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U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 89 Thursday,
No. 61 March 28, 2024

Pages 21431–22040

OFFICE OF THE FEDERAL REGISTER

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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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

RIN 3245–AH70

Ownership and Control and Contractual Assistance Requirement for the 8(a) Business Development Program; Correction

AGENCY: Small Business Administration.

ACTION: Correcting amendment.

SUMMARY: This document corrects a technical error in the definition of substantial bundling that appeared in the **Federal Register** on April 27, 2023, a final rule entitled, ''Ownership and Control and Contractual Assistance Requirements for the 8(a) Business Development Program.'' The definition of substantial bundling, as it relates to Blanket Purchase Agreements (BPAs), improperly limited substantial bundling to BPAs entered against a U.S. General Services Administration (GSA) Schedule Contract. This notice removes that limitation so that the definition of substantial bundling applies to all BPAs and not only BPAs entered against GSA Schedule Contracts.

DATES: Effective March 28, 2024.

FOR FURTHER INFORMATION CONTACT: Sam Le at (202) 619–1789 or *sam.le@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Errors

This technical correction amends the definition of substantial bundling in the U.S. Small Business Administration's (SBA's) regulations at 13 Code of Federal Regulations (CFR) 125.1. The definition of substantial bundling, as previously published on page 26210 of FR Doc. 2023–07855, mistakenly limited the scope of substantial bundling, with respect to BPAs, to apply only to BPAs entered against GSA Schedule Contracts, as authorized by Federal Acquisition Regulations (FAR) subpart 8.4. BPAs, however, may be entered in other contexts aside from GSA Schedule Contracts, including as authorized by simplified acquisition procedures at section 13.303 of the FAR.

The SBA did not intend to limit the application of the substantial bundling definition only to BPAs entered against GSA Schedule Contracts. This is clear from the preamble to SBA's final rule, published at pages 26188–26189 of 88 FR 26164, which reads, ''SBA agrees that the consolidation and bundling requirements should apply to BPAs established with more than one supplier or a single firm and to both BPAs established under FAR Part 8 or Part 13 procedures.'' Furthermore, the definition of bundling, as defined in the same final rule that is at issue, applies to BPAs without any specification for whether those BPAs are issued against a GSA Schedule contract or in accordance with simplified acquisition procedures. Based on the clear intent in the preamble and the already established definition of bundling, SBA amends the definition of substantial bundling to remove the reference to GSA Schedule contracts for BPAs impacted by substantial bundling.

II. Waiver of Proposed Rulemaking and Waiver of the Delay in Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 551, *et seq.*), while a notice of proposed rulemaking and an opportunity for public comment is generally required before the promulgation of regulations, this is not required when an agency, for good cause, finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the reasons for that finding in the document. The APA also generally requires that a final rule be effective no sooner than 30 days after the date of publication in the **Federal Register**, though an agency may also waive this requirement for good cause found.

Sections 553(b)(B) and 553(d)(3) of the APA provide the exceptions from the APA notice and comment and delay in effective date requirements. Section 553(b)(B) of the APA authorizes an agency to dispense with normal notice and comment rulemaking procedures when the agency finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest. Additionally, the agency must state that conclusion and the supporting rationale in the rule. Similarly, section 553(d)(3) of the APA allows the agency to waive the 30-day delay in effective date where good cause is found and the agency includes that conclusion and the supporting rationale in the rule.

The SBA is publishing this technical correction without advance notice or an opportunity for comment because it falls under the ''good cause'' exception of the APA, 5 U.S.C. 553(b)(B). This document corrects technical errors made in the final rule, which was published in accordance with the APA after the SBA proposed the rule and provided the public with an opportunity to comment on the proposal. The correction contained in this document does not make any substantive changes to the policies adopted in the final rule and explained in the preamble. This document makes a technical correction within the regulation text to align the definition of substantial bundling with the already published definition of bundling and for consistency with the policy discussion of the substantial bundling definition in the preamble to the final rule. The policy discussion explained that the substantial bundling definition would apply to all BPAs and not just those awarded against GSA Schedule Contracts, as supported by the public comments received. Therefore, the SBA finds good cause to conclude that it is impracticable, unnecessary, and contrary to the public interest to undertake further notice and comment procedures to incorporate this correction.

The SBA is also waiving the 30-day delay in effective date for this correction. It is in the public interest to ensure that the final rules setting forth the definition of substantial bundling be accurate so that agencies and small businesses are aware of when a procurement action falls within that definition such that the agency prepares the necessary justification and completes the required analyses and assessments to maximize small business participation to the extent possible. If the definition of substantial bundling remains improperly limited in its application due to the technical oversight in the definition, there is potential for small businesses to lose the opportunity to protest procurement actions that were not properly documented to support substantial

bundling. The SBA finds that delaying the effective date of this correction would be contrary to the public interest. In doing so, the SBA finds good cause to waive the 30-day delay in the effective date.

List of Subjects in 13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance, Veterans.

For the reasons stated above, 13 CFR part 125 is corrected by making the following correcting amendments:

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 1. The authority citation for part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q), 634(b)(6), 637, 644, 657(b), 657(f), 657r, and 657s.

■ 2. Amend § 125.1 by revising the definition of ''Substantial bundling'' to read as follows:

§ 125.1 What definitions are important to SBA's Government Contracting Programs?

* * * * *

Substantial bundling means any bundling that meets or exceeds the following dollar amounts (if the acquisition strategy contemplates multiple award contracts, orders placed under unrestricted multiple award contracts, or a Blanket Purchase Agreement or a task or delivery order contract awarded by another agency, these thresholds apply to the cumulative estimated value of the Multiple Award Contracts, orders, or Blanket Purchase Agreement, including options):

(1) $8.0 million or more for the Department of Defense;

(2) $6.0 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy; and

(3) $2.5 million or more for all other agencies.

Larry Stubblefield,

Deputy Associate Administrator, Office of Government Contracting and Business Development.

[FR Doc. 2024–05977 Filed 3–27–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1805; Project Identifier AD–2023–00019–T; Amendment 39–22695; AD 2024–05–04]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–23–04, which applied to certain Gulfstream Aerospace Corporation Model GVII–G500 and GVII–G600 airplanes. AD 2020–23–04 required revising the existing airplane flight manual (AFM) and airplane maintenance manual (AMM) to include information pertaining to the fuel boost pump. This AD was prompted by a report of misassembled impellers on the shaft of the fuel boost pump during production. This AD retains the requirements of AD 2020–23–04 and requires inspecting affected fuel boost pumps for proper installation of the impeller shaft key, marking affected fuel boost pumps that pass that inspection, and replacing fuel boost pumps that fail. This AD also limits the installation of affected fuel boost pumps. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 2, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 2, 2024.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of November 24, 2020 (85 FR 71232, November 9, 2020).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1805; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

• For service information identified in this final rule, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; email *pubs@gulfstream.com;* website *gulfstream.com/en/customer-support.*

• You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–1805.

FOR FURTHER INFORMATION CONTACT: Jared Meyer, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5534; email: *9-ASO-ATLACO-ADs@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–23–04, Amendment 39–21320 (85 FR 71232, November 9, 2020) (AD 2020–23–04). AD 2020–23–04 applied to certain Gulfstream Aerospace Corporation Model GVII–G500 and GVII–G600 airplanes. The NPRM published in the **Federal Register** on September 5, 2023 (88 FR 60606). The NPRM was prompted by a report of misassembled impellers on the shaft of the fuel boost pump during production. In the NPRM, the FAA proposed to continue to require revising the existing AFM and AMM to include information pertaining to the fuel boost pump. The NPRM also proposed to require inspecting affected fuel boost pumps for proper installation of the impeller shaft key, marking affected fuel boost pumps that pass that inspection, and replacing fuel boost pumps that fail. The NPRM also proposed to limit installation of affected fuel boost pumps. The FAA is issuing this AD to prevent the ignition of flammable vapors in the fuel tank as a result of frictional heating or sparks caused by a missing, misplaced, or dislodged impeller shaft key inside the fuel boost pump. The unsafe condition, if not addressed, could result in a potential source of ignition in the fuel tank and consequent fire or explosion.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from an anonymous commenter who supported the NPRM without change.

The FAA received additional comments from Gulfstream Aerospace Corporation (Gulfstream). The following

presents the comments received on the NPRM and the FAA's response to each comment.

Request To Change the Maintenance Manual Version

Gulfstream requested that the FAA change the maintenance manual revision dates specified in paragraph (g) of the proposed AD to refer to subsequent dates. Gulfstream stated that GVII–G600 Maintenance Manual 28–26–04 Fuel Boost Pump-Removal/Installation Procedure, dated August 31, 2020, was revised March 31, 2023, to include non-technical changes (including the use of puller tool to reduce risk of damage to Fuel Boost Pump (FBP) during removal with a caution note to avoid excess force when removing FBP and a step to record FBP serial number to determine serviceability). Gulfstream also stated that GVII–G500 Maintenance Manual 12–13–01 Defueling Procedure-Defuel, dated August 31, 2020, and GVII–G600 Maintenance Manual 12–13–01 Defueling Procedure-Defuel, dated August 31, 2020, were revised on September 30, 2023, due to an administrative error.

The FAA agrees with the request. The revised defueling procedure requested by Gulfstream is acceptable because it instructs fuel boost pump maintenance to be performed in a way that addresses the unsafe condition and it prevents damage to the parts being removed/installed. The FAA has revised paragraphs (g)(1)(i), (ii), (iii), and (v) of this AD accordingly.

Request To Change Paragraph (i) of the Proposed AD

Gulfstream requested that the compliance time in paragraph (i) of the proposed AD be revised from ''replacing the pump before further flight'' to ''replacing the pump following the completion of the CB [customer bulletin] before further flight.'' Gulfstream reported the statement ''this AD requires replacing the pump before further flight in accordance with the requirements of paragraph (h) of this AD'' in paragraph (i) of the proposed AD could be misleading. Gulfstream stated it believes this statement could be misunderstood by operators to mean that the AD immediately grounds their aircraft.

The FAA agrees with the commenter that paragraph (i) of this AD should be revised to clarify the intent of this AD. Operators have 24 months to comply with all applicable actions required by paragraph (h) of this AD. The FAA has revised paragraph (i) of this AD by removing the reference to ''before further flight'' and specifying that where the service information says to return a pump, this AD requires that the pump must be replaced.

Request for Removing GVII–G500 AFM

Gulfstream requested removing reference to ''Gulfstream Aerospace GVII–G500 Airplane Flight Manual Supplement No. GVII–G500–2020–06, dated September 8, 2020,'' from paragraph (g)(2)(ii) of the proposed AD; Gulfstream stated there are no GVII–G500 airplanes in this configuration, all aircraft have been updated to GVII Block 1 software configuration, therefore this reference to the airplane flight manual supplement is not applicable.

The FAA has confirmed with Gulfstream that Gulfstream Aerospace GVII–G500 Airplane Flight Manual Supplement No. GVII–G500–2020–06, dated September 8, 2020, is no longer applicable to the existing fleet. However, Gulfstream Aerospace GVII–G500 Airplane Flight Manual Supplement No. GVII–G500–2020–06, dated September 8, 2020, is retained in this AD. Operators may have previously complied with paragraph (g)(2)(ii) of AD 2020–23–04 using GVII–G500 Airplane Flight Manual Supplement No. GVII–G500–2020–06, dated September 8, 2020. Therefore, to provide credit to operators who have already complied with the service information and reduce the need for alternative method of compliance (AMOC) requests, the FAA has determined that this AD should include reference to GVII–G500 Airplane Flight Manual Supplement No. GVII–G500–2020–06, dated September 8, 2020. No changes have been made to this AD in this regard.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Gulfstream GVII–G500 Customer Bulletin No. 069 and Gulfstream GVII–G600 Customer Bulletin No. 037, both Revision A, both dated February 2, 2023. This service information specifies procedures for inspecting affected fuel boost pumps for proper installation of the impeller shaft key, marking affected fuel boost pumps that pass that inspection, and replacing fuel boost pumps that fail. These documents are distinct since they apply to different airplane models.

The FAA also reviewed the following AMM documents, which contain revised maintenance procedures pertaining to the fuel boost pump. These documents are distinct since they apply to different airplane models.

- 12–13–01 Defueling Procedure-Defuel, 12–13 Fueling and Defueling Operations Replenishing, Chapter 12—Servicing, Gulfstream Aerospace GVII–G500 Aircraft Maintenance Manual, Document Number GAC–AC–GVII–G500–AMM–0001, Revision 16, dated November 30, 2023.
- 12–13–01 Defueling Procedure-Defuel, 12–13 Fueling and Defueling Operations Replenishing, Chapter 12—Servicing, Gulfstream Aerospace GVII–G600 Aircraft Maintenance Manual, Document Number GAC–AC–GVII–G600–AMM–0001, Revision 12, dated November 30, 2023.
- 28–26–04 Fuel Boost Pump-Prime, 28–26 Engine and APU Fuel Delivery, Chapter 28—Fuel, Gulfstream Aerospace GVII–G500 Aircraft Maintenance Manual, Document Number GAC–AC–GVII–G500–AMM–0001, Revision 16, dated November 30, 2023.
- 28–26–04 Fuel Boost Pump-Removal/Installation, 28–26 Engine and APU Fuel Delivery, Chapter 28—Fuel, Gulfstream Aerospace GVII–G600 Aircraft Maintenance Manual, Document Number GAC–AC–GVII–G600–AMM–0001, Revision 12, dated November 30, 2023.

This AD also requires the following Gulfstream service information, which the Director of the Federal Register approved for incorporation by reference as of November 24, 2020 (85 FR 71232, November 8, 2020). (Although the maintenance manual documents have the watermarked words ''advance copy'' on each page of the document, these are not advance draft copies but final versions of temporary revisions to the AMM, pending incorporation into the AMM at the next revision.)

- Gulfstream Aerospace GVII–G500 Airplane Flight Manual Supplement No. GVII–G500 (Issue 1)—2020–05, dated September 8, 2020.
- Gulfstream Aerospace GVII–G500 Airplane Flight Manual Supplement No. GVII–G500–2020–06, dated September 8, 2020.
- Gulfstream Aerospace GVII–G600 Airplane Flight Manual Supplement No. GVII–G600–2020–06 dated September 8, 2020.

- GVII–G500 Maintenance Manual 12–13–01 Defueling Procedure-Defuel, dated August 31, 2020.
- GVII–G500 Maintenance Manual 28–26–04 Fuel Boost Pump-Prime, dated August 31, 2020.
- GVII–G600 Maintenance Manual 12–13–01 Defueling Procedure-Defuel, dated August 31, 2020.
- GVII–G600 Maintenance Manual 28–26–04 Fuel Boost Pump-Prime, dated August 31, 2020.
- GVII–G600 Maintenance Manual 28–26–04 Fuel Boost Pump-Removal/Installation, dated August 31, 2020.
- GVII–G600 Maintenance Manual 28–26–05 Fuel Boost Pump Canister-Removal/Installation, dated August 31, 2020.

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

Costs of Compliance

The FAA estimates that this AD affects 89 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Incorporate information into AMM and AFM (retained actions from AD 2020–23–04).	2 work-hours × $85 per hour = $170	$0	$170	$15,130
Impeller shaft key inspection (new action)	36 work-hours × $85 per hour = $3,060.	0	3,060	272,340

The FAA estimates the following costs to do any necessary part marking and fuel boost pump replacements that would be required based on the results of the inspection for proper installation. The FAA has no way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Part marking	0.5 work-hour × $85 per hour = $42.50	$10	$52.50
Fuel pump replacement (per fuel boost pump)	10 work-hours × $85 per hour = $850	106,706	107,556

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this 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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2020–23–04, Amendment 39–21320 (85 FR 71232, November 9, 2020); and

■ b. Adding the following new AD:

2024–05–04 Gulfstream Aerospace Corporation: Amendment 39–22695; Docket No. FAA–2023–1805; Project Identifier AD–2023–00019–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 2, 2024.

(b) Affected ADs

This AD replaces AD 2020–23–04, Amendment 39–21320 (85 FR 71232, November 9, 2020) (AD 2020–23–04).

(c) Applicability

This AD applies to the Gulfstream Aerospace Corporation airplanes, certificated in any category, identified in paragraphs (c)(1) and (2) of this AD.

(1) Model GVII–G500 airplanes, serial numbers (S/Ns) 72001 and subsequent.

(2) Model GVII–G600 airplanes, S/Ns 73001 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 2822, Fuel Boost Pump.

(e) Unsafe Condition

This AD was prompted by a report of misassembled impellers onto the shaft of the fuel boost pump during production. The FAA is issuing this AD to prevent the ignition of flammable vapors in the fuel tank as a result of frictional heating or sparks caused by a missing, misplaced, or dislodged impeller shaft key inside the fuel boost pump. The unsafe condition, if not addressed, could result in a potential source of ignition in the fuel tank and consequent fire or explosion.

(f) Compliance

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

(g) Retained Manual Updates, With Updated Service Information

This paragraph restates the requirements of paragraph (g) of AD 2020–23–04, with updated service information. For Model GVII–G500 airplane S/Ns 72001 and 72007 through 72062 inclusive; and Model GVII–G600 airplane S/Ns 73002, 73004, 73006 through 73040 inclusive, 73042, and 73043: Within 14 days after November 24, 2020 (the effective date of AD 2020–23–04), do the actions in paragraphs (g)(1) through (3) of this AD, as applicable.

(1) Revise your existing airplane maintenance manual (AMM) by replacing the procedures listed in paragraphs (g)(1)(i) through (vi) of this AD, as applicable for your model airplane.

(i) GVII–G500 Maintenance Manual 12–13–01 Defueling Procedure-Defuel, dated August 31, 2020; or 12–13–01 Defueling Procedure-Defuel, 12–13 Fueling and Defueling Operations Replenishing, Chapter 12—Servicing, Gulfstream Aerospace GVII–G500 Aircraft Maintenance Manual, Document Number GAC–AC–GVII–G500–AMM–0001, Revision 16, dated November 30, 2023.

(ii) GVII–G500 Maintenance Manual 28–26–04 Fuel Boost Pump-Prime, dated August 31, 2020; or 28–26–04 Fuel Boost Pump-Prime, 28–26 Engine and APU Fuel Delivery, Chapter 28—Fuel, Gulfstream Aerospace GVII–G500 Aircraft Maintenance Manual, Document Number GAC–AC–GVII–G500–AMM–0001, Revision 16, dated November 30, 2023.

(iii) GVII–G600 Maintenance Manual 12–13–01 Defueling Procedure-Defuel, dated August 31, 2020; or 12–13–01 Defueling Procedure-Defuel, 12–13 Fueling and Defueling Operations Replenishing, Chapter 12—Servicing, Gulfstream Aerospace GVII–G600 Aircraft Maintenance Manual, Document Number GAC–AC–GVII–G600–AMM–0001, Revision 12, dated November 30, 2023.

(iv) GVII–G600 Maintenance Manual 28–26–04 Fuel Boost Pump-Prime, dated August 31, 2020.

(v) GVII–G600 Maintenance Manual 28–26–04 Fuel Boost Pump-Removal/Installation, dated August 31, 2020; or 28–26–04 Fuel Boost Pump-Removal/Installation, 28–26 Engine and APU Fuel Delivery, Chapter 28—Fuel, Gulfstream Aerospace GVII–G600 Aircraft Maintenance Manual, Document Number GAC–AC–GVII–G600–AMM–0001, Revision 12, dated November 30, 2023.

(vi) GVII–G600 Maintenance Manual 28–26–05 Fuel Boost Pump Canister-Removal/Installation, dated August 31, 2020.

(2) Revise your existing airplane flight manual (AFM) by including in the AFM the airplane flight manual supplement (AFMS) listed in paragraph (g)(2)(i), (ii), or (iii) of this AD that is applicable to your model airplane. Using a later AFM revision with information identical to that contained in the AFMS specified for your airplane is acceptable for compliance with the requirement of this paragraph.

(i) Gulfstream Aerospace GVII–G500 Airplane Flight Manual Supplement No. GVII–G500 (Issue 1)—2020–05, dated September 8, 2020; or

(ii) Gulfstream Aerospace GVII–G500 Airplane Flight Manual Supplement No. GVII–G500–2020–06, dated September 8, 2020; or

(iii) Gulfstream Aerospace GVII–G600 Airplane Flight Manual Supplement No. GVII–G600–2020–06, dated September 8, 2020.

(3) The action required by paragraph (g)(2) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4), and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) New Requirements

For Model GVII–G500 airplane S/Ns 72001 and 72007 through 72062 inclusive; and Model GVII–G600 airplane S/Ns 73002, 73004, 73006 through 73040 inclusive, 73042, and 73043: Except as specified in paragraph (i) of this AD, within 24 months after the effective date of this AD, do all actions specified in paragraph III.D. and all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Gulfstream GVII–G500 Customer Bulletin No. 069 or Gulfstream GVII–G600 Customer Bulletin No. 037, both Revision A, both dated February 2, 2023, as applicable.

Note 1 to paragraph (h): The serial number on the aft exterior of the pump is not the pump serial number.

Note 2 to paragraph (h): Guidance on pump removal and installation procedures can be found in Gulfstream Aerospace GVII–G500 Aircraft Maintenance Manual, Document Number GAC–AC–GVII–G500–AMM–0001, Revision 12, dated June 15, 2022; and Gulfstream Aerospace GVII–G600 Aircraft Maintenance Manual, Document Number GAC–AC–GVII–G600–AMM–0001, Revision 8, dated June 15, 2022.

(i) Service Information Exception

Where Gulfstream GVII–G500 Customer Bulletin No. 069 and Gulfstream GVII–G600 Customer Bulletin No. 037, both Revision A, both dated February 2, 2023, specify to return any pump for repair, this AD requires replacing the pump in accordance with the applicable service information identified in paragraph (h) of this AD.

(j) Terminating Action for Paragraph (g) of This AD

The requirements of paragraph (g) of this AD are terminated if all applicable actions required by paragraph (h) of this AD have been accomplished.

(k) Parts Installation Limitation

As of the effective date of the AD, no person may install on any airplane a fuel boost pump having a part and serial number specified in Table 1 of Gulfstream GVII–G500 Customer Bulletin No. 069 or Gulfstream GVII–G600 Customer Bulletin No. 037, both Revision A, both dated February 2, 2023, as applicable, unless that pump is marked with the letter ''C'' to the right of the ''INSP'' legend on the pump data area.

(l) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (h) of this AD, if those actions were performed before the effective date of this AD using the service information identified in paragraphs (l)(1) and (2) of this AD, as applicable. This service information is not incorporated by reference in this AD.

(1) Gulfstream GVII–G500 Customer Bulletin No. 069, dated October 19, 2022.

(2) Gulfstream GVII–G600 Customer Bulletin No. 037, dated October 19, 2022.

(m) Alternative Methods of Compliance (AMOCs)

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

(3) AMOCs approved for AD 2020–23–04 are approved as AMOCs for the corresponding provisions of this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (m)(4)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can

still be done as specified, and the airplane can be put back in an airworthy condition.

(n) Related Information

(1) For more information about this AD, contact Jared Meyer, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5534; email: *9-ASO-ATLACO-ADs@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the address specified in paragraph (o)(5) of this AD.

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on May 2, 2024.

(i) Gulfstream GVII–G500 Customer Bulletin No. 069, Revision A, dated February 2, 2023.

(ii) Gulfstream GVII–G600 Customer Bulletin No. 037, Revision A, dated February 2, 2023.

(iii) 12–13–01 Defueling Procedure-Defuel, 12–13 Fueling and Defueling Operations Replenishing, Chapter 12—Servicing, Gulfstream Aerospace GVII–G500 Aircraft Maintenance Manual, Document Number GAC–AC–GVII–G500–AMM–0001, Revision 16, dated November 30, 2023.

Note 3 to paragraph (o)(3)(iii): The manufacturer name is located only on the title page of the documents identified in paragraphs (o)(3)(iii) and (iv) of this AD.

(iv) 12–13–01 Defueling Procedure-Defuel, 12–13 Fueling and Defueling Operations Replenishing, Chapter 12—Servicing, Gulfstream Aerospace GVII–G600 Aircraft Maintenance Manual, Document Number GAC–AC–GVII–G600–AMM–0001, Revision 12, dated November 30, 2023.

(v) 28–26–04 Fuel Boost Pump-Prime, 28–26 Engine and APU Fuel Delivery, Chapter 28—Fuel, Gulfstream Aerospace GVII–G500 Aircraft Maintenance Manual, Document Number GAC–AC–GVII–G500–AMM–0001, Revision 16, dated November 30, 2023.

Note 4 to paragraph (o)(3)(v): The manufacturer name is located only on the title page of the documents identified in paragraphs (o)(3)(v) and (vi) of this AD.

(vi) 28–26–04 Fuel Boost Pump-Removal/Installation, 28–26 Engine and APU Fuel Delivery, Chapter 28—Fuel, Gulfstream Aerospace GVII–G600 Aircraft Maintenance Manual, Document Number GAC–AC–GVII–G600–AMM–0001, Revision 12, dated November 30, 2023.

(4) The following service information was approved for IBR on November 24, 2020 (85 FR 71232, November 9, 2020).

(i) Gulfstream Aerospace GVII–G500 Airplane Flight Manual Supplement No. GVII–G500 (Issue 1)—2020–05, dated September 8, 2020.

(ii) Gulfstream Aerospace GVII–G500 Airplane Flight Manual Supplement No. GVII–G500–2020–06, dated September 8, 2020.

(iii) Gulfstream Aerospace GVII–G600 Airplane Flight Manual Supplement No. GVII–G600–2020–06 dated September 8, 2020.

(iv) GVII–G500 Maintenance Manual 12–13–01 Defueling Procedure-Defuel, dated August 31, 2020.

Note 5 to paragraph (o)(4)(iv): Although the documents in paragraphs (o)(4)(iv) through (ix) have the watermarked words ''advance copy'' on each page of the document, these are not advance draft copies but final versions of temporary revisions to the AMM, pending incorporation into the AMM at the next revision.

(v) GVII–G500 Maintenance Manual 28–26–04 Fuel Boost Pump-Prime, dated August 31, 2020.

(vi) GVII–G600 Maintenance Manual 12–13–01 Defueling Procedure-Defuel, dated August 31, 2020.

(vii) GVII–G600 Maintenance Manual 28–26–04 Fuel Boost Pump-Prime, dated August 31, 2020.

(viii) GVII–G600 Maintenance Manual 28–26–04 Fuel Boost Pump-Removal/Installation, dated August 31, 2020.

(ix) GVII–G600 Maintenance Manual 28–26–05 Fuel Boost Pump Canister-Removal/Installation, dated August 31, 2020.

(5) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; email *pubs@gulfstream.com;* website *gulfstream.com/en/customer-support.*

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

(7) 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 March 21, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06478 Filed 3–27–24; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1237

[FDMS No. NARA–24–0006; NARA–2024–022]

RIN 3095–AC17

Federal Records Management: Digital Photographs

AGENCY: National Archives and Records Administration (NARA).

ACTION: Direct final rule.

SUMMARY: The National Archives and Records Administration (NARA) is removing provisions in established regulations that cover special concerns for digital photographs. This revision is necessary because recent amendments create new and more specific requirements for digitizing permanent photographic prints. The recent amendments do not address digitized negatives and slides, therefore requirements for managing these formats have been revised and retained in the existing regulations.

DATES: This rule is effective May 28, 2024 without further action, unless adverse comment is received by April 29, 2024. If adverse comment is received, NARA will publish a timely withdrawal of the rule in the **Federal Register**.

The incorporation by reference of certain material listed in the rule was approved by the Director of the Federal Register as of November 2, 2009.

ADDRESSES: You may submit comments on this rule, identified by RIN 3095–AC17, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: Regulation_comments@nara.gov. Include RIN 3095–AC17 in the subject line of the message.

Mail (for paper, disk, or CD–ROM submissions): Send comments to Regulation Comments Desk (External Policy Program, Strategy & Performance Division (MP)); Suite 4100; National Archives and Records Administration; 8601 Adelphi Road, College Park, MD 20740–6001.

Hand Delivery or Courier: Deliver comments to the front desk at 8601 Adelphi Road, College Park, MD, addressed to: Regulations Comments Desk, External Policy Program; Suite 4100.

FOR FURTHER INFORMATION CONTACT: Edward Germino, Strategy and Performance Division, by email at *regulation_comments@nara.gov,* or by telephone at 301–837–3758. Contact *rmstandards@nara.gov* with any questions on records management standards and policy.

SUPPLEMENTARY INFORMATION:

Background

Digital photographs play a vital role in modern recordkeeping and NARA has been actively involved in creating guidelines for their preservation. The changes we made in May 2023 to 36 CFR part 1236 subpart E (88 FR 28410, May 4, 2023) supersede the requirements for digitizing permanent photographic prints in § 1237.28(d).

Therefore, NARA is removing the provisions of § 1237.28(d) relating to scanned digital images of photographic prints. Section 1237.28(d) now refers to part 1236 subpart E for digitizing photographic prints. Because NARA does not yet have standards for digitizing negatives and slides, we have retained § 1237.28(d) and limited its scope to apply only to records in these formats.

Once our revision of § 1237.28(d) is complete, agencies and contractors must follow the provisions outlined in part 1236 subpart E and the instructions in other relevant sections of part 1236 for digitizing photographic prints. These provisions cover various aspects such as scheduling and transfer, selection of image management software and hardware, digital image storage strategies, quality control for scanned digital images, inspection and preservation of born-digital images, record set designation, organization of digital images, documentation requirements, and creation of finding aids. Agencies and contractors are encouraged to consult the appropriate NARA guidance and resources for detailed instructions and help in implementing these management practices.

Regulatory Analysis

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

The Office of Management and Budget (OMB) has reviewed this rulemaking and determined it is not ''significant'' under section 3(f) of Executive Order 12866. It is not significant because it applies only to Federal agencies, updates the regulations due to a statutory requirement, only clarifies requirements that agencies already have to follow, and does not establish a new program. The requirements are necessary to comply with statute and to ensure agencies are appropriately preserving records.

Regulatory Flexibility Act (5 U.S.C. 601, et seq.)

This review requires an agency to prepare an initial regulatory flexibility analysis and publish it when the agency publishes the proposed rule. This requirement does not apply if the agency certifies that the rulemaking will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 603). We certify, after review and analysis, that this rulemaking will not have a significant adverse economic impact on small entities.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*) requires that agencies consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information we conduct, sponsor, or require through regulations. This rulemaking does not impose additional information collection requirements on the public that are subject to the Paperwork Reduction Act.

Executive Order 13132, Federalism

Executive Order 13132 requires agencies to ensure State and local officials have the opportunity for meaningful and timely input when developing regulatory policies that may have a substantial, direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. If the effects of the rule on State and local governments are substantial, the agency must prepare a Federal assessment to assist senior policymakers. This rulemaking will not have any effects on State and local governments within the meaning of the E.O. Therefore, no federalism assessment is required.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4; 2 U.S.C. 1532)

The Unfunded Mandates Reform Act requires that agencies determine whether any Federal mandate in the rulemaking may result in State, local, and Tribal governments, in the aggregate, or the private sector, expending $100 million in any one year. NARA certifies that this rulemaking does not contain a Federal mandate that may result in such an expenditure.

Materials Incorporated by Reference

The following standards appear in the amendatory text of this document and were previously approved for the locations in which they appear: ANSI/AIIM TR34; ISO 2859–1.

List of Subjects in 36 CFR 1237

Archives and records, Digital photographs, Digital records, Incorporation by reference, Records management.

For the reasons discussed in the preamble, NARA amends 36 CFR part 1237 as follows:

PART 1237—AUDIOVISUAL, CARTOGRAPHIC, AND RELATED RECORDS MANAGEMENT

■ 1. The authority citation for part 1237 continues to read as follows:

Authority: 44 U.S.C. 2904 and 3101.

§ 1237.3 [Amended]

■ 2. Amend § 1237.3 by removing and reserving paragraph (e)(1).

■ 3. Amend § 1237.28 by revising paragraph (d) to read as follows:

§ 1237.28 What special concerns apply to digital photographs?

* * * * *

(d)(1) When digitizing permanent or unscheduled slides and negatives, agencies must document the quality control inspection process used during the digitization process.

(i) Conduct a visual inspection of a sample of the scanned images to identify any defects. Additionally, evaluate the accuracy of finding aids, and verify the integrity of file header information and file names.

(ii) The sample size must be large enough to yield statistically valid results. To determine the appropriate sample size, use one of the quality sampling methods outlined in ANSI/AIIM TR34 (incorporated by reference, see § 1237.3). Agencies may consult ISO 2859–1:1996 for further guidance (contact NARA's textual research room or NARA's Regulation Comments Desk, see § 1237.3(a), for availability).

(2) When digitizing permanent or unscheduled photographic prints, refer to the requirements specified in part 1236 subpart E of this subchapter.

* * * * *

Colleen J. Shogan,

Archivist of the United States.

[FR Doc. 2024–06406 Filed 3–27–24; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2023–0096; FRL–11663–02–R4]

Air Plan Approval; Revisions to the Florida State Implementation Plan Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision

submitted by the Florida Department of Environmental Protection (FDEP) through a letter dated August 12, 2022. The revision updates the general conformity portion of the conformity rule in Florida's SIP. EPA is approving these changes because they are consistent with the Clean Air Act (CAA or Act).

DATES: This rule is effective April 29, 2024.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2023–0096. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests you contact the person 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 Federal holidays.

FOR FURTHER INFORMATION CONTACT: Josue Ortiz Borrero, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Ortiz can be reached via phone number (404) 562–8085 or via electronic mail at *ortizborrero.josue@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

General conformity is a requirement of CAA section 176(c). General conformity prohibits Federal actions within nonattainment and maintenance areas unless the emissions from the actions conform to the applicable SIP, Tribal Implementation Plan (TIP), or Federal Implementation Plan (FIP) for the area.[1] Conformity to an implementation plan means conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards (NAAQS or standards) and achieving expeditious attainment of such standards. *See* section 176(c)(1). Under general conformity, Federal actions cannot: (1) Cause or contribute to any new violation of any standard in any area; (2) increase the frequency or severity of any existing violation of any air quality standard in any area; or (3) delay timely attainment of any standard, any required interim emission reductions, or any other milestones, in any area. *Id.*

EPA promulgated two sets of conformity regulations in November 1993 to implement section 176(c) of the CAA. First, EPA promulgated transportation conformity regulations, which apply to highways and mass transit, on November 24, 1993. *See* 58 FR 62188. These regulations establish the criteria and procedures for determining whether transportation plans, programs, and projects funded under 23 U.S.C. or the Federal Transit Act (40 U.S.C. chapter 53) conform with implementation plans. EPA subsequently revised the transportation conformity regulations several times. *See* 69 FR 40004 (July 1, 2004); 70 FR 24280 (May 6, 2005); 71 FR 12468 (March 10, 2006); and 73 FR 4420 (January 24, 2008). Second, on November 30, 1993, EPA promulgated the general conformity regulations at 40 CFR part 51, subpart W and 40 CFR part 93, subpart B, which applied to all other Federal actions to ensure they conformed with implementation plans. *See* 58 FR 63214. EPA has revised its general conformity regulations twice. *See* 71 FR 40420 (July 17, 2006) and 75 FR 17254 (April 5, 2010). As part of the 2010 revisions, EPA revised its general conformity regulations to remove rules from 40 CFR part 51, subpart W that were duplicative of those in 40 CFR part 93, subpart B. *See* 75 FR 17254 (April 5, 2010).[2]

Florida Rule 62–204.500, Florida Administrative Code (F.A.C.), *Conformity,* addresses general conformity in paragraph (1). EPA incorporated Rule 62–204.500 into the Florida SIP in a direct final rule on August 11, 2003. *See* 68 FR 47468. Since then, Florida has amended Rule 62–204.500, and those changes are the subject of this rulemaking.[3]

Through a notice of proposed rulemaking (NPRM), published on February 1, 2024 (89 FR 6475), EPA proposed to approve Florida's August 12, 2022, SIP revision to Rule 62–204.500. The details of the submission, as well as EPA's rationale for changing this rule, are described in more detail in EPA's February 1, 2024, NPRM. Comments on the February 1, 2024, NPRM were due on or before March 4, 2024. EPA did not receive any comments on the February 1, 2024, NPRM.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference of Rule 62–204.500, F.A.C., *Conformity,* state effective on October 23, 2016, except for paragraphs 62–204.500(1)(a), 62–204.500(1)(b), 62–204.500(1)(c), and 62–204.500(1)(d).[4] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[5]

III. Final Action

EPA is finalizing approval, with the exceptions noted, the changes to Rule

[1] "Federal action" is defined at 40 CFR 93.152 as "any activity engaged in by a department, agency, or instrumentality of the Federal government, or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*). Where the Federal action is a permit, license, or other approval for some aspect of a non-Federal undertaking, the relevant activity is the part, portion, or phase of the non-Federal undertaking that requires the Federal permit, license, or approval."

[2] For more information on general conformity, see *https://www.epa.gov/general-conformity.*

[3] The August 12, 2022, submittal transmits several changes to other Florida SIP-approved rules. These changes are not addressed in this rulemaking and will be considered by EPA in separate rulemakings. In addition, EPA is not acting on paragraphs 62–204.500(1)(a)–(1)(d), F.A.C., because they were withdrawn from EPA consideration in a letter dated January 5, 2024, which is in the docket for this rulemaking.

[4] EPA is also correcting the explanation associated with the entry for Rule 62–204.500 at 40 CFR 52.520(c) by removing the language "Except for the incorporation by reference of 40 CFR 93.104(e) of the Transportation Conformity Rule" because it is erroneous as no reference to 40 CFR 93.104(e) exists in Rule 62–204.500.

[5] 62 FR 27968 (May 22, 1997).

62–204.500, *Conformity,* into the Florida SIP. EPA is approving these changes because they are consistent with the CAA.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. Accordingly, this 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 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 14094 (88 FR 21879, April 11, 2023);
- 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 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- 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 CAA.

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, February 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.''

FDEP did not evaluate EJ 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 EJ for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 28, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 21, 2024.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart K—Florida

■ 2. In § 52.520(c), amend the table by revising the entry for ''62–204.500'' to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED FLORIDA LAWS AND REGULATIONS

State citation (section)	Title/subject	State effective date	EPA approval date	Explanation
Chapter 62–204 Air Pollution Control—General Provisions				
* *	*	*	*	* *
62–204.500	Conformity	10/23/2016	3/28/2024, [Insert citation of publication].	Except for paragraphs 62–204.500(1)(a), (1)(b), (1)(c), and (1)(d).
* *	*	*	*	* *

* * * * *

[FR Doc. 2024–06394 Filed 3–27–24; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 89, No. 61
Thursday, March 28, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS–SC–23–0087]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the California Olive Committee (Committee) to decrease the assessment rate established for the 2024 fiscal year and subsequent fiscal years. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by April 29, 2024.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk electronically by Email: *MarketingOrderComment@usda.gov* or internet: *https://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and can be viewed at: *https://www.regulations.gov.* All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jeremy Sasselli, Marketing Specialist, or Barry Broadbent, Acting Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, or Email: *Jeremy.Sasselli@usda.gov* or *Barry.Broadbent@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California. Part 932 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers of olives operating within the area of production, and one public member.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 directs agencies to conduct proactive outreach to engage interested and affected parties through a variety of means, such as through field offices, and alternative platforms and media. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. Under the Order now in effect, California olive handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the proposed assessment rate would be applicable to all assessable olives beginning on January 1, 2024, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the U.S. Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Section 932.38 of the Order authorizes the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

This proposed rule would decrease the assessment rate from $35 per ton of assessed olives, the rate that was

established for the 2023 fiscal year and subsequent fiscal years, to $28 per ton of assessed olives for the 2024 fiscal year and subsequent fiscal years. The proposed lower rate is the result of the significantly higher crop size in 2023 (fruit that is marketed over the course of the 2024 fiscal year), and the need to maintain the Committee's financial reserve at a responsible level.

The Committee met on December 12, 2023, and unanimously recommended 2024 expenditures of $1,100,151 and an assessment rate of $28 per ton of assessed olives. In comparison, last year's budgeted expenditures were $1,154,412. The proposed assessment rate of $28 is $7 lower than the rate currently in effect. Producer receipts show total production of approximately 34,000 tons of olives from the 2023 crop year that will be assessable during the 2024 fiscal year. This amount is substantially higher than the quantity of olives that was harvested in 2022.

Olives harvested in 2023 will be marketed over the course of the 2024 fiscal year, which begins on January 1, 2024, as the harvested olives are stored in brining tanks and processed over the subsequent year. The 34,000 tons of assessable olives from the 2023 crop would generate $952,000 in assessment revenue over the 2024 fiscal year at the proposed assessment rate. The balance of funds needed to cover budgeted expenditures would come from interest income and the Committee's financial reserve. The 2024 fiscal year assessment rate decrease is appropriate to ensure the Committee has sufficient revenue to fund the recommended 2024 fiscal year budgeted expenditures while also ensuring that funds in the reserve do not exceed approximately one fiscal year's expenses, the maximum reserve amount permitted by § 932.40.

The Order has a fiscal year and a crop year that are independent of each other. The crop year is a 12-month period that begins on August 1 of each year and ends on July 31 of the following year. The fiscal year is the 12-month period that begins on January 1 and ends on December 31 of each year. Olives are an alternate-bearing crop, with a small crop (2022) followed by a large crop (2023). For this assessment rate proposed rule, the Committee utilized the estimated 2023 crop year receipts to determine the recommended assessment rate for the 2024 fiscal year.

The major expenditures recommended by the Committee for the 2024 fiscal year include $350,250 for program administration, $164,650 for export programs, $197,500 for marketing activities, $302,751 for research, and $85,000 for inspection. Budgeted expenses for these items during the 2023 fiscal year were $399,700, $148,000, $193,000, $325,712, and $88,000, respectively.

The assessment rate recommended by the Committee resulted from consideration of anticipated fiscal year expenses, estimated olive tonnage received by handlers during the 2023 crop year, and the amount in the Committee's financial reserve. Income derived from handler assessments and other revenue sources is expected to be adequate to cover budgeted expenses. The assessment rate proposed in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent fiscal years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 800 producers of olives in the production area and 2 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts equal to or less than $3.5 million (NAICS code 111339, Other Noncitrus Fruit Farming) and small agricultural service firms are defined as those whose annual receipts are equal to or less than $34.0 million (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

Because of the large year-to-year variation in California olive production, it is helpful to use a two-year average of the seasonal average producer price when undertaking calculations relating to average producer revenue. The National Agricultural Statistics Service (NASS) reported season average producer prices of olives utilized for canning for 2021 and 2022 of $851 and $913 per ton, respectively, with a two-year average price of $882. NASS had not reported the 2023 season average producer price at the time this proposed rule was published.

The appropriate quantities to consider are the annual assessable olive quantities, which were 43,336 tons in 2021 and 19,912 tons in 2022, with the two-year average production being 31,624 tons. Multiplying 31,624 tons by the two-year average producer price of $882 yields a two-year average crop value of $27,892,368. Dividing the crop value by the number of olive producers (800) yields calculated annual average producer revenue of $34,865, much less than SBA's size standard of $3.5 million. Thus, the majority of olive producers may be classified as small entities.

Dividing the $27,892,368 average crop value by 2 (the number of handlers) equals $13,946,184, which is the annual average producer crop value processed by each of the 2 handlers over the two-year period. Dividing the $34.0 million annual sales SBA size threshold for a large handler by the $13,946,184 crop value per handler yields an estimate of a 125 percent manufacturing margin for the 2 handlers, on average, to be considered large handlers. A key question is whether 125 percent is a reasonable estimate of a manufacturing margin for the olive canning process.

A review of economic literature on canned food manufacturing margins found no recent published estimates. A series of Economic Research Service reports on cost components of farm to retail price spreads, published in the late 1970s and early 1980s, found that margins above crop value for a canned vegetable product were in the range of 76 to 85 percent. Although the studies are not recent, canning technology has not changed significantly since that time period. Therefore, with the 125 percent margin estimate for the 2 olive handlers, the data indicates that they could be on the threshold of being large handlers

($34.0 million in annual sales), using two-year average data, and assuming that the 2 handlers are about the same size. In a large crop year, one or both handlers could be considered large handlers, depending on the proportion of the crop that each of the handlers processed.

This proposal would decrease the assessment rate collected from handlers for the 2024 fiscal year and subsequent fiscal years from $35 to $28 per ton of assessable olives. The Committee unanimously recommended 2024 expenditures of $1,100,151 and an assessment rate of $28 per ton. The recommended assessment rate of $28 is $7 lower than the 2023 assessment rate. The quantity of assessable olives harvested in the 2023 crop year is estimated to be 34,000 tons, compared to 19,912 tons in 2022. Olives are an alternate-bearing crop, with a small crop (2022) followed by a large crop (2023). Income derived from the $28 per ton assessment rate, along with interest income and funds from the authorized reserve, would be adequate to meet this fiscal year's budgeted expenditures.

The major expenditures recommended by the Committee for the 2024 fiscal year include $350,250 for program administration, $164,650 for export programs, $197,500 for marketing activities, $302,751 for research, and $85,000 for inspection. Budgeted expenses for these items during the 2023 fiscal year were $399,700, $148,000, $193,000, $325,712, and $88,000, respectively.

The Committee deliberated on many of the expenses, weighed the relative value of various programs or projects, and decreased their expenses for inspection and research activities while increasing marketing activities. Overall, the 2024 budget of $1,100,151 is $54,261 less than the $1,154,412 budgeted for the 2023 fiscal year.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources including the Committee's Executive, Marketing, Inspection, and Research Subcommittees. Alternate expenditure levels were discussed by these groups, based upon the relative value of various projects to the olive industry and the increased olive production. The assessment rate of $28 per ton of assessable olives was derived by considering anticipated expenses, the high volume of assessable olives, the current balance in the monetary reserve, and additional pertinent factors.

A review of information from NASS indicates that the average producer price for the 2022 crop year (the most recent year for which information is available) was $913 per ton. Therefore, utilizing the recommended assessment rate of $28 per ton, assessment revenue for the 2024 fiscal year as a percentage of total producer revenue would be approximately 3.1 percent ($28 divided by $913 times 100).

This proposed action would decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers. Some of the assessment costs to handlers may be passed on to producers. Decreasing the assessment rate would reduce the burden on handlers and may also, therefore, reduce the burden on producers.

The Committee's meetings are widely publicized throughout the production area. The olive industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the December 12, 2023, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. In addition, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, USDA has determined that this proposed rule is consistent with, and would effectuate the purposes of, the Act.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this rule.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 932 as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2024, an assessment rate of $28 per ton is established for California olives.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–06482 Filed 3–27–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0767; Project Identifier MCAI–2023–00723–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., 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

certain Bombardier, Inc., Model BD–700–2A12 airplanes. This proposed AD was prompted by reports that the baggage bay discharge push-button annunciator (PBA) switch was making contact but was not fully engaged, and the tabs were not fully locked. This proposed AD would require a verification of the baggage bay discharge PBA functionality and tab installation. 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 May 13, 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–2024–0767; 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, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Bombardier service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: William Reisenauer, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7300; email: *9-avs-nyaco-cos@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–2024–0767; Project Identifier MCAI–2023–00723–T'' 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 the 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 William Reisenauer, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7300; email: *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2023–36, dated May 29, 2023 (Transport Canada AD CF–2023–36) (also referred to after this as the MCAI), to correct an unsafe condition on certain Bombardier, Inc., Model BD–700–2A12 airplanes. The MCAI states that during the execution of a functional test procedure (FTP) during production, the baggage bay discharge PBA switch was partially engaged and failed to make electrical contact. Further investigation showed that in some instances, the baggage bay discharge PBA switch was making contact but was not fully engaged and the tabs were not fully locked, so while the PBA may pass the FTP, vibration could eventually lead to a loss of electrical contact and subsequent loss of baggage bay discharge PBA switch functionality.

The FAA is issuing this AD to address the possible inability to discharge halon into the baggage compartment in case of a fire. The unsafe condition, if not addressed, could result in the inability to control a baggage compartment fire.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0767.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Service Bulletin 700–26–7505, dated February 10, 2023. This service information specifies procedures for doing a general visual inspection of the baggage bay discharge PBA switch for proper installation and a functional operation test. 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 the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 42 airplanes of U.S. registry. The FAA

estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	$0	$170	$7,140

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all 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:

Bombardier, Inc.: Docket No. FAA–2024–0767; Project Identifier MCAI–2023–00723–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 13, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–2A12 airplanes, certificated in any category, serial numbers 70006 through 70099 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection.

(e) Unsafe Condition

This AD was prompted by reports that the baggage bay discharge push-button annunciator (PBA) switch was making contact but was not fully engaged, and the tabs were not fully locked. The FAA is issuing this AD to address the possible inability to discharge halon into the baggage compartment in case of a fire. The unsafe condition, if not addressed, could result in the inability to control a baggage compartment fire.

(f) Compliance

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

(g) Required Actions

Within 36 months after the effective date of this AD: Perform the inspection and testing of the baggage bay discharge PBA switch, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 700–26–7505, dated February 10, 2023.

(h) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (i)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(i) Additional Information

(1) Refer to Transport Canada AD CF–2023–36, dated May 29, 2023 (Transport Canada AD CF–2023–36) for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2024–0767.

(2) For more information about this AD, contact William Reisenauer, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7300; email: *9-avs-nyaco-cos@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 700–26–7505, dated February 10, 2023.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*

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

(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 March 21, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06521 Filed 3–27–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0769; Project Identifier AD–2023–00556–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company 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 certain The Boeing Company Model 777 airplanes. This proposed AD was prompted by a report indicating multiple findings of cracks in the fuselage skin common to the underwing longeron (UWL). This proposed AD would require external or internal (depending on configuration) inspections for any cracking of the left and right side fuselage skin common to the UWL, and applicable on-condition actions. 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 May 13, 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–2024–0769; 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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2024–0769.

FOR FURTHER INFORMATION CONTACT: Luis Cortez-Muniz, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3958; email: *luis.a.cortez-muniz@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–2024–0769; Project Identifier AD–2023–00556–T'' 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 Luis Cortez-Muniz Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3958; email: *luis.a.cortez-muniz@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 reports indicating multiple findings of cracks in the fuselage skin common to the UWL on all series of Boeing Model 777 airplanes. The crack findings were made during UWL replacement or accomplishing Boeing Service Bulletins 777–53–0084 or 777–53–0087, or Boeing Requirements Bulletin 777–57A0122 RB. In many of the fuselage skin crack reports, the UWL was reported not damaged. The found fuselage skin cracks were hidden externally by the UWL, and internally by fuselage frames and stringers. The fuselage skin cracks were found on airplanes with as few as 2,000 total flight cycles and 18,000 total flight hours. These fuselage skin cracks were determined to be caused by cold work surface upset that is not removed from the mating parts and high joint load transfer or significant local bending stresses at critical fastener locations. These conditions, if not addressed, could result in an inability of a principal structural element (PSE) to sustain limit load, leading to reduced structural integrity of the airplane and possible loss of control of the airplane.

Boeing has issued Boeing Alert Requirements Bulletin 777–53A0100

RB, dated March 16, 2023, to address the identified unsafe condition.

Other Relevant Rulemaking

AD 2023–17–14, Amendment 39–22541 (88 FR 60111, August 31, 2023) (AD 2023–17–14) requires repetitive inspections for cracking of the left and right side ring chords, repair angles, front spar lower chords, and front spar webs (depending on configuration) common to the UWL located at station (STA) 1035; modification of the front spar lower chord for some airplanes; repetitive post-modification inspections; and applicable on-condition actions, as specified in Boeing Alert Requirements Bulletin 777–57A0122 RB, dated October 8, 2021; and requires a maintenance records review of previously modified airplanes for the procedures used during that modification, and applicable corrective actions. Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023, specifies that the modification in Boeing Alert Requirements Bulletin 777–57A0122 RB should be done before further flight if cracking is found during certain inspections. Therefore, this proposed AD, which mandates Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023, might require that the modification be done prior to the compliance time for that modification as specified in AD 2023–17–14. For airplanes on which a front spar lower chord modification specified in Boeing Alert Requirements Bulletin 777–57A0122 RB is done as part of the requirements of paragraph (g) of this proposed AD, the modification requirements of paragraph (g) of AD 2023–17–14 are terminated for the applicable side (left or right) on which the modification was done.

AD 2019–11–02, Amendment 39–19648 (84 FR 28722, June 20, 2019) (AD 2019–11–02) requires repetitive inspections of the left and right side UWLs and applicable on-condition actions as specified in Boeing Alert Service Bulletin 777–53A0081, Revision 2, dated March 29, 2019. The accomplishment of the longeron modification specified in Boeing Service Bulletin 777–53–0084, Revision 2, dated December 9, 2020, or Boeing Service Bulletin 777–53–0087, Revision 1, dated March 4, 2020; or the front spar lower chord modification specified in Boeing Alert Requirements Bulletin 777–57A0122 RB, dated October 8, 2021; which must be done if cracking is found during certain inspections specified in Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023, terminates the inspection requirements of paragraph (g) of AD 2019–11–02 for the applicable side (left or right) on which the modification was done.

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 products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023. This service information specifies procedures for external or internal (depending on configuration) detailed and ultrasonic or surface high frequency eddy current (HFEC) inspections for any cracking of the left and right side fuselage skin common to the UWL, and applicable on-condition actions. On-condition actions include, among other things, modification of the fuselage skin, and post-modification inspections and applicable corrective actions (repairs of cracking). Compliance times for on-condition actions depend on inspection type, inspection findings, and modification status. Initial compliance times for post-modification inspections range from within 10,000 flight cycles or 50,000 flight hours, whichever occurs first after the modification; and within 30,000 flight cycles, 90,000 flight hours, or before the result of a certain total flight cycle and total flight hour equation, whichever occurs first after the modification. The repetitive intervals range from 8,000 flight cycles or 25,000 flight hours, whichever occurs first, to 11,000 flight cycles or 56,000 flight hours, whichever occurs first. Repairs of cracking found during post-modification inspections are to be accomplished before further flight.

The FAA also reviewed Boeing Multi Operator Message MOM–MOM–24–0054–01B, dated January 26, 2024. This service information specifies corrections for Boeing Alert Requirements Bulletin 777–57A0122 RB, dated October 8, 2021, that address a non-destructive test manual (NDTM) error, fastener callout errors, inadequate cap seal instructions, figure orientation errors, minimum gap errors, missing fasteners on certain figures, affected groups missing from certain figures, and typographical errors.

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 and except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *regulations.gov* under Docket No. FAA–2024–0769.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 272 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
External or internal inspections	Up to 21 work-hours × $85 per hour = $1,785 per inspection cycle.	$0	$1,785 per inspection cycle.	$485,520 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Modification	420 work-hours × $85 per hour = $35,700.	$40,620	$76,320.
Post-modification inspections	46 work-hours × $85 per hour = $3,910 per inspection cycle.	0	3,910 per inspection cycle.

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

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all 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:

The Boeing Company: Docket No. FAA–2024–0769; Project Identifier AD–2023–00556–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 13, 2024.

(b) Affected ADs

This AD affects AD 2023–17–14, Amendment 39–22541 (88 FR 60111, August 31, 2023) (AD 2023–17–14).

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report indicating multiple findings of cracks in the fuselage skin common to the underwing longeron (UWL). The FAA is issuing this AD to address fuselage skin cracking caused by cold work surface upset that is not removed from the mating parts and high joint load transfer or significant local bending stresses at critical fastener locations. The unsafe condition, if not addressed, could result in an inability of a principal structural element (PSE) to sustain limit load, leading to reduced structural integrity of the airplane and possible loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 777–53A0100, dated March 16, 2023, which is referred to in Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023.

Note 2 to paragraph (g): Guidance for accomplishing certain on-condition actions required by paragraph (g) of this AD can be found Boeing Service Bulletin 777–53–0084 Revision 2, dated December 9, 2020; Boeing Service Bulletin 777–53–0087 Revision 1, dated March 4, 2020; and Boeing Alert Requirements Bulletin 777–57A0122 RB, dated October 8, 2021.

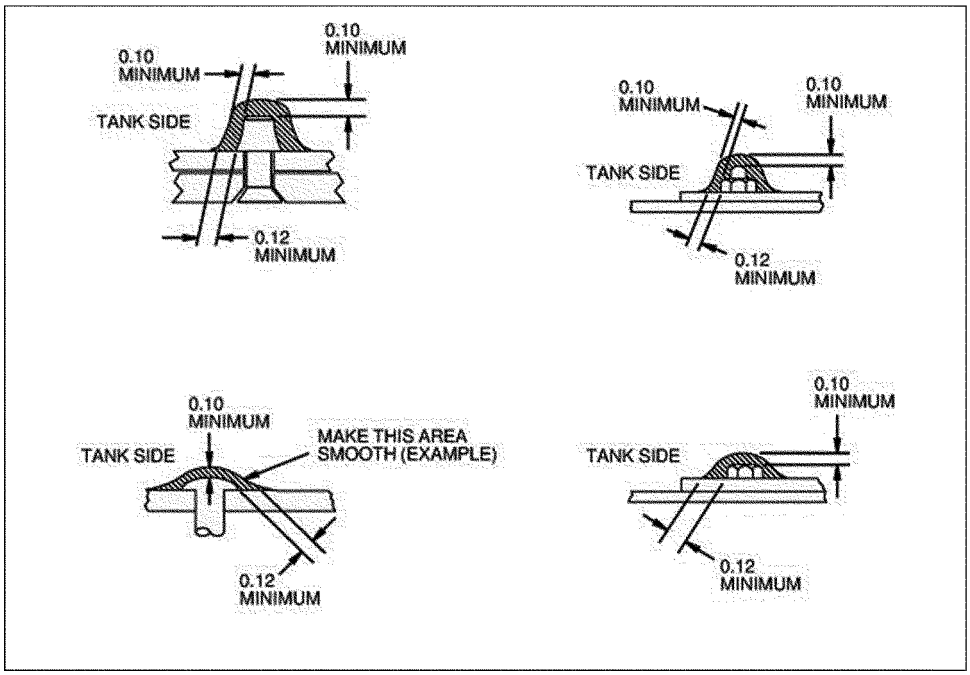
(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023, use the phrase ''the original issue date of Requirements Bulletin 777–53A0100 RB,'' this AD requires using the effective date of this AD.

(2) Where Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023, and any service information referenced in Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(3) Where any service information referenced in Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023, specifies applying a cap seal (sealant) to a fastener, fastener head, and fastener threads and collars, for this AD, during application of any cap seal to a fastener, fastener head, or fastener threads and collars, the cap seal must be applied using a cap sealing procedure with thickness greater than or equal to the dimensions given in Figure 1 to paragraph (h)(3) of this AD.

Figure 1 to Paragraph (h)(3)—Cap Sealing Dimensions (all Dimensions are in Inches)



(4) Where Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023, specifies doing actions ''in accordance with Revision 2 of Boeing Service Bulletin 777–53–0084,'' for this AD, where flagnote (f) of Figure 7 and Figure 22 of that referenced service information (''Revision 2 of Boeing Service Bulletin 777–53–0084'') includes a sealant callout of Boeing Material Specification (BMS) 5–45 or an optional BMS 5–95, only BMS 5–45 is allowed.

(5) Where Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023, specifies doing actions ''in accordance with Revision 1 of Boeing Service Bulletin 777–53–0087,'' for this AD, where flagnote (f) of Figure 13 and Figure 49 of that referenced service information (''Revision 1 of Boeing Service Bulletin 777–53–0087'') includes a sealant callout of BMS 5–45 or an optional BMS 5–95, only BMS 5–45 is allowed.

(6) Where Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023, specifies doing actions ''in accordance with the original issue of Boeing Alert Requirements Bulletin 777–57A0122 RB,'' for this AD, the exceptions specified in paragraph (h)(6)(i) through (v) of this AD apply to that referenced service information (''the original issue of Boeing Alert Requirements Bulletin 777–57A0122 RB'') and the corrections identified in Boeing Multi Operator Message MOM–MOM–24–0054–01B, dated January 26, 2024, apply to that referenced service information.

(i) Where the ''Compliance'' paragraph of the referenced service information identifies ''Tables 1 through 50,'' the correct number of tables is Tables 1 through 54.

(ii) The referenced service information does not specify the application of cap seals to underwing longeron fasteners, fastener heads, and fastener threads and collars for the airplane groups and configurations identified in paragraphs (h)(6)(ii)(A) through (D) of this AD. For those airplane groups and configurations, the application of a cap seal to the underwing longeron fasteners at the locations identified in Figures 81 and 144 is required during installation of the underwing longeron and must be applied using a cap sealing procedure with thickness greater than or equal to the dimensions given in Figure 1 to paragraph (h)(3) of this AD.

(A) Groups 7 and 8, Configurations 5 through 8, on the left side.

(B) Group 9, Configurations 1 and 2, on the left side.

(C) Groups 7 and 8, Configurations 2, 6, 10, and 14, on the right side.

(D) Group 9, Configurations 1 and 3, on the right side.

(iii) For any inspection that may require the removal of fastener cap seals, if the cap seal is removed, a cap seal of BMS 5–45 sealant must be reapplied using a cap sealing procedure with a thickness equal to or greater than the dimensions specified in Figure 1 to paragraph (h)(3) of this AD before further flight after completion of the inspection.

(iv) The referenced service information does not require the restoration of any sealant removed to accomplish high frequency eddy current and ultrasonic inspections external to the fuel tank in Figures 1, 7, 11, and 17. Following completion of any inspection required by those figures, replacement of the sealant described in paragraph (h)(6)(iv)(A) and repair of the sealant described in paragraph (h)(6)(iv)(B) of this AD, as applicable, is required.

(A) Where any sealant was removed from the heads of fasteners, before further flight, cover and fillet seal the fasteners using BMS 5–45 or BMS 5–95 sealant.

Note 3 to paragraph (h)(6)(iv)(A): Guidance for accomplishing the actions required by paragraph (h)(6)(iv)(A) of this AD can be found in the Boeing Standard Overhaul Practices Manual (SOPM) section 20–50–19.

(B) Following any sealant replacement required by paragraph (h)(6)(iv)(A) of this AD, where any secondary fuel barrier coating was removed, before further flight, repair the secondary fuel barrier using BMS 5–81 sealant.

Note 4 to paragraph (h)(6)(iv)(B): Guidance for accomplishing the actions required by paragraph (h)(6)(iv)(B) of this AD can be found in Boeing Model 777 Aircraft Maintenance Manual (AMM) section 28–11–00.

(v) The Effectivity of the referenced service information does not include Boeing Model 777F series airplanes having line numbers 1713, 1717, 1720, and 1724 through 1742 inclusive. For those airplanes the applicable actions for Group 6 must be done.

(i) Terminating Action for AD 2023–17–14

For airplanes on which a front spar lower chord modification specified in Boeing Alert Requirements Bulletin 777–57A0122 RB is done as part of the requirements of paragraphs (g) and (h)(6) of this AD, the modification requirements of paragraph (g) of AD 2023–17–14 are terminated for the applicable side (left or right) on which the modification was done.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety 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 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *AMOC@faa.gov*.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact Luis Cortez-Muniz, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3958; email: *luis.a.cortez-muniz@faa.gov*.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraph (l)(3) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 777–53A0100 RB, dated March 16, 2023.

(ii) Boeing Multi Operator Message MOM–MOM–24–0054–01B, dated January 26, 2024.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com*.

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

(5) You may view this material 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 March 22, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06522 Filed 3–27–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0766; Project Identifier MCAI–2023–00711–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2023–11–08, which applies to all Airbus SAS Model A330–841 and –941 airplanes. AD 2023–11–08 requires maintenance actions, including a high-pressure valve (HPV) seal integrity test, repetitive replacement of the HPV clips, revision of the existing airplane flight manual (AFM), and implementation of updates to the FAA-approved operator's minimum equipment list (MEL). Since the FAA issued AD 2023–11–08, the agency determined that the replacement intervals required by AD 2023–11–08 must be reduced in order to address the unsafe condition. This proposed AD would continue to require the actions in AD 2023–11–08 and would reduce the HPV clip replacement intervals, and would require, for certain airplanes, an additional revision of the existing AFM. This proposed AD would also limit the installation of HPV clips, as specified in a European Union Aviation Safety Agency (EASA AD), which is proposed for incorporation by reference (IBR). 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 May 13, 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–2024–0766; 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, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the EASA ADs identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*. It is also available at *regulations.gov* under Docket No. FAA–2024–0766.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3229; email: *vladimir.ulyanov@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–2024–0766; Project Identifier MCAI–2023–00711–T'' 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 Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3229; email: *vladimir.ulyanov@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2023–11–08, Amendment 39–22454 (88 FR 38384, June 13, 2023) (AD 2023–11–08), for all Airbus SAS Model A330–841 and –941 airplanes. AD 2023–11–08 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2022–0227, dated November 24, 2022 (EASA AD 2022–0227), to correct an unsafe condition. EASA AD 2022–0227 superseded EASA AD 2022–0181, dated August 29, 2022 (which prompted FAA AD 2022–19–05, Amendment 39–22174 (87 FR 54870, September 8, 2022)).

AD 2023–11–08 requires maintenance actions, including an HPV seal integrity test, repetitive replacement of the HPV clips, revision of the existing AFM, and implementation of updates to the FAA-approved operator's MEL. The FAA issued AD 2023–11–08 to address a leaking HPV, which may expose the pressure regulating valve (PRV), which is installed downstream from the HPV, to high pressure, possibly damaging the PRV itself and preventing its closure. The unsafe condition, if not addressed, could result in high pressure and temperatures in the duct downstream from the PRV, with possible duct burst, damage to several systems, and consequent loss of control of the airplane.

Actions Since AD 2023–11–08 Was Issued

Since the FAA issued AD 2023–11–08, EASA superseded AD 2022–0227 and issued EASA AD 2023–0111, dated May 26, 2023 (EASA AD 2023–0111) (referred to after this as the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–841 and –941 airplanes. The MCAI states that it has been determined that the interval for the HPV clip replacement must be based also on flight cycles accumulated by the HPV clip (*i.e.,* the interval must be reduced), and additional instructions applicable depending on BMC software configuration, have been identified (*i.e.,* an additional revision of the existing AFM is necessary for certain airplanes).

The FAA is proposing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0766.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2023–11–08, this proposed AD would retain certain requirements of AD 2023–11–08. Those requirements are referenced in EASA AD 2023–0111, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0111 specifies procedures for the following actions:

- Revision of the Limitations section of the existing AFM and removal of the previously required limitations.
- Implementation of the instructions of the MMEL update on the basis of which the operator's MEL must be amended with new provisions and procedures for the following items: Air Conditioning Pack, Engine Bleed Air Supply System, Engine Bleed IP (Intermediate Pressure) Check Valve, and Engine Bleed HP Valve and cancel the dispatch restrictions. Amending the applicable AFM of an airplane by incorporating the AFM Temporary Revision (TR) TR813 does not allow removal of the MMEL update as required by paragraph (7) of this [EASA] AD for that airplane.
- A seal integrity test of each HPV, and corrective actions (including replacement of the HPV, and a detailed inspection of the wing bellow on engine 1(2) and replacement of any damaged or deformed wing bellow). Also, accomplishing a Seal Integrity Test of each HPV in accordance with the instructions of the AOT.

EASA AD 2023–0111 also describes the following maintenance instructions for group 1 and group 2, among other actions, to be accomplished following certain faults or failures:

- HPV troubleshooting procedure and additional maintenance actions after any Class 1 maintenance message associated to an HPV fault, and corrective actions (including replacement of the HPV or wing bellow).
- HPV seal integrity test and the additional maintenance actions after any Class 1 or Class 2 maintenance message associated to a PRV fault, and corrective actions (including replacement of the HPV and PRV, and a detailed inspection of the wing bellow on engine 1(2) and replacement of any damaged or deformed wing bellow).
- A visual (borescope) inspection of the engine bleed air system (EBAS) to detect signs of foreign object debris (FOD), including metallic debris in the butterfly valve and dents or damage of the flaps of the intermediate pressure check valve (IPCV), and dents and missing segments in the PRV, the header of the high pressure/intermediate pressure (HP/IP) duct, the y-duct, and the pylon ducts after any failure of an HPV clip and/or any of the HPV butterfly sealing rings, and corrective actions (including removing FOD and replacing the IPCV or PRV).
- A seal integrity test of each HPV after any take-off or go-around accomplished with ''packs OFF'' or ''APU bleed ON'' or ''engine bleed OFF,'' and corrective actions (including replacement of the HPV, and a detailed inspection of the wing bellow on engine 1(2) and replacement of any damaged or deformed wing bellow).
- Additional actions to be performed for any Class 1 maintenance message associated with an HPV fault.
- Initial and repetitive replacement of each HPV clip with a new HPV clip.
- Reporting to Airbus of any failure detected during the accomplishment of any maintenance action, seal integrity test, or visual inspection specified in EASA AD 2022–0181.

EASA AD 2023–0111 also specifies that HPV clips may be installed provided they are new and serviceable, and replaced in accordance with paragraph (17) Table 1.

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

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's

bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2023–11–08. This proposed AD would require accomplishing the actions specified in EASA AD 2023–0111 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the MCAI.''

Compliance With AFM and MEL Revisions

EASA AD 2023–0111 requires operators to ''inform all flight crews'' of revisions to the existing AFM and MEL, and thereafter to ''operate the airplane accordingly.'' However, this AD does not specifically require those actions, as those actions are already required by FAA regulations.

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

FAA regulations (14 CFR 121.628(a)(2)) require operators to provide pilots with access to all of the information contained in the operator's MEL. Furthermore, 14 CFR 121.628(a)(5) requires airplanes to be operated under all applicable conditions and limitations contained in the operator's MEL.

Therefore, including a requirement in this proposed AD to operate the airplane according to the revised AFM and MEL would be redundant and unnecessary.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0111 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0111 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0111 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0111. Service information required by EASA AD 2023–0111 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–0766 after the FAA final rule is published.

Interim Action

The FAA considers that this proposed AD would be an interim action. The FAA anticipates that further AD action will follow.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 27 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2023–11–08.	14 work-hours × $85 per hour = $1,190.	Up to $28	Up to $1,218	Up to $32,886.
New proposed actions	1 work-hour × $85 per hour = $85.	$85	$85	$2,295.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 19 work-hours × $85 per hour = Up to $1,615	Up to $114,742	Up to $116,357.

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

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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:

■ a. Removing Airworthiness Directive (AD) AD 2023–11–08, Amendment 39–22454 (88 FR 38384, June 13, 2023); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2024–0766; Project Identifier MCAI–2023–00711–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 13, 2024.

(b) Affected ADs

This AD replaces AD 2023–11–08, Amendment 39–22454 (88 FR 38384, June 13, 2023) (AD 2023–11–08).

(c) Applicability

This AD applies to all Airbus SAS Model A330–841 and –941 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 36, Pneumatic.

(e) Unsafe Condition

This AD was prompted by reports of leaking bleed system high pressure valves (HPVs), likely due to HPV clip failure and sealing ring damage, and by the determination that the replacement intervals required by AD 2023–11–08 must be reduced to address the unsafe condition. The FAA is issuing this AD to address a leaking HPV, which may expose the pressure regulating valve (PRV), which is installed downstream from the HPV, to high pressure, possibly damaging the PRV itself and preventing its closure. The unsafe condition, if not addressed, could result in could result in high pressure and temperatures in the duct downstream from the PRV, with possible duct burst, damage to several systems, and consequent loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0111, dated May 26, 2023 (EASA AD 2023–0111).

(h) Exceptions to EASA AD 2023–0111

(1) Where EASA AD 2023–0111 refers to ''05 September 2022 (the effective date of EASA AD 2022–0181),'' this AD requires using September 15, 2022 (the effective date of AD 2022–19–05, Amendment 39–22174, (87 FR 54870, September 8, 2022)).

(2) Where paragraph (19) of EASA AD 2023–0111 refers to ''08 December 2022 (the effective date of EASA AD 2022–0227),'' this AD requires using the effective date of this AD.

(3) Where paragraph (21) of EASA AD 2023–0111 refers to ''08 December 2022 (the effective date of EASA AD 2022–0227),'' this AD requires using July 18, 2023 (the effective date of AD 2023–11–08).

(4) Where EASA AD 2023–0111 refers to its effective date, this AD requires using the effective date of this AD.

(5) Where paragraphs (1), (2), (3), and (7) of EASA AD 2023–0111 specify to inform all flight crews of airplane flight manual (AFM) revisions and dispatch limitations, and thereafter to operate the airplane accordingly, this AD does not require those actions, as those actions are already required by existing FAA regulations (see 14 CFR 91.9, 91.505, and 121.137).

(6) This AD does not adopt the reporting requirements of paragraph (23) of EASA AD 2023–0111.

(7) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0111.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(ii) AMOCs approved previously for AD 2023–11–08 are approved as AMOCs for the corresponding provisions of EASA AD 2023–0111 that are required by paragraph (g) of this AD.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information referenced in EASA AD 2023–0111 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231 3229; email: *vladimir.ulyanov@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0111, dated May 26, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0111, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

(5) You may view this material 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 March 21, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06520 Filed 3–27–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM22–2–000]

Compensation for Reactive Power Within the Standard Power Factor Range

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise Schedule 2 of its *pro forma* open-access transmission tariff (*pro forma* OATT), section 9.6.3 of its *pro forma* large generator interconnection agreement (LGIA), and section 1.8.2 of its *pro forma* small generator interconnection agreement (SGIA) to prohibit the inclusion in transmission rates of unjust and unreasonable charges related to the provision of reactive power within the standard power factor range by generating facilities. The Commission invites all interested persons to submit comments on the proposed reforms and in response to specific questions.

DATES: Comments are due May 28, 2024. Reply comments are due June 26, 2024.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through *https://www.ferc.gov* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Noah Schlosser (Technical Information), Office of Energy Market Regulation, 888 First Street NE, Washington, DC 20426, (202) 502–8356, *Noah.Schlosser@ferc.gov*

Jennifer Enos (Legal Information), Office of the General Counsel, 888 First Street NE, Washington, DC 20426, (202) 502–6247, *Jennifer.Enos@ferc.gov*

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I. Introduction

1. The Commission is proposing to revise Schedule 2 of its *pro forma* OATT to prohibit transmission providers from including in their transmission rates any charges associated with the supply of reactive power within the standard power factor range [1] from generating facilities. We further propose to remove from the *pro forma* LGIA and *pro forma* SGIA the requirement that a transmission provider pay an interconnection customer for reactive power within the standard power factor range if the transmission provider pays its own or affiliated generators for the same service. Accordingly, transmission providers would be required to pay an interconnection customer for reactive

[1] Operating ''inside the standard power factor range'' refers to a generating facility providing reactive power within the power factor range set forth in the generating facility's interconnection agreement when the unit is online and synchronized to the transmission system.

power only when the transmission provider asks the interconnection customer to operate its facility outside the standard power factor range set forth in its interconnection agreement.

2. The Commission's policy on reactive power compensation has evolved since issuing Order No. 888 in 1996.[2] In Order No. 888, the Commission required that reactive supply and voltage control from generating facilities be offered as a discrete ancillary service by transmission providers and, to the extent feasible, charged for on the basis of the amount required. The Commission explained that there are two ways of supplying reactive power and controlling voltage. One is to install facilities as part of the transmission system, the cost of which is part of the cost of basic transmission service. The second is to use generating facilities to supply reactive power and voltage control, which must be unbundled from basic transmission service.

3. With respect to compensation, the Commission stated that the transmission provider's ''rates for ancillary services should be cost-based.'' [3] The Commission expected, however, that transmission customers would be in a position to change the amount of reactive power service they required. The Commission also identified the possibility that reactive power could potentially someday be supplied by ''a competitive market for such service'' if ''technology or industry changes'' made such a market possible.

4. Then, in Order No. 2003, the Commission specifically addressed the circumstances and manner in which a transmission provider must pay for reactive power, inside and outside the standard power factor range (sometimes referred to as the ''deadband'').[4] In Order No. 2003, the Commission adopted a standard agreement for the interconnection of large generating facilities (the *pro forma* LGIA), which included the requirement that interconnection customers maintain a composite power delivery at continuous rated power output at the point of interconnection at a power factor within the range of 0.95 leading to 0.95 lagging [5] when synchronized to the transmission system, unless the transmission provider has established a different power factor range. Order No. 2003 required that a transmission provider compensate an interconnection customer for the provision of reactive power when the transmission provider requests the interconnection customer to operate its generating facility outside the established power factor range. With respect to reactive power within the established power factor range, the Commission initially concluded that the interconnection customer should not be compensated for reactive power when operating within the range established in the interconnection agreement because doing so ''is only meeting [the generating facility's] obligation.'' [6] But in Order No. 2003–A, the Commission clarified that ''if the Transmission Provider pays its own or its affiliated generators for reactive power within the established range, it must also pay the Interconnection Customer.'' [7] This standard is generally referred to as the comparability standard.

5. In sum, ''Order Nos. 2003 and 2003–A establish a reactive power compensation policy that, in the first instance, treats the provision of reactive power inside the [standard power factor range] as an obligation of good utility practice rather than as a compensable service and permits compensation inside the [standard power factor range] only as a function of comparability.'' [8] The Commission took this approach because, where the generating facility is operating within the standard power factor range, it is doing no more than meeting its obligation as a generator, as specified in its interconnection agreement, to maintain the appropriate power factor required to maintain voltage levels for electric power injected into the transmission system during normal operations.[9] By comparison, reactive power provided outside of the standard power factor range is considered an ancillary service for transmitting power across the transmission system to serve load,[10] and thus, the Commission has required compensation for such service.

6. The Commission has also recognized that there is little to no incremental capital expenditure associated with the equipment necessary for the production of reactive power within the standard power factor range. That is because, for both synchronous and non-synchronous generating facilities,[11] the same equipment is used for the production of real power and reactive power.[12] In

[2] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.,* Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, at 31,705–07 & n.359 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g,* Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Pol'y Study Grp.* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. N. Y.* v. *FERC,* 535 U.S. 1 (2002).

[3] *Id.* at 31,720.

[4] *Standardization of Generator Interconnection Agreements & Procs.,* Order No. 2003, 68 FR 49846 (Aug. 19, 2003), 104 FERC ¶ 61,103, at P 546 (2003), *order on reh'g,* Order No. 2003–A, 69 FR 15932 (Mar. 26, 2004), 106 FERC ¶ 61,220, *order on reh'g,* Order No. 2003–B, 70 FR 265 (Jan. 4, 2005), 109 FERC ¶ 61,287 (2004), *order on reh'g,* Order No. 2003–C, 70 FR 37661 (June 30, 2005), 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regul. Util. Comm'rs* v. *FERC,* 475 F.3d 1277 (D.C. Cir. 2007).

[5] A generating facility's leading reactive power indicates its ability to absorb reactive power and its lagging reactive power indicates its ability to produce reactive power.

[6] Order No. 2003, 104 FERC ¶ 61,103 at P 546 (''We agree that the Interconnection Customer should not be compensated for reactive power when operating its Generating Facility within the established power factor range, since it is only meeting its obligation.'').

[7] Order No. 2003–A, 106 FERC ¶ 61,220 at P 416. Section 9.6.3 of the *pro forma* LGIA provided as follows:

Transmission Provider is required to pay Interconnection Customer for reactive power that Interconnection Customer provides or absorbs from the Large Generating Facility when Transmission Provider requests Interconnection Customer to operate its Large Generating Facility outside the range specified in Article 9.6.1, provided that if Transmission Provider pays its own or affiliated generators for reactive power service within the specified range, it must also pay Interconnection Customer.

Similarly, section 1.8.2 of the *pro forma* SGIA provided as follows:

The Transmission Provider is required to pay the Interconnection Customer for reactive power that the Interconnection Customer provides or absorbs from the Small Generating Facility when the Transmission Provider requests the Interconnection Customer to operate its Small Generating Facility outside the range specified in article 1.8.1. In addition, if the Transmission Provider pays its own or affiliated generators for reactive power service within the specified range, it must also pay the Interconnection Customer.

[8] *Bonneville Power Admin.* v. *Puget Sound Energy, Inc.,* 120 FERC ¶ 61,211 (2007) (*BPA*), *order denying reh'g and granting clarification,* 125 FERC ¶ 61,273, at P 18 (2008) (BPA Rehearing Order).

[9] *See, e.g., Midcontinent Indep. Sys. Operator, Inc.,* 182 FERC ¶ 61,033 (*MISO*), *order on reh'g,* 184 FERC ¶ 61,022, at P 23 (2023) (MISO Rehearing Order) (citing *Mich. Elec. Transmission Co.,* 97 FERC ¶ 61,187, at 61,852–53 (2001) (*METC*)).

[10] *Id.*

[11] Synchronous generating facilities (*e.g.,* coal, gas, nuclear resources) produce electricity in sync with the transmission system at the system frequency. Non-synchronous generating facilities (*e.g.,* solar, wind, battery storage resources) produce electricity that is initially not in sync with the transmission system and use inverters to convert their electrical output to synchronize with the transmission system. *See* FERC Staff Report, *Payment for Reactive Power,* Docket No. AD14–7–000, 7 (Apr. 22, 2014), *https://www.ferc.gov/sites/default/files/2020-05/04-11-14-reactive-power.pdf.*

[12] MISO Rehearing Order, 184 FERC ¶ 61,022 at PP 29–30 (citing *S. Co. Servs., Inc.,* 80 FERC ¶ 61,318, at 62,091 (1997) (noting also that the primary function of a generating plant is to produce real power; thus, if costs were allocated based on the ''predominant'' function of the equipment, ''all of the costs of generation would thus be assigned to real power production and there would be no basis for any separate reactive power charge''); *BPA,* 120 FERC ¶ 61,211 at P 21 (finding that the

Continued

addition, the Commission has noted that any purported costs associated with such provision of reactive power can be recovered in other ways—such as through energy or capacity sales.[13]

7. Consistent with Order Nos. 2003 and 2003–A, multiple regional transmission organizations (RTO), independent system operators (ISOs), and non RTO/ISO transmission providers have elected not to compensate generating facilities for the provision of reactive power within the standard power factor range under Schedule 2 of the OATT.[14] Within these regions, there is no evidence that this lack of compensation has led to an insufficient supply of reactive power or that generating facilities in these regions have been unable to recover any costs associated with the production of reactive power. Additionally, the experiences of these regions where reactive power within the standard power factor range is not separately compensated indicate that investors are able to, and in fact do, develop generating facilities that can satisfy the obligations in their interconnection agreements without separate reactive power compensation.

8. Based on our review of the comments submitted in response to the Commission's Notice of Inquiry [15] in the instant docket, as well as the Commission's experience in the years since the issuance of Order No. 2003–A, we preliminarily find that allowing transmission providers to compensate generating facilities, affiliated and unaffiliated, for providing reactive power within the standard power factor range has resulted in unjust and unreasonable transmission rates. This is because generating facilities providing reactive power within the standard power factor range are only meeting their obligations under their interconnection agreements and in accordance with good utility practice, and in doing so, incur no additional costs or *de minimis* costs beyond that which they already incur to provide real power.[16] Accordingly, we propose to prohibit transmission providers from including in their transmission rates any charges associated with the supply of reactive power within the standard power factor range from a generating facility, including those owned by the transmission owner or its affiliates.

9. First, we propose to add the following sentence to the end of Schedule 2 of the *pro forma* OATT: [17] ''However, such rates shall not include compensation to generating facilities for the supply of reactive power within the power factor range specified in its interconnection agreement.'' Second, we propose to remove the following clause from the *pro forma* LGIA: [18] ''provided that if Transmission Provider pays its own or affiliated generators for reactive power service within the specified range, it must also pay Interconnection Customer.'' Third, we propose to remove the following sentence from the *pro forma* SGIA: [19] ''In addition, if the Transmission Provider pays its own or affiliated generators for reactive power service within the specified range, it must also pay the Interconnection Customer.''

II. Background

A. What is reactive power?

10. Almost all bulk electric power is generated, transported, and consumed in alternating current (AC) networks. Reactive power, which is measured in megavolt-amperes reactive (MVAr),[20] is a critical component of operating an AC electricity system and is required to control system voltage within appropriate ranges for efficient and reliable operation of the transmission system. Reactive power supports the voltages that must be controlled to provide for delivery of real power and for system reliability. Reactive power can be produced or absorbed [21] by generating facilities, power electronic equipment such as flexible AC transmission system devices, transmission lines and equipment, and load. As relevant here, generating facilities must either produce or absorb reactive power for the transmission system to maintain voltage levels required to reliably supply real power from generation to load.

11. The power factor is the ratio of a generating facility's real power to its apparent power.[22] Power factors can range from 1.0 to 0.0, with 1.0 representing only real power and 0.0 representing only reactive power. Most generating facilities have interconnection agreements that specify a standard power factor range within which the generating facility must be able to operate while producing its full real power capacity.

B. How has reactive power been compensated?

12. As noted above, the Commission's policy on reactive power compensation has evolved since issuing Order No. 888, which included provisions regarding reactive power from generating facilities as an ancillary service in Schedule 2 of the *pro forma* OATT.[23] As relevant here, in Order No. 2003, the Commission adopted a standard agreement for the interconnection of large generating facilities (the *pro forma* LGIA). This standard agreement included the requirement that interconnection customers maintain a composite power delivery at continuous rate of power output at the generating facility's point of interconnection at a power factor within the range of 0.95 leading to 0.95 lagging when synchronized to the transmission system, unless the transmission provider has established a different power factor range. Order No. 2003 required that a transmission provider compensate an interconnection customer for reactive power when the transmission provider requests that the interconnection customer operate its generating facility outside the established power factor range. With respect to reactive power within the established power factor range, the Commission initially concluded that the interconnection customer should not be compensated for reactive power when operating within the range established in the interconnection agreement because doing so ''is only meeting [the generating facility's] obligation.'' [24] But, in Order No. 2003–A, the Commission clarified that ''if the Transmission Provider pays its own or its affiliated generators for reactive power within the established range, it must also pay the Interconnection Customer.'' [25] Order No. 2003–A also exempted wind generating

incremental cost of reactive power service within the standard power factor range is minimal); *METC,* 97 FERC at 61,852–53 (''[R]eactive power provided, not as an ancillary service, but rather as a 'no cost' service within reactive design limitations, may therefore, be provided without compensation.'').

[13] *See, e.g.,* MISO Rehearing Order, 184 FERC ¶ 61,022 at P 42; *BPA,* 120 FERC ¶ 61,211 at P 21; *Sw. Power Pool, Inc.,* 119 FERC ¶ 61,199, at P 39 (2007) (stating that IPPs ''are free to negotiate rates that they charge their customers for real power that are sufficient to compensate them for any costs that they may incur in producing reactive power within their deadbands, just as affiliated generators may seek to negotiate rates that they charge their customers that are sufficient to compensate them for the costs of any reactive power that they provide within their deadbands.'').

[14] *MISO,* 182 FERC ¶ 61,033 at P 1.

[15] *Reactive Power Capability Compensation,* 177 FERC ¶ 61,118 (2021) (NOI).

[16] Real power, which accomplishes useful work (*e.g.,* runs motors), is typically measured in megawatts (MW).

[17] *See pro forma* OATT, Schedule 2.

[18] *See pro forma* LGIA, section 9.6.3.

[19] *See pro forma* SGIA, section 1.8.2.

[20] MVAr is the typical unit of measurement for reactive power.

[21] *See supra* n.5.

[22] Apparent power is the total power output of the system (both real and reactive power).

[23] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,705–07 & n.359.

[24] Order No. 2003, 104 FERC ¶ 61,103 at P 546.

[25] Order No. 2003–A, 106 FERC ¶ 61,220 at P 416.

facilities from maintaining the established power factor range.[26]

13. The Commission treats the provision of reactive power within the standard power factor range differently from that outside the standard power factor range. Where reactive power is provided outside of the standard power factor range, it is considered ''an ancillary service for *transmitting power across the grid* to serve load.'' [27] By contrast, where the generating facility is operating within the standard power factor range, ''it is meeting its obligation as a generator to maintain the appropriate power factor in order to maintain voltage levels for energy *entering the grid* during normal operations.'' [28] ''Put differently, reactive support by generating facilities operating within the standard power factor range ensures that when these facilities inject real power—the product that their facilities exist to create and sell—onto the grid under normal conditions, they can do their part to maintain adequate voltages and to not threaten reliability.'' [29]

14. In Order No. 2006,[30] the Commission adopted identical power factor and compensation requirements for small generating facilities (facilities that have a capacity of no more than 20 MW) but exempted small wind generating facilities from the reactive power requirement. Subsequently, in Order No. 827,[31] the Commission eliminated the exemptions for both small and large wind generating facilities, thus requiring those facilities to provide reactive power. As a result, all newly interconnecting non-synchronous generating facilities were required to provide reactive power within the range of 0.95 leading to 0.95 lagging at the high-side [32] of the generator substation transformer as a condition of interconnection. With respect to compensation, the Commission applied the existing policies on compensation for reactive power as articulated in Order Nos. 2003 and 2003–A and reflected in the *pro forma* LGIA and SGIA. The Commission, however, stated that the record did not contain a sufficient basis for determining a method for calculating compensation for non-synchronous generating facilities and therefore stated that any non-synchronous generating facility seeking reactive power compensation would need to propose a method for calculating that compensation as part of its filing.[33]

15. Consistent with Order Nos. 2003 and 2003–A, the Commission has permitted transmission providers to eliminate separate compensation for generating facilities providing reactive power within the standard power factor range.[34] In these cases, the Commission affirmed its determination that the provision of reactive power within the standard power factor range is not compensable except as a matter of comparability. For example, in *BPA,* the Commission granted a complaint filed by Bonneville Power Administration (BPA) arguing that the rate schedules of certain independent power producers (IPP) for reactive power were no longer just and reasonable given BPA's decision to no longer pay its own or affiliated generators.[35] The Commission found that ''Commission policy clearly allows BPA to discontinue paying all its merchants for inside the deadband reactive power service.'' [36] The Commission also found that a transmission provider's decision to end compensation for reactive power within the standard power factor range did not compromise an IPP's ability to recover costs that they may incur in producing reactive power within such range.[37] The Commission stated that such generating facilities ''may be able to recover such costs in other ways—such as through higher power sales rates of their own.'' [38] To the extent that it could be argued that such recovery was not feasible for IPPs, the Commission found that such arguments lacked plausibility ''since the incremental cost of reactive power service within the deadband is minimal.'' [39] The Commission explained that ''[t]he purpose for which generation assets are built (including reactive power capability to maintain voltage levels for generation entering the grid) is to make sales of real power.'' [40]

16. The Commission made similar findings in *MISO,* wherein it accepted an FPA section 205 application by Midcontinent Independent System Operator, Inc. (MISO) transmission owners to end generator compensation for the provision of reactive power within the standard power factor range.[41] In accepting MISO transmission owners' proposal, the Commission reiterated its longstanding policy ''that the provision of reactive power within the standard power factor range is, in the first instance, an obligation of the interconnecting generator and good utility practice,'' such that ''MISO transmission owners do not have an obligation to continue to compensate an independent generator for reactive power within the standard power factor range when its own or affiliated generators are no longer being compensated.'' [42] The Commission also rejected any reliance arguments, reasoning in part that the provision of reactive power within the standard power factor range required little or no incremental investment.[43] In addition, the Commission found that generating facilities have other opportunities, beyond Schedule 2, through which they have the opportunity to seek to recover

[26] *Id.* P 34.

[27] *See, e.g., METC,* 97 FERC at 61,852–53 (emphasis added); MISO Rehearing Order, 184 FERC ¶ 61,022 at PP 23–24.

[28] *METC,* 97 FERC at 61,852–53; *see also* MISO Rehearing Order, 184 FERC ¶ 61,022 at PP 23–24; *BPA,* 120 FERC ¶ 61,211 at P 19; *cf. Dynegy Midwest Generation, Inc.,* 125 FERC ¶ 61,280, at P 16 (2008) (''Reactive power is a localized service that is quickly used by transmission system components and cannot be transported over long distances.'').

[29] MISO Rehearing Order, 184 FERC ¶ 61,022 at P 23.

[30] *Standardization of Small Generator Interconnection Agreements & Procs.,* Order No. 2006, 111 FERC ¶ 61,220, *order on reh'g,* Order No. 2006–A, 70 FR 71760 (Nov. 30, 2005), 113 FERC ¶ 61,195 (2005), *order granting clarification,* Order No. 2006–B, 71 FR 42587 (July 27, 2006), 116 FERC ¶ 61,046 (2006).

[31] *Reactive Power Requirements for Non-Synchronous Generation,* Order No. 827, 81 FR 40793 (June 23, 2006), 155 FERC ¶ 61,277, *order on clarification and reh'g,* 157 FERC ¶ 61,003 (2016).

[32] High-side refers to the side of the transformer with higher voltages. Generally, real power must be stepped up through a transformer to transmission-level voltages before being injected into the transmission system.

[33] Order No. 827, 155 FERC ¶ 61,277 at P 52.

[34] *See, e.g., MISO,* 182 FERC ¶ 61,033 at PP 52–53; MISO Rehearing Order, 184 FERC ¶ 61,022 at P 26; *Pub. Serv. Co. of N.M.,* 178 FERC ¶ 61,088, at PP 29–31 (2022) (*PNM*); *Nev. Power Co.,* 179 FERC ¶ 61,103, at PP 20–21 (2022); *BPA,* 120 FERC ¶ 61,211 at P 20; *E.ON U.S. LLC,* 119 FERC ¶ 61,340, at P 15 (2007); *Entergy Servs., Inc.,* 113 FERC ¶ 61,040, at P 38 (2005).

[35] *BPA,* 120 FERC ¶ 61,211 at PP 19–20; BPA Rehearing Order, 125 FERC ¶ 61,273 at PP 10–11.

[36] *BPA,* 120 FERC ¶ 61,211 at P 20.

[37] *Id.* PP 19–22.

[38] *Id.* P 21 (citing *Sw. Power Pool, Inc.,* 119 FERC ¶ 61,199 at P 39).

[39] *Id.*

[40] *Id.*

[41] *MISO,* 182 FERC ¶ 61,033 at P 53 (''Bearing in mind that the provision of reactive power within the standard power factor range is, in the first instance, an obligation of the interconnecting generator and good utility practice, MISO [transmission owners] do not have an obligation to continue to compensate an independent generator for reactive power within the standard power factor range when its own or affiliated generators are no longer being compensated.'' (citation omitted)); *see also PNM,* 178 FERC ¶ 61,088 at P 29 (accepting PNM's revisions to eliminate compensation for reactive service under Schedule 2 and rejecting generators' arguments that it is ''just and reasonable for it to be compensated for investments made'' to provide reactive support consistent with interconnection requirements even though PNM elected to no longer pay its own or affiliated generators for such reactive power).

[42] *MISO,* 182 FERC ¶ 61,033 at P 53 (finding ''those protests that challenge these well-established policies to be collateral attacks on these earlier determinations.'').

[43] MISO Rehearing Order, 184 FERC ¶ 61,022 at P 29.

their costs of providing reactive power.[44]

17. Of the six Commission-jurisdictional RTOs/ISOs, only three currently compensate generating facilities for reactive power provided within the standard power factor range. Generating facilities in PJM Interconnection, L.L.C. (PJM) generally use the cost-based AEP Methodology to calculate cost-of-service rates for the production of reactive power.[45] Because the same generation equipment contributes to the production of both real power and reactive power, the AEP Methodology attempts to functionalize each piece of equipment as between its contribution to real power and reactive power. Then, using allocators calculated based on the facility's output, the AEP Methodology allocates the cost of each piece of equipment based on its relative contribution to each function.

18. Generating facilities in ISO New England Inc. (ISO–NE) and New York Independent System Operator, Inc. (NYISO) are compensated for reactive power under flat rate designs that are adjusted for inflation.[46] California Independent System Operator Corporation (CAISO),[47] Southwest Power Pool, Inc. (SPP),[48] and MISO[49] do not pay separately for reactive power within the standard power factor range.

19. Outside the RTOs/ISOs, transmission providers that pay for the provision of reactive power within the standard power factor range generally compensate generating facilities using the AEP Methodology to set reactive power compensation on an individual generating facility basis. Many non-RTO/ISO transmission providers do not pay separately for reactive power provided within the standard power factor range.[50]

C. Notice of Inquiry

20. On November 18, 2021, the Commission issued an NOI[51] in the instant docket seeking comment on various issues regarding reactive power compensation and market design as a result of the significant changes that have taken place in the electric industry in the last two decades, including changes in the generation resource mix and a general shift away from cost-of-service rates for generating facilities selling into Commission-jurisdictional markets. Generally, the Commission sought to ''examine whether the current regime for reactive power capability compensation requires revisions to ensure that payments for reactive power capability accurately reflect the costs associated with reactive power capability.''[52] Specifically, the Commission sought comment on various constructs used by transmission providers to allow for reactive power cost recovery, including issues related to the application of the AEP Methodology as well as on issues regarding recovery of reactive power costs through existing energy and/or capacity markets.

21. The Commission received 37 initial comments and 10 reply comments in response to the NOI. The commenters to the NOI are listed and group members are identified in Appendix A. Groups representing transmission customers, such as Joint Customers, the Electricity Consumers Resource Council (ELCON), and the National Rural Electric Cooperative Association (NRECA), believe that the AEP Methodology results in unjust and unreasonable rates and recommend that the Commission establish a new rate methodology.[53] In particular, Joint Customers argue that ''reactive capability alone should not be the basis for compensation.''[54] By contrast, resource developers, power generation industry groups, and commenters who support the increased use of renewable energy argue in favor of retaining and modifying the AEP Methodology to address the issues discussed in the NOI.[55]

22. The Independent Market Monitor for PJM (PJM IMM) contends that cost-of-service compensation for the provision of reactive power within the standard power factor range is an ''atavistic regulatory paradigm'' that predates the introduction of wholesale power markets and, therefore, is unnecessary in light of potential compensation through the PJM markets.[56] ELCON states that it supports the PJM IMM's position and encourages the Commission to rely on ''competitive markets for the procurement of essential grid services such as reactive power—rather than reliance on traditional cost-of-service rates'' in order to ''ensure that electricity consumers pay the lowest price possible for reliable service.''[57]

23. RTOs/ISOs generally limit their comments to describing the rate designs in their respective regions, but PJM and CAISO did provide some commentary

[44] *Id.* P 41.

[45] The AEP Methodology derives its name from Opinion No. 440, where the Commission approved AEP's, a vertically integrated utility, method for calculating the costs of synchronous generation equipment associated with the production of reactive power. *See Am. Elec. Power Serv. Corp.,* Opinion No. 440, 88 FERC ¶ 61,141 (1999), *order on reh'g,* 92 FERC ¶ 61,001 (2000). In *WPS Westwood,* the Commission recommended that all generating facilities that have actual cost data and support documentation use the AEP Methodology. *See WPS Westwood Generation, LLC,* 101 FERC ¶ 61,290, at P 14 (2002).

[46] NOI, 177 FERC ¶ 61,118 at PP 14–16.

[47] CAISO never provided compensation for reactive power within the standard power factor range. *See Cal. Indep. Sys. Operator Corp.,* 160 FERC ¶ 61,035, at P 7 (2017) (explaining that CAISO considered the possibility of compensating generating facilities for reactive power in its stakeholder process, but decided against it, reasoning that the ability to provide reactive power is part of a generator's fixed costs, which are recovered through power purchase agreements).

[48] *Sw. Power Pool, Inc.,* 119 FERC ¶ 61,199 at P 30.

[49] *MISO,* 182 FERC ¶ 61,033 at PP 52–66; MISO Rehearing Order, 184 FERC ¶ 61,022 at PP 23–55.

[50] *See, e.g.,* Arizona Public Service Company, FERC Electric Tariff Vol. No. 2, Schedule 2 (Reactive Supply and Voltage Control from Generation or Other Sources Service) (6.0.0) (''This service will be provided at no charge until APS has developed a rate that has been filed with the Commission and allowed to be implemented; however, Transmission Customers taking service at transmission voltage levels shall be responsible for maintaining a power factor of ± 95.0%, and Transmission Customers taking service at distribution voltage levels shall maintain a power factor of not less than 90% lagging but in no event leading, unless agreed to by APS.''); Public Service Company of New Mexico, PNM Open Access Transmission Tariff, Schedule 2 (Reactive Supply and Voltage Control from Generation or Other Sources Service) (2.1.0) (''As of October 1, 2021, the Effective Date of this Schedule 2, the Transmission Provider is not charging for Reactive Supply and Voltage Control from Generation or Other Sources Service from its own resources. As a result, there will be no separate charge for such service.'').

[51] NOI, 177 FERC ¶ 61,118.

[52] *Id.* P 19.

[53] Joint Customers Initial Comments at 8–13; Joint Customers Reply Comments at 2–10, 12–15; ELCON Initial Comments at 5–7, NRECA Initial Comments at 4–5.

[54] Joint Customers Initial Comments at 9.

[55] *See, e.g.,* EDF Renewables, Inc. (EDFR) Initial Comments at 2–4; Edison Electric Institute (EEI) Initial Comments at 5; Indicated Generation Owners Initial Comments at 5–7; Nuclear Energy Institute (NEI) Initial Comments at 4; PJM Power Providers Initial Comments at 2–4; Renewable Generation Companies Initial Comments at 6–7, 11–15; Renewable Generation Companies Reply Comments at 2–5, 10–11; Clean Energy Coalition Initial Comments at 1–5; Electric Power Supply Association (EPSA) Initial Comments at 2–9; Vistra Corp. and Dynegy Marketing and Trade, LLC (collectively, Vistra) Initial Comments at 6–7; Vistra Reply Comments at 6–7; Pine Gate Renewables, LLC (Pine Gate) Initial Comments at 7–8.

[56] PJM IMM Initial Comments at 2; *see also* PJM IMM, Comments, Docket No. AD16–17–000, at 1, 6–10 (filed Aug. 1, 2016) (detailing the PJM IMM's view that reactive power costs can—and should—be recovered through PJM's capacity market instead of under a cost-of-service paradigm); Monitoring Analytics, 2020 State of the Market Report for PJM, 523 (Mar. 11, 2021), *https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2020.shtml* (describing the PJM IMM's position and recommended improvements)); PJM IMM, Brief on Exceptions, Docket No. ER17–1821–002, at 3–16 (filed June 12, 2019) (discussing the PJM IMM's concerns about what it termed a ''hybrid of market-based rates and cost of service rates''); PJM IMM, Rehearing Request, Docket No. ER17–1821–005, at 3–5 (filed Apr. 30, 2021) (addressing issues regarding the Energy and Ancillary Services Offset (E&AS Offset) and a generator's proposed reactive power rates).

[57] ELCON Initial Comments at 4–5.

on the merits. While PJM does not advocate for a particular solution in this proceeding, PJM highlights several issues with its current reactive power rate scheme.[58] Specifically, PJM asserts that ''enormous'' amounts of time and resources must be expended to file, litigate, and perform testing for each individual generating facility's cost-of-service rate case,[59] which PJM notes often results in a rate product that is ''of exceptionally poor quality for an important ancillary service.'' [60] CAISO states that despite the fact that it does not compensate for reactive power within the standard power factor range, it ''has seen no evidence to this point that resources cannot comply with reactive power dispatch instructions because they have insufficient funds for the equipment to meet the reactive power dispatch.'' [61]

III. Discussion

A. Need for Reform

24. Since Order No. 2003–A, the Commission has permitted transmission providers to compensate resources for providing reactive power within the standard power factor range provided that, to ensure comparability, the transmission provider pays both affiliated and unaffiliated resources. But, as explained in more detail below, providing reactive power within the standard power factor range is a ''no cost'' [62] or *de minimis* cost service in addition to being a resource's obligation under its interconnection agreement and good utility practice. Further, the record indicates that to the extent that generating facilities have any purported costs associated with providing reactive power within the standard power factor range, these costs can be recovered through energy or capacity sales and do not require separate compensation.

25. We thus preliminarily find that where transmission providers require transmission customers to pay for the provision of reactive power within the standard power factor range, transmission rates may be unjust and unreasonable, as they include costs without a sufficient economic basis or justification.

26. The Commission's experience since Order No. 2003–A and the comments submitted into this record demonstrate that where transmission providers provide compensation, the costs to transmission customers have increased substantially without any commensurate increase in benefits. For example, in many regions today, resources are sited without regard to where there is a geographic need for reactive power, which is significant given that (unlike real power) reactive power cannot be efficiently transmitted long distances. Where such resources are compensated for reactive power that is not needed or necessarily deliverable to areas of the transmission system where reactive power may be needed, customers may be paying for a perceived reliability benefit that they are not receiving.

27. Additionally, implementing the Commission-approved AEP Methodology has become increasingly administratively burdensome to transmission providers, transmission customers, other stakeholders, and the Commission due to the resource- and time-intensity involved in determining individualized, cost-of-service reactive power rates for generation facilities through hearing and settlement judge procedures.[63] It also often results in inconsistent rate treatment across facilities.

1. Compensation for Providing Reactive Power Within the Standard Power Factor Range May Be Unjust and Unreasonable

28. We preliminarily find that providing compensation for the provision of reactive power within the standard power factor range is unjust and unreasonable because the generating facility already provides reactive power within the standard power factor range at no cost or *de minimis* cost, because such compensation may result in undue compensation or other market distortions, and because providing reactive power within the standard power factor range is an obligation of the generating facility as an interconnection customer and consistent with good utility practice.

29. We begin by explaining why providing reactive power within the standard power factor range imposes no cost or *de minimis* cost to producers. Both synchronous and non-synchronous resources provide real and reactive power as joint products,[64] with joint costs.[65] For synchronous generating facilities, ''the same equipment is used to provide real and reactive power.'' [66] Non-synchronous generating facilities use a different physical process to produce reactive power, but ''the most critical element in VAR production, the inverter,'' [67] is also necessary for non-synchronous generating facilities to produce real power that can be injected into AC systems.[68] In other words, for both synchronous and non-synchronous generating facilities, ''[t]here are few if any identifiable costs incurred by generators in order to provide reactive power'' [69] beyond the investments in equipment already necessary to generate and supply real power to the transmission system.[70]

[58] PJM Initial Comments at 1–2.

[59] *Id.* at 2–3, 5–7. PJM notes that ''many other parties beyond the generator are drawn into the proceeding, including PJM, FERC Trial Staff, zonal transmission customers, transmission owners, and/or the Independent Market Monitor for PJM, among others. These parties must in turn expend time and resources of their own in discovery and analysis of the generator's specific cost characteristics and claims, in order to formulate their own position in the proceeding and form a basis for negotiations or litigation.''

[60] PJM Initial Comments at 3.

[61] CAISO Initial Comments at 5–6.

[62] *METC,* 97 FERC at 61,852–53.

[63] Today, most reactive power filings are made by IPPs and concern non-synchronous resources that produce reactive power using different types of equipment than that contemplated by the AEP Methodology. Additionally, almost all filing entities (both synchronous and non-synchronous) have received waivers of the requirement to maintain their accounts under the Uniform System of Accounts (USofA) rules and to file a FERC Form No. 1 when they were granted market-based rate authority.

[64] *See PSC VSMPO-Avisma Corp.* v. *U.S.,* 688 F.3d 751, 756 (Fed. Cir. 2012) (defining ''joint products'' as ''two dissimilar end products that are produced from a single production process.'').

[65] A joint cost is an expenditure that benefits more than one product, and for which it is not possible to separate the contribution to each product. *In re Permian Basin Area Rate Cases,* 390 U.S. 747, 761 n.25 (1968) (''Joint costs 'are incurred when products cannot be separately produced.' '' (citing M. Adelman, The Supply and Price of Natural Gas 25 (1962))); *see also* AccountingTools, *Joint Cost* (Aug. 25, 2023), *https://www.accountingtools.com/articles/joint-cost.*

[66] EEI Initial Comments at 6.

[67] Duke Energy Corporation Initial Comments at 4.

[68] *See also* MISO Rehearing Order, 184 FERC ¶ 61,022 at P 30 (''As to non-synchronous resources, the principal piece of equipment required for non-synchronous resources to produce reactive power is the inverter, which is already necessary to convert the direct current produced by non-synchronous resources to alternating current—*i.e.,* to supply real power that can be injected into alternating current power systems. On rehearing and in earlier protests, no party points to any other equipment costs incurred by non-synchronous generating facilities that are attributable to providing Reactive Service.'' (citations omitted)).

[69] PJM IMM Initial Comments at 4; *see also* MISO Transmission Owners Reply Comments at 7–8.

[70] *See, e.g., BPA,* 120 FERC ¶ 61,211 at P 21 (finding that the incremental cost of reactive power service within the deadband is minimal); *METC,* 97 FERC at 61,852–53 (''[R]eactive power provided, not as an ancillary service, but rather as a ''no cost'' service within reactive design limitations, may therefore, be provided without compensation.''); *Ariz. Pub. Serv. Co.,* 94 FERC ¶ 61,027, at 61,080 (2001) (rejecting generators' arguments for reactive power compensation for operating within standard power factor range because the generators failed to demonstrate that ''such a requirement will limit the real power output of a generating unit and therefore will not result in any lost opportunity costs'' or that operating a generating unit within the proposed

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30. Moreover, because real and reactive power are provided as joint products with joint costs, any allocation of joint fixed costs between real and reactive power could be viewed as inherently arbitrary.[71] When separate reactive power payments were first established, utilities typically provided both generation and transmission as vertically integrated utilities under a cost-of-service regime. In such a construct, the allocation of costs between generation and transmission facilities had little significance because it affected only the allocation of costs between transmission and generation rates. In other words, prior to the advent of IPPs (which operate only generation facilities), market-based rates for energy, and the development of RTOs/ISOs and bilateral markets, the allocation of fixed costs between real and reactive power did not have a major effect on the overall revenues of a combined vertically integrated utility.[72] However, for reactive power cost recovery, the introduction of RTO/ISO markets and bilateral transactions in non-RTO/ISO regions has provided more efficient and transparent means of compensating resources than the cost-of-service model. For example, RTO/ISO markets provide generating facilities with a means to recover the costs they incur to provide various services, such as real power sales, that rely on the same equipment used for reactive power supply.[73] Additionally, generating facilities in non-RTO/ISO regions (*e.g.,* IPP) can compete in bilateral markets to recover their investment, production, and operating costs.

31. We recognize that the production of reactive power within the standard power factor range can result in certain incremental variable costs such as fuel, maintenance, and potentially other costs. That said, the Commission has repeatedly found,[74] and commenters agree, that ''[v]ariable costs of generating reactive power are *de minimis.*'' [75] Indeed, as SPP notes, variable costs ''are generally limited to changes in losses within the generating facility which are part of the overall efficiency of the resource and, as such, are typically captured in the resource offers.'' [76] Similarly, Joint Customers state that, in CAISO, SPP, and other regions that do not separately compensate for reactive power within the standard power factor range, ''perhaps generators are adequately recovering their costs through some other means.'' [77]

32. By contrast, but outside the scope of this rulemaking, the production of reactive power *outside* of the standard power factor range, for which transmission providers are required to provide compensation, may result in increased costs, including opportunity costs to the generating facility.[78] As such, if the transmission provider requires a generating facility to provide reactive power outside of the standard power factor range, the generating facility may have to ''reduce its MW output in order to comply with such an instruction[,]'' which could limit the generating facility's opportunity to receive compensation for real power sales.[79]

33. Lastly, consistent with Order No. 2003 and multiple subsequent Commission orders since then, generating facilities must produce reactive power in order to be allowed to interconnect to the transmission system, and the industry has recognized that regulating voltage among interconnected generating facilities is a necessary component of good utility practice in an interconnected transmission system. For example, CAISO states that ''[t]he rationale for the CAISO's existing approach to reactive power compensation is that the reactive power ranges called for in each interconnection agreement represent a reasonable range of what a generator is expected to provide the CAISO without additional compensation in accordance with good utility practice and as a condition of being part of the CAISO markets and CAISO grid.'' [80] The Commission, therefore, has required generating facilities to provide reactive power within the standard power factor range under their interconnection agreements and good utility practice.[81]

standard power factor range will ''affect the generation output of a unit'').

[71] *See* PJM IMM Initial Comments at 2 (''There is no reason to include complex rules that arbitrarily segregate a portion of a resource's capital costs as related to reactive power and that require recovery of that arbitrary portion through guaranteed revenue requirement payments based on burdensome cost of service rate proceedings.''); *id.* at 3, 5, 21, 24; *In re Permian Basin Area Rate Cases,* 390 U.S. at 804 (''There is ample support for the Commission's judgment that the apportionment of actual costs between two jointly produced commodities, only one of which is regulated by the Commission, is intrinsically unreliable.''); Richard A. Posner, *Natural Monopoly and Its Regulation,* 21 Stan. L. Rev. 548, 595 (1969) (''[W]here services involve joint or common costs a rational allocation is impossible even in theory. How much of the cost of a telephone handset is assignable to local and how much to interstate telephone service?''); *see also A.A. Poultry Farms, Inc.* v. *Rose Acre Farms, Inc.,* 881 F.2d 1396, 1400 (7th Cir. 1989) (''How does one allocate the cost of activities that have joint products? Agencies engaged in ratemaking struggle with these problems for years, even decades, without producing clear answers.'').

[72] *See N. States Power Co.,* 64 FERC ¶ 61,324, at 63,379 (1993) (''In general, so long as a utility was selling generation and transmission services on a bundled basis (*i.e.,* full requirements service), the functionalization of costs between generation and transmission was not critical. The historical functionalization of costs, or bright line approach, was administratively simple, it had little or no impact on the overall (*i.e.,* bundled) rate for requirements service, and problems involving cross-subsidization between the generation and transmission functions were minimal. However, strict application of the traditional bright line approach may need to be reexamined in light of changes taking place in the electric industry—particularly the increase in transmission-only service.'').

[73] *See, e.g.,* PJM IMM Initial Comments at 2 (''The current process is an inefficient waste of time because it relies on an atavistic regulatory paradigm that is not relevant in the PJM market framework. The AEP Method[ology] was created, before the creation of the PJM markets, by a regulated utility that had regulatory and financial reasons to want to define some generation costs as transmission costs.''); ELCON Initial Comments at 5 (''The AEP Methodology was established as a workable heuristic during a period in which organized markets were in their infancy and nearly all new resources were synchronous.'').

[74] MISO Rehearing Order, 184 FERC ¶ 61,022 at PP 29–31 (finding that providing reactive service requires ''little or no incremental investment'' by both synchronous and non-synchronous resources); *PJM Interconnection, L.L.C.,* 151 FERC ¶ 61,097, at PP 7, 28 (2015) (finding that non-synchronous generating facilities are comparable to traditional synchronous generating facilities, in that there are for both types of generating facilities very little if any incremental costs incurred to provide reactive power); *Panda Stonewall, LLC,* 176 FERC ¶ 61,072, at P 6 n.9 (2021) (stating that Panda Stonewall's annual revenue requirement of $2,051,894 reflected a heating losses component of $10,018). We note that the heating losses component reflects the incremental cost of providing reactive power.

[75] SPP Initial Comments at 2; *see also* PJM IMM Initial Comments at 4.

[76] SPP Initial Comments at 2–3.

[77] Joint Customers Initial Comments at 9; *see also* PJM IMM Initial Comments at 1–4; CAISO Initial Comments at 3–4; Dominion Initial Comments at 12; *MISO,* 182 FERC ¶ 61,033 at P 58 (''[J]ust as the MISO [transmission owners'] generators may try to recover their lost revenue through higher power sales rates, so too may independent power producers try to recover their lost revenue through their own higher power sales rates.''); *BPA,* 120 FERC ¶ 61,211 at P 21; *Sw. Power Pool, Inc.,* 119 FERC ¶ 61,199 at P 39 (stating that IPPs ''are free to negotiate rates that they charge their customers for real power that are sufficient to compensate them for any costs that they may incur in producing reactive power within their deadbands, just as affiliated generators may seek to negotiate rates that they charge their customers that are sufficient to compensate them for the costs of any reactive power that they provide within their deadbands.'').

[78] *See, e.g.,* SPP Initial Comments at 2 (''SPP's current Schedule 2 rate per MVArh was calculated to represent the cost of reactive power production from recently constructed generators so as to reflect the upper end of such costs. This rate is applied to compensate qualifying generators located throughout the SPP region that provide reactive power support *outside a power factor dead band.*'' (emphasis added) (citations omitted)).

[79] CAISO Initial Comments at 4.

[80] CAISO Initial Comments at 3.

[81] *See, e.g., MISO,* 182 FERC ¶ 61,033 at P 53 (''Bearing in mind that the provision of reactive power within the standard power factor range is, in the first instance, an obligation of the interconnecting generator and good utility practice, MISO [transmission owners] do not have an obligation to continue to compensate an independent generator for reactive power within

Thus, the obligation for generating facilities to provide reactive power within the standard power factor range pursuant to their interconnection agreements is separate from any compensation for reactive power. In turn, because providing reactive power within the standard power factor range is already obligated (a no cost or *de minimis* cost service), compensating for providing such reactive power could result in undue compensation to generating facilities [82] at the expense of transmission customers.

2. Adverse Impacts of the Commission's Current Reactive Power Compensation Policy

34. In the years since the issuance of Order No. 2003–A, numerous issues have arisen in regions that provide compensation to generators for the provision of reactive power within the standard power factor range.

35. First, compensation for reactive power within the standard power factor range is not tied to whether there is a particular geographic need for reactive power. As noted above, reactive power cannot be transferred over long distances across the transmission system and, as a result, the reliability benefits of a generating facility's reactive power depend, in part, on its location.[83] But, compensation in a region for reactive power within the standard power factor range does not vary based on location, meaning that some generating facilities are compensated for reactive power that is not needed at the generating facilities' location on the transmission system. As the MISO transmission owners argue, ''[t]he current framework is . . . unjust and unreasonable because resources are being paid for reactive power capability in geographic areas where not all of the available reactive power is necessary. There are service areas with concentrations of generation but very little load, creating an exporting region where load pays for reactive capability that is unneeded.'' [84] Joint Customers add that, with the vastly increased amount of generation and increase in the number of generators seeking reactive compensation, the Commission ''should reconsider whether unbounded payment for reactive power capability is appropriate, or, to the contrary, whether transmission customers are paying for capability for which they do not receive commensurate benefits.'' [85] It appears that under the current framework, generating facilities are eligible to receive cost-based reactive power payments that do not reflect the reliability benefits of the reactive power at each facility's location (*i.e.,* the extent to which the generating facility supports the voltage of the transmission system), and that the reliability benefit may be zero for certain generating facilities.

36. Second, many commenters explain that in regions that allow generating facilities to file individualized cost-of-service reactive power rates, the process for determining those rates has proven to be resource-intensive, time-intensive, and administratively burdensome for ratepayers, transmission providers, and market participants.[86] Moreover, commenters explain that in addition to being burdensome, the resulting black box settlements produce a ''rate product'' that is ''of exceptionally poor quality for an important ancillary service.'' [87]

37. As noted in the NOI, most of the filings at the Commission seeking to establish rates for reactive power compensation are made by generating facilities (both synchronous and non-synchronous) that have received waivers of the Commission's requirement to maintain their accounts under the USofA rules and to file FERC Form No. 1.[88] Due, in part, to the lack

the standard power factor range when its own or affiliated generators are no longer being compensated.'' (citations omitted)); *id.* P 54 (''We find unpersuasive protesters arguments that it is not just and reasonable to eliminate compensation for Reactive Service within the standard power factor range because generators have come to rely on the compensation for Reactive Service in order for the generators to remain financially viable. The Commission has previously rejected such arguments, finding that all newly interconnecting generators are required to provide reactive power within the power factor range of 0.95 leading to 0.95 lagging as a condition of interconnection.'' (citations omitted)); *PNM,* 178 FERC ¶ 61,088 at P 29 (rejecting generator's arguments that it is ''just and reasonable for it to be compensated for investments made'' to provide reactive support consistent with interconnection requirements even though transmission provider elected to no longer pay its own or affiliate generators for such reactive power); *Nev. Power Co.,* 179 FERC ¶ 61,103 at P 22 (finding that the generating companies' argument, ''that it is not just and reasonable to eliminate their compensation for reactive service because they made investments in their generating facilities based on the expectation that they would receive compensation for reactive service,'' unpersuasive because all newly interconnecting generators are required to provide reactive power within the standard power factor range as a condition of interconnection); Order No. 2003, 104 FERC ¶ 61,103 at P 546.

[82] *See Belmont Mun. Light Dep't* v. *FERC,* 38 F.4th 173, 179, 186 (D.C. Cir. 2022) (finding that the Commission's approval of a portion of ISO–NE's Inventoried Energy Program ''was not reasoned decision making'' and ''thwart[ed] the [Commission's] own 'longstanding policy that rate incentives must be prospective and that there must be a connection between the incentive and the conduct meant to be induced' '' because it would compensate market participants for conduct they already engage in as part of standard business operations). Compensating for reactive power that is already required for interconnection purposes could create a ''windfall'' as suggested by the D.C. Circuit in *Belmont. Id.* at 186 (citing *San Diego Gas & Elec. Co.* v. *FERC,* 913 F.3d 127, 137 (D.C. Cir. 2019)). *But see* Order No. 2003–C, 111 FERC ¶ 61,401 at P 42 (finding that because providing reactive power within the established range is an ''important service,'' payment for such service does not constitute a ''windfall.'').

[83] FERC Staff Report, *Payment for Reactive Power,* Docket No. AD14–7–000, 5 (Apr. 22, 2014), *https://www.ferc.gov/sites/default/files/2020-05/04-11-14-reactive-power.pdf.*

[84] MISO Transmission Owners Initial Comments at 7–8; *see also* Joint Customers Initial Comments at 8–9; Alliant Initial Comments at 4; NYISO, *Reliability and Market Considerations for a Grid in Transition,* at 105 (2019), *https://www.nyiso.com/documents/20142/2224547/Reliability-and-Market-Considerations-for-a-Grid-in-Transition-20191220%20Final.pdf/61a69b2e-0ca3-f18c-cc39-88a793469d50* (''Moreover, because voltage support needs are local, the NYISO will need voltage support within specific narrow regions, not necessarily at the locations at which resources able to provide reactive power without incurring substantial commitment costs may be located.'').

[85] Joint Customers Initial Comments at 8–9.

[86] *Id.* at 4–5, 12–13 (''[T]he case-by-case approach to reactive capability rates based on the AEP methodology makes it very difficult for proceedings to be resolved in an efficient manner.''); PJM IMM Initial Comments at 2, 4 (noting that ''[a]pplying cost of service rules is costly and burdensome and unnecessary'' and asserting that ''[r]emoving cost of service rules would avoid the significant waste of resources incurred to develop unneeded cost of service rates''); PJM Initial Comments at 10 (''[T]he current construct for reactive power capability compensation in PJM imposes a significant administrative burden on PJM and its resource owners, both in terms of settlements and testing.''); Dominion Initial Comments at 2–3 (noting that settlement proceedings are time consuming and not transparent); *see also* Clean Energy Coalition Reply Comments at 5; ELCON Initial Comments at 6–7; Renewable Generation Reply Comments at 25; EDFR Initial Comments at 4–5; Pine Gate Renewables Initial Comments at 6–7; PJM Power Providers Group Initial Comments at 4–5; American Electric Power Service Corporation Initial Comments at 2–3; EPSA Initial Comments at 2; Nuclear Energy Institute Initial Comments at 6–7; PJM IMM Initial Comments at 2 (''Most reactive proceedings for generators in PJM are resolved in black box settlements that fail to address the merits of the cost support provided, result from an unsupported split the difference approach, and that, not surprisingly, produce a wide, unreasonable and discriminatory disparity among the rates per paid per MW-year.'').

[87] PJM Initial Comments at 3; *see also* PJM IMM Initial Comments at 2.

[88] The Commission's accounting and reporting requirements are particularly important to the evaluation and monitoring of cost-based rates. *See, e.g., Alcoa Power Generating Inc.,* 172 FERC ¶ 61,052, at P 29 (2020); *Third-Party Provision of Ancillary Servs.; Acct. & Fin. Reporting for New Elec. Storage Technologies,* Order No. 784, 78 FR 46178 (July 30, 2013), 144 FERC ¶ 61,056 (2013) (accounting and reporting requirements ''support the rate oversight needs of both this Commission and State Commissions'' and are ''important in developing and monitoring rates, making policy decisions, compliance and enforcement initiatives, and informing the Commission and the public about the activities of entities that are subject to these accounting and reporting requirements.''); *Carville Energy LLC,* 104 FERC ¶ 61,252, at 61,833 n.13 (2003) (''For example, non-exempt public utilities keep financial records, required by this

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of availability of this cost-of-service information, many of these filings are set for hearing and settlement judge procedures.[89] Many commenters, including Joint Customers, note that these settlement proceedings ''require a significant expenditure of resources that include legal and technical consultants,'' and while many of the cases settle on a ''black box'' basis, ''significant effort is undertaken by the Joint Customers [and other participants] in order to obtain information necessary to perform an *AEP*-like calculation and develop settlement proposals.'' [90] The PJM IMM notes that, in its experience, ''[m]ost reactive proceedings for generators in PJM are resolved in black box settlements that fail to address the merits of the cost support provided, result from an unsupported split the difference approach, and that, not surprisingly, produce a wide, unreasonable and discriminatory disparity among the rates paid per MW-year.'' [91] Joint Customers also note that the time-consuming process for resolving individual reactive service rate proceedings may leave customers without adequate refund protection.[92]

38. Third, the process for testing and verification under the AEP Methodology is unduly burdensome. Under that process, resources must coordinate with the transmission provider to test and verify capability to produce reactive power under certain conditions, which often requires multiple tests over a series of months and that yields inconsistent results across resources. PJM notes that this has caused a ''significant influx of resources that are not [otherwise] required to test under PJM Manual 14–D . . . seeking to test solely for purposes of filing and/or litigating reactive power capability cases.'' [93] PJM notes that ''under the current regulatory structure, rather than PJM spending time and resources testing units based on *PJM's* operational needs as the Transmission Provider, PJM is now often spending time and resources testing units based on the *resource owner's* need to file and litigate its individual cost-of-service rate case.'' [94]

39. Fourth, as discussed above, in regions where resources recover their costs by participating in organized competitive wholesale markets, providing separate compensation for the provision of reactive power within the standard power factor range risks overcompensation and market distortion in ways that did not exist prior to the existence of organized markets.[95] As noted above, the AEP Methodology originated in an era of vertically integrated utilities, when most utilities (including AEP) filed FERC Form No. 1s, used the USofA to classify their costs, and recovered those costs entirely through cost-based rates.[96] It was thus intended to be a cost-of-service allocation method for assigning joint costs between the generation and transmission functions, but, as the PJM IMM argues, ''[t]he false precision of the AEP Method is entirely based on arbitrary assumptions.'' [97] The PJM IMM argues that even proponents of the AEP Methodology do not claim that the methodology's goal is to recover only the specific costs associated with the production of reactive power, which the PJM IMM claims is not possible in most cases. The PJM IMM further argues that the AEP Methodology was not intended to define such costs. The imprecision associated with the AEP Methodology was less problematic when the total amount that a utility recovered was largely unchanged by the allocation of fixed costs between a generation and transmission function. But, as commenters point out, today most generating facilities recover their costs through competitive markets in both RTO/ISO and non-RTO/ISO regions. The AEP Methodology's imprecision therefore becomes more significant because it can lead to arbitrary increases in the utility's total recovery when cost-based reactive power payments are added to any market recoveries.[98] That is especially true when markets fail to account for separate, cost-based reactive power revenues by using standard rate making techniques (*i.e.,* revenue crediting).[99] For example, in PJM, the

Commission, which, among other things, *are designed to aid in the development of the cost-based rates.*'' (emphasis added)).

[89] Indeed, as the Commission has explained, Parts 41, 101, and 141 of its regulations are critical to its statutory obligation under sections 205 and 206 of the FPA to ensure that rates are just, reasonable, and not unduly discriminatory or preferential. *See PSEG Fossil, LLC,* 97 FERC ¶ 61,211, at 61,920–21 (2001) (*PSEG*), *reh'g denied,* 98 FERC ¶ 61,169 (2002). Moreover, the Commission has stated that customers subject to cost-based rates have a right to cost data so that they may evaluate the ongoing reasonableness of their rates. *See also PSEG,* 97 FERC at 61,920–21.

[90] Joint Customers Initial Comments at 5. When the cases do not settle, Joint Customers note that even more resources must be expended to litigate the individual revenue requirement proposal. For example, Joint Customers note that the Panda Stonewall proceeding lasted four years from the effective date of Panda's reactive service rate to the Commission's order establishing the just and reasonable rate. *Id.* (citing *Panda Stonewall, LLC,* Opinion No. 574, 174 FERC ¶ 61,266, *reh'g denied,* 175 FERC ¶ 62,132 (2023)). During this time, Joint Customers note that they and others paid the approximately $6.2 million annual revenue requirement filed by Panda. Joint Customers state that the Commission's Order on Initial Decision established an approximately $2 million annual revenue requirement. Joint Customers note that this difference resulted in ''approximately $17 million in overcollection and delayed refunds due to customers.'' *Id.*

[91] PJM IMM Initial Comments at 2. Many other commenters express concern over the lack of transparency associated with how these rates are calculated. *See, e.g.,* American Electric Power Service Corporation Initial Comments at 2; Renewable Generation Companies Initial Comments at 22–23; ELCON Initial Comments at 6–7; Joint Customers Initial Comments at 6; PJM Initial Comments at 3–4, 11; Nuclear Energy Institute Initial Comments at 6–7; PSE&G Initial Comments at 10.

[92] *See, e.g.,* Joint Customers Initial Comments at 13, 26; *see also id.* at 28–29 (''The 15-month statutory limitation on refunds [in FPA section 206 proceedings] creates an incentive for the applicant to delay the proceeding in order to profit from their delay by running out the clock to enter a period where the applicant continues to collect the rate as filed (likely to later be determined unjust and unreasonable) without any ongoing refund obligation. While the statute provides for further refunds upon a showing of dilatory behavior by the applicant, it would be difficult to demonstrate such dilatory behavior when the delay in resolution is due to settlement proceedings, or the procedural schedule in a litigated proceeding. Therefore, customers are left in the position of either foregoing or prematurely ending settlement discussions in order to try to achieve a litigated outcome within the 15-month refund period.'').

[93] PJM Initial Comments at 6–7.

[94] *Id.* at 7 (emphasis in original); *see also* Vistra Reply Comments at 8 (''The time and resources that PJM must expend to conduct testing for the purposes of supporting individual rate cases is an anathema to the core purpose of the tests, which is system reliability.'').

[95] *See* ELCON Initial Comments at 5; PJM IMM Initial Comments at 22–23.

[96] *See, e.g.,* Joint Customers Reply Comments at 6–7; ELCON Initial Comments at 5.

[97] PJM IMM Initial Comments at 5. As a point of comparison, black start compensation also requires some cost allocation of joint costs, but this is arguably distinct from allocation for reactive power because incremental costs incurred to provide black start service can be separately identified (*e.g.,* unlike most generators, which require power from the transmission system during start-up, black start-capable generators may have small, on-site diesel generation units, or equivalent equipment, to independently support their station power needs and other electricity-using activities during start-up). *See, e.g.,* PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT Schedule 6A (12.2.0). Payment is not related only to identifiable costs. Such black start resources will also generally have a different interconnection arrangement which allows for black start service. The determination of whether a particular unit is a black start unit is ultimately defined in the applicable tariff and relates to capability rather than the presence of specific equipment.

[98] PJM IMM Initial Comments at 9–10; PJM IMM Reply Comments at 4 (''[T]he AEP Method allocates a portion (X percent) of the cost of the plant to MVAR production and the balance (1 − X percent) to MW production. In a pure cost of service world, the allocators add to 100% and there can be no over recovery, regardless of the value of X. But that is not true when the units operate in a competitive wholesale power market.'').

[99] *See* PJM IMM Reply Comments at 3 (''The Commission has recognized the relevance of the issue associated with a 'resource receiving cost-

capacity market rules currently account for reactive power payments to resources by assuming average reactive power compensation of $2,546 per MW-year.[100] But reactive power revenue requirements in PJM, many of which result from ''black-box'' settlements, range from roughly $1,000 per MW-year to $13,000 per MW-year.[101] As the PJM IMM explains, this wide range of actual compensation, which is both above and below the amount of assumed reactive power compensation in the capacity market rules, can lead to market distortions.[102]

40. The challenges experienced under the Commission's current reactive power compensation policy are exacerbated by the increasing volume of filings for reactive power compensation. Since Order No. 2003–A, and particularly in recent years, the number of reactive power filings has significantly increased.[103] In turn, the amount of reactive power compensation paid to generating facilities by transmission providers and collected from transmission customers has likewise increased.[104] We are concerned that transmission customers may not be receiving a roughly commensurate increase in reliability benefit.[105]

B. Proposed Reform

41. Having preliminarily found that allowing transmission providers to include charges associated with the supply of reactive power within the standard power factor range from generating facilities results in transmission rates that may be unjust and unreasonable, we propose, pursuant to FPA section 206,[106] that a just and reasonable replacement rate is to prohibit transmission providers from including in their transmission rates any charges associated with the supply of reactive power within the standard power factor range from a generating facility.

42. Eliminating such charges ensures that transmission customers do not pay transmission rates that include costs without an economic basis or justification. Moreover, eliminating compensation is consistent with the Commission's original statement in Order No. 2003 (as modified in Order No. 2003–A) and in subsequent cases on the non-compensability of providing reactive power within the standard power factor range. Eliminating compensation also addresses the undue discrimination concerns articulated by the Commission in Order No. 2003–A regarding the disparate treatment of affiliated and non-affiliated generating facilities, which led to the Commission's comparability policy. By requiring the same approach to compensation for all generating facilities, which necessarily includes both affiliates and non-affiliates, we address the potential for undue discrimination by the transmission provider by providing that comparability would no longer be a justification for payment. To the extent that there are incremental costs to provide reactive power within a generating facility's standard power factor range, we see no reason why such costs should not be reflected through energy or capacity offers made in organized and bilateral markets.[107]

1. Eliminating Separate Compensation Will Not Affect Reliability

43. We preliminarily find that prohibiting transmission providers from including in their transmission rates any charges associated with the supply of reactive power within the standard power factor range from a generating facility is just and reasonable because compensation for providing reactive power within the standard power factor range is unnecessary to maintain reliability.[108] Several commenters argue that separate reactive power compensation is necessary to maintain reliability. For example, Vistra, among others, argues that separate compensation for reactive power is necessary because without it, regions seeing increasing shares of non-synchronous generating facilities in their generation mixes may not have sufficient reactive power.[109] We preliminarily disagree with this argument because we preliminarily find that requiring transmission providers to continue paying for reactive power already required by a generating facility's interconnection agreement is not necessary to ensure that generating facilities provide reactive power when required.[110] As explained in *MISO,* new

based rate recovery while concurrently receiving compensation for market-based rate services involves potential double recovery of costs borne by the relevant cost-based ratepayers.' '' (quoting *Utilization of Elec. Storage Res. for Multiple Servs. When Receiving Cost-Based Rate Recovery,* 158 FERC ¶ 61,051, at P 15 (2017)); ELCON Initial Comments at 5 (''[R]ecouping costs through organized markets while separately recouping the same costs through a cost-of-service rate—would result in double recovery, imposing additional and unnecessary costs on consumers.'').

[100] *See PJM Interconnection, L.L.C.,* 182 FERC ¶ 61,073, at P 135 (2023).

[101] PJM IMM Initial Comments at 21–22; *see also* PJM Initial Comments at 4 (''There is a wide range of revenue requirements that may ultimately be agreed to by the parties to a given proceeding, and the willingness of parties to agree or not agree to a particular number may be influenced by factors completely exogenous to the actual cost and service characteristics of the unit (*e.g.*[,] the legal fees associated with continuing the litigation).'').

[102] PJM IMM Initial Comments at 21–22 (''For example, a marginal resource with reactive revenue of $5,000 per MW-year reflected in their net ACR offer would suppress the capacity market clearing price. Conversely, a marginal resource with a reactive revenue of $1,000 per MW-year reflected in their net ACR offer would inflate the capacity market clearing price.'').

[103] *See, e.g.,* Joint Customers Initial Comments at 4–5 (''In PJM's Dominion zone, there has been a significant increase in the number of reactive revenue requirements filings as well as a drastic increase in the proposed revenue requirements for Reactive Service.''); Vistra Initial Comments at 10 (noting the ''sheer volume of reactive power hearing and settlement proceedings in recent years''); PJM IMM Initial Comments at 13 (explaining that as of February 2022, there were ''over two dozen active proceedings'' and that since 2016, there have been ''more than 100'' reactive power proceedings).

[104] For example, as of December 2023, the total RTO-wide reactive power compensation paid to generating facilities in PJM was approximately $384 million. *See* PJM, Reactive Supply and Voltage Control Revenue Requirements 2023, *https://www.pjm.com/markets-and-operations/billing-settlements-and-credit.aspx* (cell D296 in the .xls file for December 2023).

[105] *See also* Joint Customers Initial Comments at 8–9 (citing *Ill. Com. Comm'n* v. *FERC,* 576 F.3d 470, 477 (2009)); Alliant Initial Comments at 5; MISO Transmission Owners Reply Comments at 10; Joint Customer Reply Comments at 5–6.

[106] 16 U.S.C. 824e.

[107] *See, e.g.,* SPP Initial Comments at 2–3 (''Variable costs of generating reactive power are de minimis and are generally limited to changes in losses within the generating facility which are part of the overall efficiency of the resource and, as such, are typically captured in the resource offers submitted to the SPP Integrated Marketplace.''); PJM IMM Initial Comments at 2–3 (''Payments based on cost of service approaches result in distortionary impacts on PJM markets. Elimination of the reactive revenue requirement and the recognition that capital costs are not distinguishable by function would increase prices in the capacity market. . . . The simplest way to address this distortion would be to recognize that all capacity costs are recoverable in the PJM markets.'').

[108] *See* CAISO Initial Comments at 5–6; Joint Customers Reply Comments at 5–6 (''Despite unsubstantiated claims to the contrary, there has been no demonstration that there is any dearth of reactive power sufficient to maintain reliability in regions where reactive compensation is not based on the AEP methodology.''); MISO Initial Comments at 6 (explaining that the ''method of compensation is incidental to reliability'' because generating facilities' obligation to provide reactive power within the standard power factor range ''ensures that reactive power will be provided to support the Transmission System.'').

[109] Vistra Comments at 4 (citing NYISO, *Reliability and Market Considerations for a Grid in Transition,* 25–26, 104–06 (2019), *https://www.nyiso.com/documents/20142/2224547/Reliability-and-Market-Considerations-for-a-Grid-in-Transition-20191220%20Final.pdf/61a69b2e-0ca3-f18c-cc39-88a793469d50* and CAISO, *Reactive Power Requirements—Automatic Voltage Regulator Systems,* Docket No. ER17–490–000 (filed Dec. 5, 2016)). *But see* Joint Customers Reply Comments at 6 (urging ''the Commission to maintain a focus on reliability as the basis for compensating for Reactive Service, but also to be wary of attempts by others to use 'reliability' to justify over-compensation for Reactive Service or to preserve outdated methodologies.'').

[110] *See Essential Reliability Servs. & the Evolving Bulk-Power Frequency Response,* Order No. 842, 83

Continued

and existing generating facilities will still be required to provide reactive power within the standard power factor range as a condition of obtaining and maintaining interconnection.[111] Additionally, as CAISO notes, its current approach to not compensate for reactive power provided within the standard power factor range has not resulted in major issues of concern with the level of reactive power.[112]

44. We seek comment on the reliability impact of prohibiting transmission providers from including in their transmission rates any charges associated with the supply of reactive power within the standard power factor range from a generating facility in regions where generating facilities currently receive such compensation.

2. Eliminating Separate Compensation Does Not Preclude Generating Facilities From Recovering Their Costs

45. We preliminarily find that separate compensation for providing reactive power within the standard power factor range is not necessary for resources to be able to recover their costs. Some commenters argue that cost-of-service payment for reactive power is important for obtaining financing. Although the prospect of receiving separate, fixed reactive power payments may be beneficial for developing certain generating facilities, resource developers continue to develop new generating facilities in regions without such payments.[113] Furthermore, the basis for these payments has always been comparability. Therefore, these arguments do not demonstrate why allowing for separate reactive power payments at the transmission provider's discretion is just and reasonable.

46. Instead, in the context of RTO/ISO markets, we preliminarily find that it is both more efficient and less administratively burdensome for generating facilities to recover any identified reactive power costs, to the extent they exist, through energy and capacity sales,[114] since competition between generating facilities may incentivize efficiency.[115] Another benefit of any such market-based compensation in RTOs/ISOs is that any costs of providing reactive power within the standard power factor range would be more transparent to market participants because they would be included in RTO/ISO energy and/or capacity prices as opposed to generating facility-specific out-of-market cost-of-service agreements.

47. The Commission has repeatedly rejected arguments that generating facilities need separate reactive power payments ''since the incremental cost of reactive power service within the deadband is minimal.'' [116] Therefore, consistent with those findings, for IPPs operating in non-RTO regions, we preliminarily find that cessation of payments for reactive power within the standard power factor range set forth in the Commission's *pro forma* LGIA and SGIA does not compromise an IPP's ability to recover costs that it may incur in producing reactive power within such range because generating facilities have the opportunity to recover such costs in other ways, ''such as through higher power sales rates of their own.'' [117]

48. Both experience in CAISO, SPP, MISO and certain non-RTO regions where generating facilities do not receive compensation for the provision of reactive power within the standard power factor range,[118] and the evidence in the record to date supports these findings. Specifically, experience and evidence demonstrate that: (1) eliminating compensation has not led to an insufficient supply of reactive power in those regions; and that (2) generating facilities in these regions have been able to recover any purported costs associated with the production of reactive power. For example, CAISO notes that it ''has seen no evidence to this point that resources cannot comply with reactive power dispatch instructions because they have insufficient funds for the equipment to meet the reactive power dispatch.'' [119] As Leeward Renewable Energy, LLC, and Union of Concerned Scientists (LRE/UCS) notes, ''the lack of separate reactive power compensation in CAISO or SPP means that all costs have to be recovered through the applicable PPA, which also means that those PPA prices are higher, all other variables being equal, than they would otherwise be.'' [120]

FR 639 (Mar. 6, 2018), 162 FERC ¶ 61,128, at P 121, *order on reh'g and clarification,* 164 FERC ¶ 61,135 (2018) (''While the Commission has approved specific compensation for discrete services that require substantial identifiable costs, such as for frequency regulation and operating reserves, the Commission has not required specific compensation for all reliability-related costs. We agree with those commenters who observe that minimal reliability-related costs such as those incurred to provide primary frequency response, are reasonably considered to be part of the general cost of doing business, and are not specifically compensated.'').

[111] *MISO,* 182 FERC ¶ 61,033 at P 55.

[112] CAISO Initial Comments at 5.

[113] For example, as of February 21, 2024, there were 453 total generating facilities in the CAISO interconnection queue, 440 of which were non-synchronous generating facilities. This corresponds to 122,885 MW of capacity, 120,043 MW of which comes from the non-synchronous generating facilities in the queue. *See* CAISO, *Formatted Generator Interconnection Queue Report, https://rimspub.caiso.com/rimsui/logon.do* (last visited Feb. 21, 2024). Similarly, as of February 21, 2024, there were 947 total generating facilities in the SPP interconnection queue, 770 of which were non-synchronous generating facilities. This corresponds to 175,243 MW of capacity, 141,879 MW of which comes from the non-synchronous generating facilities in the queue. *See* SPP, *Generator Interconnection Active Requests, https://opsportal.spp.org/Studies/GIActive* (last visited Feb. 21, 2024).

[114] *See* MISO Rehearing Order, 184 FERC ¶ 61,022 at P 42 (dismissing Vistra's claim that they would be unable to recover any costs attributable to providing reactive service through mechanisms other that Schedule 2, such as in energy offers and capacity offers. The Commission noted that ''[a]s to capacity offers, among the 'going forward' costs that can be recovered are 'mandatory capital expenditures necessary to comply with federal . . . reliability requirements,' which would appear to include any (hypothetical) capital investments and expenditures associated with Reactive Service. As to energy offers, Vistra does not explain the basis for its assertion that the Tariff bars including any incremental costs associated with Reactive Service (*e.g.,* fuel costs, short-term variable operations and maintenance) in such offers.'').

[115] For example, in PJM, capital costs are included in the Net Cost of New Entry (Net CONE) parameter of the Variable Resource Requirement (VRR) curve in the capacity market and the Net CONE parameter directly affects clearing prices by affecting both the maximum capacity price and the location of the downward sloping part of the VRR. As a result, if the Commission were to eliminate reactive power compensation within the standard power factor range, the only change that would be required would be to exclude the reactive power revenues from the Net CONE parameter and to exclude any reactive power revenues from the energy and ancillary services offset from the offer caps for resources that provide reactive power. *See* PJM IMM Initial Comments at 21–22, 25.

[116] *BPA,* 120 FERC ¶ 61,211 at P 21 (citing *Sw. Power Pool, Inc.,* 119 FERC ¶ 61,199 at P 39).

[117] *Id.*

[118] *See Cal. Indep. Sys. Operator Corp.,* 160 FERC ¶ 61,035 at P 19. In 2017, the Commission considered the CAISO's approach and found ''a separate payment for the provision of reactive power capability inside the standard power factor range is not required, and we see no reason to require a separate cost recovery mechanism for reactive power capability based on the record here.'' The Commission later affirmed this approach when it was proposed by different transmission providers. *See PNM,* 178 FERC ¶ 61,088 at P 29 (''Consistent with Commission precedent, a transmission provider may decide to eliminate compensation for having the capability of providing reactive service within the standard power factor range.''); *MISO,* 182 FERC ¶ 61,033 at P 55 (''As stated by MISO [transmission owners] and supporting commenters, new and existing generators in MISO will still be required to provide reactive power within the standard power factor range as a condition of obtaining and maintaining an interconnection. MISO [transmission owners] do not propose to change MISO's ability to manually redispatch individual generators for voltage control and generators will continue to be compensated under a separate Tariff mechanism if MISO directs a generation resource to provide reactive power outside of the standard power factor range.'' (citations omitted)); *see also* Order No. 842, 162 FERC ¶ 61,128 at P 120 (explaining that ''there are interconnection requirements for generating facilities in which the recovery of capital costs and operating expenses are not necessarily ensured.'').

[119] CAISO Initial Comments at 5–6.

[120] LRE/UCS Initial Comments at 16.

49. The record from the Notice of Inquiry contains comments arguing that removal of all reactive power compensation under the standard power factor range without a transition period or other similar mechanism has the potential to disrupt business and investment decisions for generating entities in certain markets in the near term.[121] We seek comment on whether and, if so, how the elimination of separate reactive power payments will affect generating facilities' ability to recover their costs in the markets that currently provide reactive power compensation within the standard power factor range. We also seek comment on whether, and if so how, eliminating separate reactive power compensation within the standard power factor range may affect investment decisions to build, or finish building, generation facilities, and whether, and if so how, the elimination could otherwise affect generators' business decisions in those markets.

C. Proposed Revisions for Eliminating Compensation for Reactive Power Supply Within the Standard Power Factor Range

50. To effectuate the changes discussed herein, we propose three revisions discussed further below. Our preliminary findings and these proposed revisions are consistent with the Commission's previous initial statements in Order No. 2003 (which was subsequently revised in Order No. 2003–A) and in subsequent cases on the non-compensability of providing reactive power within the standard power factor range. They also address the undue discrimination concerns articulated by the Commission in Order No. 2003–A, which led to the Commission's comparability policy.[122] By requiring the same approach to compensation for all resources, which necessarily includes both affiliates and non-affiliates, there is no potential for undue discrimination by the transmission provider and comparability would no longer be a justification for payment.

1. Revise Schedule 2 of the Pro Forma OATT

51. We propose to revise Schedule 2 of the *pro forma* OATT to add the following sentence at the end of Schedule 2: ''*However, such rates shall not include any charges associated with the compensation to a generating facility for the supply of reactive power within the power factor range specified in its interconnection agreement.*'' This proposed revision would prohibit separate compensation for the provision of reactive power within the standard power factor range specified in an interconnection agreement.

2. Revise Section 9.6.3 of the Pro Forma Large Generator Interconnection Agreement

52. We propose to revise section 9.6.3 of the *pro forma* LGIA to remove the proviso: ''provided that if Transmission Provider pays its own or affiliated generators for reactive power service within the specified range, it must also pay Interconnection Customer.'' Accordingly, under our proposal here, section 9.6.3 of the *pro forma* LGIA would read as follows: ''Payment for Reactive Power. Transmission Provider is required to pay Interconnection Customer for reactive power that Interconnection Customer provides or absorbs from the Large Generating Facility when Transmission Provider requests Interconnection Customer to operate its Large Generating Facility outside the range specified in Article 9.6.1. Payments shall be pursuant to Article 11.6 or such other agreement to which the Parties have otherwise agreed.'' Along with the other proposed revisions, this proposed revision would prohibit a transmission provider from including in its transmission rates any charges associated with the supply of reactive power within the specified power factor range from a generating facility. Accordingly, transmission providers would be required to pay an interconnection customer for reactive power only when the transmission provider requests the interconnection customer to operate its facility outside the power factor range set forth in its interconnection agreement.

3. Revise Section 1.8.2 of the Pro Forma Small Generator Interconnection Agreement

53. We propose to revise section 1.8.2 of the *pro forma* SGIA to remove the following sentence: ''In addition, if the Transmission Provider pays its own or affiliated generators for reactive power service within the specified range, it must also pay the Interconnection Customer.'' Accordingly, under our proposal here, section 1.8.2 of the *pro forma* SGIA would read as follows: ''The Transmission Provider is required to pay the Interconnection Customer for reactive power that the Interconnection Customer provides or absorbs from the Small Generating Facility when the Transmission Provider requests the Interconnection Customer to operate its Small Generating Facility outside the range specified in article 1.8.1.'' Along with the other proposed revisions, this proposed revision would prohibit a transmission provider from including in its transmission rates any charges associated with the supply of reactive power within the specified power factor range from a generating facility. Accordingly, as above, transmission providers would be required to pay an interconnection customer for reactive power only when the transmission provider requests the interconnection customer to operate its facility outside the power factor range set forth in its interconnection agreement.

IV. Proposed Compliance Procedures

54. We propose to require each transmission provider to submit a compliance filing within 60 days of the effective date of the final rule in this proceeding revising its OATT, *pro forma* LGIA, and *pro forma* SGIA, as necessary, to comply with the requirements set forth in any final rule issued in this proceeding. In addition, we propose to allow 90 days from the date of the compliance filing for implementation of the proposed reforms to become effective.

55. To the extent that any transmission provider believes that it already complies with the reforms adopted in any final rule in this proceeding, the transmission provider would be required to demonstrate how it complies in the compliance filing required 60 days after the effective date of any final rule in this proceeding. In reviewing compliance filings, the Commission will apply the ''consistent with or superior to'' standard to deviations from the adopted *pro forma* language proposed by non-RTO/ISO transmission providers. In evaluating compliance filings made by RTOs/ISOs, the Commission will apply the ''consistent with or superior to'' standard to deviations from the adopted *pro forma* Schedule 2 and the ''independent entity variation standard'' to deviations from the *pro forma* LGIA and *pro forma* SGIA.

56. We seek comment on whether the proposed compliance and

[121] *See, e.g.,* EDF Renewables Initial Comments at 11–12 (''Since independent power producers . . . rely on project financing to finance their project development, predictability of the revenue stream is very important to this industry segment.); Joint Customers Reply Comments at 17 (noting that ''resource developers or owners may have made the decision to invest in resources under the Commission's currently approved methods for determining reactive compensation,'' while also cautioning against allowing unjust reactive power rates to ''remain effective indefinitely.''); Duke Energy Comments at 4 (''Developers have . . . obtained financing based on [the AEP] methodology being in place.'').

[122] *See supra* notes 7–9 and associated text.

implementation timeline would allow sufficient time for changes to be implemented in response to a final rule or whether a limited transition period (beyond the 90-day implementation period proposed in this NOPR) may be necessary. Specifically, we seek comment on the following questions:

- Is a transition period necessary? Please provide discussion supporting any opinion.
- What factors, if any, such as potential business or investment impacts, should be considered in determining whether any transition period is appropriate, how any transition period for reactive power compensation may be structured to minimize impacts, and for what duration any transition period should last? Absent a transition period, would the final rule disrupt business and investment decisions or not? If so, what transition mechanisms other than delaying the implementation date of the final rule would minimize such disruptions and be just and reasonable?
- For regions that have an established capacity market, should transmission providers be allowed to make the implementation date of their compliance filing align with the region's capacity market timelines in order to allow costs associated with reactive power production, if any, to be incorporated into capacity market bids? Would a different transition mechanism, if any, be necessary for regions without a capacity market? Would it be unduly discriminatory or preferential to set different implementation dates for the final rule in different markets and regions?
- If the Commission allows existing generation resources that have previously received compensation for reactive power supply to continue to receive compensation for a limited period while prohibiting new generation resources from receiving reactive power compensation, how should it determine eligibility for continued compensation in a manner that is just and reasonable and not unduly discriminatory or preferential?

V. Information Collection Statement

57. The Office of Management and Budget's (OMB) regulations require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

58. This notice of proposed rulemaking proposes to amend the Commission's regulations pursuant to section 206 of the Federal Power Act, to eliminate compensation to generating facilities for the provision of reactive power within the standard power factor range set forth in each generating facility's individual interconnection agreement. To accomplish this, the Commission proposes to require each transmission provider to amend the standard large interconnection agreement and the standard small generator interconnection agreement in its open access transmission tariff to implement the reforms proposed in this NOPR. Such filings should be made under Part 35 of the Commission's regulations. Subsequently, the proposed rule would revise the following currently approved information collections: *FERC 516H (OMB control. No. 1902–0303): Pro Forma Open Access Transmission Tariff, FERC 516 (OMB control No. 1902–0096): Electric Tariff Filings, and FERC 516A (OMB control No. 1902–0203): Standardization of Small Generator Interconnection Agreements and Procedures [SGIA and SGIP].*

59. The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act. Comments are solicited on whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

60. Please send comments concerning the collection of information and the associated burden estimates to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission. Due to security concerns, comments should be sent electronically to the following email address: *oira_submission@omb.eop.gov.* Comments submitted to OMB should refer to OMB Control No. 1902–0303, 1902–0096, or 1902–0203.

61. Please submit a copy of your comments on the information collection to the Commission via the eFiling link on the Commission's website at *https://www.ferc.gov.* If you are not able to file comments electronically, please send a copy of your comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Comments on the information collection that are sent to FERC should refer to Docket No. RM22–2–000.

62. *Title:* FERC 516H: Pro Forma Open Access Transmission Tariff, FERC 516: Electric Tariff Filings, and FERC 516A: Standardization of Small Generator Interconnection Agreements and Procedures [SGIA and SGIP].

63. *Action:* Proposed revision of the information collection in accordance with RM22–2–000.

64. *OMB Control No.:* 1902–0303, 1902–0096, 1902–0203.

65. *Respondents for This Rulemaking:* Public utility transmission providers, including RTOs/ISOs.

66. *Frequency of Information Collection:* One-time compliance filing.

67. *Necessity of Information:* The proposed rule will require that transmission providers submit to the Commission a one-time compliance filing proposing tariff revisions.

68. *Internal Review:* The Commission has reviewed the changes and has determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry in support of the Commission's ensuring just and reasonable rates. The Commission has specific, objective support for the burden estimates associated with the information collection requirements.

69. *Public Reporting Burden:* The Commission's estimate consists of our estimated effort related to updating the proposed revisions to the Pro Forma Open Access Transmission Tariff, and subsequent revisions to the Large Generator Interconnection Agreements and Small Generator Interconnection agreements and the effort related to submitting a one-time compliance filing.

70. The Commission estimates burden [123] and cost [124] as follows:

A. Collection	B. Number of respondents	C. Annual number of responses per respondent	D. Total number of responses (Column B × Column C)	E. Average burden hours & cost per response	F. Total annual hour burdens & total annual cost (Column D × Column E)	G. Cost per respondent (Column F ÷ Column B)
FERC 516H: Pro Forma Open Access Transmission Tariff						
Transmission Providers (one-time compliance filing)	40	1	40	4 hrs.; $400	160 hrs.; $16,000	$400
FERC 516: Electric Tariff Filings						
Transmission Providers (one-time compliance filing)	43	1	43	4 hrs.; $400	172 hrs.; $17,200	400
FERC 516A: Standardization of Small Generator Interconnection Agreements and Procedures						
Transmission Providers (one-time compliance filing)	43	1	43	4 hrs.; $400	172 hrs.; $17,200	400
Totals	.....	.....	.....	.....	504 hrs.; $50,400	.....

VI. Environmental Analysis

71. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[125] We conclude that neither an Environmental Assessment nor an Environmental Impact Statement is required for this NOPR under § 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts, and regulations that affect rates, charges, classification, and services.[126]

VII. Regulatory Flexibility Act Certification

72. The Regulatory Flexibility Act of 1980 (RFA) [127] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) sets the threshold for what constitutes a small business. Under SBA's size standards,[128] transmission providers under the category of Electric Bulk Power Transmission and Control (NAICS code 221121), have a size threshold of 950 employees (including the entity and its associates).[129]

73. We estimate that there are 43 transmission providers that are affected by the reforms proposed in this NOPR, based on the NERC Active Compliance Registry Matrix as of January 11, 2024.[130] The Commission used a combination of sources to determine the number of employees within each entity using open-source data and information from Dunn & Bradstreet. We estimate that 6 of the 43 transmission providers, approximately 14% (rounded), are small entities.

74. We estimate that one-time costs (in Year 1) associated with the reforms proposed in this NOPR for one transmission provider (as shown in the table above) would be $400. Following Year 1, the Commission estimates no ongoing costs associated with this proposed rule.

75. According to SBA guidance, the determination of significance of impact ''should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors.'' [131] We do not consider the estimated cost of $400 to be a significant economic impact for any of the entities that would be impacted by this NOPR. As a result, we certify that the reforms proposed in this NOPR would not have a significant economic impact on a substantial number of small entities.

VIII. Comment Procedures

76. The Commission invites interested persons to submit comments on the matters and issues proposed in this document to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due May 28, 2024. Also, reply comments are due June 26, 2024. Comments must refer to Docket No. RM22–2–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

77. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *https://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word

[123] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the estimated burden, refer to 5 CFR 1320.3.

[124] Commission staff estimates that the respondents' skill set (and wages and benefits) for Docket No. RM22–13–000 are comparable to those of Commission employees. Based on the Commission's Fiscal Year 2024 average cost of $207,786/year (for wages plus benefits, for one full-time employee), $100/hour is used.

[125] *Reguls. Implementing the Nat'l Env't Pol'y Act,* Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[126] 18 CFR 380.4(a)(15).

[127] 5 U.S.C. 601–612.

[128] 13 CFR 121.201.

[129] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. The Small Business Administrations' regulations at 13 CFR 121.201 define the threshold for a small Electric Bulk Power Transmission and Control entity (NAICS code 221121) to be 500 employees. *See* 5 U.S.C. 601(3) (citing to Section 3 of the Small Business Act, 15 U.S.C. 632).

[130] North American Electric Reliability Corporation, *NCR Active Entities List,* (Jan. 12, 2024), NERC_Compliance_Registry_Matrix_Excel.xlsx.

[131] U.S. Small Business Administration, *A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act,* 18 (Aug. 2017), *https://cdn.advocacy.sba.gov/wp-content/uploads/2019/06/21110349/How-to-Comply-with-the-RFA.pdf.*

processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

78. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

IX. Document Availability

79. 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 (*https://www.ferc.gov*).

80. From the Commission'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.

81. 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.*

By direction of the Commission.

Issued: March 21, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A: List of Commenters

A. Initial Commenters

- Haley Benson
- Nikhil Bhushan
- Market Monitoring Unit of Southwest Power Pool, Inc.
- Charles T. Gaunt
- Duke Energy Corporation
- Wolverine Power Supply Cooperative, Inc.
- Nuclear Energy Institute
- PJM Interconnection, L.L.C.
- Electricity Consumers Resource Council
- Southwest Power Pool, Inc.
- California Independent System Operator Corporation
- State Agencies [1]
- Electric Power Service Corporation
- Renewable Generation Companies [2]
- Midcontinent Independent System Operator, Inc.
- Clean Energy Coalition [3]
- Pine Gate Renewables, LLC
- Edison Electric Institute
- National Rural Electric Cooperative Association
- New York Independent System Operator, Inc.
- ISO New England Inc.
- MISO Transmission Owners
- PJM Power Providers Group
- Vistra Corp. and Dynegy Marketing and Trade, LLC
- National Hydropower Association
- Alliant Energy Corporate Services, Inc.
- Dominion Energy Services, Inc.
- Los Angeles Department of Water and Power
- Leeward Renewable Energy, LLC, and Union of Concerned Scientists
- EDF Renewables, Inc.
- Ameren Services Company
- Electric Power Supply Association
- Indicated Generation Owners [4]
- Joint Customers [5]
- PSEG
- Independent Market Monitor for PJM
- American Electric Power Service Corporation

B. Reply Commenters

- Renewable Generation Companies
- Electric Power Supply Association
- Clean Energy Coalition
- Vistra Corp. and Dynegy Marketing and Trade, LLC
- EDF Renewables, Inc.
- PSEG
- Ameren Services Company
- Joint Customers
- MISO Transmission Owners
- Independent Market Monitor for PJM

[1] State Agencies consist of the Connecticut Attorney General, the Connecticut Department of Energy and Environmental Protection, the Connecticut Office of Consumer Counsel, the Delaware Attorney General, the Delaware Division of the Public Advocate, the Office of the People's Counsel for the District of Columbia, the Maine Office of the Public Advocate, the Massachusetts Attorney General, the Attorney General of the State of Michigan, the Minnesota Attorney General, the Oregon Attorney General, and the Rhode Island Attorney General.

[2] Renewable Generation Companies consist of D.E. Shaw Renewable Investments, L.L.C., EDF Renewables, Inc., EDP Renewables North America LLC, Enel North America, Inc., Invenergy Renewables LLC, Lightsource Renewable Energy Operations, LLC, NextEra Energy Resources, LLC, Open Road Renewables, LLC, and RWE Renewables Americas, LLC.

[3] Clean Energy Coalition consists of the Solar Energy Industries Association, the American Clean Power Association, Earthjustice, and the Natural Resources Defense Council.

[4] Indicated Generation Owners consists of Ares EIF Management, LLC, Brookfield Renewable Trading and Marketing LP, Cogentrix Energy Power Management, LLC, and Eagle Creek Renewable Energy, LLC.

[5] Joint Customers consist of Old Dominion Electric Cooperative, Northern Virginia Electric Cooperative, Inc., and Dominion Energy Services, Inc.

[FR Doc. 2024–06556 Filed 3–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2007–0073]

RIN 1218–AC91

Emergency Response Standard

AGENCY: Occupational Safety and Health Administration (OSHA), DOL.

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

SUMMARY: OSHA is extending the period for submitting comments by 45 days to allow stakeholders interested in the NPRM on Emergency Response additional time to review the NPRM and collect information and data necessary for comment.

DATES: The comment period for the NPRM that was published at 89 FR 7774 on February 5, 2024, is extended. Comments on any aspect of the NPRM must be submitted by June 21, 2024.

ADDRESSES:

Written comments: You may submit comments and attachments, identified by Docket No. OSHA–2007–0073, electronically at *www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the online instructions for making electronic submissions. The Federal e-Rulemaking Portal at *www.regulations.gov* is the only way to submit comments on this NPRM.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2007–0073). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to Docket No. OSHA–2007–0073 at *www.regulations.gov.* All comments and submissions are listed in the *www.regulations.gov* index;

however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code. OSHA is identifying supporting information in this NPRM by author name and publication year, when appropriate. This information can be used to search for a supporting document in the docket at *www.regulations.gov.* Contact the OSHA Docket Office at 202–693–2350 (TTY number: 877–889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Contact Frank Meilinger, Director, Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mark Hagemann, Director, Office of Safety Systems, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693–2222; email: *hagemann.mark@dol.gov.*

SUPPLEMENTARY INFORMATION:

On February 5, 2024, OSHA issued an NPRM to initiate rulemaking to update the existing Fire Brigades standard. The proposed rule would expand the scope of OSHA's standard to include a broad range of hazards emergency responders encounter during emergency response activities and would bring the standard in line with the Federal Emergency Management Agency's (FEMA) National Response Framework. It would also modernize the standard to align with the current industry consensus standards issued by the National Fire Protection Association (NFPA) on the safe conduct of emergency response activities.

The public comment period for the NPRM was to close on May 6, 2024, 90 days after publication of the NPRM. However, OSHA received requests from stakeholders to extend the comment period by an additional 30 days (Document ID 0419); 60 days (see, *e.g.,* Document ID 0426, 0428, 0439, 0440); and 90 days (see, *e.g.,* Document ID 0420, 0434, 0437, 0453). Stakeholders explained that they need additional time to carefully review the questions in the NPRM and gather data.

OSHA agrees to an extension of the public comment period and believes a 45-day extension is sufficient and appropriate in order to balance the agency's need for stakeholder input with the agency's desire to proceed with the rulemaking in a timely manner. Therefore, OSHA is extending the public comment period until June 21, 2024.

Additionally, several commenters submitted requests for a public hearing on the NPRM (see, *e.g.,* Document ID 0435, 0444, 0456, 0459, 0463). OSHA plans to hold a virtual public hearing after the close of the comment period to allow stakeholders from all over the country to participate. OSHA will publish a separate notice at a future date to announce the details of the public hearing.

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this document pursuant to the following authorities: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order 8–2020 (85 FR 58393 (Sept. 18, 2020)); 29 CFR part 1911; and 5 U.S.C. 553.

Signed at Washington, DC.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–06610 Filed 3–27–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2024–OSERS–0012]

State Personnel Development Grants

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priorities and requirements.

SUMMARY: The Department of Education (Department) proposes priorities and requirements under the State Personnel Development Grants (SPDG) program, Assistance Listing Number 84.323A. The Department may use these priorities and requirements for competitions in fiscal year (FY) 2024 and later years. We take this action to focus attention on assisting States in reforming and improving their systems for personnel preparation and personnel development in order to improve results for children with disabilities.

DATES: We must receive your comments on or before April 29, 2024.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *www.regulations.gov.* However, if you require an accommodation or cannot otherwise submit your comments via *www.regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''

Note: The Department's policy is generally to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jennifer Coffey, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: (202) 987–0150. Email: *Jennifer.Coffey@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities and requirements. To ensure that your comments have maximum effect in developing the final priorities and requirements, we urge you to clearly identify the specific section of the proposed priorities and requirements that each comment addresses.

We are particularly interested in comments about whether the proposed priorities or any of the proposed requirements would be challenging for new applicants to meet and, if so, how the proposed priorities or requirements could be revised to address potential challenges. The Department is also

particularly interested in comments in response to the following questions.

Directed Questions:

1. What are the common challenges or barriers experienced by State educational agencies (SEAs) in developing and implementing career pathways for those interested in becoming fully certified special education teachers, including paraprofessionals, through residency, grow your own (GYO), and registered apprenticeships programs?

2. What supports would help SEAs to develop and implement career pathways for those interested in becoming fully certified special education teachers, including paraprofessionals, through residency, GYO, and registered apprenticeships programs?

3. What are the common challenges or barriers experienced by SEAs in developing and implementing a system to address the professional learning and certification needs of personnel with an emergency certification who work with children with disabilities?

4. What supports would help SEAs to develop and implement a system to address the professional learning and certification needs of personnel with an emergency certification who work with children with disabilities?

5. Which stakeholders should SEAs collaborate with to develop and implement a system to address the professional learning and certification needs of personnel with an emergency certification who work with children with disabilities?

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from these proposed priorities and requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect public comments about the proposed priorities and requirements by accessing *Regulations.gov*. To inspect comments in person, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities and requirements. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the SPDG program is to assist SEAs in reforming and improving their systems for personnel preparation and professional development of individuals providing early intervention, educational, and transition services to improve results for children with disabilities.

''Raise the Bar: Lead the World'' (RTB) is the Department's call to action to transform prekindergarten through postsecondary learning and unite around what truly works by promoting academic excellence, boldly improving learning conditions, and preparing our Nation's students for global competitiveness (*www.ed.gov/raisethebar/*). A robust and sustainable educator workforce available to educate and support all children and youth, including children and youth with disabilities, is essential to this call to action. These proposed priorities and requirements support the Department's RTB goals. Specifically, we are proposing priorities designed to:

- Mitigate the barriers to improved educational outcomes and functional results for children with disabilities by increasing the number of well-qualified, fully certified special education teachers, including paraprofessionals;
- Increase collaborative and effective instruction and services for children with disabilities;
- Expand the ability of principals to serve as instructional leaders who create an equity-based, cooperative, and inclusive environment; and
- Provide pre-service and in-service personnel with the knowledge, attitudes, skills, and aspiration to engage effectively with families.

The SPDG program, as a pre-service and in-service professional development program, is uniquely positioned to support the Department's RTB goals by helping to ensure that children with disabilities have access to well-qualified educators and by growing the number of teachers and administrators who can use data to develop and implement standards-based individualized education programs (IEPs) and provide effective instruction in inclusive environments. The proposed priorities specified in this notice are designed to support pathways and professional development for personnel to improve outcomes for children with disabilities.

We intend for these proposed priorities to supplement Absolute Priorities 1 and 2 published in the **Federal Register** on December 19, 2022 (87 FR 77566),[1] as well as other relevant statutory and regulatory priorities established by the Department. Specifically, as part of any SPDG competition, all applicants would be required to meet the statutory requirements in sections 651 through 655 of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1451–1455.

Program Authority: 20 U.S.C. 1451–1455.

Proposed Priorities

This document contains five proposed priorities. Proposed Priorities 1 through 5 are based on allowable activities in sections 651 through 655 of IDEA. These proposed priorities would be applicable to all eligible applicants. We may apply one or more of these priorities in any year in which this program is in effect.

Proposed Priority 1: Providing Career Pathways for Those Interested in Becoming Fully Certified Special Education Teachers, Including Paraprofessionals, Through Residency, GYO, and Registered Apprenticeships Programs

Background:

The purpose of this proposed priority is to assist SEAs in developing and implementing or enhancing existing teacher residency, grow your own (GYO), and registered apprenticeships programs that provide additional pathways to becoming a special education teacher.

According to the October 2022 results of the National Center for Education Statistics (NCES) School Pulse Panel on Staffing, 21 percent of responding public schools reported that they were not fully staffed in the area of special education for the 2022–2023 school year (U.S. Department of Education, 2023). Ensuring all students have access to a well-qualified, fully certified teacher must continue to be a priority for all States. By reducing the cost of earning a license and offering flexible scheduling, teacher residency, GYO, and registered apprenticeships programs are designed to bring more people into the profession. Teacher residency, GYO, and registered apprenticeships programs may open doors to the profession for those who may otherwise face barriers to entrance, including multilingual, racially and ethnically diverse individuals, individuals who have disabilities, and paraprofessionals who may already have decades of classroom

[1] See *www.federalregister.gov/documents/2022/12/19/2022-27367/applications-for-new-awards-state-personnel-development-grants.*

experience, but for numerous reasons, including cost, could not pursue a teaching degree.

The Department has partnered with the Department of Labor and leading education organizations to advance high-quality and affordable teacher preparation through the expansion of registered apprenticeship programs for K–12 teachers, which can be used to scale and strengthen evidence-based teacher residency and GYO programs (see *www.whitehouse.gov/briefing-room/statements-releases/2022/08/31/fact-sheet-biden-harris-administration-announces-public-and-private-sector-actions-to-strengthen-teaching-profession-and-help-schools-fill-vacancies/* and *www.ed.gov/news/press-releases/education-labor-departments-announce-new-efforts-to-advance-teacher-preparation-programs-and-expand-registered-apprenticeships-educators*).

Research shows that high-quality residency models can expand the pool of well-prepared applicants entering the teaching profession, promoting diversity of the workforce and bringing a wide range of experiences into the classroom to support students. A 2014 implementation study published by the Institute of Education Sciences shows that residents are more likely than nonresidents to report feeling prepared to enter the classroom and that after program completion, more than 90 percent of residents stayed in their school district for three years (Silva et al., 2014).

When aligned to high-quality, evidence-based practices for education preparation, such as those drafted by the Pathways Alliance and approved by the Department of Labor, registered apprenticeship programs have the potential to be an effective, high-quality ''earn and learn'' model that allow candidates to earn their teaching credential while earning a salary by combining coursework with structured, paid on-the-job learning experiences with a mentor teacher (Pathways Alliance, 2023). Registered apprenticeship programs for K–12 teachers can be used to establish, scale, and build on existing high-quality pathways into teaching that emphasize classroom-based experience, such as teacher residencies.

GYO is an approach to developing a pipeline of educator candidates to meet specific workforce needs that seeks to eliminate any barriers that may prevent local candidates from entering or remaining in the field. GYO programs are distinguished from other pipelines by whom they target, focusing on recruitment of high school students, career changers, paraprofessionals, non-teaching-school faculty, and community members (Espinoza et al., 2018). Offering financial aid (*e.g.,* loan forgiveness and scholarships) to candidates completing GYO programs, targeting communication to specific populations, and establishing systems for candidates to receive continuous coaching and mentoring from entrance into the GYO program through early service can all aid in the success of these programs (Carver-Thomas, 2018; Professional Educator Standards Board, 2018; Texas Comprehensive Center, 2018). GYO programs can help address shortages in high-need areas and subjects, such as in rural schools and in special education (Jessen et al., 2020); it can also result in improved recruitment and retention of teachers of color (Gist et al., 2019).

Proposed Priority 1:

Projects designed to increase the number of certified special education teachers by establishing a new, or enhancing an existing, teacher residency, GYO, or registered apprenticeship program that minimizes or eliminates the cost of certification for special education teacher candidates and provides opportunities for candidates to be paid, including being provided with a stipend (which, for programs that include paid experience for the duration of the certification program, can be met through paragraph (i), below), to cover the time spent gaining classroom experience during their certification program.

A project implementing a new or enhanced teacher residency, GYO, or registered apprenticeship program must—

(a) Use data-driven strategies and evidence-based approaches to increase recruitment, successful completion, and retention of the special education teachers supported by the project;

(b) Provide standards for participants to enter into and complete the program;

(c) Be aligned to evidence-based (as defined in 34 CFR 77.1) practices for effective educator preparation;

(d) Have little to no financial burden for program participants, or provide for loan forgiveness;

(e) Provide opportunities for candidates to be paid, including being provided with a stipend, to cover time spent in clinical experience during their certification program;

(f) Develop a plan to monitor program quality;

(g) Require completion of a bachelor's degree either before entering or as a result of the residency, GYO, or apprenticeship program;

(h) Result in the satisfaction of all requirements for full State teacher licensure or certification, excluding emergency, temporary, provisional, or other sub-standard licensure or certification;

(i) Provide increasing levels of responsibility for the resident/GYO participant/apprentice during at least one year of paid on-the-job learning/clinical experience, during which a mentor teacher is the teacher of record; and

(j) Develop a plan to ensure the program has funding after the end of the project period.

In their applications, States must describe how their projects will meet these program requirements. In addition to these requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Common Elements.*

Proposed Priority 2: Supporting Emergency Certified Special Education Teachers To Become Fully Certified

Background:

Citing a Department of Education report, Wilkerson and colleagues (2022) note that all States and the District of Columbia have reported a shortage of special education teachers in at least one academic year between 2014–2018. In fact, 48 States have authorized alternative routes to fill special education positions (Myers et al., 2020).

For decades, school districts have relied on unlicensed special education teachers to fill these vacancies, leaving students with disabilities to receive educational services from insufficiently trained individuals and resulting in inequitable educational opportunities (Wilkerson et al., 2022). Under IDEA, teachers who are not fully certified may provide special education instruction under an emergency certification as long as they are participating in a program that provides an alternate route to full special education teacher certification and that certain additional criteria are met.[2] Numerous States across the country have filled teaching positions through such emergency certifications

[2] IDEA section 612(a)(14)(C), as amended by ESSA, eliminates the definition of ''highly qualified'' and specifies Federal requirements for the employment of special education teachers. Under Assurance 14, special education teachers must: have obtained full certification by completing traditional or alternate preparation, or by passing the State special education licensing examination; have not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and hold at least a bachelor's degree.

due to shortages of fully certified special education teachers.

National test scores suggest students with disabilities are losing ground in reading and are not improving in mathematics (Annie E. Casey Foundation, 2023; U.S. Department of Education, 2022). It is critical that special educators serving under an emergency certification become fully certified via high-quality programs. A high-quality pathway to certification can provide special education teachers with the knowledge and skills to collaboratively develop, implement, and monitor the progress of IEPs that lead to student success, while planning and providing instruction alongside general education teachers. They require the skills to effectively collaborate with administrators, related service providers, and families to optimize instruction, services, and supports for students with disabilities.

Proposed Priority 2:

Projects designed to increase the number of fully certified special education teachers by implementing plans that address the emergency certification needs of personnel who work with children with disabilities. The plans must—

(a) Identify the barriers and challenges to full certification that are experienced by special education personnel on emergency certifications;

(b) Include evidence-based (as defined in 34 CFR 77.1) strategies to address those barriers and challenges and assist special education personnel on emergency certifications to obtain full certification, consistent with State-approved or State-recognized requirements, within three years;

(c) Include training and coaching on, at a minimum—

(1) The skills needed to collaboratively develop, implement, and monitor standards-based IEPs;

(2) High-leverage and evidence-based instructional and classroom management practices; and

(3) The provision of wrap-around services (*e.g.,* social, emotional, and mental health supports), special education services, and other supports for children with disabilities; and

(d) Provide participating special education personnel on emergency certifications with opportunities to apply the evidence-based skills and practices described in paragraph (c) in the classroom.

In their applications, States must describe how their projects will meet these program requirements. In addition to these requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Common Elements.*

Proposed Priority 3: Person-Centered IEPs That Support Instructional Progress

Background:

A cornerstone of special education under IDEA is a free appropriate public education (FAPE) in the least restrictive environment (LRE). It is through high-quality person-centered [3] individualized education programs (IEPs) that local educational agencies (LEAs) and schools plan and deliver evidence-based instruction, supports, and services to students with disabilities to provide FAPE in the LRE. However, States, LEAs, and schools continue to face significant challenges with providing FAPE, including person-centered, rigorous, and specially designed instruction and service delivery. Recent research indicates that the majority of IEPs are incomplete and lack substantive sufficiency of the statement of present levels of performance, which is the crucial initial component of a person-centered IEP (*e.g.,* Hott et al., 2021; Lequia et al., 2023).

Effective preparation and support can increase the opportunities for, and ability of, leaders, educators, and families to participate in the development, implementation, and progress monitoring of academically meaningful and legally sound person-centered IEPs (Yell et al., 2020). Under IDEA, an IEP team for a child with a disability must include the child's parent(s), at least one general education teacher, the child's special education teacher or, where appropriate, the child's special education provider, a local educational agency representative, the child, whenever appropriate, and others who have knowledge or special expertise regarding the child. The multidisciplinary nature of the IEP team presents collaborative opportunities and challenges, especially between school professionals and parents (Goldman & Mason, 2018; Mueller & Vick, 2019). Parents play a critical role in the child's life. Parental input helps identify the child's strengths and needs and aids the team identifying appropriate services. This parental input adds significant value to the IEP and can lead to improved educational results and functional outcomes. To best support students, school and district personnel on IEP teams need the skills to choose and use evidence-based practices for core instruction and supplemental supports and services, such as those designed to foster self-efficacy, as well as to increase the child's learning opportunities with general education peers.

Proposed Priority 3:

Projects designed to provide pre-service and in-service training to school and district personnel, including IEP team members (*e.g.,* special education and general education teachers, related service personnel who work with children with disabilities) and administrators, to improve their skills in developing and implementing person-centered IEPs that support instructional progress and improve functional outcomes [4] for children with disabilities. Projects must—

(a) Provide training and coaching to administrators and IEP team members to increase their ability to develop, implement, and monitor person-centered IEPs that support instructional progress so that they can—

(1) Use appropriate data to determine the child's instructional and functional strengths and needs;

(2) Increase the child's learning time and opportunities with general education peers, as appropriate, based on research;

(3) Choose and use evidence-based (as defined in 34 CFR 77.1) practices for core instruction; and

(4) Supplement core instruction with special education services.

In their applications, States must describe how their projects will meet these program requirements. In addition to these requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Common Elements.*

Proposed Priority 4: Principals as Instructional Leaders Who Support Collaborative Service Provision

Background:

When principals are strong instructional leaders who help create an inclusive school environment and district leaders support those principals, all students, including students with disabilities, can thrive. School building administrators, including principals,

[3] Some States and organizations have defined ''person-centered,'' as used in this notice, to reference when students and their families are actively sought to participate in their schooling, including IEP development and implementation, the course of study, and related and transition services, however this term is still developing in the field. The discussions and decisions leading to a person-centered program are founded upon the unique school, extracurricular, and postsecondary strengths, interests, and goals of the student and their family.

[4] An IEP that supports instructional progress is an IEP that focuses on the academic, vocational, developmental, and social needs of the child and allows the child to benefit from instruction.

vice principals, and teacher leaders, are responsible for IDEA implementation and ensuring children with disabilities are provided the services and supports that they are eligible for under IDEA. School building administrators help set high expectations for performance in schools and ensure that the unique, individual needs of each child with a disability are met, consistent with their IEP, and district administrators give them the tools, training, and support they need to do so.

Given that school building leaders have complex roles, it is not surprising that administrators who receive high-quality training handle the multi-faceted demands of the role better and stay in their jobs longer (Herman et al., 2022). When that is the case, principals can be instrumental in supporting teacher and provider practices, motivating school staff, maintaining a positive school program climate, and ensuring inclusive settings are offered. Access to professional learning opportunities influences administrators' job satisfaction and retention (Boyce & Bowers, 2016). In addition to covering essential, research-based content on topics such as instructional leadership, data-based decision making, and systems improvement, the structure of continued professional development for administrators also matters (Darling-Hammond et al., 2022). Especially important to building the capacity of administrators is access to coordinated, continued professional development with structured learning opportunities, such as through a cohort model, mentoring, one-on-one coaching, networking to build a professional community, applied learning opportunities, and problem-solving related to the needs of individual children.

Proposed Priority 4:

Projects designed to provide professional development to improve the instructional leadership provided by principals, district leaders, and teacher leaders (administrators) to promote educational equity for children with disabilities. Projects must provide training and coaching to assist administrators to—

(a) Create and support equitable school schedules and other operations that enable collaborative services from general and special education staff;

(b) Support schoolwide inclusionary practices within a multi-tiered systems of support (MTSS) framework;

(c) Support evidence-based (as defined in 34 CFR 77.1) professional development for their staff related to—

(1) Effective content instruction;

(2) Data for decision-making and continuous progress monitoring;

(3) IEP development and implementation; and

(4) Wrap-around services;

(d) Actively engage families and school communities to identify and address concerns regarding, and barriers to, accessibility, equity, and inclusiveness, using frameworks such as universal design; and

(e) Provide administrators structured learning opportunities, such as through a cohort model, mentoring, one-on-one coaching, networking to build a professional community, and applied learning opportunities, such as problem-solving related to the needs of individual children.

In their applications, States must describe how their projects will meet these program requirements. In addition to these requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Common Elements.*

Proposed Priority 5: Improving Engagement Between Schools and Families

Background:

Family engagement is one of the most powerful predictors of a child's development, educational attainment, and success in school and life (Weiss et al., 2018). Research shows that increased family involvement is related to improved child development and student achievement, attendance, behavior, graduation rates, advanced course enrollment, and college enrollment (Henderson & Mapp, 2002; Robinson et al., 2018; Young et al., 2023). The perspective of family members at the table is needed to create and advocate for the kinds of student-centered learning experiences that will allow all students to: master academic content aligned with the standards; gain future-ready knowledge, skills, and dispositions; and succeed in postsecondary learning and careers (Weiss et al., 2018). Research suggests that collaboration between schools and families is an important support for students with learning and behavioral challenges, including students with disabilities (Sheridan & Wheeler, 2017). Further, children learn anywhere, anytime, and not just in school. Families play a central role in supporting learning and building learning pathways.

To bring families to the table and engender learning in the home and community, commitments and support that foster mutual trust and shared responsibility are necessary (Ogg et al., 2021). Educators who understand how culture and community shape family engagement practices can better work from families' strengths and create high-quality IEPs that will lead to success in school, college, and career.

Family engagement is central to IDEA, which states that families are equal members of the IEP team who must be provided the opportunity to fully participate in all decisions concerning a child's evaluation, placement, and services. When families contribute to IEP decisions, educators may be more successful in planning and delivering productive interventions and supports (Turnbull et al., 2018). Furthermore, involving families in data-based decision making allows them to take a more active role in supporting their children's learning and behavior at home (Weingarten et al., 2020). Families can reinforce school routines, expectations, and language, thereby creating alignment between home and school that may, in turn, contribute to improved student outcomes (Garbacz et al., 2016). Family-professional partnerships and caregiver involvement are impacted by how educators value caregivers' input, and school-home communication can have positive effects on child behavioral outcomes (Li & Burke, 2023).

Proposed Priority 5:

Projects designed to develop the capacity of administrators and educators to develop systems and use strategies that build trust and engagement with families, while further strengthening the role families play in their child's development and learning. Projects must—

(a) Provide training and coaching to assist administrators to—

(1) Develop and implement policies and programs that recognize families' funds of knowledge, connect family engagement to student learning, and create welcoming, inviting cultures; and

(2) Create systems that support staff and families in meaningful engagement (*i.e.,* Leading by Convening and the Dual-Capacity Framework. For more information visit *www.dualcapcity.org* and *www.ncsi.wested.org/resources/leading-by-convening*);

(b) Provide training and coaching to assist educators and early intervention providers to—

(1) Build their knowledge, attitudes, beliefs, aspirations, and behaviors about effective strategies to engage families in their child's learning;

(2) Work with families to make collaborative, data-based decisions in the development and implementation of the child's IEP; and

(3) Provide information and resources to families that enable them to support their children's learning and behavior at home; and

(c) Provide training and coaching to families so they can—

(1) Meaningfully participate in the development and implementation of their child's IEP;

(2) Participate in data-based decision making related to their child's education; and

(3) Further their child's learning at home.

In their applications, States must describe how their projects will meet these program requirements. In addition to these requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Common Elements.*

Common Elements:

In addition to the requirements contained in the proposed priorities, to be considered for funding, applicants must meet the following application and administrative requirements:

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Align with and integrate other State initiatives and programs, as well as district and local improvement plans, to leverage existing professional development and data systems;

(2) Develop and implement plans to sustain the grant program after the grant funding has ended; and

(3) Integrate family engagement into all project efforts by supporting capacity building for personnel and families.

(b) Demonstrate, in the narrative section of the application under ''Quality of Project Services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Develop the knowledge and ability of personnel to be culturally responsive and engage children and families with a strengths-based approach;

(ii) Engage students, families, and community members to assess the appropriateness and impact of the intervention, program, or strategies; and

(iii) Review program procedures and resources to ensure a diversity of perspectives are brought into the project; and

(2) Achieve the project's goals and objectives. To meet this requirement, the applicant must provide—

(i) Either a logic model (as defined in 34 CFR 77.1) or theory of action (to be provided in Appendix A), which demonstrates how the proposed project will achieve intended measurable outcomes;

(ii) A description of proposed in-State and national partners that the project will work with to achieve the goals and objectives of the grant and how the impact of these partnerships will be measured; and

(iii) A description of how the project will be based on current research and make use of evidence-based (as defined in 34 CFR 77.1) practices. To meet this requirement, the applicant must describe—

(A) The current research base for the chosen interventions;

(B) The evidence-based model or practices to be used in the project's professional development activities; and

(C) How implementation science will be used to support full and sustained use of evidence-based practices and result in sustained systems of implementation support.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party [5] evaluator. The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model or theory of action required under paragraph (b)(2)(i) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model or theory of action and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report to the Department; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how the proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(1) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable;

(2) Timelines and milestones for accomplishing the project tasks;

(3) How key project personnel and any consultants and subcontractors will be allocated to the project and how these allocations are appropriate and adequate to achieve the project's intended outcomes; and

(4) How the proposed project will benefit from a diversity of perspectives, including those of families, educators, technical assistance providers, researchers, and policy makers, among others, in its development and operation.

[5] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Provide an assurance that any project website will include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility;

(3) Include, in the budget, attendance at the following:

(i) An annual one and one-half day SPDG National Meeting in the Washington, DC area during each year of the project period; and

(ii) A three-day project directors' conference in Washington, DC, during each year of the project period, provided that, if the conference is conducted virtually, the project must reallocate unused travel funds no later than the end of the third quarter of each budget period; and

(4) Budget $6,000 annually for support of the SPDG program network and website currently administered by the University of Oregon (*www.signetwork.org*).

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Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priorities and Requirements:

We will announce the final priorities and requirements in a document in the **Federal Register**. We will determine the final priorities and requirements after considering public comments on the proposed priorities and requirements and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these proposed priorities and these requirements, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $200 million or more (adjusted every three years by the Administrator of Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866, as amended by Executive Order 14094. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' OIRA has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities and requirements only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed priorities and requirements easier to understand,

including answers to questions such as the following:

- Are the requirements in the proposed priorities and requirements clearly stated?
- Do the proposed priorities and requirements contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed priorities and requirements (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed priorities and requirements be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed priorities and requirements in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed priorities and requirements easier to understand? If so, how?
- What else could we do to make the proposed priorities and requirements easier to understand?

To send any comments about how the Department could make these proposed priorities and requirements easier to understand, see the instructions in the **ADDRESSES** section.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification: The Secretary certifies that these proposed priorities and requirements would not have a significant economic impact on a substantial number of small entities. Participation in the SPDG program is voluntary. In addition, the only eligible entities for this program are SEAs, which do not meet the definition of a small entity. For these reasons, the proposed priorities and requirements would not impose any additional burden on small entities. We expect that in determining whether to apply for SPDG program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving an SPDG program grant. An eligible entity probably would apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that these proposed priorities and requirements would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Paperwork Reduction Act of 1995

These proposed priorities and requirements contain information collection requirements that are approved by OMB under OMB control number 1820–0028. The proposed priorities and requirements do not affect the currently approved data collection.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2024–06656 Filed 3–27–24; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 24–278; MB Docket No. 24–83; FR ID 210721]

Radio Broadcasting Services; Mattoon, Illinois

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on the proposal to substitute Channel 245B1 for vacant Channel 245B at Mattoon, Illinois. The existing vacant Channel 245B at Mattoon is not in compliance with the minimum distance separation requirements of the Federal Communications Commission's (Commission) rules. A staff engineering analysis indicates that Channel 245B1 can be allotted to Mattoon, Illinois, consistent with the minimum distance separation requirements of the Commission's rules, with a site restriction of 12.2 kilometers (7.6 miles) southeast of the community. The reference coordinates are 39–23–17 NL and 88–17–21 WL.

DATES: Comments must be filed on or before May 13, 2024, and reply comments on or before May 28, 2024.

ADDRESSES: Secretary, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2054, *Rolanda-Faye.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 24–83, adopted March 19, 2024, and released March 20, 2024. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs.* The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at *https://www.fcc.gov/edocs.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden

''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will publish the required summary of this Notice of Proposed Rulemaking on *https://www.fcc.gov/proposed-rulemakings,* pursuant to The Providing Accountability Through Transparency Act, *see* 5 U.S.C. 553(b)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Proposed Rules

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

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. In § 73.202, in paragraph (b), amend the Table of FM Allotments under Illinois by adding in alphabetical an entry for ''Mattoon'' to read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)

[U.S. States]	Channel No.
* * * * *	
Illinois	
* * * * *	
Mattoon	245B1

TABLE 1 TO PARAGRAPH (b)—Continued

[U.S. States]	Channel No.
* * * * *	

* * * * *

[FR Doc. 2024–06616 Filed 3–27–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 98–204; FCC 24–18; FR ID 207778]

Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) refreshes the existing record regarding the statutorily mandated collection of workforce composition data for multichannel video programming distributors (MVPDs) on FCC Form 395–A.

DATES: Comments due on or before April 29, 2024; reply comments due on or before May 13, 2024.

ADDRESSES: You may submit comments, identified by MB Docket No. 98–204, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://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* (mail to: *fcc504@fcc.gov*) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, please contact Christopher Sova of the Media Bureau, Industry Analysis Division, *christopher.sova@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking (*Second FNPRM*) FCC 24–18, in MB Docket No. 98–204, adopted on February 7, 2024, and released on February 22, 2024. The complete text of this document is available electronically via the search function on the FCC's website at *https://docs.fcc.gov/public/attachments/FCC-24-18A1.pdf.*

Synopsis

1. Having addressed the issues concerning the reinstatement of the Form 395–B data collection, we now seek, by this Second Further Notice of Proposed Rulemaking (*Second FNPRM*), to refresh the existing record regarding the statutorily mandated collection of Form 395–A data pursuant to 47 U.S.C. 554(d)(3)(A)–(B). Since 1984 the Commission has required MVPDs with six or more full-time employees to file the FCC Form 395–A. Similar to the Form 395–B collected from broadcasters, Form 395–A seeks to gather workforce composition data from multichannel video programming distributors (MVPDs) on an annual basis. The Commission suspended the filing of Form 395–A in 2001 in the wake of the decision by the U.S. Circuit Court of Appeals for the *District of Columbia Circuit in MD/DC/DE Broadcasters Associations* v. *FCC (MD/DC/DE Broadcasters),* which vacated certain aspects of the Commission's EEO requirements for broadcasters. While the similar requirements for MVPDs have never been challenged, the Commission suspended the collection of both Forms 395–A and B, along with various EEO

requirements, in order to analyze the impact of the *MD/DC/DE* Broadcasters decision. In the Third Report and Order and Fourth Notice of Proposed Rulemaking (*Third Report and Order and Fourth NPRM*), the Commission reinstated Forms 395–A and B pending resolution of questions about confidential collection and use. As the Commission had not resolved those questions until its adoption of the Fourth Report and Order in MB Docket No. 98–204 (*Fourth R&O*), the collection of the Form 395–A remained suspended along with the Form 395–B. Despite that suspension, the Commission continued to seek OMB approval for the information collection, and during that time, OMB approved both Forms 395–A and B, subject to the Commission's resolution of confidentiality issues regarding the forms' collection and use. Although the filing of the Form 395–A has been suspended since 2001, OMB has most recently approved the information collection through January 31, 2026.

Discussion

2. We now seek by this *Second FNPRM* to refresh the record stemming from the *Third Report and Order and Fourth NPRM* regarding the collection of MVPD workforce composition data. Consistent with the analysis provided in the *Fourth R&O* for making Form 395–B data public, we tentatively conclude that the collection of Form 395–A also should be reinstated and made available for public review. We seek comment as to whether Congress's directive that MVPD operators make Form 395–A available for public inspection at their own facilities would be consistent with our amending our rules to require that MVPD operators instead make Form 395–A publicly available through the Commission-hosted Online Public Inspection File (OPIF). While section 634(d)(3)(B) of the Act states that an MVPD should make Form 395–A available for public inspection at the MVPD's central office and at every office where five or more full-time employees are regularly assigned to work, section 634(d)(4) of the Act permits the Commission to amend the requirements associated with Form 395–A as needed. We tentatively conclude that requiring the Form 395–A to be placed in the OPIF would be more efficient for the public that wishes to review such reports, as OPIF provides one online site for such review. We also tentatively conclude that hosting the reports in OPIF will reduce the burdens placed on MVPDs, as this will relieve the MVPDs of maintaining such reports at individual central offices, including providing sufficient staffing for such offices. We also tentatively conclude that our proposal to change the location of where the Form 395–A data will be housed from the MVPD's central office to the OPIF website is consistent with the basic intent of section 634(d)(3)(B) of the Act, which is to ensure that the public has access to the Form 395–A data. We seek comment on these tentative conclusions. Alternatively, if section 634(d)(3)(B) of the Act were to be read to compel availability of Form 395–A at MVPD offices, would it be within our authority and consistent with sound policy to additionally require availability through OPIF?

3. In the *Order on Reconsideration,* we modified § 73.3612 of our rules to specifically state that the Form 395–B data will not be used in assessing any aspect of an individual broadcast licensee's or permittee's compliance with both the nondiscrimination and equal employment opportunity requirements of § 73.2080. Despite the slight variation in the underlying statutory authority for the collection of the workforce employment data from MVPDs versus broadcasters, the Commission traditionally has treated both data collections in a similar manner. In this regard, the Commission has imposed the same restrictions on the use of workforce composition data stemming from both Forms 395–A and B. Consequently, we tentatively conclude that § 76.1802 of our rules concerning the MVPD annual employment report should be modified so as to align with the modifications made to § 73.3612 of our rules for broadcasters in the *Order on Reconsideration.* In the *Order on Reconsideration,* we incorporated what appears as a Note to § 73.3612 into the rule itself to conform to the publishing conventions of the National Archives and Records Administration's Office of the Federal Register. We seek comment on our tentative conclusion to do the same with regard to the language that currently appears as a Note to § 76.1802, to read as follows:

Each employment unit with six or more full-time employees shall file an annual employment report on the FCC Form 395–A with the Commission on or before September 30 of each year. Data concerning the gender, race and ethnicity of an employment unit's workforce collected in the annual employment report will be used only for purposes of analyzing industry trends and making reports to Congress. Such data will not be used for the purpose of assessing any aspect of an individual employment unit's compliance with our nondiscrimination or EEO rules for multi-channel video program distributors.

4. As stated in the *Fourth R&O,* the Form 395–B will include a mechanism to provide further specificity about broadcaster employees' gender identities. We seek comment on whether we should adopt a similar mechanism for the Form 395–A.

5. We also seek comment on the attendant costs and benefits of any proposals advanced in response to this item.

6. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all under 47 U.S.C. 151, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

Procedural Matters

7. *Ex Parte Rules—Permit-But-Disclose.* With respect to the *Second FNPRM,* this proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules at 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing

them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

8. *Filing Requirements—Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.145 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page 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).

9. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy change proposals on small entities in the *Second Further Notice of Proposed Rulemaking.*

10. *Initial Paperwork Reduction Act Analysis for Second Further Notice of Proposed Rulemaking in MB Docket No. 98–204.* This *Second FNPRM* may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

11. *Providing Accountability Through Transparency Act.* The Providing Accountability Through Transparency Act of 2023 requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. Accordingly, the Commission will publish the required summary of this *Second Further Notice of Proposed Rulemaking* on *https://www.fcc.gov/proposed-rulemakings.*

Initial Regulatory Flexibility Act Analysis

12. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities of the policies and rules proposed in this Second Further Notice of Proposed Rulemaking (*Second FNPRM*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the *Second FNPRM.* The Commission will send a copy of the *Second FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Second FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

13. The *Second FNPRM* seeks to refresh the record regarding the Commission's annual collection of broadcaster multichannel video programming distributor (MVPD) composition data by race and gender on FCC Form 395–A. In 2001, the Commission suspended the filing of Form 395–A after a federal court decision vacated certain aspects of the Commission's equal employment opportunity (EEO) requirements for broadcasters. Although the similar requirements for MVPDs have never been challenged, the Commission suspended the collection of both the broadcasters' Form 395–B and the MVPDs' Form 395–A, along with various EEO requirements, in order to analyze the impact of the federal court decision. In 2004, the Commission reinstated Forms 395–A and B pending resolution of questions about confidential collection and use of the forms' data. Today, having resolved the issues related to the confidentiality of the Form 395–B data in the *Fourth Report and Order,* the Commission now seeks public comment on the legal issues pertaining to availability and confidentiality of Form 395–A data.

14. Consistent with the decision in the *Fourth Report and Order* to make Form 395–B data public, the Commission tentatively concludes in the *Second FNPRM* that the collection of Form 395–A should also be reinstated in the same manner as it was previously with regard to public availability. The Communications Act requires an MVPD to make its Form 395–A available for public inspection at the MVPD's central office and at every office where five or more full-time employees are regularly assigned to work. The Commission has traditionally treated Form 395–A and B data in the same manner with regard to confidentiality. Consequently, the *Second FNPRM* seeks comment on whether instead of (or in addition to) maintaining the Form 395–A at a MVPD's central office, the form should now be maintained on the Commission's website similar to the requirement now established in the *Fourth Report and Order* for broadcasters' Form 395–B. Other than a proposal to include a mechanism in the Form 395–A that would enable MVPDs to account for those employees who identify as gender non-binary, the proposed reinstatement of this collection does not change the form's reporting requirements. We predict that inclusion of this mechanism, which would allow for accurate data gathering, would incur only a minimal economic impact on a substantial number of small entities.

B. Legal Basis

15. The proposed action is authorized under sections 1, 2(a), 4(i), 4(j), 4(k), 303, 403, and 634(d) of the Communications Act of 1934, as amended 47 U.S.C. 151, 152(a), 154(i), 154(k), 303, 403, and 554(d).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

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

additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

17. Cable Companies and Systems (Rate Regulation). The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

18. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

19. Open Video Systems. The open video system (OVS) framework was established in 1996 and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. OVS operators provide subscription services and therefore fall within the SBA small business size standard for the cable services industry, which is ''Wired Telecommunications Carriers.'' The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this total, 2,964 firms operated with fewer than 250 employees. Thus, under the SBA size standard the majority of firms in this industry can be considered small. Additionally, we note that the Commission has certified some OVS operators who are now providing service and broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information for the entities authorized to provide OVS however, the Commission believes some of the OVS operators may qualify as small entities.

20. Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs). SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are included in the Wired Telecommunications Carriers' industry which includes wireline telecommunications businesses. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this total, 2,964 firms operated with fewer than 250 employees. Thus under the SBA size standard, the majority of firms in this industry can be considered small.

21. Direct Broadcast Satellite (DBS) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.

22. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service—DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation. DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. In this section, we identify the reporting, recordkeeping, and other compliance requirements contained in the Second FNPRM and consider whether small entities are affected disproportionately by any such requirements. To a large degree, the Second FNPRM only seeks to reinstitute the previous reporting, recordkeeping, or compliance requirements for collection of MVPD workforce composition data on Form 395–A, as this collection was previously suspended in 2001. The Second FNPRM, does, however, seek comment on whether to replace the existing requirement that a MVPD maintain a copy of the Form 395–A at its central office with a requirement that a MVPD instead upload a copy of its Form 395–A to the Commission's website. Alternatively, if the statute were read to compel availability of Form 395–A at MVPD offices, the Second FNPRM seeks comment on whether it is within our authority and consistent with sound

policy to additionally require availability through the OPIF. So as to harmonize the MVPD requirements with those imposed on broadcasters, the Second FNPRM also seeks comment on whether to modify the Commission's rules so as to include a statement that the Commission will not use the Form 395–A data when assessing compliance with both the nondiscrimination and EEO requirements of its rules. Currently, the prohibition contained in the Commission's rules only references a restriction on the use of the Form 395–A data for assessing compliance with the EEO rules. Because the only proposed modification in the Second FNPRM with regard to reporting or recordkeeping obligations is merely a change in the location of where the Form 395–A will be housed (*i.e.,* on the Commission's website rather than (or in addition to) the MVPDs' central office), we do not anticipate a significant change in the compliance burden for small entities. Additionally, MVPD employment units with less than six full-time employees are exempt from filing the statistical data requested on the form. Hence, the Commission concludes that small entities will not be disproportionately affected by the Second FNPRM.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

25. The Second FNPRM seeks to refresh the record regarding the Commission's annual collection of MVPD workforce composition data by race and gender on Form 395–A. It would lead to a resumption of this data collection and would propose only to modify one of the locations where the Form 395–A should be retained, by seeking comment on whether an MVPD should retain a copy on the Commission's website in lieu of (or in addition to) at the MVPDs' central office. To the extent MVPDs were maintaining hard copies of the Form 395–A at their central offices, we anticipate that storing an electronic copy on the Commission's website will minimize the economic burdens on MVPDs. Where maintenance of a hard copy necessitates the use of MVPD staff time to monitor public access to the Form 395–A, retention of an electronic copy on the Commission's website presents itself as a simple and straightforward process, requiring only a minimal degree of navigating the Commission's database system to upload the information. Further, as detailed in the Second FNPRM, the collection of MVPD workforce composition data and providing the data for public inspection are required by section 634(d) of the Act.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Second FNPRM

26. None.

List of Subjects in 47 CFR Part 76

Radio; Reporting and recordkeeping requirements; Television.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

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

■ 2. Revise § 76.1802 to read as follows:

§ 76.1802 Annual employment report.

Each employment unit with six or more full-time employees shall file an annual employment report on the FCC Form 395–A with the Commission on or before September 30 of each year. Data concerning the gender, race and ethnicity of an employment unit's workforce collected in the annual employment report will be used only for purposes of analyzing industry trends and making reports to Congress. Such data will not be used for the purpose of assessing any aspect of an individual employment unit's compliance with our nondiscrimination or EEO rules for multi-channel video program distributors.

[FR Doc. 2024–05940 Filed 3–27–24; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 89, No. 61

Thursday, March 28, 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

Agricultural Marketing Service

[Doc. No. AMS–SC–24–0009]

Notice of Request for Extension and Revision of a Currently Approved Information Collection for Pistachios Grown in California, Arizona, and New Mexico

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Agricultural Marketing Service's (AMS) intent to request an extension for and revision to a currently approved information collection for Pistachios Grown in California, Arizona, and New Mexico, pursuant to Federal Marketing Order No. 983.

DATES: Comments on this notice must be received by May 28, 2024 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or online at *https://www.regulations.gov.* All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting the comments will be made available to the public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Thomas Nalepa, Marketing Specialist, and Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085; Fax: (202) 720–8938; or Email: *thomas.nalepa@usda.gov* and *matthew.pavone@usda.gov.*

Small businesses may request information on this notice by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone (202) 720–8085; Fax: (202) 720–8938; or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Pistachios Grown in California, Arizona, and New Mexico, Marketing Order No. 983.

OMB Number: 0581–0215.

Expiration Date of Approval: June 30, 2024.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' authorizes the Secretary of Agriculture to issue marketing orders that regulate the handling of any agricultural commodity specified in the Act, and to consider recommendations submitted by the administrative committees that manage the operations of such marketing orders. The individuals serving on an administrative committee are nominated by each commodity industry, are familiar with the handling of such commodity in their local area and are thus in a position to make recommendations to the Secretary.

This notice pertains to the Federal marketing order regulating the handling of pistachios grown in California, Arizona, and New Mexico (7 CFR part 983), hereinafter referred to as the ''Order.'' The Order authorizes grade and size requirements, as well as a requirement for aflatoxin testing on domestic shipments only.

The Administrative Committee for Pistachios (Committee) locally administers the Order that requires handlers to submit certain information to the Committee to effectively implement program requirements, fulfill the intent of the Act, and assist the industry in carrying out marketing decisions. Only authorized employees of the Committee, and authorized representatives of the USDA have access to information provided on the forms.

Requesting public comments on the forms described below is part of the process to obtain approval through the Office of Management and Budget (OMB).

The forms needing OMB approval are contained in OMB No. 0581–0215 and include Committee nominations and ballots for producers (SC–245 and SC–246) and handlers (SC–245A and SC–244); background statements for Committee nominees (SC–243); marketing agreement (SC–242); and referendum (SC–240A) and continuance ballots (SC–240).

There are also forms to report assessment receipts (ACP–1), notify for failed lot dispositions (ACP–2), apply for exemption from handling requirements (ACP–3), request for minimal testing for aflatoxins (ACP–4), report inter-handler transfers (ACP–5), provide monthly inventory and shipment data (ACP–6), and submit lists of producers and deliveries (ACP–7).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.27 hours per response.

Respondents: Pistachio producers, handlers, and testing laboratories.

Estimated Number of Respondents: 1,220.

Estimated Number of Responses: 1,968.37.

Estimated Number of Responses per Respondent: 1.61.

Estimated Total Annual Burden on Respondents: 541.19 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will also become a matter of public record.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–06493 Filed 3–27–24; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FTPP–22–0080]

National Bioengineered Food Disclosure Standard; Annual Review of the List of Bioengineered Foods

ACTION: Notice; request for information.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting information about potential additions to or subtractions from the List of Bioengineered Foods (List) as it pertains to the National Bioengineered Food Disclosure Standard (Standard).

DATES: Comments must be received by April 29, 2024 to be assured of consideration.

ADDRESSES: Interested parties are invited to submit written comments via the internet at *https://www.regulations.gov.* Enter ''AMS–FTPP–22–0080'' in the Search field. Select the Documents tab, then select the 'Comment' button in the list of documents. Comments may also be filed by mail or by fax with the Docket Clerk, 1400 Independence Ave. SW, Room 2069—South, Washington, DC 20250; Fax: (202) 260–8369. All comments submitted in response to this notice, including the identity of individuals or entities submitting comments, will be made available to the public on the internet via *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth Becker, Research and Rulemaking Branch Chief, Food Disclosure and Labeling Division, Fair Trade Practices Program, Agricultural Marketing Service, U.S. Department of Agriculture, Telephone (202) 570–3661, Email *kenneth.becker@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 2016, Public Law 114–216 amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et. seq.*) (amended Act) to require USDA to establish a national, mandatory standard for disclosing any food that is or may be bioengineered. In accordance with the amended Act, USDA published final regulations (2018 final rule) to implement the Standard on December 21, 2018 (83 FR 65814). The regulations became effective on February 19, 2019, with a mandatory compliance date of January 1, 2022. Under 7 CFR 66.1, a bioengineered food is a food that—subject to certain factors, conditions, and limitations—contains detectable genetic material that has been modified through *in vitro* recombinant deoxyribonucleic acid (rDNA) techniques and for which the modification could not otherwise be obtained through conventional breeding or found in nature.

The regulations, at 7 CFR 66.6, provides the List, which currently includes: alfalfa, apple (Arctic™ varieties), canola, corn, cotton, eggplant (BARI Bt Begun varieties), papaya (ringspot virus-resistant varieties), pineapple (pink flesh varieties), potato, salmon (AquAdvantage®), soybean, squash (summer, coat-protein mediated virus-resistant), sugarbeet, and sugarcane (Bt insect-resistant). Where practical, the List includes specific information about individual crops and foods, such as variety descriptions or trade names, to help distinguish bioengineered versions of those foods from their non-bioengineered counterparts.

The List attempts to capture bioengineered crops and food that meet the statutory definition of ''bioengineering,'' based on existing technology, and that could potentially be offered for sale in the United States (83 FR 65839). AMS has developed the List to identify the crops and food that are available in a bioengineered form, and to aid regulated entities considering whether they may need to make a bioengineered disclosure (83 FR 65839). Food has a broad definition under 7 CFR 66.1 and includes raw agricultural commodities, such as crops and animals; incidental additives; and processed foods. Raw agricultural commodities, including crops and animals, are candidates for inclusion on the List. Microbes, such as enzymes, yeasts, and other similar foods produced in controlled environments, are excluded from the List, as explained in the preamble to the 2018 Final Rule, and therefore are not considered for addition to the List (83 FR 65839). Similarly, ''processed foods'', as defined at 7 CFR 66.1, are excluded from the List (*See* 83 FR 65819).

As stated in the preamble to the 2018 final rule, at 83 FR 65852, the List ''establishes a presumption about what foods might require disclosure under the Standard but does not absolve regulated entities from the requirement to disclose the bioengineered status of food and food ingredients produced with foods not on the List when the regulated entities have actual knowledge that such foods or food ingredients are bioengineered.'' As a result, if a regulated entity is using a food or ingredient produced from an item on the List, they must make a bioengineered food disclosure unless they have records demonstrating that the food or ingredient they are using is not bioengineered. Similarly, even if a food is not on the List, a regulated entity must make a bioengineered food disclosure if they have actual knowledge a food or ingredient that they are using is a bioengineered food or a bioengineered food ingredient.

The regulations at 7 CFR 66.7(a) require AMS to review and consider updates to the List on an annual basis and solicit comments regarding recommended updates to the List through notification in the **Federal Register** and on the AMS website.

The regulations at 7 CFR 66.7(a) further provide that:

(1) Recommendations regarding additions to and subtractions from the List may be submitted to AMS at any time or as part of the annual review process.

(2) Recommendations should be accompanied by data and other information to support the recommended action.

(3) AMS will post public recommendations on its website, along with information about other revisions to the List that the agency may be considering, including input based on consultation with the government agencies responsible for oversight of the products of biotechnology: USDA's Animal and Plant Health Inspection Service (USDA–APHIS); the U.S. Environmental Protection Agency (EPA); the Department of Health and Human Services' Food and Drug Administration (FDA)' and appropriate members of the Coordinated Framework for the Regulation of Biotechnology or a similar successor.

(4) AMS will consider whether foods for inclusion on the List have been authorized for commercial production somewhere in the world and whether the food is currently in legal commercial production for human food somewhere in the world.

As stated at 7 CFR 66.7(b), regulated entities will have 18 months following the effective date of the updated List to revise food labels to reflect changes to the List in accordance with the disclosure requirements of 7 CFR part 66.

II. Request for Information

When considering whether crops and food available in a bioengineered form should be added to the List, AMS will consider two criteria: (1) whether the food has been authorized for commercial production somewhere in the world; and (2) whether the food is currently in legal commercial production for human food somewhere in the world. AMS uses resources such as GAIN Agricultural Biotechnology Annual Reports, information from food manufacturers, and international governmental information to track such authorizations and the status of commercial production.

AMS is soliciting comments including data, recommendations, and other information on the inclusion of several specific crops and foods it has determined are likely to meet the criteria to be added to the List. AMS also seeks information from the public on any additional crops or foods that may meet the criteria to be added to the List, any crops or foods that no longer meet the criteria and should be subtracted from the List, and any trade names, varieties or modifiers that should be considered for addition to or subtraction from the items currently appearing on the List. After reviewing the recommendations and information submitted in response to this notice, AMS will use that information, as well as input based on consultation with other government agencies responsible for oversight of the products of biotechnology, to determine whether it should initiate rulemaking to update the List. Any comments not directly related to updates to the List will not be considered, nor will recommendations that are not accompanied by data and other information to support the recommended action. AMS is providing 30 days for the submission of relevant information. Any changes to the List would be reflected in an amendment to 7 CFR part 66.

1. Should Dry Edible Beans (Event—EMB–PVØ51) [1] [2] be added to the List? If so, would you suggest that AMS use a modifier, trade name, variety, etc.?

2. Should Cowpea (Event—AAT709A) [3] [4] be added to the List? If so, would you suggest that AMS use a modifier, trade name, variety, etc.?

3. Should Wheat (Event—HB4) [5] [6] be added to the list? If so, would you suggest that AMS use a modifier, trade name, variety, etc.?

4. Should Rice (Event—GR2E, Production of provitamin A carotenoids),[7] [8] also known as Golden Rice, be added to the List? If so, would you suggest that AMS use a modifier, trade name, variety, etc.?

5. Should Purple Tomato (Event—Del/Ros1–N) [9] be added to the List? If so, would you suggest that AMS use a modifier, trade name, variety, etc.?

6. Should Plums (Honeysweet, Event—ARS–PLMC5–6) [10] be added to the List? If so, would you suggest that AMS use a modifier, trade name, variety, etc.?

7. Are there any other crops or foods that should be considered for inclusion on the List?

8. Are there any crops or foods currently on the List that should be considered for subtraction from the List?

9. Should any modifiers be added or changed for any of the crops or foods already on the List?

Authority: 7 U.S.C. 1621 *et seq.*

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–06535 Filed 3–27–24; 8:45 am]

BILLING CODE P

[1] *https://www.isaaa.org/gmapprovaldatabase/event/default.asp?EventID=23.*

[2] Agricultural Biotechnology Annual–2021–Brazil, *https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Agricultural%20Biotechnology%20Annual_Brasilia_Brazil_10-20-2021.*

[3] Agricultural Biotechnology Annual—2021—Nigeria, *https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Agricultural%20Biotechnology%20Annual_Lagos_Nigeria_10-20-2021.*

[4] *https://sciencenigeria.com/pbr-cowpea-revolutionising-nigerias-food-production-nabda-boss/.*

[5] Argentina: Agricultural Biotechnology—Annual–2021, *https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Agricultural%20Biotechnology%20Annual_Buenos%20Aires_Argentina_10-20-2021.*

[6] UPDATE 1—Argentina becomes first country to authorize planting GMO wheat | Reuters.

[7] Philippines approves Golden Rice for direct use as food and feed, or for processing, *https://www.irri.org/news-and-events/news/philippines-approves-golden-rice-direct-use-food-and-feed-or-processing.*

[8] *https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Agricultural%20Biotechnology%20Annual_Manila_Philippines_RP2022-0058.pdf.*

[9] *https://www.cfsanappsexternal.fda.gov/scripts/fdcc/index.cfm?set=NewPlantVarietyConsultations&id=DelRos1-N.*

[10] *https://www.isaaa.org/gmapprovaldatabase/event/default.asp?EventID=236.*

DEPARTMENT OF AGRICULTURE

Economic Research Service

Agency Information Collection Activities: Comment Request

AGENCY: Economic Research Service (ERS), Department of Agriculture (USDA).

ACTION: Notice of information collection; request to comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ERS is proposing a new information collection to study consumer's willingness to pay to prevent health effects of foodborne illness, ''Foodborne Illness Prevention Valuation Survey.''

DATES: Written comments on this notice must be received by May 28, 2024 to be assured of consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

ADDRESSES: Address all comments concerning this notice to *julie.parker3@usda.gov* and *ers.pra@usda.gov* identified by docket number 0536–NEW.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Julie Parker at *ers.pra@usda.gov* or 202–868–7945.

SUPPLEMENTARY INFORMATION:

Title of collection: Foodborne Illness Prevention Valuation Survey.

OMB Control Number: 0536–NEW.

Type of Request: A new information collection.

Abstract:

Collection of Information for Foodborne Illness Prevention Valuation Survey

The proposed data collection will survey U.S. consumers to study the value consumers place on preventing pain and suffering from foodborne illnesses and their long-term outcomes. The survey sample will be drawn from a panel of individuals recruited to be representative of the U.S. public. USDA Food Safety and Inspection Service uses these estimates in cost-benefit analysis of proposed food safety regulations. They also use information on the value consumers place on avoiding a range of foodborne illnesses to help inform food safety program priorities.

This stated preference survey will enhance understanding of the value the public places on preventing foodborne illness. Like other cost of illness research, current cost of foodborne illness estimates includes cost of medical treatment, the value of lost time, and willingness to pay to reduce risk of death, but do not include the value consumers place on preventing the physical, emotional and social burden experienced from these illnesses. Economic theory supports the utility of measuring consumer willingness to pay for these non-monetary benefits of health protection, as demonstrated by recent survey

research in the United Kingdom and Australia. The proposed survey project will build upon these efforts.

Participation in the survey will be voluntary. Respondents will be recruited online and will respond to an online survey. Data will be analyzed using discrete choice models to estimate consumers' willingness to pay to prevent pain and suffering from foodborne illnesses and their long-term outcomes. Results from the survey will provide the first U.S. estimates of consumer willingness to pay to prevent pain and suffering from foodborne illnesses. Results will be published in academic journals and Federal research reports. This will help ensure stakeholder and public access to results regarding the benefits of food safety programs. This work will also inform future studies on valuing prevention of foodborne illness.

Authority: These data will be collected under the authority of US Code (U.S.C.) 7 U.S.C. 2204(a) General duties of Secretary, advisory functions, research and development and 7 U.S.C 6971, Under Secretary of Agriculture for Research, Education, and Economics, as implemented under the Code of Federal Regulations (CFR) 7 CFR 2.21 which delegates to the Under Secretary, as Chief Scientist, the responsibility for agricultural systems and technology, including emerging agricultural research, education, and extension needs. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320. 5 CFR part 1320.

Confidentiality: All ERS employees and ERS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, Title III of Public Law 115–435, codified in 44 U.S.C. ch. 35.

Estimate of Burden: The burden for this collection of information is estimated to average approximately 30 minutes per respondent completing the survey.

Respondents: The respondents will be consumers across the United States.

Estimated Number of Respondents: Up to 3,000 respondents completing the survey. This is based on a 30% response rate from a total of 10,000 sampled consumers.

Estimated Total Annual Burden on Respondents: Up to 2,000 hours (inclusive of completed responses and contacts).

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of ERS, including whether the information will have practical utility; (b) the accuracy of ERS's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information for respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Spiro Stefanou,

Administrator, Economic Research Service, United States Department of Agriculture.

[FR Doc. 2024–06598 Filed 3–27–24; 8:45 am]

BILLING CODE 3410–18–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of virtual business meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Texas Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a series virtual business meeting via ZoomGov on the following dates listed below. These virtual business meetings are for the purpose of selecting and refining their next project topic.

DATES: These meetings will take place on:

- Wednesday, April 24, 2024, from 12:00 p.m.–1:00 p.m. CT
- Wednesday, June 5, 2024, from 12:00 p.m.–1:00 p.m. CT
- Tuesday, June 18, 2024, from 12:00 p.m.–1:00 p.m. CT

Zoom Webinar Link to Join *(Audio/Visual)*

- Wednesday, April 24 *https://www.zoomgov.com/webinar/register/WN_Z2vPBVG4TU2q6sJEdLqlMw*
- Wednesday, June 5 *https://www.zoomgov.com/webinar/register/WN_X94mfqEwQGCsRs8k-umsSQ*
- Tuesday, June 18 *https://www.zoomgov.com/webinar/register/WN_OUBydKsbRk6y2Zk-bZQX3g*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Angelica Trevino, Support Services Specialist, *atrevino@usccr.gov* at least 10 business days prior to 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 meeting. Written comments can be sent via email to Brooke Peery (DFO) at *bpeery@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Texas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *atrevino@usccr.gov.*

Agenda

I. Welcome & Roll Call

II. Approval of Minutes

III. Committee Discussion

IV. Public Comment

V. Adjournment

Dated: March 23, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–06593 Filed 3–27–24; 8:45 am]

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COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Iowa Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Iowa Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a series of public meetings via Zoom. The purpose of these meetings is for the Committee to gather testimony regarding their study the barriers to mental and behavioral health access for K–12 students.

DATES:

- Thursday, April 18, 2024, from 3:00 p.m.–5:00 p.m. Central Time
- Thursday, May 23, 2024, from 3:00 p.m.–5:00 p.m. Central Time
- Thursday, May 30, 2024, from 3:00 p.m.–5:00 p.m. Central Time

ADDRESSES: The meetings will be held via Zoom.

April 18th Briefing Meeting

—*Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_VK0pBMUPTDeZw5iQvnxKfg*

—Join by Phone (Audio Only) 1–833–435–1820 USA Toll Free: Meeting ID: 160 778 0646

May 23rd Briefing Meeting

—*Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_xMWf9NjZQnSWf65VOagf_A*

—Join by Phone (Audio Only) 1–833–435–1820 USA Toll Free: Meeting ID: 161 840 3592

May 30th Briefing Meeting

—*Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_61PU4pvYQxKvxB42p7ibQQ*

—Join by Phone (Audio Only) 1–833–435–1820 USA Toll Free: Meeting ID: 161 815 3351

FOR FURTHER INFORMATION CONTACT: Ana Fortes, Designated Federal Officer, at *afortes@usccr.gov* or (202) 681–0857.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Corrine Sanders, Support Specialist, at *csanders@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Ana Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Iowa Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *afortes@usccr.gov.*

Agenda

I. Introductory Remarks (3:00–3:10 p.m.)

II. Presentations (3:10–4:10 p.m.)

III. Q & A (4:10–4:35 p.m.)

IV. Public Comment (4:35–4:50 p.m.)

V. Business Meeting (Tentative)

VI. Adjournment (5:00 p.m.)

Dated: March 22, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–06539 Filed 3–27–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–071, C–570–072]

Sodium Gluconate, Gluconic Acid, and Derivative Products From the People's Republic of China Continuation of Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on sodium gluconate, gluconic acid, and derivative products from the People's Republic of China would likely lead to the continuation or recurrence of dumping and countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable March 20, 2024.

FOR FURTHER INFORMATION CONTACT: Stephanie Trejo, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4390

SUPPLEMENTARY INFORMATION:

Background

On November 13, 2018, Commerce published in the **Federal Register** the AD and CVD orders on sodium gluconate, gluconic acid, and derivative products from the People's Republic of China.[1] On October 2, 2023, the ITC instituted,[2] and Commerce initiated,[3] the first sunset review of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders,* would likely lead to the continuation or recurrence of dumping and countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins of dumping

[1] *See Sodium Gluconate, Gluconic Acid, and Derivative Products From the People's Republic of China: Antidumping Duty and Countervailing Duty Orders,* 83 FR 56299 (November 13, 2018) (*Orders*).

[2] *See Sodium Gluconate, Gluconic Acid, and Derivative Products From China; Institution of Five-Year Reviews,* 88 FR 67807 (October 2, 2023).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 67729 (October 2, 2023).

and subsidy rates likely to prevail should the *Orders* be revoked.[4]

On March 20, 2024, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders*) would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

The scope of the orders covers all grades of sodium gluconate, gluconic acid, liquid gluconate, and glucono delta lactone (GDL) (collectively GNA Products), regardless of physical form (including, but not limited to substrates; solutions; dry granular form or powders, regardless of particle size; or as a slurry). The scope also includes GNA Products that have been blended or are in solution with other product(s) where the resulting mix contains 35 percent or more of sodium gluconate, gluconic acid, liquid gluconate, and/or GDL by dry weight. Sodium gluconate has a molecular formula of $NaC_6H_{11}O_7$. Sodium gluconate has a Chemical Abstract Service (CAS) registry number of 527–07–1, and can also be called ''sodium salt of gluconic acid'' and/or sodium 2, 3, 4, 5, 6 pentahydroxyhexanoate. Gluconic acid has a molecular formula of $C_6H_{12}O_7$. Gluconic acid has a CAS registry number of 526–95–4, and can also be called 2, 3, 4, 5, 6 pentahydroxycaproic acid. Liquid gluconate is a blend consisting only of gluconic acid and sodium gluconate in an aqueous solution. Liquid gluconate has CAS registry numbers of 527–07–1, 526–95–4, and 7732–18–5, and can also be called 2, 3, 4, 5, 6-pentahydroxycaproic acid-hexanoate. GDL has a molecular formula of $C_6H_{10}O_6$. GDL has a CAS registry number of 90–80–2, and can also be called d-glucono-1,5-lactone.

The merchandise covered by the scope of the orders is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 2918.16.1000, 2918.16.5010, and 2932.20.5020. Merchandise covered by the scope may also enter under HTSUS subheadings 2918.16.5050, 3824.99.2900, and 3824.99.9397. Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* is March 20, 2024.[6] Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: March 22, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–06600 Filed 3–27–24; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Sodium Gluconate, Gluconic Acid, and Derivative Products From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Orders,* 89 FR 7369 (February 2, 2024), and accompanying Issues and Decision Memorandum (IDM); *see also Sodium Gluconate, Gluconic Acid, and Derivative Products From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 89 FR 7375 (February 2, 2024), and accompanying IDM.

[5] *See Sodium Gluconate, Gluconic Acid, and Derivative Products From China; Determinations,* 89 FR 19876 (March 20, 2024).

[6] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. ITA–2024–0002]

X–RIN 0625–A–001

Indo-Pacific Economic Framework for Prosperity Clean Economy Investor Forum Solicitation of Applications for Participation

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: The International Trade Administration (ITA) seeks applications for the Department to consider recommending to the Government of Singapore (Singapore) for participation in the Indo-Pacific Economic Framework for Prosperity (IPEF) Clean Economy Investor Forum (Forum) hosted by Singapore on June 5–6, 2024. The Forum was announced on November 16, 2023, in the Joint Statement following an IPEF Ministerial meeting. The Forum participants will help advance the climate objectives of the proposed IPEF Clean Economy Agreement by helping facilitate investments in climate-related projects in the Indo-Pacific region. ITA is seeking applications from the U.S. private sector for ITA to consider recommending to Singapore.

DATES: The IPEF Clean Economy Investor Forum will take place on Thursday and Friday, June 5–6, 2024.

FOR FURTHER INFORMATION CONTACT: Ava Jamerson, Policy Advisor, Office of the Under Secretary of Commerce for International Trade, 1401 Constitution Avenue NW, Washington, DC 20230; email: *ava.jamerson@trade.gov;* telephone: 202.823.0686. For additional information about IPEF, please visit: *https://www.commerce.gov/ipef.* You can find the latest information about the Clean Economy Pillar at: *https://www.commerce.gov/ipef/pillar-iii* and at *https://www.commerce.gov/sites/default/files/2023-11/US-Factsheet-SF-Pillar-III.pdf.*

SUPPLEMENTARY INFORMATION:

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III. Request for Nominations

I. Background

In May 2022, the United States launched the Indo-Pacific Economic Framework for Prosperity. IPEF is part of the Biden Administration's

commitment to strengthening ties with allies and partners and tackling 21st Century economic challenges in the Indo-Pacific region.

IPEF seeks to advance resilience, sustainability, inclusiveness, economic growth, fairness, and competitiveness for the 14 IPEF partner economies—Australia, Brunei Darussalam, Fiji, India, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, the United States, and Vietnam. IPEF also will provide tangible benefits that fuel economic activity and investment, promote sustainable and inclusive economic growth, and benefit workers and consumers across the region.

The IPEF partners are launching the inaugural IPEF Clean Economy Investor Forum to catalyze investment for sustainable infrastructure and climate technology across IPEF economies to advance the goals of the proposed Clean Economy Agreement, which includes increasing investment flows and financing for climate-related infrastructure, technologies, and projects in the region. The proposed Clean Economy Agreement outlines collaboration through a convening of private and institutional investors to facilitate business matching and investments, as well as sharing expertise and good practices on scaling up clean technology and infrastructure investments.

The Forum is being hosted by Singapore on June 5–6, 2024, and will be attended by Secretary Raimondo and her counterparts from the 13 other IPEF partner countries. Its purpose is to convene a diverse set of stakeholders from across the United States and the Indo-Pacific region to gain market insights, make industry and government contacts, solidify business strategies, and identify funding for specific projects to advance the goals of the proposed Clean Economy Agreement.

The Forum will focus on the markets of the 14 partner economies that are actively engaging in the proposed Clean Economy Agreement, with a particular focus on emerging economies. The scope of climate issues in which the Forum seeks to facilitate trade and investment will be informed by issues covered in the proposed Clean Economy Agreement, including efforts towards energy security and transition, climate resilience and adaptation, and greenhouse gas emissions mitigation.

The International Trade Administration seeks applications from the U.S. private sector to be recommended as participants in the Forum, including but not limited to investors, companies, and non-profits. Each country will be asked to put forward individuals from their countries' private sectors to participate in the Forum for consideration by Singapore. Singapore will ultimately select who to invite to the Forum.

II. Criteria

Singapore expects to invite approximately 20–50 participants from the U.S. private sector, at its discretion. ITA is seeking applications from the U.S. private sector, which it will consider based on the below criteria. Through this process, ITA will prepare recommendations for final approval by the Department and then share with Singapore for Singapore's consideration and decision. ITA is primarily focused on senior executives from organizations including investors, companies, and/or non-profits.

Interested companies should submit their applications for immediate consideration to the International Trade Administration at *IPEFInvestorForum@trade.gov* by or before 5:00 p.m. EST on April 9, 2024. The following criteria will be used to identify prospective participants. These participants will be considered through a holistic analysis and are not required to meet each element listed below:

(1) Level of executive representation;

(2) Consistency of the applicant's goals and objectives with the stated scope of the Forum;

(3) Alignment with the proposed Clean Economy Agreement objectives;

(4) Focus on IPEF markets, such as experience or demonstrated interest in investing in the region in the next 18 months in one or more IPEF markets;

(5) Ability to fulfill and support the objectives of the Forum (*e.g.,* significant funds and/or assets to support the types of projects envisioned); and

(6) Headquarters in the United States.

The Department may consider other information as it deems relevant.

Please do not send company or organization brochures.

Applications received after April 9, 2024, will be considered only if space and scheduling constraints permit and if Singapore continues to accept recommendations.

Applicants selected to be recommended to Singapore will be notified.

III. Request for Applications

To be considered, all applications should include the following information, as applicable:

(1) Organization Name;

(2) U.S. State of Incorporation;

(3) Corporate Headquarters;

(4) Principal Place of Business;

(5) Main Address (Street Address, City, State, and Zip Code);

(6) List of Subsidiary or Affiliate Offices in Asia;

(7) Industry Area(s);

(8) Main Products and/or Services;

(9) A brief (up to one page) Statement of Interest explaining (1) your organization's goals and qualifications for attending the Forum, and (2) how your organization's work can support the clean energy transition, climate resilience and adaptation, and greenhouse gas emissions mitigation;

(10) Name, title, work email, phone number, and biography of your Chief Executive Officer, President, Chief Investment Officer, or other senior executive who would represent the organization at the Forum;

(11) Name, title, work email, and phone number of the main working-level point of contact that will facilitate the senior executive's participation in the Forum; and

(12) Name, title, work email, and phone number of one optional accompanying staff person.

Privacy Act Statement

The collection, maintenance, and disclosure of this information is governed by the Privacy Act of 1974 (5 U.S.C. 552a). The Department of Commerce is authorized to collect this information pursuant to authorities that include but are not limited to: 15 U.S.C. 1512. The principal purposes for which the Department will use the information is to assist in selecting the U.S. representatives to recommend to Singapore to participate in the Forum. Information received will be maintained in COMMERCE/DEPT–23, Information Collected Electronically in Connection with Department of Commerce Activities and Programs. One of the routine uses for this information includes providing it to other registrants, including the Government of Singapore, to facilitate company/organization matchmaking (Routine Use 1). A complete set of routine disclosures is included in the system of records notice, published both in the **Federal Register** and on the Department's website at: *https://www.commerce.gov/opog/privacy/system-records-notice.* Disclosing this information to the Department of Commerce is voluntary. However, if you do not provide this information, or only provide part of the information requested, you may not be considered for selection as U.S. representatives to the Forum.

Authority: 15 U.S.C. 1512.

Dated: March 22, 2024.

Diane Farrell,

Deputy Under Secretary for International Trade.

[FR Doc. 2024–06508 Filed 3–27–24; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–881]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty order on certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea) to correct a ministerial error. The period of review (POR) is September 1, 2021, through August 31, 2022.

DATES: Applicable March 28, 2024.

FOR FURTHER INFORMATION CONTACT: Caroline Carroll, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4948.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 2024, Commerce published the *Final Results* of this review in the **Federal Register**.[1] On February 23, 2024, we received a timely ministerial error allegation from Steel Dynamics, Inc. (SDI), the petitioner.[2] No other party made a ministerial error allegation or rebutted the petitioner's ministerial error allegation. We are amending the *Final Results* to correct the ministerial error raised by SDI.

Legal Framework

Section 751(h) of the Tariff Act of 1930, as amended (the Act), defines a ''ministerial error'' as including ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other unintentional error which the administering authority considers ministerial.'' With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review . . .''

Ministerial Error

In the *Final Results,* we made a countervailing duty export subsidy offset in our calculations for Hyundai Steel Company (Hyundai).[3] In its Ministerial Error Allegation, the petitioner noted that while Commerce intended to adjust Hyundai's U.S. price by a 0.04 percent export subsidy offset rate, it instead adjusted U.S. price by a four percent rate.[4] We agree that we made this ministerial error in the *Final Results* and we are amending the *Final Results* to correct this ministerial error, pursuant to section 751(h) of the Act and 19 CFR 351.224(e). Correcting this error changes Hyundai's weighted-average dumping margin from 0.88 percent to 1.35 percent. As a result of these changes, the rate for the company not selected for individual examination, KG Dongbu Steel Co., Ltd. (KG Dongbu), also changes from 2.13 percent to 2.28 percent.

For a detailed discussion of the ministerial error, as well as Commerce's analysis, *see* Ministerial Error Memorandum.[5] The Ministerial Error Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.*

Amended Final Results

As a result of correcting the ministerial error described above, we determine that the following estimated weighted-average dumping margins exists for the period September 1, 2021, through August 31, 2022:

Exporter or producer	Weighted-average dumping margin (percent)
Hyundai Steel Company	1.35
KG Dongbu Steel Co., Ltd	2.28

Disclosure

We intend to disclose the calculations performed in connection with these amended final results of review to parties in this review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these amended final results of review.

In accordance with 19 CFR 351.212(b)(1), for Hyundai, we calculated importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales for each importer to the total entered value of the sales for each importer.[6] Where an importer-specific antidumping duty assessment rate is zero or *de minimis,* within the meaning of 19 CFR 351.106(c)(1), Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' will apply to entries of subject merchandise made during the period of review produced by Hyundai for which the examined company did not know that the merchandise that it sold to the intermediary company (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the company not selected for individual examination, KG Dongbu, we will instruct CBP to assess antidumping duties at an *ad valorem* assessment rate based on the weighted average of the cash deposit rates calculated for Hyundai and POSCO.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of

[1] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2021–2022,* 89 FR 13689 (February 23, 2024) (*Final Results*), and accompanying Issues and Decision Memorandum.

[2] *See* Petitioner's Letter, ''Ministerial Error Comments on Final Dumping Margin of Hyundai Steel Company,'' dated February 23, 2024 (Ministerial Error Allegation).

[3] *See* Memorandum, ''Amended Final Results Margin Calculation for Hyundai Steel Company,'' dated concurrently with this notice (Hyundai Steel Amended Final Calculation Memo).

[4] *See* Ministerial Error Allegation.

[5] See Memorandum, ''Ministerial Error Allegation in the Final Results,'' dated concurrently with this notice (Ministerial Error Memorandum); *see also* Hyundai Steel Amended Final Calculation Memo.

[6] We note that POSCO/POSCO International's (POSCO's) dumping margin did not change in these amended final results.

publication of the amended final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following amended cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after February 23, 2024, the publication date of the *Final Results,* as provided by section 751(a)(2)(C) of the Act: (1) the amended cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in these amended final results of review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation but the producer has been covered in a prior completed segment of this proceeding, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 20.33 percent, the all-others rate established in the LTFV investigation.[7] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these amended final results in accordance with sections 751(h) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: March 18, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–06609 Filed 3–27–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD828]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an exempted fishing permit renewal application from the Massachusetts Division of Marine Fisheries (MA DMF) contains all of the required information and warrants further consideration. The exempted fishing permit (EFP) would allow federally permitted fishing vessels to fish outside fishery regulations in support of exempted fishing activities proposed by the applicant. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

DATES: Comments must be received on or before April 12, 2024.

ADDRESSES: You may submit written comments by the following method:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''MA DMF Ventless Trap EFP.''

FOR FURTHER INFORMATION CONTACT: Christine Ford, Fishery Management Specialist, *Christine.Ford@noaa.gov,* (978) 281–9185.

SUPPLEMENTARY INFORMATION: The MA DMF submitted a complete application for an EFP to conduct commercial fishing activities that the regulations would otherwise restrict. This EFP would exempt the participating vessels from the following Federal regulations:

TABLE 1—REQUESTED EXEMPTIONS

CFR citation	Regulation	Need for exemption
50 Part 697.21(c)(1) and (2)	Gear specification requirements for Lobster Management Areas 1 and 2.	To allow for the use of traps without escape vents.
§ 697.19(a) and (b)	Trap limit requirements for Areas 1 and 2	To allow for trap limits to be exceeded.
§ 697.19(i)	Trap tag requirements	To allow for alternatively tagged traps.
§§ 697.20(a)(2), 697.20(b)(2), 697.20(a)(3), and 697.20(b)(3).	Minimum and maximum carapace length requirements for Areas 1 and 2.	To allow sub-legal and over-sized lobsters to be landed for research purposes.

[7] *See Certain Cold Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders,* 81 FR 64432, 64434 (September 20, 2016).

TABLE 1—REQUESTED EXEMPTIONS—Continued

CFR citation	Regulation	Need for exemption
§ 697.20(g)(1) and (3)	V-notch possession requirement for Areas 1 and 2.	To allow landing of female lobsters for research purposes.
§ 697.20(d)(1) and (3)	Berried female possession requirements	To allow landing of egg-bearing female lobsters for research purposes.
§ 697.20(h)(1)	Minimum carapace width requirements	To allow sub-legal Jonah crabs to be landed for research purposes.
§§ 697.20(h)(2)(i) and (ii)	Berried female possession requirement	To allow landing of egg-bearing female Jonah crabs for research purposes.

TABLE 2—PROJECT SUMMARY

Project title	2024 MA DMF Ventless Trap Survey.
Project Start	05/01/2024.
Project End	10/31/2024.
Project objectives.	To provide fishery-independent data on lobster and Jonah crab growth and abundance within Massachusetts State waters.
Project location.	Statistical Areas 514 and 538.
Number of vessels.	Up to 6.
Number of trips.	Approximately 70.
Trip duration (days).	1.
Total number of days.	Approximately 70.
Gear type(s)	Lobster traps.
Number of tows or sets.	16 per trip.
Duration of tows or sets.	3 day soak time.

Project Narrative

The purpose of this survey is to provide fishery-independent data on lobster and Jonah crab growth and abundance within Massachusetts State waters of statistical areas 514 and 538. MA DMF funds this lobster abundance survey through their commercial and recreational lobster license fees. This survey has occurred annually since 2006. At least one MA DMF scientist would be on board for the sampling trips. MA DMF personnel would not be on board when traps are baited and deployed. Exemptions would not substantively change vessel operations. All catch during sampling trips would be retained temporarily to collect biological data. MA DMF staff may collect lobster and/or Jonah crab, including undersized, oversized, v-notched, and egg-bearing lobsters. Collected samples would be used for research projects on growth and maturity. No catch from the experimental traps would be landed for sale. All gear would be Atlantic Large Whale Take Reduction Plan compliant. Survey traps will be separate from each vessel's commercial lobster traps and would be tagged as, ''MA DMF Research Traps.''

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate the completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

All comments received are a part of the public record and may be posted for public viewing without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''anonymous'' as the signature if you wish to remain anonymous).

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

Dated: March 25, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–06651 Filed 3–27–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD832]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of the Socio-Economic Panel (SEP) on April 15 and 16, 2024. The Scientific and Statistical Committee (SSC) will meet on April 16–18, 2024.

DATES: The SEP meeting will be held from 1:30 p.m. until 5 p.m., EDT on April 15; and from 8:30 a.m. until 12 p.m. on April 16, 2024. The SSC meeting will be held from 1:30 p.m. until 5 p.m., EDT on April 16; from 8:30 a.m. until 5 p.m. on April 17; and from 8:30 a.m. until 12 p.m. on April 18, 2024.

ADDRESSES:

Meeting address: The meetings will be held at the Crowne Plaza, 4831 Tanger Outlet Blvd., North Charleston, SC 29418; phone: (843) 744–4422.

The meetings will also be available via webinar. Registration is required. Webinar registration, an online public comment form, and briefing book materials will be available two weeks prior to the meetings at: *https://safmc.net/scientific-and-statistical-committee-meeting/.*

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Dr. Judd Curtis, Quantitative Fishery Scientist, SAFMC; phone: (843) 302–8441 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *judd.curtis@safmc.net.*

SUPPLEMENTARY INFORMATION:

SSC Socio-Economic Panel

The SEP meeting agenda includes updates on Council active amendments, the Council's Citizen Science program, and the Best Fishing Practices Outreach and Evaluation Workshop. The SEP will provide feedback on upcoming stakeholder engagement meetings, social and economic metrics used in Stock Assessment and Fisheries Evaluation (SAFE) reports, and social and economic information to include in the Snapper Grouper Management Strategy Evaluation (MSE). They will also discuss improving incorporation of Equity and Environmental Justice concerns into Council initiatives, the National Academy of Sciences report on Assessing Equity in the Distribution of

Fisheries Management Benefits, and other business as necessary.

Scientific and Statistical Committee

The SSC meeting agenda includes updates on the Florida State Reef Fish Survey, South Atlantic Red Snapper Research Program, and Southeast Reef Fish Survey Trends Report. It will also include updates from the Southeast Fishery Science Center (SEFSC) Minimizing Red Snapper Discards Publication, Low Recruitment Workgroup, Commercial Discard Logbook Data, and Precision Threshold Workgroup. The SSC will review Terms of Reference and Scopes of Work for upcoming Southeast Data, Assessment, and Review (SEDAR) projects, and discuss other business as necessary.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 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: March 25, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–06649 Filed 3–27–24; 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; NOAA Financial Assistance Performance Progress Reports

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. This notice pertains to a revision and extension of the approved collection of information for NOAA Financial Assistance Performance Progress Reports. Public comments were previously requested via the **Federal Register** on December 27, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: NOAA Financial Assistance Performance Progress Reports.

OMB Control Number: 0648–0718.

Form Number(s): None.

Type of Request: Regular submission. Revision and extension of a currently approved information collection.

Number of Respondents: 645.

Average Hours per Response: Marine Debris Program (MDP) Performance Progress Report: 8 hours; MDP Performance Progress Report Table: 0.25 hours; MDP Companion Tracker: 1 hour; MDP Additional Metrics Trackers: 3 hours; Coral Reef Conservation Program (CRCP) Semi-Annual Reports: 10 hours; Restoration Center (RC) Progress Report: Initial—9.5 hours; Semi-Annual—5.5 hours; and Final—9.75 hours; RC Administrative Progress Reports: Initial—6 hours; Semi-Annual—2.75 hours; and Final—5.5 hours.

Total Annual Burden Hours: 4,800.

Needs and Uses: This is a request for revision and extension to an approved collection of information under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and implementing regulations at 5 CFR. Part 1320. This previously-approved information collection assists NOAA in the administration and evaluation of financial assistance awards made by the NOAA Marine Debris Program (MDP), NOAA Coral Reef Conservation Program (CRCP), and the NOAA Restoration Center (RC).

This revision, which is described in more detail below, is only applicable for the NOAA MDP financial assistance awards, and previous information collections for NOAA Coral Reef Conservation Program (CRCP) and NOAA Restoration Center (RC) remain unchanged. There are no changes to the NOAA CRCP or NOAA RC forms that were previously approved, including the RC Progress Reports (Initial, Semi-Annual, and Final), RC Administrative Progress Reports (Initial, Semi-Annual, and Final), and CRCP Semi-Annual Reports. However, the extension applies to the entire previously-approved information collection.

Every year, the NOAA MDP, the NOAA CRCP, and the NOAA RC each support a variety of initiatives specific to their individual authorizations and programmatic mandates. This support is made substantially through grants and cooperative agreements, the terms and conditions of which require regular progress reporting and communication of project accomplishments to the agency. This information collection identifies what is to be provided in these reports, and aims to assist recipients in fulfilling their responsibilities in meeting interim and final progress report requirements. This information is also necessary for NOAA to effectively oversee the expenditure of public funds awarded through these programs, to ensure both cost-effectiveness and programmatic goals are met.

The NOAA RC provides technical and financial assistance to identify, develop, implement, and evaluate community-driven habitat restoration projects. Awards are made as grants or cooperative agreements under the authority of the Magnuson-Stevens Fishery Conservation and Management Act of 2006, 16 U.S.C. 1891a and the Fish and Wildlife Coordination Act, 16 U.S.C. 661, as amended by the Reorganization Plan No. 4 of 1970.

The NOAA CRCP operates under authorization from the Coral Reef Conservation Act (CRCA) of 2000, 16 U.S.C. 6401 *et seq.* This act authorizes the NOAA CRCP to conserve, and restore the condition of United States coral reef ecosystems; to promote the science-based management and sustainable use of coral reef ecosystems to benefit local communities and the Nation; to develop sound scientific information on the condition of coral reef ecosystems and the threats to such ecosystems; to assist in the preservation of coral reefs by supporting science-based, consensus-driven, and community-based coral reef management; to provide financial resources, technical assistance, and scientific expertise to establish a formal mechanism for the collecting and allocating of monetary donations from the private sector to be used for coral reef conservation projects; to support rapid response to exigent circumstances that pose immediate and long-term threats to coral reefs; and to serve as a model for advancing international efforts to monitor, conserve, and restoral coral.

The NOAA MDP supports national and international efforts to research, prevent, and reduce the impacts of marine debris. The NOAA MDP is a centralized office within NOAA that coordinates and supports activities, both within the bureau and with other federal agencies that address marine debris and its impacts. In addition to inter-agency coordination, NOAA MDP uses partnerships with state and local agencies, tribes, non-governmental

organizations, academia, and industry to investigate and solve the problems that stem from marine debris through removal, research, prevention, and reduction activities, in order to protect and conserve our nation's marine environment and coastal economies, and to ensure navigation safety. In large part, these partnerships are made through grants, cooperative agreements, contracts, MOUs, or are simply informal technical assistance arrangements.

The Marine Debris Research, Prevention, and Reduction Act authorizes NOAA MDP to enter into cooperative agreements and contracts and provide financial assistance in the form of grants to carry out the purposes of the Act—namely to identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety. 33 U.S.C. 1951, 1952. To date, both competitive and non-competitive funding opportunities have been implemented by NOAA MDP to provide federal funding to non-federal applicants for activities to carry out the purposes of the Act.

The terms and conditions of MDP grants and cooperative agreements require regular progress reporting and communication of project accomplishments to the agency. Grant reporting is necessary for NOAA to effectively oversee the expenditure of public funds, and to ensure both the cost-effectiveness of funded projects and that programmatic goals are met.

This information collection revision clarifies agency reporting requirements, and aims to assist recipients in fulfilling their federal grant responsibilities. NOAA MDP proposes to revise and clarify grant performance progress report (PPR) instructions and add a table to the PPR that will be used for recipients whose activities span multiple states. NOAA MDP proposes to add the collection of performance measure information in a spreadsheet that captures required project metrics at a finer geographic resolution than would otherwise be possible using the PPR. NOAA MDP also proposes collection of additional metrics related to certain activities from large marine debris removals and pre- and post-removal habitat monitoring for grantees who perform these activities as part of their NOAA MDP award. The additional collection of project-level data, including project-level location and implementation data, aligns with the guidance provided in Memorandum M–22–12, Advancing Effective Stewardship of Taxpayer Resources and Outcomes in the Implementation of the Infrastructure Investment and Jobs Act (IIJA) in order to ensure robust and transparent reporting of IIJA investments.

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government.

Frequency: Variable (quarterly to semi-annually).

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: The Marine Debris Research, Prevention, and Reduction Act (33 U.S.C. 1951 *et seq.*) as amended by the Marine Debris Act Amendments of 2012 (Pub. L. 112–213, Title VI, Sec. 603, 126 Stat. 1576, December 20, 2012), Save Our Seas Act of 2018 (Pub. L. 115–265), and Save Our Seas 2.0 Act of 2020 (Pub. L. 116–224); Magnuson-Stevens Fishery Conservation and Management Act of 2006, 16 U.S.C. 1891a and the Fish and Wildlife Coordination Act, 16 U.S.C. 661, as amended by the Reorganization Plan No. 4 of 1970; Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 *et seq.*)

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 0648–0718. Do not submit Confidential Business Information or otherwise sensitive or protected information.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–06599 Filed 3–27–24; 8:45 am]

BILLING CODE 3510–JS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD788]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public online meeting.

SUMMARY: The Coastal Pelagic Species (CPS) Subcommittee of the Pacific Fishery Management Council's (Pacific Council's) Scientific and Statistical Committee (SSC) will hold an online meeting to review and update the Terms of Reference (TOR) for the CPS Stock Assessment Review Process for 2025 and 2026 and Accepted Practices Guidelines for CPS Stock Assessments document. The meeting is open to the public.

DATES: The SSC CPS Subcommittee online meeting will be held Wednesday, April 17, 2024 beginning at 9 a.m. and continuing until 1 p.m. Pacific Time or until business for the day has been completed.

ADDRESSES: The SSC CPS Subcommittee meeting will be an online meeting. Specific meeting information, including directions on how to join the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. Kerry Griffin, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2409.

SUPPLEMENTARY INFORMATION: The purpose of the SSC CPS Subcommittee meeting is to: (a) is to review proposed changes to the Terms of Reference for CPS Stock Assessment Reviews that will inform the process of conducting and reviewing CPS assessments in 2025 and 2026 and (b) update best practices for conducting CPS stock assessments. Members of the Pacific Council's CPS advisory bodies are encouraged to attend.

No management actions will be decided by the SSC CPS Subcommittee. The SSC CPS Subcommittee members' role will be development of recommendations and reports for consideration by the SSC and Pacific Council at the June meeting in San Diego, California.

Although nonemergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed 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 of the SSC CPS Subcommittee to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: March 25, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–06648 Filed 3–27–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Initial Patent Applications

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comments on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on January 10, 2024 during a 60-day comment period (89 FR 1557). This notice allows for an additional 30 days for public comment.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Initial Patent Applications.

OMB Control Number: 0651–0032.

Needs and Uses: The United States Patent and Trademark Office (USPTO) is required by Title 35 of the United States Code, including 35 U.S.C. 131, to examine applications for patents. The USPTO administers the patent statutes relating to examination through various rules in Chapter 37 of the Code of Federal Regulations (CFR), such as, for example, 37 CFR 1.16 through 1.84. Each patent applicant must provide sufficient information to allow the USPTO to properly examine the application to determine whether it meets the criteria set forth in the patent statutes and regulations for issuance as a patent. The patent statutes and regulations require that an application for patent include the following information:

(1) A specification containing a description of the invention and at least one claim defining the property right sought by the applicant;

(2) A drawing(s) or photograph(s), where necessary for an understanding of the invention;

(3) An oath or declaration signed by the applicant (under 35 U.S.C. 115(f), the time for filing the oath or declaration is no later than the date on which the issue fee for the patent is paid); and

(4) A filing fee.

Various types of patent applications are covered under this information collection:

- Noncontinuing, nonprovisional utility, plant and design applications,
- Provisional applications,
- Continuation/divisional applications of international applications,
- Continued prosecution applications (design), and
- Continuation/divisional and continuation-in-part applications of utility, plant, and design applications.

In addition, this information collection covers certain other papers filed by applicants, such as, for example, petitions to accept an unintentionally delayed priority or benefit claim, petitions to accept a filing by other than all of the inventors or a person not the inventor, and petitions requesting that applications filed under 37 CFR 1.495(b) be accorded a receipt date.

Furthermore, this information collection incorporates the lone item in 0651–0073 (Patent Law Treaty): petitions to restore the right of priority to a foreign application under 37 CFR 1.55(c) or the benefit of a prior-filed provisional application under 37 CFR 1.78(b). The petitions are used to extend the 12-month periods set forth in 35 U.S.C. 119(a) and (e) by an additional 2 months where there is an unintentional delay in filing an application claiming priority to a foreign application or the benefit of a provisional application. Once this information collection is renewed, and the petitions are added, 0651–0073 will be discontinued. For this 30-day notice, the non-hourly cost burdens have been adjusted due to an increase in the postage rate since the 60-day notice was published.

Forms: (AIA = America Invents Act; SB = Specimen Book)

- PTO/AIA/01 (Declaration (37 CFR 1.63) for Utility or Design Patent Application using an Application Data Sheet (37 CFR 1.76))
- PTO/AIA/01CN (Chinese (simplified) Language Declaration (37 CFR 1.63) for Utility or Design Application Using an Application Data Sheet (37 CFR 1.76))
- PTO/AIA/01DE (German Language Declaration (37 CFR 1.63) for Utility or Design Application Using an Application Data Sheet (37 CFR 1.76))
- PTO/AIA/01ES (Spanish Language Declaration (37 CFR 1.63) for Utility or Design Application Using an Application Data Sheet (37 CFR 1.76))
- PTO/AIA/01FR (French Language Declaration (37 CFR 1.63) for Utility or Design Application Using an Application Data Sheet (37 CFR 1.76))
- PTO/AIA/01IT (Italian Language Declaration (37 CFR 1.63) for Utility or Design Application Using an Application Data Sheet (37 CFR 1.76))
- PTO/AIA/01JP (Japanese Language Declaration (37 CFR 1.63) for Utility or Design Application Using an Application Data Sheet (37 CFR 1.76))
- PTO/AIA/01KR (Korean Language Declaration (37 CFR 1.63) for Utility or Design Application Using An Application Data Sheet (37 CFR 1.76))
- PTO/AIA/01NL (Dutch Language Declaration (37 CFR 1.63) for Utility or Design Application Using an Application Data Sheet (37 CFR 1.76))
- PTO/AIA/01RU (Russian Language Declaration (37 CFR 1.63) for Utility or Design Application Using An Application Data Sheet (37 CFR 1.76))
- PTO/AIA/01SE (Swedish Language Declaration (37 CFR 1.63) for Utility or Design Application Using an Application Data Sheet (37 CFR 1.76))
- PTO/AIA/02 (Substitute Statement in Lieu of an Oath or Declaration for Utility or Design Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64))
- PTO/AIA/02CN (Chinese (Simplified) Language Substitute Statement in Lieu of an Oath or Declaration for Utility or Design Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64))
- PTO/AIA/02DE (German Language Substitute Statement in Lieu of an Oath or Declaration for Utility or Design Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64))
- PTO/AIA/02ES (Spanish Language Substitute Statement in Lieu of an Oath or Declaration for Utility or Design Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64))

- PTO/AIA/02FR (French Language Substitute Statement in Lieu of an Oath or Declaration for Utility or Design Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64))
- PTO/AIA/02IT (Italian Language Substitute Statement in Lieu of an Oath or Declaration for Utility or Design Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64))
- PTO/AIA/02JP (Japanese Language Substitute Statement In Lieu Of An Oath Or Declaration For Utility Or Design Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64))
- PTO/AIA/02KR (Korean Language Substitute Statement in Lieu of an Oath or Declaration for Utility or Design Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64))
- PTO/AIA/02NL (Dutch Language Substitute Statement in Lieu of an Oath or Declaration for Utility or Design Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64))
- PTO/AIA/02RU (Russian Language Substitute Statement in Lieu of an Oath or Declaration for Utility or Design Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64))
- PTO/AIA/02SE (Swedish Language Substitute Statement in Lieu of an Oath or Declaration for Utility or Design Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64))
- PTO/AIA/03 (Declaration (37 CFR 1.63) for Plant Patent Application using an Application Data Sheet (37 CFR 1.76))
- PTO/AIA/04 (Substitute Statement in Lieu of an Oath or Declaration for Plant Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64))
- PTO/AIA/08 (Declaration for Utility or Design Patent Application (37 CFR 1.63))
- PTO/AIA/09 (Plant Patent Application (35 U.S.C. 161) Declaration (37 CFR 1.162))
- PTO/AIA/10 (Supplemental Sheet for Declaration (Additional Inventor(s), Supplemental Sheet for PTO/AIA/08, 09))
- PTO/AIA/11 (Substitute Statement Supplemental Sheet (Inventor(s), Supplemental Sheet for PTO/AIA/02, 04, 07))
- PTO/AIA/14 (Application Data Sheet 37 CFR 1.76)
- PTO/AIA/15 (Utility Patent Application Transmittal)
- PTO/AIA/18 (Design Patent Application Transmittal)
- PTO/AIA/19 (Plant Patent Application Transmittal)
- PTO/SB/01 (Declaration for Utility or Design Patent Application (37 CFR 1.63))
- PTO/SB/01A (Declaration (37 CFR 1.63) for Utility or Design Application Using an Application Data Sheet (37 CFR 1.76))
- PTO/SB/02 consisting of PTO/SB/02A (Declaration (Additional Inventor(s), Supplemental Sheet)) and PTO/SB/02B (Declaration—Supplemental Priority Data Sheet)
- PTO/SB/02CN (Declaration (Additional Inventors) and Supplemental Priority Data Sheets [2 pages] (Chinese Language Declaration for Additional Inventors)
- PTO/SB/02DE (Declaration (Additional Inventors) and Supplemental Priority Data Sheets [2 pages] (German Language Declaration for Additional Inventors))
- PTO/SB/02ES (Declaration (Additional Inventors) and Supplemental Priority Data Sheet [2 pages] (Spanish Language Declaration for Additional Inventors))
- PTO/SB/02FR (Declaration (Additional Inventors) and Supplemental Priority Data Sheet [2 pages] (French Language Declaration for Additional Inventors))
- PTO/SB/02IT (Declaration (Additional Inventors) and Supplemental Priority Data Sheet [2 pages] (Italian Language Declaration for Additional Inventors))
- PTO/SB/02JP (Japanese Language Substitute Statement in Lieu of an Oath or Declaration for Utility or Design Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64))
- PTO/SB/02KR (Declaration (Additional Inventors) and Supplemental Priority Data Sheet [2 pages] (Korean Language Declaration for Additional Inventors))
- PTO/SB/02NL (Declaration (Additional Inventors) and Supplemental Priority Data Sheet [2 pages] (Dutch Language Declaration for Additional Inventors))
- PTO/SB/02RU (Declaration (Additional Inventors) and Supplemental Priority Data Sheet [2 pages] (Russian Language Declaration for Additional Inventors))
- PTO/SB/02SE (Declaration (Additional Inventors) and Supplemental Priority Data Sheet [2 pages] (Swedish Language Declaration for Additional Inventors))
- PTO/SB/02LR (Declaration Supplemental Sheet for Legal Representatives (35 U.S.C. 117) on Behalf of a Deceased or Incapacitated Inventor)
- PTO/SB/03 (Plant Patent Application (35 U.S. C. 161) Declaration (37 CFR 1.63))
- PTO/SB/04 (Supplemental Declaration for Utility or Design Patent Application (37 CFR 1.67))
- PTO/SB/05 (Utility Plant Application Transmittal)
- PTO/SB/06 (Patent Application Fee Determination Record (Substitute for Form PTO–875)
- PTO/SB/07 (Multiple Dependent Claim Fee Calculation Sheet (Substitute for Form PTO–1360; For Use with Form PTO/SB/06)
- PTO SB 16—Patent Center and PTO SB 16 (Provisional Application for Patent Cover Sheet)
- PTO/SB/17 (Fee Transmittal)
- PTO/SB/29 (For Design Applications Only: Continued Prosecution Application (CPA) Request Transmittal)
- PTO/SB/29A (For Design Applications Only: Receipt for Facsimile Transmitted CPA)
- PTO/SB/101 (Declaration for Utility or Design Patent Application (37 CFR 1.63) (Chinese Language Declaration)
- PTO/SB/102 (Declaration for Utility or Design Patent Application (37 CFR 1.63) (Dutch Language Declaration)
- PTO/SB/103 (Declaration for Utility or Design Patent Application (37 CFR 1.63) (German Language Declaration)
- PTO/SB/104 (Declaration for Utility or Design Patent Application (37 CFR 1.63) (Italian Language Declaration)
- PTO/SB/105 (Declaration for Utility or Design Patent Application (37 CFR 1.63) (French Language Declaration)
- PTO/SB/106 (Declaration for Utility or Design Patent Application (37 CFR 1.63) (Japanese Language Declaration)
- PTO/SB/107 (Declaration for Utility or Design Patent Application (37 CFR 1.63) (Russian Language Declaration)
- PTO/SB/108 (Declaration for Utility or Design Patent Application (37 CFR 1.63) (Swedish Language Declaration)
- PTO/SB/109 (Declaration for Utility or Design Patent Application (37 CFR 1.63) (Spanish Language Declaration)
- PTO/SB/110 (Declaration for Utility or Design Patent Application (37 CFR 1.63) (Korean Language Declaration)
- PTO/SB/445 (Petition to Accept an Unintentionally Delayed Claim Under 35 U.S.C. 119(e) (37 CFR 1.78(c)) and/or to Accept an Unintentionally Delayed Claim Under 35 U.S.C. 120, 121, 365(c), or 386(c) (37 CFR 1.78(e)) for the Benefit of a Prior-Filed Application)
- PTO/SB/458 (Petition to Accept an Unintentionally Delayed Claim under 35 U.S.C. 119(a)-(d) or (f), 365(a) or (b), or 386(a) or (b) for the Right of Priority to a Prior-Filed Foreign Application (37 CFR 1.55(e))
- PTO/SB/459 (Petition to Restore the Benefit of a Provisional Application (37 CFR 1.78(b)) or to Restore the Priority to a Foreign Application (37 CFR 1.55(c))

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual Respondents: 588,255 respondents.

Estimated Number of Annual Responses: 588,255 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately between 45 minutes (0.75 hours) and 40 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 12,543,215 hours.

Estimated Total Annual Respondent Non-Hourly Cost Burden: $1,156,505,487.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this 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 information collection or the OMB Control Number, 0651–0032.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0032 information request'' in the subject line of the message.
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2024–06592 Filed 3–27–24; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2013–0025]

Notice of Availability and Request for Comment: Revision to the Voluntary Standard for Infant and Cradle Swings

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: The U.S. Consumer Product Safety Commission's (Commission or CPSC) mandatory rule, Safety Standard for Infant Swings, incorporates by reference ASTM F2088–20, Standard Consumer Safety Specification for Infant and Cradle Swings. ASTM notified the Commission that it has revised this incorporated voluntary standard. CPSC seeks comment on whether the revision improves the safety of infant and cradle swings.

DATES: Comments must be received by April 11, 2024.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2013–0025, by any of the following methods:

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

Mail/Hand Delivery/Courier/Confidential Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want available to the public, you may submit such comments by mail, hand delivery, courier, or you may email them to *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to *https://www.regulations.gov.* Do not submit to this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2013–0025, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Carlos Torres, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2504; email: *Ctorres@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the Commission to adopt mandatory standards for durable infant or toddler products. 15 U.S.C. 2056a(b)(1). Mandatory standards must be ''substantially the same as'' voluntary standards, or they may be ''more stringent'' than the applicable voluntary standards, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the products. *Id.* Mandatory standards may be based, in whole or in part, on a voluntary standard.

Section 104(b)(4)(B) of the CPSIA specifies the process for when a voluntary standards organization revises a standard that the Commission incorporated by reference under section 104(b)(1). First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the Commission may reject or accept the revised standard. To reject a revised standard, the Commission must notify the voluntary standards organization within 90 days of receiving the notice that it has determined that the revised standard does not improve the safety of the consumer product and that it is retaining the existing standard. If the Commission does not take this action, the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision (or a later date specified by the Commission in the **Federal Register**). 15 U.S.C. 2056a(b)(4)(B).

In 2012, the Commission adopted a mandatory rule for infant swings under section 104(b)(1) of the CPSIA, which was codified in 16 CFR part 1223. The rule incorporated by reference ASTM F2088–12a, *Standard Consumer Safety Specification for Infant Swings,* with modifications to the labeling and test method requirements.[1] 77 FR 66703 (Nov. 7, 2012). At the time the Commission published the final rule, ASTM F2088–12a was the current version of the voluntary standard. ASTM subsequently revised the voluntary standard six times. ASTM F2088–22 is the current mandatory standard incorporated by reference in 16 CFR part 1223. ASTM F2088 applies to infant and cradle swings, which it describes as products with powered mechanisms that provide swinging or gliding seats for children who cannot climb out of the products. The ASTM standard includes performance requirements, test methods, and requirements for warning labels and instructional literature to address hazards to infants associated with infant and cradle swings.

In April 2013, ASTM notified CPSC that it had issued a revised standard for infant swings, ASTM F2088–13. In accordance with the procedures set out in section 104(b)(4)(B) of the CPSIA, the revised standard became the new mandatory standard for infant swings. The Commission published a direct final rule to update 16 CFR part 1223, incorporating by reference ASTM F2088–13, without modification. 78 FR 37706 (June 24, 2013).

After the Commission issued the revised mandatory standard in 2013, ASTM approved two more revisions: ASTM F2088–15 and ASTM F2088–19. However, ASTM did not notify CPSC of these revisions under CPSIA section 104(b)(4)(B). Consequently, these revised standards did not become the mandatory standards by operation of law, and the Commission did not update the mandatory standard to incorporate by reference these revised ASTM standards. On October 5, 2020, ASTM notified CPSC that it had revised the voluntary standard for infant swings, issuing ASTM F2088–20. In accordance with the procedures set out in section 104(b)(4)(B) of the CPSIA, the revised standard became the new mandatory standard for infant swings. The Commission published a direct final rule to update 16 CFR part 1223, incorporating by reference ASTM F2088–20, without modification. 86 FR 4961 (Jan. 19, 2021).

On October 2, 2021, ASTM notified CPSC that it had revised the voluntary standard for infant swings, issuing ASTM F2088–21. In accordance with the procedures set out in section 104(b)(4)(B) of the CPSIA, the revised standard became the new mandatory standard for infant swings. The Commission published a direct final rule to update 16 CFR part 1223, incorporating by reference ASTM F2088–21, without modification. 86 FR 59609 (Oct. 28, 2021).

On July 5, 2022, ASTM notified CPSC that it had revised the voluntary standard for infant swings, issuing ASTM F2088–22. In accordance with the procedures set out in section 104(b)(4)(B) of the CPSIA, the revised standard became the new mandatory standard for infant swings. The Commission published a direct final rule to update 16 CFR part 1223, incorporating by reference ASTM F2088–22, without modification. 87 FR 57390 (Sep. 20, 2022).

On March 18, 2024, ASTM notified CPSC that it had approved and published ASTM F2088–24. CPSC staff is assessing the revised voluntary standard to determine, consistent with section 104(b)(4)(B) of the CPSIA, its effect on the safety of consumer products covered by the standard. The Commission invites public comment on that question, to inform staff's assessment and any subsequent Commission consideration of the revisions in ASTM F2088–24.[2]

The currently incorporated voluntary standard (ASTM F2088–22) and the revised voluntary standard (ASTM F2088–24) are available for review in several ways. A read-only copy of the existing, incorporated standard (ASTM F2088–22) is available for viewing, at no cost, on the ASTM website at: *https://www.astm.org/READINGLIBRARY/.* A read-only copy of the revised standard (ASTM F2088–2024), including red-lined versions that identify the changes from the 2022 version to the 2024 version, are available, at no cost, on ASTM's website at: *https://www.astm.org/CPSC.htm.* Interested parties can also download copies of the standards by purchasing them from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: 610–832–9585; *https://www.astm.org.* Alternatively, interested parties can schedule an appointment to inspect copies of the standards at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479.

Comments must be received by April 11, 2024. Because of the short statutory time frame Congress established for the Commission to consider revised voluntary standards under section 104(b)(4) of the CPSIA, CPSC will not consider comments received after this date.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2024–06606 Filed 3–27–24; 8:45 am]

BILLING CODE 6355–01–P

[1] The modifications included changes to the required warning label content and a revised test method to address an omission in the voluntary standard for toy mobiles attached to swings.

[2] The Commission voted 4–0 to approve this notice.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Privacy Act of 1974; System of Records

AGENCY: Corporation for National and Community Service.

ACTION: Notice of new systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Corporation for National and Community Service (operating as AmeriCorps) proposes to establish a new system of records entitled ''CNCS–20–COO–ERC Emergency Response Communication System of Records.'' This system of records allows AmeriCorps to maintain information to administer operational response to critical events.

DATES: You may submit comments on or before April 29, 2024. Unless timely comments are received that would require a revision, this new system of records will become effective on April 29, 2024.

ADDRESSES: You may submit comments identified by system name and number by any of the following methods:

1. Electronically through *regulations.gov.* Once you access *regulations.gov,* find the web page for this SORN by searching for CNCS–20–COO–ERC.
2. By email at *privacy@americorps.gov.*
3. By mail: AmeriCorps, Attn: Bilal Razzaq, Chief Privacy Officer, OIT, 250 E Street SW, Washington, DC 20525.
4. By hand delivery or courier to AmeriCorps at the address for mail between 9:00 a.m. and 4:00 p.m. Eastern Standard Time, Monday through Friday, except for Federal holidays.

Please note that all submissions received may be posted without change

to *regulations.gov,* including any personal information. Commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: If you have general questions about the system of records, please contact ZhuoHong Liu at *zliu@americorps.gov,* by phone at 202–938–7868, or mail them to the address in the **ADDRESSES** section above. Please include the system of records' name and number.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, AmeriCorps' Office of Facilities and Support Services proposes to establish a new agency-wide system of records titled ''CNCS–20–COO–ERC Emergency Response Communication System of Records.'' This system will enhance AmeriCorps' flexibility to execute pre-defined communication processes in emergency situations and improve its capacity to administer its operational response to critical events to maintain business continuity and to keep its personnel safe.

II. Privacy Act

The Privacy Act codifies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. In accordance with 5 U.S.C. 552a(r), AmeriCorps has provided a report of this system of records to the Office of Management and Budget and to Congress.

Below is the description of CNCS–20–COO–ERC Emergency Response Communication System of Records.

SYSTEM NAME AND NUMBER:

CNCS–20–COO–ERC Emergency Response Communication System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This system of record is maintained by the Office of Facilities and Support Services, Office of the Chief Operating Officer, AmeriCorps. 250 E Street SW, Washington, DC 20525. The system is run by a cloud service provider certified by the Federal Risk and Authorization Management Program.

SYSTEM MANAGER(S):

Director, Office of Facilities and Support Services, Office of the Chief Operating Officer, AmeriCorps. 250 E Street SW, Washington, DC 20525.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Continuity Directive 1, Federal Executive Branch National Continuity Program and Requirements, January 17, 2017; Federal Property Management Regulation 101–20.103–4, Occupant Emergency Program; Homeland Security Presidential Directive 20, National Continuity Policy, May 4, 2007.

PURPOSE(S) OF THE SYSTEM:

AmeriCorps uses this system to collect and maintain the contact information of its personnel to whom the system will send emergency notifications. AmeriCorps uses this system to execute pre-defined communication processes in emergency situations and to administer its operational response to critical events to maintain business continuity and to keep its personnel safe.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The federal employees and contractors of AmeriCorps.

CATEGORIES OF RECORDS IN THE SYSTEM:

The full names of AmeriCorps personnel; AmeriCorps-assigned office email addresses; AmeriCorps-assigned office phone numbers; the office mobile phone numbers that AmeriCorps issues to its employees; personal email addresses that AmeriCorps personnel provide at their own choice; personal home or mobile phone numbers that AmeriCorps personnel provide at their own choice; office locations of AmeriCorps personnel (city and state).

RECORD SOURCE CATEGORIES:

The office contact information in the records is obtained from the official staff directory maintained in the Microsoft Active Directory of AmeriCorps. The personal home and mobile phone numbers and personal email addresses are collected directly from AmeriCorps personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

1. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other federal agency conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation or proceeding and one of the following is a party to the litigation or has an interest in such litigation:

a. AmeriCorps;

b. Any employee or former employee of AmeriCorps in his/her official capacity;

c. Any employee or former employee of AmeriCorps in his/her individual capacity, only when DOJ or AmeriCorps has agreed to represent the employee; or

d. The United States or any agency thereof.

2. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

3. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

4. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

5. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

6. To an official of another federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

7. To state, territorial and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the

disclosure is compatible with the purpose for which the records were compiled.

8. To an expert, consultant, grantee, or contractor (including employees of the contractor) of AmeriCorps that performs services requiring access to these records on AmeriCorps' behalf to carry out the purposes of the system.

9. To appropriate agencies, entities, and persons when

a. AmeriCorps suspects or has confirmed that there has been a breach of the system of records;

b. AmeriCorps has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, AmeriCorps (including its information systems, programs, and operations), the federal government, or national security; and

c. the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with AmeriCorps' efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

10. To another federal agency or federal entity, when AmeriCorps determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in

a. responding to a suspected or confirmed breach or

b. preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

11. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

12. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings, when it is relevant and necessary to the litigation or proceeding.

13. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for AmeriCorps, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same requirements and limitations on disclosure as are applicable to AmeriCorps officers and employees.

14. To appropriate third parties contracted by AmeriCorps to investigate a complaint or appeal filed by an employee or applicant, or to facilitate and conduct mediation or other alternative dispute resolution (ADR) procedures or programs.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

AmeriCorps stores records in this system electronically.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records maintained in this system of records are subject to National Archives and Records Administration General Records Schedule 5.3, item 20. The Disposition Authority is DAA–GRS2016–0004–0002. The disposition is temporary. The records will be destroyed when superseded or obsolete, or upon separation or transfer of an employee.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

AmeriCorps safeguards records in this system according to applicable laws, rules, and policies, including all applicable AmeriCorps automated systems security and access policies. AmeriCorps has strict controls in place to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

In accordance with 45 CFR part 2508—Implementation of the Privacy Act of 1974, as amended, individuals wishing to access their own records that are stored within the system of records may contact the FOIA Officer/Privacy Act Officer by sending (1) an email to *FOIA@americorps.gov* or (2) a letter addressed to the System Manager, attention Privacy Inquiry. Individuals who make a request must include enough identifying information (*i.e.,* full name, current address, date, and signature) to locate their records, indicate that they want to access their records, and be prepared to confirm their identity as required by 45 CFR part 2508.

CONTESTING RECORD PROCEDURES:

All requests to contest or amend information maintained in the system will be directed to the FOIA Officer/Privacy Act Officer. Individuals who make a request must include enough identifying information to locate their records, in the manner described above in the Record Access Procedures section. Requests should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

NOTIFICATION PROCEDURES:

Any individual desiring to contest or amend information not subject to exemption may contact the FOIA Officer/Privacy Act Officer via the contact information in the Record Access Procedures section. Individuals who make a request must include enough identifying information to locate their records, indicate that they want to be notified whether their records are included in the system, and be prepared to confirm their identity as required by 45 CFR part 2508.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Prabhjot Bajwa,

Senior Agency Official for Privacy and Chief Information Officer.

[FR Doc. 2024–06602 Filed 3–27–24; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Disaster Response Cooperative Agreements

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service, operating as

AmeriCorps, has submitted a public information collection request (ICR) entitled Disaster Response Cooperative Agreements for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 29, 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.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Rita Pratte, 202–815–5719, or by email at *rpratte@americorps.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on November 30, 2023 at 88 FR 83536. The comment period ended January 29, 2024. No public comments were received from this Notice.

Title of Collection: Disaster Response Cooperative Agreements.

OMB Control Number: 3045–0133.

Type of Review: Revision.

Respondents/Affected Public: Businesses and Organizations.

Total Estimated Number of Annual Responses: 500.

Total Estimated Number of Annual Burden Hours: 500.

Abstract: AmeriCorps seeks renewal of the current information collection. AmeriCorps uses the information collected through Disaster Response Cooperative Agreements (DCRAs) to more effectively use its deployable resources to meet the needs of disaster-affected communities. An understanding of the participating programs allows AmeriCorps to match the capabilities of the programs to the needs of the communities and will allow better asset mapping and resource typing. This information collection helps AmeriCorps identify and deploy programs effectively and efficiently, and ensures interested programs meet the appropriate programmatic and fiscal requirements to successfully execute disaster response activities. Additionally, the collected information will allow AmeriCorps to conduct better outreach to interested programs by providing them with more information about the agency's disaster procedures, reimbursement requirements, and support services offered. The forms under the DRCA help the agency efficiently collect information during a disaster event as well as assess the capacity of all DRCA programs throughout the year. Forms are completed electronically and emailed to AmeriCorps. A revision to this information collection is requested to include a new reporting form for non-mission assignment disaster response. The current application is due to expire on March 31, 2024.

Alexander Garcia,

Deputy Director, AmeriCorps NCCC.

[FR Doc. 2024–06608 Filed 3–27–24; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

AGENCY: Department of the Air Force.

ACTION: Meeting notice.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce the following Federal Advisory Committee meeting of the Board of Visitors (BoV) of the Air University.

DATES: Tuesday, April 2, 2024, from 8 a.m. to 5 p.m. and Wednesday, April 3, 2024, from 8 a.m. to 3 p.m. (Central Time).

ADDRESSES: Air University Commander's Conference Room, Building 800, Maxwell Air Force Base, Alabama 36112–6335.

FOR FURTHER INFORMATION CONTACT: Dr. Shawn P. O'Mailia, Designated Federal Officer, Air University Headquarters, 55 LeMay Plaza South, Maxwell Air Force Base, Alabama 36112–6335; telephone (334) 953–4547; *au.bov1@us.af.mil.*

SUPPLEMENTARY INFORMATION: This meeting is held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of this meeting is to provide independent advice and recommendations on matters pertaining to the educational, doctrinal, and research policies and activities of Air University. The agenda will include topics relating to the Air University Commander and President's priorities and Air University's reorganization, the Community College of the Air Force Subcommittee report, a Community College of the Air Force Taskforce update, The International Officer School overview and honor roll, an Air University financial overview, a Fifth-Year Interim Report and Quality Enhancement Plan update for SACSCOC, a Great Power Competition and Air Command and Staff College's Agile Learning discussion, a Student Life-cycle Management update and an Air University Honorary Degree Nominee presentation.

Meeting Accessibility: Open to the public. Any member of the public wishing to attend this meeting should contact the Designated Federal Officer listed below at least ten calendar days prior to the meeting for information on base entry procedures.

Written Statements: Any member of the public wishing to provide input to the Air University Board of Visitors in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act should submit a written statement to the Designated Federal Officer at the address detailed below. Statements submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least ten calendar days prior to the meeting that is the subject of this notice. Written statements received after this date may not be provided to or considered by the Air University Board of Visitors until its next meeting. The Designated Federal Officer will review all timely

submissions with the Air University Board of Visitors' Board Chairperson and ensure they are provided to members of the Board before the meeting that is the subject of this notice.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2024–06545 Filed 3–27–24; 8:45 am]

BILLING CODE 3911–44–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[ARL–240222A–AA]

Notice of Intent To Assign Foreign Patent Rights Patent

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to assign foreign patent rights to the patent applications listed below to the Government of Japan as represented by the Commissioner of Acquisition Tech and Logistics, 5–1, Ichigayahonmuracho, Shinjuku-ku, Tokyo, JP 162–8870. The Department of the Air Force will retain all rights, title, and interest in U.S. Application Serial No. 17/779,954, entitled FIBER REINFORCED POLYMER COMPOSITE STRUCTURES AND ELECTROMAGNETIC INDUCTION PROCESS FOR MAKING SAME, and filed on 19 November 2020.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to Department of the Air Force T3 Program Office, 1864 4th Street, Building 15, Wright-Patterson AFB, OH 45433; Phone: 937–607–8230; or Email: *afrl.sb.t3officeacount@us.af.mil.* Include Docket No. ARL–240222A–AA in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Department of the Air Force T3 Program Office, 1864 4th Street, Building 15, Wright-Patterson AFB, OH 45433; Phone: 937–607–8230; or Email: *afrl.sb.t3officeacount@us.af.mil.*

Abstract of patent application(s):

The present invention relates to resin compositions, fiber reinforced polymeric structures and electromagnetic induction processes for making same. Such magnetic induction processes are pulsed processes that can be optionally coupled with cooling steps between pulses. The aforementioned fiber reinforced polymeric structures can take forms that include, but are not limited to, pipes; pressure vessels, including rocket motor cases and fire extinguishers; golf club shafts; tennis and badminton racquets; skis; snowboards; hockey sticks; fishing rods; bicycle frames; boat masts; oars; paddles; baseball bats; and softball bats. In addition, such fiber reinforced polymeric structures can be supplemented with other materials, such as a rocket propellant, to form articles, for example, a rocket motor.

Intellectual property:

EP Application No. 20892987, entitled FIBER REINFORCED POLYMER COMPOSITE STRUCTURES AND ELECTROMAGNETIC INDUCTION PROCESS FOR MAKING SAME, and filed on 19 November 2020.

JP Application No. 2022530177A, entitled FIBER REINFORCED POLYMER COMPOSITE STRUCTURES AND ELECTROMAGNETIC INDUCTION PROCESS FOR MAKING SAME, and filed on 19 November 2020.

The Department of the Air Force may assign these foreign patent rights unless a timely objection is received that sufficiently shows that such assignment would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Authority: 35 U.S.C. 209; 37 CFR 404.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2024–06544 Filed 3–27–24; 8:45 am]

BILLING CODE 3911–44–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for the KC–46A Sixth Main Operating Base Beddown

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of availability of a record of decision.

SUMMARY: The United States Air Force signed the Record of Decision for the KC–46A Sixth Main Operating Base (MOB 6) on March 14, 2024.

ADDRESSES: For further information contact: Mr. Austin Narranjo, AFCEC/CIE, 2261 Hughes Ave, Ste 155, JBSA Lackland, TX 78236, ph: (210) 563–0190.

SUPPLEMENTARY INFORMATION: The Record of Decision reflects the Air Force decision to beddown 24 KC–46A Primary Aeropsace Vehichles Aurthorized (PAA) at MacDill Air Force Base in Tampa, Florida.

The decision was based on matters discussed in the KC–46A Sixth Main Operating Base Beddown Final Environmental Impact Statement, contributions from the public and regulatory agencies, and other relevant factors. The Final Environmental Impact Statement was made available to the public on November 24, 2023 through a Notice of Availability published in the **Federal Register** (Volume 88, Number 225, page 82350) with a 30-day wait period that ended on December 24, 2023.

Authority: This Notice of Availability is published pursuant to the regulations (40 CFR part 1506.6) implementing the provisions of the National Environmental Policy Act of 1969 (42 U.S.C.. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (32 CFR parts 989.21(b) and 989.24(b)(7)).

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2024–06660 Filed 3–27–24; 8:45 am]

BILLING CODE 3911–44–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: RP24–554–000.
Applicants: Vector Pipeline L.P.
Description: Annual Fuel Use Report for 2023 of Vector Pipeline L.P.
Filed Date: 3/21/24.
Accession Number: 20240321–5244.
Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: RP24–555–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Rate Schedules LSS/SS–2 Tracker Filing Effective 2/1/24 and 4/1/24 to be effective 2/1/2024.
Filed Date: 3/21/24.
Accession Number: 20240321–5276.
Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: RP24–556–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filings—Various Shippers on 03/22/2024 to be effective 4/1/2024.
Filed Date: 3/22/24.
Accession Number: 20240322–5000.
Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: RP24–557–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filings—Golden Pass LNG Terminal LLC to be effective 4/1/2024.
Filed Date: 3/22/24.
Accession Number: 20240322–5001.
Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: RP24–558–000.
Applicants: Cheniere Corpus Christi Pipeline, L.P.
Description: Annual Operations Transactions Report of Cheniere Corpus Christi Pipeline, L.P.
Filed Date: 3/22/24.
Accession Number: 20240322–5043.
Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: RP24–559–000.
Applicants: Cheniere Creole Trail Pipeline, L.P.
Description: Annual Operations Transactions Report of Cheniere Creole Trail Pipeline, L.P.
Filed Date: 3/22/24.
Accession Number: 20240322–5044.
Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: RP24–560–000.
Applicants: Midship Pipeline Company, LLC.
Description: Annual Operational Transactions Report of Midship Pipeline Company, LLC.
Filed Date: 3/22/24.
Accession Number: 20240322–5045.
Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: RP24–561–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Service Agreement—Puget to be effective 4/1/2024.
Filed Date: 3/22/24.
Accession Number: 20240322–5088.
Comment Date: 5 p.m. ET 4/3/24.

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: March 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06638 Filed 3–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL24–1–000]

Project-Area Wage Standards in the Labor Cost Component of Cost-of-Service Rates

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Policy statement.

SUMMARY: The Federal Energy Regulatory Commission (Commission) clarifies how the Commission will treat the use of project-area wage standards in calculating the labor cost component of jurisdictional cost-of-service rates.

DATES: This policy statement is effective June 26, 2024.

FOR FURTHER INFORMATION CONTACT:
Heidi Nielsen (Legal Information), Office of the General Counsel, (202) 502–8435, *heidi.nielsen@ferc.gov*
Adam Pollock (Technical Information), Office of Energy Market Regulation, (202) 502–8458, *adam.pollock@ferc.gov*
James Sarikas (Technical Information), Office of Energy Market Regulation, (202) 502–6831, *james.sarikas@ferc.gov*

SUPPLEMENTARY INFORMATION: 1. On October 19, 2023, the Commission issued a proposed policy statement,[1] proposing to clarify how it will treat the use of project-area wage standards in calculating the labor cost component of cost-of-service rates, including under Natural Gas Act (NGA) sections 4, 5, and 7, 15 U.S.C. 717c–d, 717f; the Interstate Commerce Act (ICA), 49 U.S.C. app. 1(5)(a); and Federal Power Act (FPA) sections 205 and 206, 16 U.S.C. 824d–e.[2] In this Policy Statement, we adopt the proposals in the Proposed Policy Statement, as discussed below.

I. Background

A. Current Commission Precedent

2. Project-area wage standards are the prevailing wages set by labor markets in the locale where the associated project work (*e.g.,* construction, capital repairs, decommissioning) is performed. Those prevailing wages can be found in data sources that indicate the basic hourly wage rates and fringe benefit rates for labor, direct employees, and/or contract personnel that prevail in a particular geographic area. For example, under the Davis-Bacon Act, the U.S. Department of Labor issues prevailing wage determinations based on periodic surveys of union and non-union wages paid in a particular location. These determinations serve as the minimum wage that must be paid by contractors and subcontractors performing under certain federally funded or assisted construction contracts.[3] A number of states have enacted their own prevailing wage laws, sometimes referred to as ''Little Davis-Bacon'' laws.[4]

3. The Commission addressed the treatment of project-area wages in natural gas pipeline cost-of-service rates in Opinion Nos. 510 and 524.[5] In

[1] *Project-Area Wage Standards in the Labor Cost Component of Cost-of-Service Rates,* 185 FERC ¶ 61,049 (2023) (Proposed Policy Statement).

[2] While most interstate oil pipelines have market-based or indexed rates, some jurisdictional pipelines have cost-of-service rates on file with the Commission.

[3] ''By requiring the payment of minimum prevailing wages, Congress sought to 'ensure that Government construction and federally assisted construction would not be conducted at the expense of depressing local wage standards.''' Dep't of Labor, *Updating the Davis-Bacon & Related Acts Reguls.,* 88 FR 57526, 57526 (Aug. 23, 2023) (citing Determination of Wage Rates Under the Davis-Bacon & Serv. Cont. Acts 5 Op. O.LC. 174, 176 (1981)) (Final Rule).

[4] Dep't of Labor, *Dollar Threshold Amount for Contract Coverage under State Prevailing Wage Laws* (Jan. 1, 2023), *https://www.dol.gov/agencies/whd/state/prevailing-wages.*

[5] *Portland Nat. Gas Transmission Sys.,* Opinion No. 510, 134 FERC ¶ 61,129 (2011), *reh'g granted in part,* 142 FERC ¶ 61,198 (2013), *reh'g dismissed,*

Continued

Opinion No. 510, the Commission rejected a pipeline operator's proposal to use union-only wage rates from a single proxy location to estimate the labor cost of decommissioning its pipeline that spanned four states,[6] finding that the pipeline operator had not carried its burden under NGA section 4 to show that it would use union labor and that, based on the evidence in that proceeding, it was accordingly reasonable to estimate labor costs using a ''blended'' mix of average union and non-union wage rates in the general private construction industry in the states where the pipeline was located, ''weighted'' by the length of pipe in each state.[7] The Commission subsequently applied the same approach in Opinion No. 524, finding that the same operator had again failed to present sufficient supporting evidence for its proposal to use union-only wage rates in its estimate of decommissioning labor costs.[8]

B. Proposed Policy Statement

4. In the Proposed Policy Statement, the Commission proposed to clarify that Opinion Nos. 510 and 524 were based on the record evidence before the Commission in those proceedings and do not reflect a heightened standard of review with respect to project-area wage rates.[9] The Commission proposed that jurisdictional entities should be able to include wages consistent with project-area wage standards in cost-of-service rates filed with the Commission where the record supports that outcome.

5. Specifically, the Commission proposed that, when a Commission-jurisdictional entity presents evidence that it: (1) pays project-area wage standards; (2) is contractually obligated to pay project-area wage standards; or (3) commits via affidavit filed in the rate proceeding that it will pay project-area wage standards, the Commission will presume, absent contrary evidence, that such project-area wage standards are just and reasonable for the relevant labor-cost component.[10] Furthermore, the Commission proposed that it will reject the inclusion of labor wages consistent with project-area wage standards in cost-of-service rates when the evidence demonstrates that the jurisdictional entity has not paid or will not be paying labor wages consistent with project-area wage standards.

6. The Commission proposed to accept as evidence of project-area wage standards: (1) Davis-Bacon Act local prevailing wage determinations; (2) state prevailing wage determinations; (3) applicable collective-bargaining agreements or Project Labor Agreements; or (4) other evidence demonstrating the prevailing wages paid in the relevant locale(s), such as an industry-accepted database used in construction cost estimates.[11] The Commission sought comment on the appropriateness of the four proposed sources of project-area wage standards. In particular, the Commission sought comment on the appropriateness of using industry databases with construction cost estimates as a source of project-area wage standards as well as whether any project-area wage standards might not be captured in the first three listed categories.

7. The Commission further proposed that jurisdictional entities seeking to include project-area wage standards in cost-of-service rates should maintain and preserve records, including books of account or records for work performed by employees, contractors or subcontractors, sufficient to demonstrate that claimed project-area wages were actually paid.[12]

II. Comments

8. Comments were filed by: CenterPoint Energy Minnesota Resources Corp dba CenterPoint Energy Minnesota Gas (CenterPoint); Charps, LLC; Enbridge (U.S.) Inc. (Enbridge); Illinois Commerce Commissioners Doug P. Scott, Michael T. Carrigan, and Conrad R. Reddick (Illinois Commerce Commissioners); International Union of Operating Engineers; Interstate Natural Gas Association of America (INGAA); Laborers' International Union of North America (LIUNA); Pe Ben USA, Inc.; Minnesota Public Utilities Commission (Minnesota Commission); Pennsylvania Public Utility Commissioner Kathryn Zerfuss (Pennsylvania Commissioner Zerfuss); Pipe Line Contractors Association; Pipeliners Union 798 United Association; Price Gregory International; R.L. Coolsaet Construction Company; Southern Star Central Gas Pipeline, Inc. (Southern Star); and Teamsters National Pipeline Labor Management Cooperation Trust.

9. Commenters broadly support the issuance of a policy statement that clarifies how the Commission will treat the use of project-area wage standards in calculating the labor cost component of jurisdictional cost-of-service rates.[13] Commenters disagree, however, on whether jurisdictional entities should be able to use sources other than collective bargaining agreements for the project-area wage standard.

10. Labor unions (including International Union of Operating Engineers, LIUNA, Pipeline Local Union 798, Pipe Line Contractors Association, and Teamsters National Pipeline Labor Management Cooperation Trust); Charps, LLC; PE Ben USA, Inc.; Price Gregory International; and R.L. Coolsaet Construction Company argue that collective bargaining rates should be the only metric for project-area wages when an operator certifies the employment of union labor.[14] LIUNA and Pipe Line Contractors Association explain that collectively bargained rates not only reflect actual wage and fringe benefit rates paid to the project workforce, including per diem rates but also are legally binding and can be verified by the Commission.[15] CenterPoint states that collectively bargained rates via the union or project agreement accurately reflect the actual labor cost, especially for unexpected infrastructure work where time is critical, and ensures that work is done quickly while maintaining high quality and safety.[16]

11. International Union of Operating Engineers argues that the Commission should only use Davis-Bacon and state prevailing wages if they have been updated recently and reflect actual wages received (*e.g.,* collectively bargained rates), not a metric unused by any other public agency or construction estimator.[17]

12. International Union of Operating Engineers cautions against the use of a

150 FERC ¶ 61,106 (2015); *Portland Nat. Gas Transmission Sys.,* Opinion No. 524, 142 FERC ¶ 61,197 (2013), *reh'g denied,* 150 FERC ¶ 61,107 (2015). Among other things, these proceedings involved estimating the expected costs for future pipeline retirements, specifically, determining the labor component for decommissioning costs to be recovered by a pipeline operator, Portland Natural Gas Transmission System.

[6] Opinion No. 510, 134 FERC ¶ 61,129 at P 124.

[7] *Id.*

[8] Opinion No. 524, 142 FERC ¶ 61,197 at PP 162–64.

[9] Proposed Policy Statement, 185 FERC ¶ 61,049 at P 4.

[10] *Id.* P 5.

[11] *Id.* P 6.

[12] *Id.* P 7.

[13] Illinois Commerce Commissioners, Minnesota Commission, and Pennsylvania Commissioner Zerfuss support the use of prevailing wages.

[14] Charps, LLC Comments at 1; International Union of Operating Engineers Comments at 2; LIUNA Comments at 2–4; PE Ben USA, Inc. Comments at 1; Pipeline Local Union 798 Comments at 1; Pipe Line Contractors Association Comments at 2; Price Gregory International Comments at 1; R.L. Coolsaet Construction Company Comments at 1; Teamsters National Pipeline Labor Management Cooperation Trust Comments at 2.

[15] LIUNA Comments at 2; Pipe Line Contractors Association Comments at 2. *See also* PE Ben USA, Inc. Comments at 1; Price Gregory International Comments at 1; R.L. Coolsaet Construction Company Comments at 1.

[16] CenterPoint Comments at 2.

[17] International Union of Operating Engineers Comments at 2.

''blended wage rate'' (*i.e.,* the average of union and non-union wages in the general private construction industry within the states where the pipeline is located) to reimburse pipeline operator costs for several reasons: (1) it distorts the actual wages paid to workers; (2) it relies upon the Bureau of Labor and Statistics' Occupational Employment Statistics that do not segment the industry into industry groups (*e.g.,* heavy, highway, building, residential); (3) it includes the residential construction industry, which requires different skill sets than industrial work; (4) it fails to incorporate fringe benefits; and (5) it disincentivizes the use of union contractors because they are not able to recover labor costs and gives a false impression that union labor is more expensive.[18]

13. Pipe Line Contractors Association state that, in the absence of a union commitment, it may be appropriate for the Commission to consider other sources after verifying that the source's labor rates reasonably reflect actual wages and fringe benefit rates that would need to be paid to recruit and retain a qualified workforce.[19] However, Pipe Line Contractors Association opposes the inclusion of ''other industry-accepted wage sources'' and asks the Commission to rely solely on the other three sources. It urges the Commission to limit the use of costing databases because such databases are usually based on national averages or averages for the entire construction industry and exclude vital compensation components such as fringe benefit and per diem rates (*e.g.,* crew costs in RSMeans, a construction costing application, only include the hourly wage rate and contractor overhead costs, not compensation sources). It also urges the Commission not to use costing databases with wage rates from the Bureau of Labor Statistics because: (1) its occupational wage rates are based on a rolling three-year cycle that constitute historical wages and lag behind current market trends; (2) its wage data does not capture sectoral differences, which is important because pipeline construction requires higher skills and operator qualification; and (3) it excludes fringe benefit contribution rates, per diem rates, and training investments, which are critical compensation inputs for the pipeline industry.

14. CenterPoint contends that the database would be useful if it is specific to the local affected community, stating that national databases are less useful, especially in the current labor market with labor rates varying widely across the country.[20] Enbridge and Southern Star argue that, as long as the source for compensation levels reflects actual market conditions necessary to attract a highly skilled workforce, and the operator can certify that those rates were paid or will be paid, the Commission should defer these labor decisions to the operator and find these costs to be just and reasonable.[21] Southern Star states that there are several legitimate business reasons for employing a workforce with a higher labor rate.[22] Southern Star notes, for example, that a pipeline often requires a specialized workforce with advanced skills, experience, and training which may offer alternative cost savings other than the baseline labor rate, or other advantages such as in the area of safety.

15. INGAA states that it is appropriate to accept and evaluate submitted evidence from industry databases and other evidence to demonstrate prevailing wages paid in the relevant locale(s), adding that the Commission strikes an appropriate balance between offering definitive guidance on how to demonstrate wage standards and retaining the flexibility that has been the hallmark of rate cases before the Commission.[23]

III. Commission Determination

16. As explained in the Proposed Policy Statement, Opinion Nos. 510 and 524 were based on the record evidence before the Commission in those proceedings and do not reflect a heightened standard of review with respect to project-area wage rates.[24] We adopt the proposals in the Proposed Policy Statement to allow jurisdictional entities to include wages consistent with project-area wage standards in cost-of-service rates filed with the Commission where the record supports that outcome. Specifically, when a Commission-jurisdictional entity presents evidence that it: (1) pays project-area wage standards; (2) is contractually obligated to pay project-area wage standards; or (3) commits via affidavit[25] filed in the rate proceeding that it will pay project-area wage standards, the Commission will presume, absent contrary evidence, that such project-area wage standards are just and reasonable for the relevant labor-cost component.[26] Furthermore, the Commission will reject the inclusion of labor wages consistent with project-area wage standards in cost-of-service rates when the evidence demonstrates that the jurisdictional entity has not paid or will not be paying labor wages consistent with project-area wage standards.

17. We adopt the Proposed Policy Statement's proposal regarding the sources of project-area wage standards, as clarified below. Pursuant to the framework discussed below, we find that appropriate sources of project-area wage standards may include: (1) applicable collective-bargaining agreements or Project Labor Agreements;[27] (2) Davis-Bacon Act local prevailing wage determinations;[28] (3) state prevailing wage determinations;[29] or (4) other evidence demonstrating the prevailing wages paid in the relevant locale(s), such as an industry-accepted database used in construction cost estimates.[30]

[18] *Id.* at 1–2.

[19] Pipe Line Contractors Association Comments at 2.

[20] CenterPoint Comments at 2.

[21] Enbridge Comments at 3–4; Southern Star Comments at 4.

[22] Southern Star Comments at 3.

[23] INGAA Comments at 2.

[24] Proposed Policy Statement, 185 FERC ¶ 61,049 at P 4.

[25] We remind filers that all information submitted in cost-of-service filings must be truthful and accurate, *see* 18 CFR 35.13(d)(6) (''A utility shall include in its filing an attestation . . . that . . . the cost of service statements and supporting data submitted . . . are true, accurate, and current representations of the utility's books, budgets, or other corporate documents.''), 154.308 (''The filing must include a statement . . . representing that the cost statements, supporting data, and workpapers, that purport to reflect the books of the company do, in fact, set forth the results shown by such books.''), 341.1(b)(1) (''The signature on a filing constitutes a certification that the contents are true to the best knowledge and belief of the signer . . . .''), and that failure to meet this requirement may result in a referral to the Office of Enforcement for further investigation and action, as appropriate.

[26] Consistent with 48 CFR 22.401, this policy statement applies to employee or contract labor whose duties are primarily manual or physical in nature, as distinguished from mental or managerial, and did not apply to employees or contractors whose duties are primarily executive, supervisory, administrative, or clerical. For purposes of this policy statement, ''wages'' mean the basic hourly pay rate including fringe benefits, as more fully defined in 48 CFR 22.401.

[27] Project Labor Agreements are agreements between building trade unions and contractors. They govern terms and conditions of employment (including wage-related issues) on a construction project for all craft workers—union and nonunion. Dep't of Labor, *Project Labor Agreement Res. Guide, Project Labor, Cmty. Workforce, & Cmty. Benefits Agreements Res. Guide,* ¶ 1, *https://www.dol.gov/general/good-jobs/project-labor-agreement-resource-guide.*

[28] Pursuant to the Davis-Bacon Act, as amended and codified at 40 U.S.C. 3141(2), the term ''prevailing wages'' includes the basic hourly rate of pay and fringe benefits, as determined by the Department of Labor. *See* Final Rule, 88 FR at 57526 (citing 40 U.S.C. 3142, 3145), 57531, 57546, 57699, 57722–724.

[29] The applicable state prevailing wage determination should meet or exceed the Davis-Bacon Act local prevailing wage determinations.

[30] Proposed Policy Statement, 185 FERC ¶ 61,049 at P 6.

18. In considering these sources of project-area wage standards, we clarify that the Commission will look to applicable collective-bargaining agreements or Project Labor Agreements as an appropriate default source of project-area wage standards. We find that it is appropriate to identify these agreements as the default source of project-area wage standards because collectively bargained wages reflect actual wage and fringe benefit rates paid to the project workforce, including per diem rates. Moreover, such wages are legally binding and can be verified by the Commission. By comparison, labor costs based upon Davis-Bacon Act data are estimates of future costs based on average local wages, which may differ from the actual wages paid by a jurisdictional entity.

19. We find, however, that there could be circumstances when a jurisdictional entity uses collectively bargained wages for only part of its workforce or that collective bargained wage data is otherwise not representative of the jurisdictional entity's future labor costs. For example, as Southern Star points out, jurisdictional entities may need to hire higher-wage specialized workers, which could justify the use of sources other than collective-bargaining agreements or Project Labor Agreements. For these reasons, a jurisdictional entity may use the other three data sources enumerated in the Proposed Policy Statement [31] if the jurisdictional entity provides a detailed explanation of why these sources: (1) better reflect actual wages than relying on collective-bargaining agreements or Project Labor Agreements; and (2) accurately reflect wage information during the project period, including demonstrating that it is based on up-to-date data.

20. Finally, we adopt the Proposed Policy Statement proposal that jurisdictional entities seeking to include project-area wage standards in cost-of-service rates should maintain and preserve records, including books of account or records for work performed by employees, contractors or subcontractors, sufficient to demonstrate that claimed project-area wages were actually paid.[32]

IV. Information Collection Statement

21. The Paperwork Reduction Act and the implementing regulations of the Office of Management and Budget (OMB) require approval of certain information collection requirements imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB Control Number and an expiration date. Respondents subject to the filing requirements will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

22. This Policy Statement clarifies how the Commission will treat the use of project-area wage standards in calculating the labor cost component of jurisdictional cost-of-service rates filed by a natural-gas company, interstate oil pipeline, or public utility, pursuant to NGA sections 4, 5 and 7, 15 U.S.C. 717c–d, 717f; ICA, 49 U.S.C. app. 1(5)(a); and FPA sections 205 and 206, 16 U.S.C. 824d-e, respectively.

23. The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act. Comments are solicited on whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

24. Send written comments on the revisions to the information collections in Docket No. PL24–1–000 to OMB through *www.reinfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (identified in paragraph 25 below) in the subject line of your comments. Comments should be sent within 30 days of publication of this docket to *www.reginfo.gov/public/do/PRAMain.* Additionally, please submit copies of your comments (identified by Docket No. PL24–1–000) by either of the following methods: (1) eFiling at Commission's website: *http://www.ferc.gov/docs-filing/efiling.asp* or (2) Mail/Hand Delivery/Courier: Federal Energy Regulatory Commission, Secretary of the Commission, at Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852. All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

25. *Collection Nos., Titles and OMB Control Nos.:* FERC–516J (Labor Wage Policy Statement, OMB Control No. 1902–TBD); FERC–537 (Gas Pipeline Certificates: Construction, Acquisition and Abandonment; OMB Control No. 1902–0060); FERC–538 (Gas Pipeline Certificates: Section 7(a) Mandatory Initial Service, OMB Control No. 1902–0061); FERC–545 (Gas Pipeline Rates: Rate Change (Non-formal), OMB Control No. 1902–0154); FERC–546 (Certificated Rate Filings: Gas Pipeline Rates, OMB Control No. 1902–0155); FERC–550 (Oil Pipeline Rates—Tariff Filings and Depreciation Studies, OMB Control No. 1902–0089); FERC–555 (Preservation of Records for Public Utilities and Licensees, Natural Gas and Oil Pipeline Companies, OMB Control No. 1902–0098).

26. *Action:* Revisions to the collections of information in accordance with the Policy Statement.

27. *Respondents:* The estimate of the number of respondents that may elect to use project-area wage standards in calculating the labor cost component of cost-of-service rates is based upon the existing burden inventory currently approved by OMB for filing rates cases, depreciation studies and certificate filings, include initial rates or seeking approval to charge existing rates for natural gas companies, public utilities and oil pipelines. This burden estimate is based upon one-third of the filings electing to include an additional burden by the filer to incorporate labor costs based upon paying wages that at minimum meet project-area wage standards.

28. *Frequency of Information Collection:* Jurisdictional entities, when including elements in rates reflecting future capital costs, may elect to make the above showings in support of wages that are at or above project-area wage standards. Such proceedings may include but are not limited to certificates for new natural gas pipelines, general natural gas pipeline and electric utility rate cases, proposed new or modified depreciation rates, and proposed inclusion of asset retirement obligation in rates. In total, jurisdictional entities may make such a showing one time per year.

29. *Necessity of Information:* The information would be necessary for the jurisdictional entity to receive the presumption that wages for capital projects that are at or above project-area wage standards are not just and reasonable.

30. *Internal Review:* The Commission has reviewed the changes and has determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry in support of the Commission's ensuring just and reasonable rates. The

[31] *See supra* P 6.

[32] Proposed Policy Statement, 185 FERC ¶ 61,049 at P 7.

Commission has specific, objective support for the burden estimates associated with the information collection requirements. However, we request comments with supporting background information on the estimates for burden and cost.

31. The Commission estimates the effect of the Policy Statement on burden [33] and cost [34] as follows:

32.

ESTIMATES OF THE EFFECTS DUE TO THE POLICY STATEMENT IN DOCKET NO. PL24–1–000

A. Information collection	B. Number of respondents	C. Annual number of responses per respondent	D. Total number of responses (column B × column C)	E. Average burden hours and cost per response	F. Total annual hour burdens & total annual cost (column D × column E)	G. Cost per respondent (column F ÷ column B)
FERC–516J [35]	6	1	6	15 hrs. $1,500	90 hrs. $9,000	$1,500
Other Affected Collections [36]						
FERC–537	22	1	22	15 hrs. $1,500	330 hrs. $33,000	1,500
FERC–538	1	1	1	15 hrs. $1,500	15 hrs. $1,500	1,500
FERC–546	16	1	16	15 hrs. $1,500	240 hrs. $24,000	1,500
FERC–550	7	1	7	15 hrs. $1,440	105 hrs. $10,500	1,500
FERC–545	11	1	11	15 hrs. $1,500	165 hrs. $16,500	1,500
FERC–555	170	1	170	1 hr. $500	170 hrs. $17,000	100
Total Effect of the Policy Statement			233		1,115 hrs. $111,500	

V. Document Availability

33. 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*).

34. From the Commission'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.

35. 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.*

VI. Effective Date

36. This Policy Statement will become effective on June 26, 2024.

By the Commission.

Issued: March 21, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06557 Filed 3–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1576–000]

Maple Flats Solar Energy Center LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Maple Flats 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 April 11, 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

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[33] "Burden" is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the estimated burden, refer to 5 CFR 1320.3.

[34] Commission staff estimates that the respondents' skill set (and wages and benefits) for this docket are comparable to those of Commission employees. Based on the Commission's Fiscal Year 2023 average cost of $207,786/year (for wages plus benefits, for one full-time employee), $100.00/hour is used.

[35] The FERC–516J is a new temporary collection number that includes the burden changes due to this Policy Statement. This temporary number will be used for the burden related to the FERC–516 (OMB# 1902–0096) information collection (IC).

Note: In the Proposed Policy Statement, the Commission referenced the FERC–1006 temporary collection, which will no longer be used because most of the information collection requests have been approved by OMB since the publication of the Proposed Policy Statement.

[36] Since the issuance of the Proposed Policy Statement, OMB has approved data collections FERC–545, –555, –537.

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: March 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06639 Filed 3–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1587–000]

AlbertaEx, L.P.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of AlbertaEx, L.P.'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 April 11, 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: March 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06635 Filed 3–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5737–032]

Santa Clara Valley Water District; 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.:* 5737–032.

c. *Date Filed:* February 20, 2024.

d. *Applicant:* Santa Clara Valley Water District.

e. *Name of Project:* Anderson Dam Hydroelectric Project.

f. *Location:* The project is located on Coyote Creek in Santa Clara County, California. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Ryan McCarter, Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118, *rmccarter@valleywater.org,* (408) 630–2983.

i. *FERC Contact:* Jennifer Ambler, (202) 502–8586, *jennifer.ambler@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. *Water Quality Certification:* 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.

l. *Deadline for filing comments, motions to intervene, and protests:* April 22, 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 *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 the docket number P–5737–032. 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.

m. *Description of Request:* Santa Clara Valley Water District (Valley Water), exemptee for the Anderson Dam Hydroelectric Project located on Coyote Creek in Santa Clara County, California, proposes to: (1) drawdown the Anderson reservoir to perform a seismic retrofit of the dam which would include removing Anderson Dam in stages and rebuilding the dam and spillway to meet Federal Energy Regulatory Commission and California Department of Water Resources Division of Safety of Dams public safety requirements, (2) decommission the hydroelectric facility, (3) implement conservation measures downstream of the dam on Coyote Creek, and (4) surrender the hydroelectric project exemption. Valley Water anticipates construction to retrofit the dam would take approximately seven years to complete and proposes to start construction in 2026. Valley Water also proposes various environmental monitoring plans, site restoration activities, and mitigation measures including improvements to Ogier Ponds and enhancements to the fish passage facilities at the Coyote Percolation Dam located downstream and outside of the Anderson Dam Hydroelectric Project on Coyote Creek that would take additional time to complete. In the application, Valley Water discusses how the project exemption, and therefore the Commission's jurisdiction over the project, would remain until the Commission finds the seismic retrofit construction complete and all conditions of any surrender order are met. Valley Water would continue to maintain Anderson Reservoir and the rebuilt dam after exemption surrender and proposes to implement Phase 1 flow releases from the Fish and Aquatic Habitat Collaborative Effort Agreement.

n. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlinesupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

o. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

p. *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.

q. *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.

r. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 21, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06558 Filed 3–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–37–000]

Columbia Gulf Transmission, LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the Proposed Amoco South Pecan Lake Abandonment Project

On January 16, 2024, Columbia Gulf Transmission, LLC (Columbia Gulf) filed an application in Docket No. CP24–37–000 requesting an Authorization pursuant to Section 7(b) of the Natural Gas Act involving abandonment of approximately 21 miles of pipeline and related appurtenances in Cameron Parish, Louisiana.

On January 26, 2024, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice

of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1]

Schedule for Environmental Review

Issuance of EA June 20, 2024
90-day Federal Authorization Decision Deadline[2] September 18, 2024

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Columbia Gulf proposes to abandon in place and abandon by removal approximately 21 miles of pipeline and related appurtenances, located in Cameron Parish, Louisiana. According to Columbia Gulf, abandonment will eliminate the need for future operating and maintenance expenditures on outdated facilities that are no longer needed to satisfy current firm service obligations. Abandonment of these facilities will not change the certificated capacity of Columbia Gulf's system and will not result in the termination or reduction of service to existing customers of Columbia Gulf.

The Project would consist of the following activities:

- Abandon in place and by removal approximately 16 miles of its 16-inch-diameter South Pecan Lake Pipeline;
- Abandon by removal approximately 1 mile of its 12-inch-diameter Amoco/South Pecan Lake Pipeline;
- Abandon by removal approximately 4 miles of its 6-inch-diameter Go Around Bayou Pipeline;
- Abandon by removal all of the facilities at the South Pecan Lake metering and regulating station (M&R) No. 505 and Goodrich M&R No. 4144; and
- Abandon by removal other related appurtenances.

Background

On February 7, 2024, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Amoco South Pecan Lake Abandonment Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, we received comments by a landowner, James Guinn; the Mississippi Band of the Choctaw Indians; and U.S. Fish and Wildlife Service. The primary issues raised were abandonment in place procedures and addressing unanticipated discoveries of cultural resources. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP24–37), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: March 21, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06560 Filed 3–27–24; 8:45 am]

BILLING CODE 6717–01–P

[1] 40 CFR 1501.10 (2020).

[2] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2561–057]

Notice of Intent To Prepare an Environmental Assessment; Sho-Me Electric Power Cooperative

On June 29, 2023, Sho-Me Electric Power Cooperative (licensee) filed an application to surrender its license for the Niangua Hydroelectric Project No. 2561. The project is located on the Nianqua River in Camden County, Missouri. The project does not occupy federal lands.

The licensee has determined it no longer wants to pursue relicensing of the project. The licensee intends to surrender its license and to leave the facilities in place, including the project dam, power tunnel, powerhouse, and associated facilities. The power canal would be drained and sealed at both ends and the project would be disconnected from the power grid. No ground disturbing activities are proposed with surrender of the project license. A Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protest was issued on August 1, 2023.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the proposed action. The planned schedule for the completion of the EA is September 30, 2024.[1] Revisions to the schedule may be made as appropriate. The EA will be issued and made available for review by all interested parties. All comments filed on the EA will be reviewed by staff and considered in the Commission's final decision on the proceeding.

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 to cooperate in the preparation

[1] 42 U.S.C. 4336a(g)(1)(B) requires lead federal agencies to complete EAs within 1 year of the agency's decision to prepare an EA.

of the EA planned to be issued July 2024. Agencies wishing to cooperate, or further discuss the benefits, responsibilities, and obligations of the cooperating agency role, should contact staff listed at the bottom of this notice by April 11, 2024. 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).

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 to access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Any questions regarding this notice may be directed to Rebecca Martin at 202–502–6012 or *Rebecca.martin@ferc.gov.*

Dated: March 21, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06559 Filed 3–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2876–005]

California Department of Water Resources; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 2876–005.

c. *Date Filed:* February 1, 2024.

d. *Submitted By:* California Department of Water Resources (DWR).

e. *Name of Project:* Pine Flat Transmission Line.

f. *Location:* Near the Kings River in Fresno County, California.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Jeremiah McNeil, Manager, California Department of Water Resources, Hydropower License Planning and Compliance Office, P.O. Box 942836, Sacramento CA 94236–0001; (916) 699–8414; email: *Jeremiah.McNeil@water.ca.gov.*

i. *FERC Contact:* Shannon Archuleta at (202) 552–2739 or email at *shannon.archuleta@ferc.gov.*

j. DWR filed its request to use the Traditional Licensing Process on February 1, 2024. DWR provided public notice of its request on February 15, 2024. In a letter dated March 22, 2024, the Acting Director of the Division of Hydropower Licensing approved DWR's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402. We are also initiating consultation with the California State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating DWR as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. DWR filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website *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 at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY, (202) 502–8659.

You may 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 licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 2876. Pursuant to 18 CFR 16.20 each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 31, 2027.

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: March 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06637 Filed 3–27–24; 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 exempt wholesale generator filings:

Docket Numbers: EG24–139–000.
Applicants: Clearwater Wind III, LLC.
Description: Clearwater Wind III, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 3/20/24.
Accession Number: 20240320–5219.
Comment Date: 5 p.m. ET 4/10/24.

Docket Numbers: EG24–140–000.
Applicants: IP Lumina BESS, LLC.
Description: IP Lumina BESS, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 3/21/24.
Accession Number: 20240321–5130.
Comment Date: 5 p.m. ET 4/11/24.

Docket Numbers: EG24–141–000.
Applicants: IP Lumina II BESS, LLC.
Description: IP Lumina II BESS, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 3/21/24.
Accession Number: 20240321–5132.
Comment Date: 5 p.m. ET 4/11/24.

Docket Numbers: EG24–142–000.
Applicants: IP Radian BESS, LLC.
Description: IP Radian BESS, LLC submits Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 3/21/24.
Accession Number: 20240321–5134.
Comment Date: 5 p.m. ET 4/11/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–91–000.

Applicants: LS Power Development, LLC v. *PJM Interconnection, L.L.C. and Monitoring Analytics, LLC,* as the Independent Market Monitor for PJM.

Description: Complaint of *LS Power Development, LLC* v. *PJM Interconnection, L.L.C. and Monitoring Analytics, LLC,* as the Independent Market Monitor for PJM.

Filed Date: 3/20/24.

Accession Number: 20240320–5217.

Comment Date: 5 p.m. ET 4/19/24.

Docket Numbers: EL24–92–000.

Applicants: Cometa Energia, S.A. de C.V., Cometa Energia, S.A. de C.V.,/o/b/o, Energia Azteca X, S. de R.L. de C.V. v. *California Independent System Operator.*

Description: Complaint of *Cometa Energia, S.A. de C.V.,/o/b/o, Energia Azteca X, S. de R.L. de C.V.* v. *California Independent System Operator.*

Filed Date: 3/20/24.

Accession Number: 20240320–5220.

Comment Date: 5 p.m. ET 4/9/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–333–000; ER24–334–000.

Applicants: Oak Lessee, LLC, Oak Solar, LLC.

Description: Amendment to February 1, 2024, Oak Solar, LLC et al. tariff filing.

Filed Date: 3/18/24.

Accession Number: 20240318–5272.

Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–1189–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to NSA No. 7186, AF1–287 RE: Metadata Correction to be effective 4/3/2024.

Filed Date: 3/21/24.

Accession Number: 20240321–5192.

Comment Date: 5 p.m. ET 4/11/24.

Docket Numbers: ER24–1587–000.

Applicants: AlbertaEx, L.P.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authority and Request for Waivers to be effective 5/21/2024.

Filed Date: 3/21/24.

Accession Number: 20240321–5102.

Comment Date: 5 p.m. ET 4/11/24.

Docket Numbers: ER24–1588–000.

Applicants: Double Black Diamond Solar Power, LLC.

Description: Baseline eTariff Filing: Petition for Blanket MBR Authorization with Waivers & Expedited Treatment to be effective 3/25/2024.

Filed Date: 3/21/24.

Accession Number: 20240321–5180.

Comment Date: 5 p.m. ET 4/11/24.

Docket Numbers: ER24–1589–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Lighthouse Electric Cooperative TSA to be effective 3/4/2024.

Filed Date: 3/21/24.

Accession Number: 20240321–5211.

Comment Date: 5 p.m. ET 4/11/24.

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: March 21, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06565 Filed 3–27–24; 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: RP24–545–000.

Applicants: Elba Express Company, L.L.C.

Description: Compliance filing: Annual Interruptible Revenue Crediting Report 2024 to be effective N/A.

Filed Date: 3/20/24.

Accession Number: 20240320–5173.

Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–546–000.

Applicants: Empire Pipeline, Inc.

Description: § 4(d) Rate Filing: Fuel Tracker (Empire Tracking Supply Interim Settlement Rates 2024) to be effective 2/1/2024.

Filed Date: 3/20/24.

Accession Number: 20240320–5184.

Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–547–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 3.21.24 Negotiated Rates—Hartree Partners, LP R–7090–12 to be effective 4/1/2024.

Filed Date: 3/21/24.

Accession Number: 20240321–5104.

Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: RP24–548–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 3.21.24 Negotiated Rates—Hartree Partners, LP R–7090–13 to be effective 4/1/2024.

Filed Date: 3/21/24.

Accession Number: 20240321–5115.

Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: RP24–550–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 3.21.24 Negotiated Rates—Macquarie Energy LLC R–4090–30 to be effective 4/1/2024.

Filed Date: 3/21/24.

Accession Number: 20240321–5117.

Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: RP24–551–000.

Applicants: Transwestern Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Filing—Tenaska to be effective 4/1/2024.

Filed Date: 3/21/24.

Accession Number: 20240321–5131.

Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: RP24–552–000.

Applicants: ETC Tiger Pipeline, LLC.

Description: § 4(d) Rate Filing: NRA Amendment No 3—Chesapeake to be effective 4/1/2024.

Filed Date: 3/21/24.

Accession Number: 20240321–5133.

Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: RP24–553–000.

Applicants: Bison Pipeline LLC.

Description: Compliance filing: Company Use Gas Annual Report 2024 to be effective N/A.

Filed Date: 3/21/24.

Accession Number: 20240321–5157.

Comment Date: 5 p.m. ET 4/2/24.

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.

Filings in Existing Proceedings

Docket Numbers: PR24–48–001.

Applicants: Wisconsin Power and Light Company.

Description: § 284.123(g) Rate Filing: Amendment in Docket No. PR24–48 to be effective 2/4/2022.

Filed Date: 3/20/24.

Accession Number: 20240320–5174.

Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: RP24–333–001.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: Compliance filing: Petition for Approval of Settlement in Docket Nos. RP24–333 and RP19–351 to be effective N/A.

Filed Date: 3/20/24.

Accession Number: 20240320–5133.

Comment Date: 5 p.m. ET 4/1/24.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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: March 21, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06564 Filed 3–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5089–027]

Fall River Rural Electric Cooperative, Inc.; Notice of Scoping Meetings and Soliciting Scoping Comments

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.:* 5089–027.

c. *Date filed:* August 31, 2021.

d. *Applicant:* Fall River Rural Electric Cooperative, Inc.

e. *Name of Project:* Felt Hydroelectric Project (Felt Project or project).

f. *Location:* On the Teton River, near the town of Tetonia, in Teton County, Idaho. The project occupies 114.4 acres of federal land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Nicholas Josten, 2742 Saint Charles Ave., Idaho Falls, Idaho 83404; (208) 528–6152.

i. *FERC Contact:* John Matkowski at (202) 502–8576; or email at *john.matkowski@ferc.gov*.

j. *Deadline for filing scoping comments:* May 21, 2024.

The Commission strongly encourages electronic filing. Please file scoping 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 at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy via U.S. Postal Service 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. All filings must clearly identify the project name and docket number on the first page: Felt Hydroelectric Project (P–5089–027).

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 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 is not ready for environmental analysis at this time.

l. *The Felt Project includes:* (1) a 122.5-foot-long, 12-foot-high concrete dam that includes the following sections: (a) 25-foot-long sluiceway section with a 4-foot-wide fish ladder and a 14-foot-wide corrugated steel radial gate and (b) a 96-foot-long uncontrolled overflow spillway with a crest elevation of 5,530-feet mean sea level (msl); (2) a 7-acre impoundment with a storage capacity of 28 acre-feet at a normal water surface elevation of 5,530-feet msl; (3) a 178-foot-long, 8.5-foot-deep fish screen structure equipped with a bar rack with 3/8-inch clear bar spacing and diamond mesh screen; (4) three intake openings located behind the fish screen each equipped with 10-foot-wide intake gates and 10-foot-wide trash racks with 3-inch clear bar spacing; (5) three, 8-foot-square unlined rock tunnels connecting the intakes to penstocks and consisting of: (a) a 179-foot-long Tunnel No. 1 connecting to a 280-foot-long, 78-inch-diameter steel penstock that bifurcates into two, 180-foot-long, 60-inch-diameter steel penstocks that connect to Powerhouse No. 1; and (b) a 177-foot-long Tunnel No. 2 and a 196-foot-long Tunnel No. 3 each connecting to a 1,750-foot-long, 96-inch-diameter steel penstock that connects to Powerhouse No. 2; (6) an 83-foot-long, 26-foot-wide, 13-foot-high reinforced concrete Powerhouse No. 1 containing two horizontal Francis turbine-generator units with a combined generating capacity of 1,950 kilowatts (kW); (7) a 36-foot-long, 36-foot-wide, 25-foot-high reinforced concrete Powerhouse No. 2 containing two vertical Francis turbine-generator units with a combined generating capacity of 5,500 kW; (8) two tailrace channels discharging to the Teton River from Powerhouses No. 1 and No. 2; (9) a 1,500-foot-long, 4.16 kilovolt (kV) overhead transmission line connecting Powerhouse No. 1 to a transformer

located next to Powerhouse No. 2; (10) a 2,000-foot-long, 24.9 kV overhead transmission line leading from the transformer to the interconnection point; and (11) appurtenant facilities.

The project operates in a run-of-river mode such that outflow from the project approximates inflow. The project has a maximum hydraulic capacity of 900 cubic feet per second (cfs) when all four turbine generator units in Powerhouse No. 1 (upper powerhouse) and Powerhouse No. 2 (lower powerhouse) are operating. The project is required to discharge a minimum flow into the 1,950-foot-long bypassed reach of 20 cfs from July 1 to March 14 and 50 cfs from March 15 to June 30. The project generates an average of 33,100 megawatt-hours per year.

m. Copies of the application can be viewed on the Commission's website at *https://www.ferc.gov,* using the ''eLibrary'' link. Enter the project's docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support.

You may also register 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.*

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 at *OPP@ferc.gov.*

n. *Scoping Process:*

Pursuant to the National Environmental Policy Act (NEPA), Commission staff intends to prepare either an environmental assessment (EA) or an environmental impact statement (EIS) (collectively referred to as the ''NEPA document'') that describes and evaluates the probable effects, including an assessment of the site-specific and cumulative effects, if any, of the proposed action and alternatives. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission issues an EA or an EIS.

Scoping Meetings

Commission staff will hold two public scoping meetings to receive input on the scope of the NEPA document. An evening meeting will focus on receiving input from the public and a daytime meeting will focus on the concerns of resource agencies, non-governmental organizations (NGOs), and Indian Tribes. We invite all interested agencies, Indian Tribes, NGOs, and individuals to attend one or both meetings. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Tuesday, April 23, 2024
Time: 1:00 p.m. MT
Place: AmericInn Lodge
Address: 1098 Golden Beauty Dr, Rexburg, Idaho 83440

Evening Scoping Meeting

Date: Tuesday, April 23, 2024
Time: 6:00 p.m. MT
Place: AmericInn Lodge
Address: 1098 Golden Beauty Dr, Rexburg, Idaho 83440

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link (see item m above).

An environmental site review is typically held in conjunction with the scoping meeting. However, access to the project site is likely to be limited by winter weather and/or poor vehicular access conditions when scoping for this project will occur. For these reasons, an environmental site review will not be conducted at this time.

Objectives

At the scoping meetings, Commission staff will: (1) summarize the environmental issues tentatively identified for analysis in the NEPA document; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the NEPA document, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the NEPA document; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project. Individuals, NGOs, Indian Tribes, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the NEPA document.

Dated: March 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06642 Filed 3–27–24; 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: ER12–1739–007.
Applicants: Bethel Wind Energy LLC.
Description: Notice of Non-Material Change in Status of Bethel Wind Energy LLC.
Filed Date: 3/20/24.
Accession Number: 20240320–5222.
Comment Date: 5 p.m. ET 4/10/24.

Docket Numbers: ER17–2011–002; ER22–1703–004.
Applicants: Salem Harbor Power Development LP, Castleton Commodities Merchant Trading L.P.
Description: Supplement to July 28, 2023 Notice of Change in Status of Salem Harbor Power Development LP, et al.
Filed Date: 3/20/24.
Accession Number: 20240320–5221.
Comment Date: 5 p.m. ET 4/10/24.

Docket Numbers: ER20–1505–007.
Applicants: Basin Electric Power Cooperative.
Description: Notice of Change in Status of Basin Electric Power Cooperative.
Filed Date: 3/22/24.
Accession Number: 20240322–5214.
Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: ER24–596–002.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to Filing, WMPA SA No. 5981; Queue No. AG1–386 to be effective 2/6/2024.
Filed Date: 3/22/24.
Accession Number: 20240322–5058.
Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: ER24–761–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Wilsonville Solar LGIA Deficiency Response to be effective 12/15/2023.

Filed Date: 3/22/24.

Accession Number: 20240322–5125.

Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: ER24–1158–001.

Applicants: Entergy Arkansas, LLC.

Description: Tariff Amendment: Entergy MSS–4 Decom Update to be effective 4/1/2024.

Filed Date: 3/22/24.

Accession Number: 20240322–5120.

Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: ER24–1591–000.

Applicants: Flatland Storage LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application and Request for Expedited Action to be effective 3/22/2024.

Filed Date: 3/21/24.

Accession Number: 20240321–5261.

Comment Date: 5 p.m. ET 4/11/24.

Docket Numbers: ER24–1593–000.

Applicants: Randolph Solar Park LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application and Request for Expedited Action to be effective 3/22/2024.

Filed Date: 3/21/24.

Accession Number: 20240321–5266.

Comment Date: 5 p.m. ET 4/11/24.

Docket Numbers: ER24–1594–000.

Applicants: Wisconsin Public Service Corporation.

Description: § 205(d) Rate Filing: Annual Formula Rate Update for PEB and PBOP Changes in W–1A Tariff and RS No. 87 to be effective 4/1/2024.

Filed Date: 3/22/24.

Accession Number: 20240322–5035.

Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: ER24–1595–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: OATT Revised Attachment H–1—Appendix A, Summary of Rates, Attachments 3, 5 and to be effective 5/22/2024.

Filed Date: 3/22/24.

Accession Number: 20240322–5083.

Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: ER24–1596–000.

Applicants: PacifiCorp.

Description: Tariff Amendment: Termination of Foote Creek III Wholesale Distribution Service Agreement to be effective 5/22/2024.

Filed Date: 3/22/24.

Accession Number: 20240322–5112.

Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: ER24–1597–000.

Applicants: Harvest Gold Solar Power, LLC.

Description: Baseline eTariff Filing: Petition for Blanket MBR Authorization with Waivers & Expedited Treatment to be effective 3/25/2024.

Filed Date: 3/22/24.

Accession Number: 20240322–5121.

Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: ER24–1598–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: GTC NITSA Filing to be effective 12/1/2023.

Filed Date: 3/22/24.

Accession Number: 20240322–5126.

Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: ER24–1599–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 7204; AE1–163/AE2–281 to be effective 5/22/2024.

Filed Date: 3/22/24.

Accession Number: 20240322–5128.

Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: ER24–1600–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2024–03–22_SA 3592 Termination of ATC-Wood County Solar Sub E&P (J986) to be effective 3/23/2024.

Filed Date: 3/22/24.

Accession Number: 20240322–5131.

Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: ER24–1601–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: End-User Customer Refund Balancing Account Adjustment (ECRBAA) Revision to be effective 7/1/2024.

Filed Date: 3/22/24.

Accession Number: 20240322–5132.

Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: ER24–1602–000.

Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2024–03–22_SA 4265 ATC-Plymouth ESA to be effective 5/22/2024.

Filed Date: 3/22/24.

Accession Number: 20240322–5158.

Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: ER24–1603–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: NSA, Service Agreement No. 7205; AE2–072 to be effective 5/22/2024.

Filed Date: 3/22/24.

Accession Number: 20240322–5168.

Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: ER24–1604–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of SA No. 6241; AE2–303 to be effective 5/22/2024.

Filed Date: 3/22/24.

Accession Number: 20240322–5185.

Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: ER24–1605–000.

Applicants: Strauss Wind, LLC.

Description: Compliance filing: Compliance filing 2024 to be effective 3/23/2024.

Filed Date: 3/22/24.

Accession Number: 20240322–5189.

Comment Date: 5 p.m. ET 4/12/24.

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: March 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06640 Filed 3–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2741–039]

Kings River Conservation District; Notice Of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 2741–039

c. Date Filed: February 1, 2024.

d. *Submitted By:* Kings River Conservation District (KRCD).

e. *Name of Project:* Jeff L. Taylor Pine Flat Power Plant.

f. *Location:* On the Kings River in Fresno County, California.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* David Merritt, General Manager, Kings River Conservation District, 4886 E. Jensen Ave., Fresno, CA 93725; (559) 237–5567; email: *powerplantferc@krcd.org.*

i. *FERC Contact:* Shannon Archuleta at (202) 552–2739 or email at *shannon.archuleta@ferc.gov.*

j. KRCD filed its request to use the Traditional Licensing Process on February 1, 2024. KRCD provided public notice of its request on February 15, 2024. In a letter dated March 22, 2024, the Acting Director of the Division of Hydropower Licensing approved KRCD's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402. We are also initiating consultation with the California State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating KRCD as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. KRCD filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website *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 at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

You may 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 licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 2741. Pursuant to 18 CFR 16.20 each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 31, 2027.

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: March 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06641 Filed 3–27–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0883; FRL11863–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Greenhouse Gas Reporting Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Greenhouse Gas Reporting Program (EPA ICR Number 2300.20, OMB Control Number 2060–0629) 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 March 31, 2024. Public comments were previously requested via the **Federal Register** on May 4, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments must be submitted on or before April 29, 2024.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2022–0883, to EPA online using *http://www.regulations.gov* (our preferred method), 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. 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: Joe Ford, Climate Change Division, Office of Atmospheric Protection, Office of Air and Radiation (Mail Code 6207A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–7659; fax number: 202–343–2342; email address: *ford.joe@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through March 31, 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 May 4, 2023, during a 60-day comment period (88 FR 28546). 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: In response to the FY2008 Consolidated Appropriations Act (H.R. 2764; Pub. L. 110–161) and under authority of the Clean Air Act, the EPA finalized the Mandatory Reporting of Greenhouse Gases Rule (GHG Reporting Rule) (74 FR 56260; October 30, 2009). The GHG Reporting Rule, which became effective on December 29, 2009, establishes reporting requirements for certain large facilities and suppliers. It does not require control of greenhouse gases. Instead, it requires that sources emitting greenhouse gases, supplying certain products that contain greenhouse gases, or injecting carbon dioxide (CO_2) underground in quantities above certain threshold levels, to monitor and report annual emissions in amounts of carbon dioxide equivalent (CO_2e).

Subsequent rules have promulgated requirements for additional facilities, suppliers, and mobile sources; provided clarification and corrections to existing requirements; finalized CBI determinations; amended recordkeeping requirements; and implemented an alternative verification approach. Collectively, the GHG Reporting Rule and its associated rulemakings are referred to as the Greenhouse Gas Reporting Program (GHGRP).

The purpose for this ICR is to renew and revise the GHG Reporting Rule ICR to update and consolidate the burdens and costs imposed by the current ICR under the GHGRP.

Form Numbers: None.

Respondents/affected entities: Facilities emitting GHGs, supplying certain products that contain GHGs, or injecting CO_2 underground in quantities above certain threshold levels of CO_2e.

Respondent's obligation to respond: Mandatory (42 U.S.C. 7401–7671q).

Estimated number of respondents (annual average): 12,434.

Frequency of response: Annually.

Total estimated burden: 705,554 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $95,175,521 (per year), which includes $33,282,257 annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of 34,458 hours in the total estimated respondent burden compared with that identified in the last ICR renewal. Furthermore, the annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.07 hours per response. The last ICR estimated an average burden of 0.08 hours per response. This change in burden reflects an adjustment in the number of respondents from projected to actual and an adjustment of labor rates, capital, and operation and maintenance (O&M) costs to reflect 2021 dollars. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal Agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information; and disclosing and providing information; adjusting the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; training personnel to be able to respond to a collection of information; searching data sources; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2024–06553 Filed 3–27–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0534, FRL–11861–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget; Comment Request; Identification, Listing, and Rulemaking Petitions (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Identification, Listing and Rulemaking Petitions (Renewal), EPA ICR Number 1189.32, OMB Control Number 2050–0053 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 March 31, 2024. Public comments were previously requested via the **Federal Register** on July 28, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before April 29, 2024.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2018–0534, 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: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0453; *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through March 31, 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 July 28, 2023 during a 60-day comment period (88 FR 48845). 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: Under the authority of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended,

Congress directed the Environmental Protection Agency (EPA) to implement a comprehensive program for the safe management of hazardous waste. In addition, Congress wrote that ''[a]ny person may petition the Administrator for the promulgation, amendment or repeal of any regulation'' under RCRA (section 7004(a)). 40 CFR parts 260 and 261 contain provisions that allow regulated entities to apply for petitions, variances, exclusions, and exemptions from various RCRA requirements.

The following are some examples of information required from petitioners under 40 CFR part 260. Under 40 CFR 260.20(b), all rulemaking petitioners must submit basic information with their demonstrations, including name, address, and statement of interest in the proposed action. When a petition is submitted, the Agency reviews materials, deliberates, publishes its tentative decision in the **Federal Register**, and requests public comment. The EPA also may hold informal public hearings (if requested by an interested person or at the discretion of the Administrator) to hear oral comments on its tentative decision. After evaluating all comments, the EPA publishes its final decision in the **Federal Register**.

With this renewal, this ICR will no longer include the burden associated with the disposal of coal combustion residuals (CCR) from electric utilities as solid waste under Subtitle D of RCRA, found at 40 CFR part 257, subpart D. That burden is covered by OMB Control Number 2050–0223.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are the private sector, as well as State, Local, or Tribal Governments.

Respondent's obligation to respond: Required to obtain or retain a benefit (RCRA Sections 1008, 4004, 4005(a)).

Estimated number of respondents: 2,603.

Frequency of response: On occasion.

Total estimated burden: 62,778 hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $11,679,180, which includes $8,860,784 in annualized capital and O&M costs.

Changes in the estimates: There is total decrease of 240,430 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. There is a decrease of 175,319 hours as the hours associated with the information collection requirements for the disposal of CCR from this ICR were transferred to 2050–0223 in order to better align the collection requirements as they relate to RCRA and the disposal of CCR; specifically, as they relate to 40 CFR part 257. In addition, there was a decrease of $7,538,452 in capital/O&M costs to 2050–0223 as part of this realignment.

The remaining decrease of approximately 65,111 hours and $1,775,173 is an adjustment to the existing estimates based on data gathered through consultations with EPA Regional and State Offices and the regulated community, not due to program changes.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2024–06555 Filed 3–27–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2023–0110; FRL–11862–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NSPS for Metal Coil Surface Coating (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Metal Coil Surface Coating (EPA ICR Number 0660.14, OMB Control Number 2060–0107) 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 March 31, 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: Comments may be submitted on or before April 29, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2023–0110, to EPA online using *www.regulations.gov/* (our preferred method), 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 for the proposed 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 comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: 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 March 31, 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 *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for the regulations published at 40 CFR part 60, subpart TT were proposed on January 5, 1981, promulgated on November 1, 1982, and most recently amended on October 17, 2000. These regulations apply to existing and new metal coil surface coating facilities with the following surface coating lines: each prime coat operation; each finish coat operation; and each prime and finish coat operation cured simultaneously, where the finish coat is applied wet-on-wet over the prime coat. New facilities include those that commenced construction, modification, or reconstruction after the date of proposal.

This information is being collected to assure compliance with 40 CFR part 60, subpart TT.

Form Numbers: None.

Respondents/affected entities: Metal coil surface coating facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart TT).

Estimated number of respondents: 158 (total).

Frequency of response: Initially, quarterly, occasionally, semiannually, and annually.

Total estimated burden: 16,200 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,200,000 (per year), which includes $151,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations: (1) the regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Although there are no changes in the regulatory requirements and there is no significant industry growth, there is a decrease in the operation and maintenance (O&M) costs due to a calculation correction to the number of respondents using temperature monitoring systems.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2024–06554 Filed 3–27–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R08–SFUND–2024–0009; FRL–11812–01–R8]

Proposed CERCLA Administrative Settlement Agreement and Order on Consent for Remedial Investigation Addendum/Focused Feasibility Study

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERLCA''), notice is hereby given that a Proposed Administrative Settlement Agreement and Order on Consent for Remedial Investigation Addendum/Focused Feasibility Study (''Proposed Agreement'') associated with the Smeltertown Site near Salida, Chaffee County, Colorado (''Site'') was executed by the U.S. Environmental Protection Agency (''EPA''), Region 8 and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before April 29, 2024.

ADDRESSES: The Proposed Agreement and additional background information relating to the agreement will be available upon request. Any comments or requests or for a copy of the Proposed Agreement should be addressed to Julie Nicholson, Enforcement Specialist, Superfund and Emergency Management Division, Environmental Protection Agency-Region 8, Mail Code 8SEM–PAC, 1595 Wynkoop Street, Denver, Colorado 80202, telephone number: (401) 714–6143, email address: *nicholson.julie@epa.gov* and should reference the Smeltertown Site.

You may also send comments, identified by Docket ID No. EPA–R08–SFUND–2024–0009 to 40. Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Kayleen Castelli, Senior Assistant Regional Counsel, Office of Regional Counsel, Environmental Protection Agency, Region 8, Mail Code 8ORC–LEC, 1595 Wynkoop, Denver, Colorado 80202, telephone number:(303) 312–6174, email address: *castelli.kayleen@epa.gov.*

SUPPLEMENTARY INFORMATION: The Proposed Agreement would resolve potential EPA claims under section 107(a) of CERCLA, against Butala Construction Co. (''Settling Party'')for the performance of a remedial investigation addendum and focused feasibility study (RIA/FFS) for Operable Unit 2 (OU2) and a portion of the Vista Del Rio Subdivision (the ''Property''), which is associated with the Smeltertown Site. The RIA/FFS will evaluate the possible impacts and potential remedies for the actual and/or threaten ''release'' of any hazardous substance resulting from Settling Party's activities and will analyze the remedy selected in the OU2 Record of Decision issued by the EPA in 1998 as it relates to those activities. This Settlement separately contemplates the soil and groundwater sampling programs for the Vista Del Rio subdivision by the Settling Party. The Vista Del Rio Subdivision is the subdivision of the 18-acres along the western edge of the Site. The Proposed Settlement also provides for the payment of certain response costs incurred by the United States at or in connection with the Site and the Vista Del Rio Subdivision and provides a covenant not to sue or to take administrative action from the United States to the Settling Party pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a) with regard to the Property.

For thirty (30) days following the date of publication of this document, EPA will receive electronic comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection by request. Please see the **ADDRESSES** section of this document for instructions.

Ben Bienlenberg,

Acting Division Director, Superfund and Emergency Management Division, Region 8.

[FR Doc. 2024–06643 Filed 3–27–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX and 3060–0928; FR ID 211190]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before April 29, 2024.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information

collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–XXXX.

Title: Class A Television Stations—Low Power Protection Act.

Type of Review: New collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents and Responses: 50 respondents and 250 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection 47 U.S.C. 151, 152, 154(i), 154(j), 303, 307, 309, 311, 336(f), and the Low Power Protection Act, Public Law 117–344, 136 Stat. 6193 (2023).

Total Annual Burden: 250 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission will use the information collected under this information collection to determine whether applicants can convert to Class A status pursuant to the Low Power Protection Act.

On December 11, 2023, the Commission adopted a Report and Order, FCC 23–112, to implement the Low Power Protection Act (LPPA or Act), which was enacted on January 5, 2023. The LPPA provides certain low power television (LPTV) stations with a limited window of opportunity to apply for primary spectrum use status as Class A television stations. The Report and Order establishes the period during which eligible stations may file applications for Class A status, eligibility and interference requirements, and the process for submitting applications.

The Report and Order adopts new rules 47 CFR 73.6030(c) and (d) which contain information collections. Section 73.6030(c) provides that applications for conversion to Class A status must be submitted using FCC Form 2100, Schedule F within one year beginning on the date on which the Commission issues notice that the rules implementing the Low Power Protection Act take effect. The licensee will be required to submit, as part of its application, a statement concerning the station's operating schedule during the 90 days preceding January 5, 2023 and a list of locally produced programs aired during that time period. The applicant may also submit other documentation, or may be requested by Commission staff to submit other documentation, to support its certification that the licensee meets the eligibility requirements for a Class A license under the Low Power Protection Act. Section 73.6030(d) provides that A Class A television broadcast license will only be issued under the Low Power Protection Act to a low power television licensee that files an application for a Class A Television license (FCC Form 2100, Schedule F), which is granted by the Commission.

Under this new information collection, the Commission will collect the information, disclosures, and certifications required by sections 73.6030(c) and (d) of the Commission's rules from each applicant seeking to convert to Class A status and will use the information, disclosures, and certifications to determine whether an applicant is qualified to convert to a Class A station. Without the information collected, the Commission will not be able to determine if an applicant is qualified to become a Class A station under the LPPA.

OMB Control No.: 3060–0928.

Title: FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule F (Formerly FCC 302–CA); 47 CFR 73.6028; Section 73.3700(b)(3); Section 73.3700(h)(2) and Section 73.3572(h).

Form No.: FCC Form 2100, Schedule F.

Type of Review: Revision of a currently approved information collection.

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

Number of Respondents and Responses: 115 respondents and 165 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement and One time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority is contained in Statutory authority for the collection of information associated with the LPPA is contained in Sections 1, 2, 4(i), 4(j), 303, 307, 309, 311, and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 303, 307, 309, 311, 336(f) of the Communications Act of 1934, as amended, and the Low Power Protection Act, Public Law 117–344, 136 Stat. 6193 (2023).

Statutory authority for the collection of information associated with the CBPA is contained in Sections 154(i), 307, 308, 309, and 319 of the Communications Act of 1934, as amended, the Community Broadcasters Protection Act of 1999, and the Middle Class Tax Relief and Job Creation Act of 2012.

Total Annual Burden: 460 hours.

Annual Cost Burden: $41,725.

Needs and Uses: The FCC Form 2100, Schedule F is used by Low Power TV (LPTV) stations that seek to convert to Class A status; existing Class A stations seeking a license to cover their authorized construction permit facilities; and Class A stations entering into a channel sharing agreement. The FCC Form 2100, Schedule F requires a series of certifications by the Class A applicant as prescribed by the Community Broadcasters Protection Act of 1999 (CBPA). Licensees will be required to provide weekly announcements to their listeners: (1) informing them that the applicant has applied for a Class A license and (2) announcing the public's opportunity to comment on the application prior to Commission action.

On December 11, 2023, the Commission adopted a Report and Order, FCC 23–112, to implement the Low Power Protection Act (LPPA or Act), which was enacted on January 5, 2023. The LPPA provides certain low power television (LPTV) stations with a limited window of opportunity to apply for primary spectrum use status as Class A television stations. The Report and Order establishes the period during which eligible stations may file applications for Class A status, eligibility and interference requirements, and the process for submitting applications. The Report and Order provides that applications to convert to Class A status under the Low Power Protection Act must be filed using FCC Form 2100, Schedule F. The application form requires certifications by the applicant as prescribed by the LPPA. This submission is being made to OMB for approval of the modified FCC Form 2100, Schedule F. In addition, LPTV stations that file an application to convert to Class A status must provide local public notice of the filing of the application pursuant to 47 CFR 73.3580(c). Specifically, the station must both broadcast on-air announcements and give online notice. This submission also reflects the burden associated with that information collection and is also being made to request Office of Management and Budget (OMB) approval of that collection.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–06603 Filed 3–27–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Fiber Intake and Laxation Outcomes

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submission.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Fiber Intake and Laxation Outcomes,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before April 29, 2024.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Kelly Carper, Telephone: 301–427–1656 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Fiber Intake and Laxation Outcomes.* AHRQ is conducting this review pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Fiber Intake and Laxation Outcomes.* The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/fiber-intake/protocol.*

This is to notify the public that the EPC Program would find the following information on *Fiber Intake and Laxation Outcomes* helpful:

- A list of completed studies that your organization has sponsored for this topic. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements, if relevant: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this topic.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including, if relevant, a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this topic and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on topics not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted,

please sign up for the email list at: *https://effectivehealthcare.ahrq.gov/email-updates.*

The review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Question (KQ)

KQ 1: What is the association between fiber intake and laxation/gut motility in apparently healthy individuals?

KQ 1a: How does the association vary among people in different life stages?

PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, and Setting)

STUDY ELIGIBILITY CRITERIA BASED ON POPULATION, INTERVENTION, COMPARATOR, OUTCOME (PICO), AND OTHER ELEMENTS

Element	Inclusion criteria	Exclusion criteria
Population	• Individuals of any age, including pregnant or lactating women. • General population, including individuals with overweight/obese and those at elevated cardiometabolic disease risk. ○ Overweight/obese. ○ Hyperglycemia and related conditions, including type 2 diabetes. ○ Dyslipidemia. ○ Hypertension/high blood pressure.	• Those with diseases/health-related conditions or taking medications that could impact gut motility/laxation (*e.g.,* irritable bowel syndrome; chronic constipation; lactose intolerance; use of medications that stimulate laxation or cause constipation). • Those with chronic constipation (100% of study population), including functional constipation. • Study eligibility criteria includes ''abnormal laxation'' as defined by either a minimum or maximum number of defecations per week (or equivalent). • Those with other gastrointestinal-related conditions, symptoms, diagnoses; ○ Including diverticulosis. • Those with diseases/health-related conditions or taking medications that could alter the gut microbiota composition/diversity (*e.g.,* antibiotics). • Those with cancer, gastrointestinal disease, undernutrition, or who have had gut resection or bariatric surgery. • Those with acute illness or injury. • Pre-term babies (gestational age <37 weeks), babies with low birth weight (<2,500 g) or small for gestational age (per study criteria). • Enteral/tube fed. • Animal, *in vitro,* or other non-human studies.
Interventions	• Fiber intake, including different types and sources of fiber. • Fiber naturally occurring in food, enriched in food, dietary supplements, and diets that can be defined on the basis of fiber content. ○ Must specify quantity of fiber intake.	• Diets (or other interventions or exposures) where the fiber intake has not been quantified or explicitly specified. • Combinations of fiber (from food or dietary supplements) and other entities with a purported effect on motility, digestion, or microbiota (*e.g.,* psyllium + probiotic). • Combinations of fiber supplements and other entities (*e.g.,* minerals, vitamins).
Comparators	• Different levels (dosages) of fiber. • No added fiber or placebo. • Different types or sources of fiber. • Different formulations of fiber.	• Other entities with a purported effect on motility, digestion, or microbiota (*e.g.,* probiotic). • Alternative food group diets (*e.g.,* red meat, fish, high protein).
Interventions vs. Comparators.	• Fiber (supplement) vs. no fiber (supplement). • Higher fiber (diet) vs. lower fiber (diet). • Fiber vs. alternative fiber. • Fiber vs. alternative fiber dose. • Fiber vs. alternative fiber formulation.	• Fiber + probiotic (etc.) vs. no intervention or placebo. • Fiber + probiotic (etc.) vs. same probiotic (etc.). • Fiber vs. probiotic (etc.). • High-fiber diet vs. red meat diet (etc.).
Outcomes	• Laxation (*i.e.,* gut motility). ○ Fecal frequency (*e.g.,* number of defecations per week). ○ Gastrointestinal transit time. ▪ Bristol stool scale (stool consistency). ▪ Dye, marker studies. ○ Fecal output, weight/bulk (g/day). ○ Ease of defecation (*e.g.,* constipation).	• Other disease or health outcomes. • Flatulence, eructation, bloating, etc.
Subgroups of interest	• Specific life stages: ○ Infants. ○ Children and adolescents. ○ Adults (19–64). ○ Older adults (≥65). ○ Pregnant or postpartum. ○ Sex (male, female).	None.
Design	• Randomized controlled trials. ○ Parallel or cross-over. • N ≥10/group.	• Observational studies. • All other study designs.

STUDY ELIGIBILITY CRITERIA BASED ON POPULATION, INTERVENTION, COMPARATOR, OUTCOME (PICO), AND OTHER ELEMENTS—Continued

Element	Inclusion criteria	Exclusion criteria
Timing	• Minimum duration of intervention: 2 weeks. • In cross-over studies, any change in outcome measure must exclude data from the first week after end of any prior treatments. This may be accomplished by a washout period of at least 1 week.	None.
Setting	• General population.	• Hospital or other acute care settings.
Publication	• English language. • Published in peer-reviewed journals.	• Non-English language text. • Conference abstracts and other non-peer-reviewed data.

Dated: March 18, 2024.

Marquita Cullom,

Associate Director.

[FR Doc. 2024–06595 Filed 3–27–24; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–R–38 and CMS–10400]

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 May 28, 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–R–38 Conditions for Certification for Rural Health Clinics and Conditions for Coverage for Federally Qualified Health Centers in 42 CFR 491

CMS–10400 Establishment of Qualified Health Plans and American Health Benefit Exchanges

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:* Reinstatement of a previously approved collection; *Title of Information Collection:* Conditions for Certification for Rural Health Clinics and Conditions for Coverage for Federally Qualified Health Centers in 42 CFR 491; *Use:* The Conditions for Medicare Certification (CfCs) for Rural Health Clinics (RHCs) are based on criteria prescribed in law and designed to ensure that each RHC has properly trained staff to provide appropriate care and to assure a safe physical environment for patients. The information collection requirements described herein are needed to implement the Medicare and Medicaid CfCs for a total of 5,349 RHCs. These requirements are similar in intent to standards developed by industry organizations such as the Joint Commission on Accreditation of Hospitals, and the National League of Nursing/American Public Association, and merely reflect accepted standards of management and care to which rural health clinics must adhere.

Federally Qualified Health Centers (FQHCs) are also subject to Conditions for Certification to participate in the Medicare and Medicaid programs. These health and safety standards are the foundation for improving quality and protecting the health and safety of Medicare and Medicaid beneficiaries. The information collection requirements described herein affect approximately 11,252 FQHCs. The current information collection requirements at 42 CFR 491.9(b) and 491.11 are applicable to both RHCs and FQHCs. *Form Number:* CMS–R–38 (OMB control number: 0938–0334); *Frequency:* Recordkeeping and Reporting—Annually; *Affected Public:* Business or other for-profits; *Number of Respondents:* 17,663; *Total Annual Responses:* 17,663; *Total Annual Hours:* 104,245. (For policy questions regarding this collection contact Claudia Molinar at 410–786–8445.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Establishment of Qualified Health Plans and American Health Benefit Exchanges; *Use:* On March 23, 2010, the Patient Protection and Affordable Care Act (PPACA; Pub. L. 111–148) was signed into law, and on March 30, 2010, the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) was signed into law. The two laws implement various health insurance policies. Section 1303 of the PPACA, as implemented in 45 CFR 156.280, specifies standards for issuers of qualified health plans (QHPs) through the Exchanges that cover abortion services for which public funding is prohibited (also referred to as non-Hyde abortion services or non-excepted abortion services). In the Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers (2012 Exchange Establishment Rule) (77 FR 18310), we codified the statutory provisions of section 1303 of the PPACA in regulation at 45 CFR 156.280. Under 45 CFR 156.280(e)(5)(ii), each QHP issuer that offers coverage of abortion services for which public funding is prohibited must submit to the State Insurance Commissioner a segregation plan describing how the QHP issuer establishes and maintains separate allocation accounts for any QHP covering abortion services for which public funding is prohibited, and pursuant to § 156.280(e)(5)(iii), each QHP issuer must annually attest to compliance with PPACA section 1303 and applicable regulations. This segregation plan is used to verify that the QHP issuer's financial and other systems fully conform to the segregation requirements required by the PPACA.

The Centers for Medicare and Medicaid Services (CMS) is renewing this information collection request (ICR) in connection with the segregation plan requirement under 45 CFR 156.280(e)(5)(ii). The burden estimates for this collection of information renewal reflect the time and effort for QHP issuers to submit a segregation plan that demonstrates how the QHP issuer segregates QHP funds in accordance with applicable provisions of generally accepted accounting requirements, circulars on funds management of the Office of Management and Budget (OMB) and guidance on accounting of the Government Accountability Office. CMS is also renewing the ICR in connection with the annual attestation requirement under 45 CFR 156.280(e)(5)(iii). The burden estimate for this ICR reflects the time and effort associated with QHP issuers submitting an annual attestation to the State Insurance Commissioner attesting to compliance with section 1303 of the PPACA. *Form Number:* CMS–10400 (OMB control number: 0938–1156); *Frequency:* Annually); *Affected Public:* Private Sector (business or other for-profits, not-for-profits institutions); *Number of Respondents:* 1,617; *Number of Responses:* 1,617; *Total Annual Hours:* 5,508.75. (For questions regarding this collection, contact Agata Pelka at 667–290–9979).

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–06645 Filed 3–27–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10593]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by April 29, 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or

reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Establishment of an Exchange by a State and Qualified Health Plans; *Use:* Section 1311(d) of the Affordable Care Act requires an Exchange to be a governmental agency or nonprofit entity established by a State; requires an Exchange make Qualified Health Plans (QHPs) available to eligible individuals and employers; and identifies the minimum functions an Exchange must perform. CMS and other federal partners will use the data collected from states operating SBEs to determine Exchange compliance with federal standards for operating the Exchange. The data that health insurance issuers, Exchanges, and other entities that Exchanges contract within performing Exchange functions collect will help to inform CMS, Exchanges, and health insurance issuers on the participation of individuals, employers, and employees in the individual Exchange and SHOP. *Form Number:* CMS–10593 (OMB control number: 0938–1312); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profits and Not-for-profits institutions; *Number of Respondents:* 20; *Total Annual Responses:* 20; *Total Annual Hours:* 55,026. (For policy questions regarding this collection contact Tiffany Y. Animashaun at *Tiffany.Animashaun@cms.hhs.gov*).

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–06647 Filed 3–27–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Runaway and Homeless Youth—Homeless Management Information System (RHY–HMIS; Office of Management and Budget# 0970–0573)

AGENCY: Family and Youth Services Bureau, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Family and Youth Services Bureau's Runaway and Homeless Youth (RHY) Program is requesting a 3-year extension of the Runaway and Homeless Youth—Homeless Management Information System (RHY–HMIS) data collection efforts (OMB #0970–0573, expiration 07/31/2024). There are no changes requested to the data elements.

DATES: *Comments due within 30 days of publication.* OMB must decide about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The RHY Program has a requirement to collect information from all youth who receive shelter and supportive services with RHY funding. In April 2015, the Administration on Children, Youth and Families, through a formal Memorandum of Understanding, integrated the RHY data collection with the U.S. Department of Housing and Urban Development's (HUD) HMIS and HUD's data standards along with other federal partners. HUD has OMB approval for HUD's data standards and ACF has approval under a separate OMB number for the RHY data elements. The data collection effort includes universal data elements that are collected by all federal partners and RHY program specific elements, which are tailored to the RHY Program using HUD's HMIS.

Respondents: Youth who receive emergency and longer-term shelter and supportive services under RHY funding.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
RHY–HMIS: Basic Center Program (Intake)	123,000	1	0.38	46,740	15,580
RHY–HMIS: Basic Center Program (Exit)	123,000	1	0.33	40,590	13,530
RHY–HMIS: Transitional Living Program (including Maternity Group Home program and TLP Demonstration Programs; Intake)	24,000	1	0.38	9,120	3,040
RHY–HMIS: Transitional Living Program (including Maternity Group Home program and TLP Demonstration Programs; Exit)	24,000	1	0.33	7,920	2,640
RHY–HMIS: Street Outreach Program (Contact)	108,000	1	0.5	54,000	18,000
RHY–HMIS: Street Outreach Program (Engagement)	30,000	1	0.28	8,400	2,800
RHY Funded Grantees (data entry)	308,225	2	0.36	221,922	73,974
RHY Funded Grantees (data submission)—FY24	675	2	0.16	216	72
RHY Funded Grantees (data submission)—FY25 & FY26	675	8	0.16	864	288
Estimated Total Annual Burden Hours					129,924

Authority: Reconnecting Homeless Youth Act of 2008 (Pub. L. 110–378) through Fiscal Year (FY) 2013 and reauthorized by the Juvenile Justice Reform Act through FY 2019.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–06546 Filed 3–27–24; 8:45 am]

BILLING CODE 4184–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

This will be a hybrid meeting held in-person and virtually and will be open to the public, as indicated below, with attendance limited to space available. Individuals who plan to attend in-person or view the virtual meeting and need special assistance such as sign language interpretation or other reasonable accommodations, should notify Dr. Jeanette Marketon via email at *jeanette.marketon@nih.gov* five days in advance of the meeting. The open session of the meeting can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/*.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: May 7, 2024.

Closed: 10:30 a.m. to 11:45 a.m.

Agenda: To review and evaluate grant applications.

Open: 12:45 p.m. to 5:00 p.m.

Agenda: Presentations and other business of the Council.

Place: Neuroscience Center, Conference Room 1155/1145, National Institutes of Health, 6001 Executive Boulevard, Rockville, MD 20852 (Hybrid Meeting).

Contact Person: Susan R.B. Weiss, Ph.D., Director, Division of Extramural Research, Office of the Director, National Institute on Drug Abuse, NIH, Three White Flint North, RM 09D08, 11601 Landsdown Street, Bethesda, MD 20852, 301–443–6480, *sweiss@nida.nih.gov*.

Contact Person: Jeanette Marketon, Ph.D., PMP Director, Office of Extramural Policy. Division of Extramural Research, Office of Extramural Policy, National Institute on Drug Abuse, NIH, Three White Flint North, RM 09C71, 11601 Landsdown Street, Bethesda, MD 20852, 301–443–5239, *jeanette.marketon@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to Dr. Jeanette Marketon via email at *jeanette.marketon@nih.gov*. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 25, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06612 Filed 3–27–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) Review SEP–II.

Date: May 15–16, 2024.

Time: 9:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Anita T. Tandle, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850, 240–276–5085, *tandlea@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–10: NCI Clinical and Translational Cancer Research.

Date: May 15, 2024.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W104, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: David G. Ransom, Ph.D., Chief, Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W104, Rockville, Maryland 20850, 240–276–6351, *david.ransom@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Comprehensive Partnerships to Advance Cancer Health Equity (CPACHE, U54).

Date: May 16, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W108, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Clifford W. Schweinfest, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W108, Rockville, Maryland 20850, 240–276–6343, *schweinfestcw@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Diet, Lipid Metabolism, and Cancer.

Date: May 16, 2024.

Time: 9:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Shree Ram Singh, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850, 240–672–6175, *singhshr@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–7: NCI Clinical and Translational Cancer Research.

Date: May 17, 2024.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W640, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Saejeong J. Kim, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W640, Rockville, Maryland 20850, 240–276–7684, *saejeong.kim@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–1: NCI Clinical and Translational Cancer Research.

Date: May 23, 2024.

Time: 9:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Shree Ram Singh, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850, 240–672–6175, *singhshr@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel SEP–3; NCI Clinical and Translational Cancer Research.

Date: June 5, 2024.

Time: 9:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W612, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Prashant Sharma, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W612, Rockville, Maryland 20850, 240–275–6351, *prashant.sharma@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 22, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06548 Filed 3–27–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: May 7, 2024.

Closed: 9:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Date: May 8, 2024.

Closed: 9:15 a.m. to 3:55 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Date: May 9, 2024.

Closed: 9:30 a.m. to 3:20 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institute on Drug Abuse, NIH, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Contact Person: Megan E. Bollinger, M.S., Management Analyst, Office of the Scientific Director, National Institute on Drug Abuse, 251 Bayview Boulevard, Suite 200, Baltimore, MD 21224, (443) 740–2466, *Megan.Bollinger@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 25, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06618 Filed 3–27–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0233]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0011

AGENCY: Coast Guard, DHS.

ACTION: Sixty-Day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0011, Applications for Private Aids to Navigation and for Class I Private Aids to Navigation on Artificial Islands and Fixed Structures; without change.

Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before May 28, 2024.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2024–0233] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email *hqs-dg-m-cg-61-pii@uscg.mil* for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2024–0233, and must be received by May 28, 2024.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Applications for Private Aids to Navigation and for Class I Private Aids to Navigation on Artificial Islands and Fixed Structures.

OMB Control Number: 1625–0011.

Summary: Under the provision of 14 U.S.C. 81, the Coast Guard is authorized to establish aids to navigation. 14 U.S.C. 83 prohibits establishment of aids to navigation without permission of the Coast Guard. 33 CFR 66.01–5 provides a means for private individuals to establish privately maintained aids to navigation. Under 43 U.S.C. 1333(d), the Secretary of Homeland Security has the authority to promulgate and enforce regulations concerning lights and other warning devices relating to the promotion of safety of life and property on artificial islands, installations, and other devices on the outer continental shelf involved in the exploration, development, removal, or transportation of resources there from. The Secretary delegated this authority to the Commandant of the Coast Guard under Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3. Coast Guard's regulations in 33 CFR part 67 prescribe the type of aids to navigation that must be installed on artificial islands and fixed structures. Under the provision of 33 U.S.C. 409, Congress requires owners of vessels to immediately mark sunken craft unless Coast Guard issues a waiver. The Coast Guard's regulations for marking of sunken vessels are set out in 33 CFR part 64.11. The information collected for private aids to navigations and markings can only be obtained from the owners of sunken vessels. The information collection requirements related to these aids to navigation applications are contained in 33 CFR 66.01–5 and 67.35–5.

Need: The information in these private aids to navigation applications (CG–2554 and CG–4143) provides the Coast Guard with vital information about private aids to navigation and is essential for safe marine navigation. These forms are required under 33 CFR parts 66 and 67. The information is reviewed to ensure the private aid is in compliance with current regulations. Additionally, these forms provide the Coast Guard with information which can be distributed to the public to advise of new, or changes to private aids to navigation. In addition, collecting the applicant's contact information is important because it allows the Coast Guard to contact the applicant should there be a discrepancy or mishap involving the permitted private aid to navigation. Certain discrepancies create hazards to navigation and must be responded to and promptly corrected or repaired.

Forms:

- CG–2554, Private Aids to Navigation Application.
- CG–4143, Application for Class I Private Aids to Navigation on Artificial Islands and Fixed Structures.

Respondents: Owners of private aids to navigation.

Frequency: On occasion.

Hour Burden Estimate: The estimated annual burden has decreased from 2,000 hours to 1,709 hours due to a decrease in the number of respondents a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: March 22, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–06542 Filed 3–27–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0234]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0102

AGENCY: Coast Guard, DHS.

ACTION: Sixty-Day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0102, National Response Resource Inventory; without change.

Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before May 28, 2024.

ADDRESSES: You may submit comments identified by Coast Guard docket

number [USCG–2024–0234] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email *hqs-dg-m-cg-61-pii@uscg.mil* for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2024–0234, and must be received by May 28, 2024.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Title: National Response Resource Inventory.

OMB Control Number: 1625–0102.

Summary: The information is needed to improve the effectiveness of deploying response equipment in the event of an oil spill. It may also be used in the development of contingency plans.

Need: Section 4202 of the Oil Pollution Act of 1990 (Pub. L. 101–380) requires the Coast Guard to compile and maintain a comprehensive list of spill removal equipment in a response resource inventory (RRI). This collection helps fulfill that requirement.

Forms: None.

Respondents: Oil spill removal organizations.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 1,378 hours to 1,964 hours a year, primarily due to the addition of the new optional Non-Floating Oils/Dispersants application.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: March 22, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–06543 Filed 3–27–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0031; OMB No. 1660–NW157]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Generic Clearance for FEMA's Major Disaster, Emergency Response, Emergency Recovery, and Hazard Mitigation Programs

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of new collection and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning a new generic information collection allowing FEMA to individually update instruments needed to provide financial, non-financial, program management, and technical assistance for FEMA's major disaster, emergency response, emergency recovery, and hazard mitigation activities.

DATES: Comments must be submitted on or before April 29, 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address: *FEMA-Information-Collections-Management@fema.dhs.gov* or Jennie Orenstein, Branch Chief, FEMA's Federal Insurance and Mitigation Administration's Policy, Tools and Training Branch, at *jennie.gallardy@fema.dhs.gov* or (202) 212–4071.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended), 42 U.S.C. 5121–5207

(Stafford Act) provides broad authority to FEMA for disaster and emergency relief operations, reducing risk to people and property from hazards, and related activities and operations. The Stafford Act authorizes FEMA to provide financial and technical assistance to assist state, local, territorial, and Tribal (SLTT) governments and certain private non-profit (PNP) entities with the response to and recovery from Presidentially declared major disasters and emergencies, and the implementation of hazard mitigation measures and related activities that reduce or eliminate long-term risk to people and property from hazards and their effects.

The National Flood Insurance Act of 1968 (''NFIA''), as amended, and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001, *et seq.*) authorize FEMA's National Flood Insurance Program (NFIP), including a wide range of related activities. For instance, the NFIA authorizes FEMA to provide financial assistance for planning and carrying out projects and activities designed to reduce the risk of flood damage to NFIP-insured structures.

FEMA routinely receives additional guidance from Congress, through new legislation, and the President through Executive Orders (E.O.). Congressional and E.O. mandates often require significant adjustments to previously approved information collections to provide timely assistance to survivors and are often required within weeks. FEMA is proposing moving instruments from currently approved information collections into this new generic information collection to provide the necessary flexibility to update individual existing instruments and create new instruments as new guidance from Congress and the President is received, deliver timely assistance to survivors (both before and after a disaster), and maintain compliance with the Paperwork Reduction Act.

This proposed information collection previously published in the **Federal Register** on December 11, 2023, at 88 FR 85898 with a 60-day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Generic Clearance for FEMA's Major Disaster, Emergency Response, Emergency Recovery, and Hazard Mitigation Programs.

Type of Information Collection: New information collection.

OMB Number: 1660–NW157.

FEMA Forms: Not Applicable.

Abstract: The Stafford Act authorizes FEMA to provide financial, non-financial, program management and technical assistance to state, local, territorial, and Tribal (SLTT) governments and certain private non-profit (PNP) entities with the response to and recovery from Presidentially declared major disasters and emergencies, and the implementation of hazard mitigation measures and related activities that reduce or eliminate long-term risk to people and property from hazards and their effects. The information collected is required for FEMA's Hazard Mitigation Assistance (HMA) programs, the Revolving Loan Fund capitalization program, and the Public Assistance (PA) Program, for ongoing program implementation and optimization.

Affected Public: State, Local, or Tribal Governments; Private, Non-Profits.

Estimated Number of Respondents: 671,356.

Estimated Number of Responses: 671,356.

Estimated Total Annual Burden Hours: 633,775.

Estimated Total Annual Respondent Cost: $39,908,812.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $21,641,036.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2024–06621 Filed 3–27–24; 8:45 am]

BILLING CODE 9111–BW–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0033; OMB No. 1660–NW171]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Generic Clearance for FEMA's Collection of Feedback on Customer Satisfaction and Disaster Recovery

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of new collection and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. FEMA invites the general public to take this opportunity to comment on a new information collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, this notice seeks comments concerning a generic clearance to collect feedback from applicants on service delivery and their subsequent disaster recovery.

DATES: Comments must be submitted on or before April 29, 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-*

Management@fema.dhs.gov or Kristin Brooks, Statistician, FEMA's Recovery Reporting and Analytics Division, Customer Survey and Analysis Section, at (202) 826–6291 or *Kristin.Brooks@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Executive Order 12862, ''Setting Customer Service Standards,'' requires that all Federal Agencies implement customer service standards and provide service to the public that matches or exceeds the best service available in the private sector. To accomplish this, Federal Agencies are required to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

The Government Performance and Results Act (GPRA) of 2010 also requires quarterly performance assessments of Government programs for purposes of assessing agency performance and improvement. One of the primary goals of GPRA is to improve Federal program effectiveness and public accountability by promoting a focus on results, service quality, and customer satisfaction.

The Foundations for Evidence-Based Policymaking Act of 2018 (''Evidence Act'') supports that data collection and analysis are important inputs to be used as evidence for prioritizing agency efforts to support civic engagement, delivering on mission, service, and stewardship objectives, and supporting decision-making.

FEMA seeks Office of Management and Budget (OMB) approval for a generic clearance to collect feedback from applicants on service delivery and their subsequent disaster recovery. The Agency has numerous touchpoints with applicants through several specialized customer-facing programs. The feedback collected from applicants may be quantitative or qualitative in nature depending on the population of interest, specific research questions, and the types of required analysis.

This proposed information collection previously published in the **Federal Register** on December 11, 2023, at 88 FR 85896 with a 60-day public comment period. FEMA received one public comment stating that the creation of this generic collection was counterintuitive to the purpose of the Paperwork Reduction Act of 1995. Executive Order 12862, ''Setting Customer Service Standards,'' requires that all Federal Agencies implement customer service standards and provide service to the public that matches or exceeds the best service available in the private sector. To accomplish this, Federal Agencies are required to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The GPRA also requires quarterly performance assessments of Government programs for purposes of assessing agency performance and improvement.

FEMA currently administers several customer satisfaction surveys to meet government standards. The goal of this submission is to consolidate customer satisfaction surveys under one clearance to streamline the approval process—not to add surveys or increase burden. A generic clearance will allow FEMA to be more flexible in revising surveys when questions become outdated or irrelevant, which will ultimately minimize burden on the end-user. Survey participation is completely voluntary.

The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Generic Clearance for FEMA's Collection of Feedback on Customer Satisfaction and Disaster Recovery.

Type of Information Collection: New information collection.

OMB Number: 1660–NW171.

FEMA Forms: Not Applicable.

Abstract: Federal Agencies are required to survey their customers to determine the kind and quality of services they want and their level of satisfaction with those services. In order for the Agency to maintain customer service standards, there must be continuous assessment of service delivery throughout all phases of the customer journey. The Agency will collect, analyze, and interpret information gathered from this generic clearance to identify strengths and weaknesses with program delivery.

Affected Public: Individuals and Households; State, Local or Tribal Governments.

Estimated Number of Respondents: 389,770.

Estimated Number of Responses: 389,770.

Estimated Total Annual Burden Hours: 69,135.

Estimated Total Annual Respondent Cost: $3,015,890.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $2,886,676.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2024–06623 Filed 3–27–24; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0032; OMB No. 1660–NW170]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Generic Clearance for FEMA's Standardized Grants Performance Reporting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of new collection and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. FEMA invites the general public to take this opportunity to comment on a new information collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, this notice seeks comments concerning FEMA's grants performance reporting.

DATES: Comments must be submitted on or before April 29, 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Cassandra Henry, Ph.D., CGMS, Monitoring and Compliance Branch, Risk Management Division, Grant Programs Directorate, FEMA, at 202–257–2308 or *Cassandra.Henry@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Code of Federal Regulations (see 2 CFR 200.301 and 200.329), Federal awarding agencies must measure each recipient's performance to show achievement of program goals and objectives, share lessons learned, improve program outcomes, and foster adoption of promising practices. The Foundations for Evidence-Based Policy-Making Act of 2018 (Pub. L. 115–435) (''Evidence Act'') established processes for the Federal Government to modernize and increase impacts of reporting activities. To achieve these aims, the Federal Emergency Management Agency (FEMA) is changing its programmatic reporting to facilitate better and more consistent data collection. FEMA's Grant Programs Directorate (GPD) Risk Management Division (RMD) developed standard performance reporting instruments under this new generic collection for use across FEMA's grant programs. These instruments will replace the current quarterly performance reporting that does not have a standard format.

Grant performance reporting is a Federal requirement; standardized instruments under this generic collection will serve as the minimum performance reporting requirement for all programs. FEMA grants will collect both performance and project effectiveness measures via the required instruments under this new generic collection. Each FEMA grant program will collect only relevant, useful data. FEMA will utilize a standard framework under this generic collection but will not require each program to create the same end-product. Programs will tailor grant performance reporting instruments based on the grant's specific objectives, activities, indicators, targets, and reporting measures most appropriate for each program's funding objectives. Instruments under this generic collection are not intended to replace all existing information collection instruments that are programmatic or statutorily specific (*i.e.,* existing grant specific reporting).

This proposed information collection previously published in the **Federal Register** on December 11, 2023, at 88 FR 85897 with a 60-day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Generic Clearance for FEMA's Standardized Grants Performance Reporting.

Type of Information Collection: New information collection.

OMB Number: 1660–NW170.

FEMA Forms: Not Applicable.

Abstract: Performance reporting is required for recipients of Federal Emergency Management Agency (FEMA) grants. However, the scope and detail of previous performance reporting varied across different FEMA grant programs. FEMA is changing its programmatic reporting to facilitate better data collection. The instruments under this generic collection will satisfy the minimum performance reporting requirement for all programs while introducing a common performance reporting framework. Individual grant programs will use this framework as a starting point and then develop tailored program-specific instruments based on the program's objectives, activities, indicators, and targets. Each FEMA grant program will collect only relevant, useful data. Performance data is used by FEMA to track recipient progress, monitor project execution, evaluate program outcomes, and respond to requests from Congress.

Affected Public: State, Local, and Tribal Governments; Private Sector.

Estimated Number of Respondents: 6,200.

Estimated Number of Responses: 24,800.

Estimated Total Annual Burden Hours: 744,000.

Estimated Total Annual Respondent Cost: $41,753,280.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $10,163,120.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2024–06622 Filed 3–27–24; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0034; OMB No. 1660–NW172]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Generic Clearance for FEMA's Preparedness Grant Programs

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of new collection and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. FEMA invites the general public to take this opportunity to comment on a new information collection. In accordance

with the requirements of the Paperwork Reduction Act of 1995, this notice seeks comments concerning a new generic collection to oversee FEMA's Office of Grants Administration programmatic and financial stewardship of non-disaster grant awards.

DATES: Comments must be submitted on or before April 29, 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Amy Bulgrien, Senior Advisor, FEMA, Office of Grants Administration at *amy.bulgrien@fema.dhs.gov* and 202–880–7522.

SUPPLEMENTARY INFORMATION: FEMA's Office of Grants Administration (OGA) was created to oversee the programmatic management, financial management and administration of non-disaster grants. These programs help make the country more resilient and support the Nation's needs before, during, and after disasters. Non-disaster grants also help develop and sustain capabilities at the state, local, Tribal, and territorial levels to mitigate, prevent, protect against, respond to, and recover from terrorism or other high-consequence disasters and emergencies. The instruments in this collection are required to apply for FEMA funds and the data collected through these instruments is used by FEMA to evaluate grant applications, assess applicant risk, monitor awards for compliance, and comply with Federal laws and regulations. OGA manages and ensures accountability of FEMA preparedness grant programs under sections 430, 503(b)(2)(G), 504(a)(12), 2021–2023, and 2220–A of the Homeland Security Act of 2002. OGA programmatically manages and financially administers certain non-disaster and preparedness grants and conducts environmental planning and historic preservation activities for these grants, including homeland security and preparedness grants (with statutory authority for certain waivers) pursuant to titles V, XVIII, and XX of the Homeland Security Act of 2002; section 503(b)(2)(B), (G), and (H) of the Homeland Security Act of 2002 (6 U.S.C. 313(b)(2)(B), (G), and (H)); section 1809 of the Homeland Security Act of 2002 (6 U.S.C. 579); titles XIV and XV of the Implementing Recommendations of the 9/11 Commission Act of 2007; 46 U.S.C. 70107; sections 635 and 662 of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 723 and 762); title VI of the Stafford Act, as amended; Reorganization Plan No. 3 of 1978, 5 U.S.C. App.; sections 33 and 34 of the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. 2229, 2229a); section 3006 of the Deficit Reduction Act of 2005, as amended; section 204 of the REAL ID Act of 2005; the Coronavirus Aid, Relief, and Economic Security Act, Div. B (Pub. L. 116–136); and grant programs authorized in annual appropriations acts or future preparedness grant program authorities.

FEMA's OGA is submitting this request for a generic collection to streamline integration of stakeholder feedback on instruments. This collection will ensure all Office of Management and Budget (OMB) control number expiration dates are aligned across the OGA portfolio.

This proposed information collection previously published in the **Federal Register** on December 12, 2023, at 88 FR 86141 with a 60-day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Generic Clearance for FEMA's Preparedness Grant Programs.

Type of Information Collection: New Collection.

OMB Number: 1660–NW172.

FEMA Forms: Not Applicable.

Abstract: FEMA's Office of Grants Administration was created to oversee the programmatic management, financial management, and administration of non-disaster grants. Non-disaster grant programs help make the country more resilient and support the nation's needs before, during, and after disasters. Non-disaster grants help develop and sustain capabilities at the state and local, tribal, and territorial levels to mitigate, prevent, protect against, respond to, and recover from terrorism or other high-consequence disasters and emergencies. Instruments in this collection are required to apply for FEMA funds; data collected via the instruments is used by FEMA to evaluate grant applications, assess applicant risk, monitor awards for compliance, and comply with Federal laws and regulations.

Affected Public: State, Local or Tribal Government; Businesses or other For-profits; Not-for Profit institutions.

Estimated Number of Respondents: 35,552.

Estimated Number of Responses: 55,244.

Estimated Total Annual Burden Hours: 1,737,291.

Estimated Total Annual Respondent Cost: $100,067,963.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $3,173,288.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2024–06624 Filed 3–27–24; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2024–0008; OMB No. 1660–0023]

Agency Information Collection Activities: Proposed Collection; Comment Request; Community Assistance Contact (CAC) Reports, Community Assistance Visit (CAV) Reports, and National Flood Insurance Program (NFIP) Compliance Audit Reports

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the effectiveness of a community's implementation of the National Flood Insurance Program's Community Assistance Contact (CAC) and Community Assistance Visits (CAV) Reports. FEMA is moving away from CAV and CAC reports to the newly designed process of NFIP Compliance Audits in response to a report issued on May 5, 2020, by the Government Accounting Office (GAO) entitled ''National Flood Insurance Program: FEMA Can Improve Community Oversight and Data Sharing.'' This report gave several recommendations including the following: assess different approaches for ensuring compliance with NFIP requirements and ensure data on community visits are up-to-date and complete. While the new NFIP Compliance Audit process aligns with the old CAV and CAC processes, it is more organized, more consistent, more transparent, allows for better documentation, and more efficiently focuses resources to where they are needed most.

DATES: Comments must be submitted on or before May 28, 2024.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2024–0008. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Owen, Program Specialist, Floodplain Management Division, Mitigation Directorate, Federal Insurance and Mitigation Administration, FEMA at *Sarah.Owen@fema.dhs.gov* or (510) 409–4818. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) codified at 42 U.S.C. 4001, *et seq.* is authorized by Public Law 90–448 (1968) and expanded by Public Law 93–234 (1973). The Department of Homeland Security, Federal Emergency Management Agency (FEMA) administers the NFIP. The NFIP's major objective is to assure that participating communities are achieving the flood loss reduction objectives through adoption and enforcement of adequate land use and control measures. Sections 1315 and 1361 provide the basis for FEMA's process to evaluate how well communities are implementing their floodplain management programs. Title 44 CFR 59.22 directs the respondent to submit evidence of the corrective and preventive measures taken to meet the flood loss reduction objectives.

The two key methods FEMA uses in determining community assistance needs are through the Community Assistance Contact (CAC) and Community Assistance Visit (CAV), which serve to provide a systematic means of monitoring community NFIP compliance. Through the CAC and CAV, FEMA can also determine to what extent communities are achieving the flood loss reduction objectives of the NFIP. By providing assistance to communities, the CAC and CAV also serve to enhance FEMA's goals of reducing future flood losses, thereby achieving the NFIP's cost-containment objective. The burden hours and costs associated with this collection were re-evaluated which led to the main revision in this extension request.

FEMA is moving away from CAV and CAC reports to the newly designed process of NFIP Compliance Audits is in response to a report issued on May 5, 2020, by the Government Accounting Office (GAO) entitled ''National Flood Insurance Program: FEMA Can Improve Community Oversight and Data Sharing.'' This report gave several recommendations including the following: assess different approaches for ensuring compliance with NFIP requirements and ensure data on community visits are up-to-date and complete. While the new NFIP Compliance Audit process aligns with the old CAV and CAC processes, it is more organized, more consistent, more transparent, and allows for better documentation. The main efficiency gained in the new process is that it is a progressive audit which allows for varying depths of investigation based on the community's needs. Another efficiency is a compliance score. These two improvements will allow FEMA to better utilize limited resources to increase community compliance.

FEMA is also adding the collection of information from NFIP-participating communities in order to comply with the Endangered Species Act. The information may include the impact of the proposed development on the natural floodplain functions, the amount of fill, compensatory storage information, the amount of impervious surface, the area in which clearing/grading may occur, the number of trees removed, and other information related to hydraulic connections.

Collection of Information

Title: Community Assistance Contact (CAC) Reports, Community Assistance Visit (CAV) Reports, and National Flood Insurance Program (NFIP) Compliance Audit Reports.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0023.

FEMA Forms: FEMA Form FF–206–FY–21–141 (formerly 086–0–28(E)), Community Assistance Visit (CAV) Report; FEMA Form FF–206–FY–21–142 (formerly 086–0–29(E)), Community Assistance Contact (CAC) Report; and FEMA Form FF–206–FY–24–100, NFIP Compliance Audit Report.

Abstract: FEMA previously used the Community Assistance Contact (CAC) and the Community Assistance Visit (CAV) to make a comprehensive assessment of a community's floodplain management program. Through this assessment, FEMA assisted the community to understand the NFIP's requirements and implement effective

flood loss reductions measures. Communities can achieve cost savings through flood mitigation actions by way of insurance premium discounts and reduced property damage. The CAV and CAC processes have been updated recently to the NFIP Compliance Audit process which aims to do a more efficient, consistent and transparent job of assessing the community's floodplain management program, providing them with the needed technical assistance to improve it, and documenting the results for data analysis.

Affected Public: State, Local or Tribal Governments.

Estimated Number of Respondents: 102.

Estimated Number of Responses: 4,002.

Estimated Total Annual Burden Hours: 48,002.

Estimated Total Annual Respondent Cost: $2,071,766.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $2,216,556.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2024–06620 Filed 3–27–24; 8:45 am]

BILLING CODE 9111–47–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2024–0009]

Reestablishment of the Homeland Security Science and Technology Advisory Committee

AGENCY: Science and Technology Directorate, Department of Homeland Security.

ACTION: Committee Management; Notice of Federal advisory committee charter reestablishment.

SUMMARY: The Secretary of Homeland Security has determined that the reestablishment of the Homeland Security Science and Technology Advisory Committee (HSSTAC) is necessary and in the public interest to support the Department of Homeland Security (DHS) Science and Technology Directorate (S&T) in the performance of its duties. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

FOR FURTHER INFORMATION CONTACT: Stanley Cunningham, HSSTAC Designated Federal Official, S&T Department of Homeland Security, *hsstac@hq.dhs.gov,* 202–254–2311.

SUPPLEMENTARY INFORMATION:

Committee Designation: Homeland Security Science and Technology Advisory Committee (HSSTAC).

Purpose and Objective: The charter of the HSSTAC is being reestablished in accordance with the provisions of the Federal Advisory Committee Act (FACA), Title 5 United States Code, Chapter 10. Once approved, a copy of the reestablished charter will be posted in the FACA database here. The HSSTAC is established pursuant to the authority of Title 6 United States Code, Section 451 and provides independent, consensus scientific and technical advice and recommendations to the Under Secretary for Science and Technology, who leads the Department of Homeland Security (DHS) Science and Technology Directorate (S&T). S&T's activities focus on strengthening America's security and resiliency by providing knowledge products and innovative technology solutions for the Homeland Security Enterprise. The HSSTAC supports the priority needs of DHS S&T's Chief Scientist, Director of Strategy and Policy, as well as the functional offices conducting the Directorate's Research, Development, Test and Evaluation (RDT&E) mission. Upon request by the Secretary of Homeland Security, the committee provides scientific and technical advice to the Homeland Security Advisory Council.

Duration: The committee's reestablished charter is effective starting on the date filed with Congress for a duration of two years. The previous charter was effective starting November 23, 2021, and expired November 23, 2023.

Responsible DHS Officials: Adam Cox, HSSTAC Executive Director, and Stanley Cunningham, HSSTAC Designated Federal Official, S&T Department of Homeland Security, *hsstac@hq.dhs.gov.*

Dated: March 22, 2024.

Michael J. Miron,

Committee Management Officer.

[FR Doc. 2024–06549 Filed 3–27–24; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–N–19]

30-Day Notice of Proposed Information Collection: Form 50900: Elements for the Annual Moving to Work Plan and Annual Moving to Work Report, OMB Control No.: 2577–0216

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* April 29, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451

7th Street SW, Room 8210, Washington, DC 20410; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 14, 2023 at 87 FR 17099.

A. Overview of Information Collection

Title of Information Collection: Elements for the Annual MTW Plan and Annual MTW Report.

OMB Approval Number: 2577–0216.

Type of Request: Revision of a currently approved collection.

Form Number: 50900.

Description of the need for the information and proposed use: All public housing authorities (PHA) are required to submit a five (5) year plan and annual plans as stated in Section 5A of the 1937 Act, as amended. Moving to Work (MTW) PHAs that are subject to the Standard MTW Agreement submit an Annual MTW Plan and Annual MTW Report (also known as the HUD Form 50900) in lieu of the standard annual and 5 year PHA plans.

The Standard MTW Agreement was developed in 2007 and was transmitted to the existing MTW agencies in January 2008. As additional MTW PHAs were selected they too were provided with the Standard MTW Agreement. 39 MTW PHAs (known as the ''Initial'' MTW PHAs) currently operate under this agreement. In 2016, HUD extended the term of the Standard Agreement to the end of each agency's 2028 Fiscal Year (FY).

The HUD Form 50900 is a required element as part of the Standard MTW Agreement and contains important information regarding the MTW PHA's upcoming FY activities and a retrospective look back at the MTW PHA's preceding FY. HUD collects the information in this form in order to evaluate the impacts of MTW activities, accurately and timely respond to congressional and other inquiries regarding outcome measures, and identify promising practices learned through the MTW demonstration.

Revisions are being made to the HUD Form 50900 to reduce the reporting and administrative burden on MTW PHAs. All standard metrics within the HUD Form 50900 that were previously required for MTW activities will be eliminated, though they will remain optional for MTW PHAs to report. In addition to eliminating previously required standard metrics, MTW PHAs will now have the option to share an annual narrative, self-reported PHA data, and participant success stories. In lieu of the agency-reported standard metrics, HUD will pull data already reported by the agencies through required HUD systems. This will reduce burden on the agencies.

Updates have been made to specify if MTW PHAs are seeking to apply MTW Activities to any of its Special Purpose Voucher (SPV) types. This will reduce burden on MTW PHAs, by streamlining and replacing the current SPV MTW waiver separate approval process for Emergency Housing Vouchers (EHVs), HUD-Veterans Affairs Supportive Housing (HUD–VASH) vouchers and Stability Vouchers (SVs). Also, SPVs are included in an MTW PHA's planned leasing forecast for the upcoming Fiscal Year in order to provide a more comprehensive estimate of planned households served within the MTW PHA's portfolio. Based on public comments received, other changes include aligning planned new public housing bedroom size categories with HUD systems, and an optional narrative to report on unique households served through local, non-traditional rental services programs such as short-term rental assistance, rapid rehousing, emergency housing, etc., and a description section to indicate whether waiting list are site-based or agency-wide for public housing.

Through the Annual MTW Plan and Report, each MTW PHA will continue to inform HUD, its residents and the public of the PHA's mission for serving the needs of low-income and very low-income families, and the PHA's strategy for addressing those needs. The Annual MTW Plan, like the Annual PHA Plan, provides an easily identifiable source by which residents, participants in tenant-based programs, and other members of the public may locate policies, rules, and requirements concerning the PHA's operations, programs, and services.

The appropriations act in 2016 authorized an additional 100 MTW slots and additional slots may be added through future appropriations acts. Eligible applicants interested in obtaining MTW designation are required to submit applications to HUD, as explained in the applicable HUD Notice. The information collection covers the information needed from applicants to determine which applicants should be selected. The information provided demonstrates the applicants' plans to implement a local MTW program and includes related applicant history. The application includes such information as narrative exhibits, certifications, data forms, and supporting documentation. The information will be used by HUD staff to evaluate threshold requirements and review applications.

Respondents (i.e., affected public): The respondents to this PRA are the 39 Public Housing Authorities (PHAs) that had MTW designation as of December 15, 2015 and potential applicants that may be submitting applications to participate in the program.

Estimated Number of Respondents: The estimated number of respondents is 39.

Estimated Number of Responses: There are 78 submissions per year, reflecting the 39 PHAs. Each submission is comprised of 7 sections each requiring a response. All 7 sections are completed with the first annual submission (Plan), and 5 of the 7 sections are completed with the second annual submission (Report). This results in a total of 2 submissions per PHA, across all 39 affected PHAs or 78 total responses, that include 468 sections.

Frequency of Response: MTW PHAs complete requirements associated with this Form twice per year (Plan and Report). In the Plan, the PHA completes each of the 7 sections of the Form. In the Report, the PHA completes only 5 of the 7 sections of the Form.

Average Hours per Response: The estimated average burden is 33 hours per response (or 66 total hours per year).

Total Estimated Burdens: The total estimated burdens are 66, given each PHA completes the form twice per year (Plan and Report).

	Respondents	Annual responses/ respondent	Total responses per year	Burden per year per respondent	Total burden hours	Cost burden
Program Information:						
Application	0	0	0	0	0	$0
50900 "Annual MTW Plan and Report Elements:"						
Introduction	39	2	78	3	234	13,090
General Housing Authority Information	39	2	78	8	624	34,907
Proposed MTW Activities	39	1	39	25	975	54,542
Ongoing MTW Activities	39	2	78	10	780	43,633
Sources and Uses of Funding	39	2	78	8	624	34,907
Administrative	39	2	78	7	546	30,543
Certifications of Compliance	39	1	39	5	195	10,908
Total Burden	39 total	varies	468	66	3,978	222,529

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including annual reporting based on the activities performance as related to the MTW program statutory objectives and through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2024–06591 Filed 3–27–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7090–N–03]

60-Day Notice of Proposed Information Collection: Relocation Options Study, OMB Control No.: 2528–NEW

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* May 28, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting, ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Anna Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Anna Guido, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Anna.P.Guido@hud.gov;* telephone (202) 402–5535 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Relocation Options Study.

OMB Approval Number: 2528–NEW.

Type of Request: New data collection.

Form Number: N/A.

Description of the need for the information and proposed use: The Office of Policy Development and Research (PD&R), at the U.S. Department of Housing and Urban Development (HUD), is proposing the collection of information for the Relocation Options study.

Increasing threats of natural hazards due to climate change may necessitate the movement of households or entire communities to mitigate risk to people and properties. This research will conduct analysis of the efficacy of buyouts, relocation, and resettlement in mitigating hazard risk exposure; assess the potential adverse outcomes, inequities, and opportunity of such programs; and determine the needed capacity and coordination of Federal, state, and local levels to enable successful buyout, relocation, and resettlement initiatives. The goal of this research is to improve equity in how disaster recovery and mitigation funds are used for households that participate

in buyout programs in communities that have received Community Development Block Grant-Disaster Recovery (CDBG–DR) grants or Community Development Block Grant Mitigation (CDBG–MIT) grants. Results from this research shall be interpretable to inform a framework for a pilot program and evaluation structure to inform the ongoing federal approach to hazard-related relocation. Currently, a ''buyout'' for CDBG–DR and CDBG–MIT grants means the acquisition of a property located in a floodway, floodplain, or other grantee-designated high-risk area, that is intended to reduce risk from future hazards.

This **Federal Register** Notice provides an opportunity to comment on the information collection for this study titled Relocation Options. The information collection is designed to support the Relocation Options study to better understand outcomes of households and communities that have participated in homeowner buyout programs using CDBG–DR or CDBG–MIT funds. This work will include a qualitative component and generate principles for equitable and responsible buyouts, relocation, and resettlement strategies. The study includes interviews of CDBG–DR grantees and program administrators, other relevant community stakeholders, and homeowners that have gone through a CDBG–DR or CDBG–MIT funded buyout process.

Respondents: CDBG–DR grantee representatives and administrators; other relevant community stakeholders, and homeowners living in CDBG–DR grantee jurisdictions.

Estimated Number of Respondents: Information may be collected from approximately a total of 27 key informants. This includes: (1) 27 qualitative interviews with grantees, CDBG–DR or CDBG–MIT program administrators, other relevant stakeholders, and homeowners that participated in a CDBG–DR or CDBG–MIT buyout program.

Estimated Time per Response: Interviews are expected to take one hour each. The total estimated time is 27 hours.

Frequency of Response: One time for each interview.

Estimated Total Annual Cost: $4,058.20 for all individual document/information solicited for related research activities covered under approval for researchers conducting primary interview data collection and research participants.

The Table below provides the estimated burden hours for interviews. These estimates assume the maximum targeted number of study participants and are calculated as the time needed to complete individual surveys and interviews or to participate in focus groups. The table breaks out time to complete informed consent and time participating in the study by key informant group (Government Stakeholders, Community Stakeholders, and Program Participants).

Calculating the annual total cost burden to respondents, the project team utilized Occupational Employment Statistics from the U.S. Department of Labor's Bureau of Labor Statistics to identify the median hourly wages (as classified by Standard Occupational Classification, SOC, codes) for October 2023 for interview participants.

ANNUAL BURDEN TABLE

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Interviews with government stakeholders	27	1	1	1	27	$59.90	$1,617.30
Interviews with community stakeholders	27	1	1	1	27	43.93	1,186.11
Interviews with program participants	15	1	1	1	15	43.93	658.95
Interview Total	69				69		3,462.36
Informed consent to participate in the study—Government Stakeholders	27	1	1	0.17	4.59	59.90	112.02
Informed consent to participate in the study—Community Stakeholders	27	1	1	0.17	4.59	49.93	229.18
Informed consent to participate in the study—Program Participants	15	1	1	0.17	2.55	49.93	127.32
Informed Consent Total	69				11.73		595.84
Grand Total	69				80.73		4,058.20

Respondent's Obligation: Participation is voluntary.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected, and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Todd M. Richardson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2024–06655 Filed 3–27–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6380–N–02]

Tribal Intergovernmental Advisory Committee (TIAC) Spring Meeting

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of HUD's TIAC.

DATES: The meeting will be held on Wednesday, May 15, 2024, and Thursday, May 16, 2024. On each day, the session will begin at approximately 9:00 a.m. (ET) and adjourn at approximately 5:00 p.m. (ET).

ADDRESSES: The meeting will take place at the HUD Headquarters Building, 451 7th Street SW, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Heidi Frechette, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4108, Washington, DC 20410, telephone number 202–401–7914 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible call, please visit *https://www.fcc.gov/consumers/guides/telecomunicationsrelay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 31, 2022, HUD published a notice (87 FR 18807) in the **Federal Register** that announced the final structure of the TIAC and requested the submission of Tribal nominations to the TIAC. On November 29, 2022, HUD published a notice (87 FR 73317) announcing the TIAC membership. Thus, to strengthen HUD's engagement with Tribal Nations, HUD established its first Tribal advisory committee. The first in-person TIAC meeting was held on Wednesday, April 12, 2023, and Thursday, April 13, 2023, in Washington, DC. On September 27, 2023, and September 28, 2023, the second in-person meeting of the TIAC was held in Tucson, Arizona.

II. Upcoming Committee Meeting

The next in-person meeting of the TIAC will be Wednesday, May 15, 2024, and Thursday, May 16, 2024. On each day, the session will begin at approximately 9:00 a.m. (ET) and adjourn at approximately 5:00 p.m. (ET). The meeting will take place at the HUD Headquarters Building, 451 7th Street SW, Washington, DC 20410. The Committee will operate under the Tribal government statutory exemption to the Federal Advisory Committee Act (FACA) found in the Unfunded Mandates Reform Act (UMRA) at 2 U.S.C. 1534(b). Accordingly, participation in the meeting is limited to TIAC members. Members of the public may not formally participate in the meeting or make statements during the meeting.

III. Future Committee Meetings

Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of all future meetings will be published in the **Federal Register**. HUD will make every effort to publish such notices at least 30 calendar days prior to each meeting.

Richard Monocchio,

Principal Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2024–06636 Filed 3–27–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R8–ES–2024–0020; FXES11140800000]

Endangered and Threatened Species; Receipt of an Incidental Take Permit Application and Proposed Habitat Conservation Plan; City of Colton, San Bernardino County, CA; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application for an incidental take permit to take the federally listed Santa Ana sucker under the Endangered Species Act (ESA). We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before April 29, 2024.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents this notice announces, along with public comments received, online in Docket No. FWS–R8–ES–2024–0020 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2024–0020.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2024–0020; U.S. Fish and Wildlife Service, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Cleary-Rose, Division Supervisor, Carlsbad Fish and Wildlife Office, 760–322–2070. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TTD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, received an application from the Colton/San Bernardino Regional Tertiary Treatment and Water Reclamation Authority and San Bernardino Municipal Water Department (applicants) for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq*). The requested permit would authorize take of the federally threatened Santa Ana sucker (*Catostomus santaanae*) incidental to the ongoing operation of the rapid infiltration and extraction (RIX) facility along approximately 2 miles of the Santa Ana River, in the city of Colton, San Bernardino County, California.

We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as low effect, and may qualify for a categorical exclusion pursuant to the Council on

Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The project area is located along an approximately 2-mile stretch of the Santa Ana River in the City of Colton in San Bernardino County, California. The applicants request a 50-year incidental take permit for temporary impacts to approximately 2 miles of river occupied by Santa Ana sucker. The RIX facility supplies tertiary treated water to this stretch of the river and contributes to the functional quality of Santa Ana sucker habitat in the affected reach of the river. The applicants propose to avoid, minimize, and mitigate the impacts of RIX facility shutdowns on the 2-mile stretch of river by using supplemental groundwater wells that can supply up to 16 cubic feet per second of replacement water, coordinating with partners to monitor fish during shutdowns, and monitoring effects by conducting studies to assess the impact of the facility operations on Santa Ana sucker populations in this stretch of the river.

Our Preliminary Determination

The Service has made a preliminary determination that the project, including continued operation and maintenance of the RIX facility and the proposed mitigation, would individually and cumulatively have a minor effect on the Santa Ana sucker and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a low-effect ITP that individually or cumulatively would have a minor effect on the Santa Ana sucker and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual.

A low-effect ITP is one that would result in:

- Minor nonsignificant effects on species covered in the HCP;
- Nonsignificant effects on the human environment; and
- Impacts that, when added together with the impacts of other past, present, and reasonable foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

We will evaluate the proposed application and any comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7(a)(2) of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, we will issue the permit to the applicants for incidental take of the Santa Ana sucker.

Public Availability 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 to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Scott Sobiech,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2024–06617 Filed 3–27–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CA_FRN_MO4500178030]

Notice of Public Meetings of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976, and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) California Desert District Advisory Council (Council) will meet as indicated below.

DATES: The 2024 schedule of meetings for the Council is as follows: April 27, 2024; August 10, 2024; and December 7, 2024. All three meetings will be held from 9 a.m. to 3 p.m. Pacific Time. A virtual participation option will also be available on the Zoom platform. Field tours may be held from 9 a.m. to 3 p.m. the day before each meeting. If weather or other circumstances arise and an on-site meeting is cancelled, the meeting will be held virtually via Zoom and the field tour will not occur.

ADDRESSES: The April meeting will be held at the El Centro Field Office, 1661 S. 4th Street, El Centro, CA 92243; the August meeting will be held at the Needles Field Office, 1303 S. Highway 95, Needles, CA 92363; and the December meeting will be held at the Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311. The agendas for the public meetings, virtual meeting participation information, and field tours details will be posted on the Council's web page at: *https://www.blm.gov/get-involved/rac/california/california-desert-district,* at least 2 weeks in advance of the meetings. Field tour participants must register to attend 7 days in advance.

Members of the public are welcome on field tours but must provide their own transportation and meals.

FOR FURTHER INFORMATION CONTACT: Kate Miyamoto, BLM California Desert District Office, telephone: 760–883–8528, email: *kmiyamoto@blm.gov*.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Council provides recommendations to the Secretary of the Interior concerning the planning and management of public land resources in the BLM's California Desert District and offers advice on implementing the comprehensive, long-range plan for management, use, development, and protection of the public lands within the California Desert Conservation Area. Agenda topics for the April meeting may include presentations on the Salton Sea, off-highway vehicle recreation and visitation in the El Centro Field Office, and overviews from the district and field offices and fire program. Agenda topics for the August meeting may include presentations on the Mojave Trails National Monument planning

effort, the East Mojave Trail and partnership, and overviews from the district and field offices and fire program. Agenda topics for the December meeting may include a vote on the Barstow Business Plan, proposed recreation fees and plans for the Desert Discovery Center, and overviews from the district and field offices and fire program.

All Council meetings are open to the public. There will be an opportunity for public comment during the meeting. Depending on the number of people who wish to speak and the time available, the time for individual comments may be limited. Written comments for the Council may be sent electronically in advance of the scheduled meetings to Public Affairs Officer Kate Miyamoto at *kmiyamoto@blm.gov* or in writing to BLM California Desert District/Public Affairs, 1201 Bird Center Drive, Palm Springs, CA 92262. Written comments will also be accepted at the time of the public meeting.

While each of the meetings are scheduled from 9 a.m. to 3 p.m., meetings could end prior to 3 p.m. should the Council conclude its business. Members of the public interested in a specific agenda item or discussion should schedule their arrival accordingly.

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made 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.

Meeting Accessibility/Special Accommodations

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least 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.

(Authority: 43 CFR 1784.4–2)

Michelle Lynch,

California Desert District Manager.

[FR Doc. 2024–06652 Filed 3–27–24; 8:45 am]

BILLING CODE 4331–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; International Price Program U.S. Import and Export Price Indexes

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-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 29, 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.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The price data collected by the International Price Program (IPP) is used to produce indexes which measure, on a monthly basis, changes in transaction prices of goods and services exported from or imported into the U.S. This published data is in turn used to deflate import and export trade statistics, deflate the foreign trade component of the GDP, determine monetary and fiscal policy, negotiate trade agreements, and determine trade and commercial policy. The respondents are establishments conducting import/export trade and receive no compensation for their participation. The IPP survey is a voluntary survey. For additional substantive information about this ICR, see the related notice published in the **Federal Register** January 19, 2024 (89 FRN 3695).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Agency: DOL–BLS.

Title of Collection: International Price Program U.S. Import and Export Price Indexes.

OMB Control Number: 1220–0025.

Affected Public: Businesses or other for-profits.

Total Estimated Number of Respondents: 3,350.

Total Estimated Number of Responses: 19,510.

Total Estimated Annual Time Burden: 9,650 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–06604 Filed 3–27–24; 8:45 am]

BILLING CODE 4510–24–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: John S. McCain III National Center for Environmental Conflict Resolution (National Center), Morris K. Udall and Stewart L. Udall Foundation.

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Morris K. Udall and Stewart L. Udall Foundation has submitted the information collections described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, the agency is requesting comments on these information collections from all interested individuals and

organizations. The purpose of this notice is to allow 30 days for public comment.

DATES: Interested persons are invited to submit comments on or before April 29, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collections should be submitted within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find the information collections by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: For specific questions or to request additional information about these ICRs, contact Mitch Chrismer at *chrismer@udall.gov,* or by telephone at 520–901–8544. 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 Morris K. Udall and Stewart L. Udall Foundation's National Center, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), previously provided the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information during a 60-day period in the **Federal Register**, 88 FR 63630, September 15, 2023. No comments were received and therefore no changes were made based on public comment. However, the Udall Foundation decided to consolidate the six initially proposed Information Collection Request (ICR) renewals into two ICRs. Five of the initially proposed ICRs have been consolidated under a single OMB Control Number with multiple Information Collections (ICs) contained within it. The proposed ICRs are necessary to measure, improve, and report on National Center performance and delivery of its services. They are not expected to have a significant economic impact on respondents or to affect a substantial number of small entities. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Environmental Conflict Resolution Services Participant Questionnaires.

OMB Control Number: 3320–0003.

Respondents/Affected Public: Individuals or households; business or other for-profit; not-for-profit; federal government; and state, local or tribal government.

Total Estimated Number of Annual Responses: 765.

Total Estimated Number of Annual Burden Hours: 100.

Abstract: The ICs used for this program are being consolidated under a single ICR. All will be separate ICs under OMB Control Number 3320–0003. These ICs are:

- National Center for Environmental Conflict Resolution Assessment Evaluation—Requester Questionnaire (former OMB Control Number 3320–0003);
- Mediation Services Participant Questionnaire (Agreement Seeking) (former OMB Control Number 3320–0004);
- Facilitated Meeting/Workshop Services Participant Questionnaire (former OMB Control Number 3320–0007);
- ECR Support Services Evaluation—Requester Questionnaire (former OMB Control Number 3320–0009); and
- National Center for Environmental Conflict Resolution Facilitated Process Evaluation—Participant Questionnaire (former OMB Control Number 3320–0010).

These evaluations support the National Center's program evaluation and have the practical utility of supporting achievement of the National Center's goals and continuous improvement of service delivery. These goals are to assist parties in resolving federal environmental disputes in a timely and constructive manner; to increase the appropriate use of Environmental Collaboration and Conflict Resolution (ECCR), particularly within the federal government; to improve the ability of federal agencies and other interested parties to engage in ECCR effectively; and to promote collaborative problem solving and consensus building during the design and implementation of federal environmental policies to help prevent and reduce the incidence of future environmental disputes. These evaluations are a primary means by which the National Center evaluates its performance in these key areas of agency activity.

Title of Collection: Training Services Participant Questionnaire.

OMB Control Number: 3320–0006.

Respondents/Affected Public: Individuals or households; business or other for-profit; not-for-profit; federal government; and state, local or tribal government.

Total Estimated Number of Annual Responses: 600.

Total Estimated Number of Annual Burden Hours: 55.

Abstract: This survey collects information to evaluate trainings conducted by the National Center. Trainings include any session of three hours or more in the following categories: skill-building workshops requested by agencies for their staff (*e.g.,* interest-based negotiation training for complex intergovernmental conflicts); ECCR project-specific capacity building for stakeholders (*e.g.,* stakeholder orientations related to multiparty negotiation); and all of the Udall Foundation certificate program ECCR trainings. This survey is a primary means by which the National Center evaluates its performance on this critical agency activity.

(20 U.S.C. 5601–5609)

Dated: March 25, 2024.

David P. Brown,

Executive Director, Morris K. Udall and Stewart L. Udall Foundation.

[FR Doc. 2024–06650 Filed 3–27–24; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 24–023]

Earth Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Advisory Committee (ESAC). This Committee functions in an advisory capacity to the Director, Earth Science Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Tuesday, April 16, 2024, 8:30 a.m.–5 p.m., and Wednesday, April 17, 2024, 8:30 a.m.–3 p.m., eastern time.

ADDRESSES:

For April 16, 2024, Public attendance will be virtual only. See dial-in and Webex information below.

For April 17, 2024, NASA Headquarters, Room 8R40, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: KarShelia Kinard, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355 or *karshelia.kinard@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public only on April 17, 2024, up to the capacity of the meeting room. This meeting is also available telephonically and by WebEx for both days. You must use a touch-tone phone to participate in this meeting. Any interested person may call the USA toll number +1–415–527–5035 or USA toll (Chicago) number +1–312–500–3163, Access code: 2824 307 9953, for April 16, 2024, to participate in this meeting by telephone. The WebEx link is *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=me2e237d43d1df427dafffc99bfbb220e* the meeting number is 2824 307 9953, webinar password: RKmHhJQ77$2 (75644577 from phones and video systems, case sensitive). For April 17, 2024, the USA toll number +1–415–527–5035 or USA toll (Chicago) number +1–312–500–3163, Access code: 2831 207 4547 to participate in this meeting by phone. The WebEx link is *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=me556af95d2a2050ffe666ab0261c53f7,* the meeting number is 2831 207 4547, webinar password is cxAbnbt$838 (29226280 from phones and video systems, case sensitive). The agenda for the meeting includes the following topics:

—Earth Science Division Update
—Earth Science to Action (ES2A) Strategy
—Earth Science Division Program Elements Updates
—Earth Science Observatory (ESO) Integration

The agenda will be posted on the ESAC web page: *https://science.nasa.gov/researchers/nac/science-advisory-committees/esac.*

All attendees are required to register in NASA's Enterprise Visitor Access Management System prior to visit. You will be requested to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters in addition to Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizens and Permanent Residents (green card holders) may provide full name, citizenship and email address no less than 3 working days in advance by contacting Ms. KarShelia Kinard via email at *karshelia.kinard@nasa.gov*.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Carol J. Hamilton,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2024–06418 Filed 3–27–24; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's ad hoc Committee on Elections hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: April 2, 2024, at 1:30 p.m. EDT.

PLACE: This meeting will be held by teleconference through the National Science Foundation.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Chair's Opening Remarks about the agenda; Discussion of progress to build a slate of nominees for NSB Chair and Vice Chair positions for the 2024–2026 term and next steps.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Andrea Rambow, *arambow@nsf.gov,* 703–292–7000. You may find meeting updates at *https://www.nsf.gov/nsb/meetings/index.jsp#up.*

Ann E. Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2024–06750 Filed 3–26–24; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board hereby gives notice of the scheduling of two teleconference of the National Science Board/National Science Foundation Commission on Merit Review (MRX) for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act.

TIME AND DATE: Thursday, March 28, 2024, from 2:00–4:00 p.m. EDT.

Monday, April 1, 2024, from 3:00–5:00 p.m. EDT.

PLACE: These meetings will be via videoconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda for the March 28, 2024, meeting is: Commission Chair's remarks about the agenda; Commission planning; Discussion of Preliminary Recommendations; Commission Chair's closing remarks.

The agenda for the April 1, 2024, meeting is: Commission Chair's remarks about the agenda; Discussion of Preliminary Recommendations; Commission Chair's closing remarks.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Meeting information and updates may be found at *www.nsf.gov/nsb.*

Ann E. Bushmiller,

Senior Counsel to the National Science Board Office.

[FR Doc. 2024–06749 Filed 3–26–24; 4:15 pm]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m., Thursday, April 4, 2024.

PLACE: 1255 Union Street NE, Suite 500, Washington, DC 20002.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Regular Board of Directors meeting.

The General Counsel of the Corporation has certified that in her opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (4) permit closure of the following portion(s) of this meeting:

- Executive (Closed) Session

Agenda

I. Call to Order
II. Discussion Item: FY2023 External Audit Discussion with BDO Auditors
III. Sunshine Act Approval of Executive (Closed) Session
IV. Executive Session: BDO Auditors

V. Executive Session: Special Topic
VI. Executive Session: Report from CEO
VII. Executive Session: Report from CFO
VIII. Executive Session: Report from General Counsel
IX. Executive Session: Report from CIO
X. Action Item: Approval of Meeting Minutes—February 15 Regular Board Meeting
XI. Action Item: FY2023 External Audit
XII. Discussion Item: March 26 Audit Committee Report
XIII. Discussion Item: Capital Corporations Update and Grant Request for June
XIV. Discussion Item: Academic Partner for Achieving Excellence Program
XV. Discussion Item: Office Lease Expirations (Kansas City, Denver, and Boston)
XVI. Discussion Item: IT Support Contract—Additional Service Needed
XVII. Management Program Background and Updates
Other Reports
a. 2024 Board Calendar
b. 2024 Board Agenda Planner
c. CFO Report
i. Financials (through 1/31/24)
ii. Single Invoice Approvals $100K and over
iii. Vendor Payments $350K and over
iv. Exceptions
d. Programs Dashboard
e. Housing Stability Counseling Program (HSCP)
f. Strategic Plan Scorecard—FY2024 Q1

Portions Open to the Public: Everything except the Executive (Closed) Session.

Portions Closed to the Public: Executive (Closed) Session.

CONTACT PERSON FOR MORE INFORMATION: Jenna Sylvester, Paralegal, (202) 568–2560; *jsylvester@nw.org.*

Jenna Sylvester,

Paralegal.

[FR Doc. 2024–06712 Filed 3–26–24; 11:15 am]

BILLING CODE 7570–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Special Financial Assistance Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of information collection.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval under the Paperwork Reduction Act of a collection of information contained in PBGC's regulation on special financial assistance. The purpose of the information collection is to gather information necessary for PBGC to operate this special financial assistance program. This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments must be submitted on or before April 29, 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.

All comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information.

A copy of the request will be posted on PBGC's website at *https://www.pbgc.gov/prac/laws-and-regulation/federal-register-notices-open-for-comment.* It may also be obtained without charge by writing to the Disclosure Division (*disclosure@pbgc.gov*), Office of the General Counsel of PBGC, 445 12th Street SW, Washington, DC 20024–2101; or, calling 202–229–4040 during normal business hours. If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Karen Levin (*levin.karen@pbgc.gov*), Attorney, Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–229–3559. If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Section 4262 of the Employee Retirement Income Security Act of 1974 (ERISA) requires PBGC to provide special financial assistance (SFA) to certain financially troubled multiemployer plans upon application for assistance. Part 4262 of PBGC's regulations, ''Special Financial Assistance by PBGC,'' provides guidance to multiemployer pension plan sponsors on eligibility, determining the amount of SFA, content of an application for SFA, the process of applying, PBGC's review of applications, restrictions and conditions, and reporting and notice requirements.

To apply for SFA, a plan sponsor must file an application with PBGC and include information about the plan, plan documentation, and actuarial information, as specified in §§ 4262.6 through 4262.9. Also, if the plan is changing certain assumptions for purposes of demonstrating its requested amount of SFA, then the plan sponsor may use PBGC's SFA assumptions guidance. PBGC needs the application information to review a plan's eligibility for SFA and amount of requested SFA. PBGC estimates that over the next 3 years an annual average of 45 plan sponsors will file applications for SFA with an average annual hour burden of 540 (45 × 12) hours and an average annual cost burden of $1,530,000 (45 × $34,000).

Under § 4262.10(g), a plan sponsor may, but is not required to, file a lock-in application as a plan's initial application. The lock-in application contains basic information about the plan and a statement of intent to lock-in base data. PBGC needs the information in the lock-in application to ensure that a plan sponsor intends to lock-in the plan's data. PBGC estimates that over the next 3 years an annual average of 6 plan sponsors will file lock-in applications for SFA with an average annual hour burden of 6 (6 × 1) hours and an average annual cost burden of $4,800 (6 × $800).

Under § 4262.16(i), a plan sponsor of a plan that has received SFA must file an Annual Statement of Compliance with the restrictions and conditions under section 4262 of ERISA and part 4262 once every year through 2051. PBGC needs the information in the Annual Statement of Compliance to ensure that a plan is compliant with the imposed restrictions and conditions. PBGC is providing updated instructions for filers to use when entering the information for the Annual Statement of Compliance in PBGC's e-Filing portal. The instructions include a certification statement that must be manually signed and dated by a trustee who is a current member of the plan's board of trustees and authorized to sign on behalf of the board of trustees, or by another representative of the plan sponsor. PBGC estimates that over the next 3 years an annual average of 150 plan sponsors will file an Annual Statement of Compliance with an average annual hour burden of 300 (150 × 2) hours and

an average annual cost burden of $360,000 (150 × $2,400).

Under § 4262.15(c), a plan sponsor of a plan with benefits that were suspended under sections 305(e)(9) or 4245(a) of ERISA must issue notices of reinstatement to participants and beneficiaries whose benefits were suspended and are being reinstated. Participants and beneficiaries need the notice of reinstatement to better understand the calculation and timing of their reinstated benefits and, if applicable, make-up payments. PBGC estimates that over the next 3 years an average of 2 plans per year will be required to send notices to participants with suspended benefits. PBGC estimates that these notices will impose an average annual hour burden of 4 (2 × 2) hours and average annual cost burden of $4,000 (2 × $2,000).

Finally, under § 4262.16(d), (f), (g) and (h) a plan sponsor must file a request for a determination from PBGC for approval for an exception under certain circumstances for SFA conditions under § 4262.16 relating to reductions in contributions, transfers or mergers, and withdrawal liability. PBGC needs the information required for a request for a determination to evaluate whether to approve an exception from the specified condition of receiving SFA. PBGC estimates that over the next 3 years, PBGC will receive an average of 4.2 requests per year for determinations. PBGC estimates an average annual hour burden of 13.6 hours and average annual cost burden of $33,000 ((0.2 × $25,000) + (2 × $12,000) + (2 × $2,000)).

The estimated aggregate average annual hour burden for the next 3 years for the information collection in part 4262 is 863.6 (540 + 6 + 300 + 4 + 13.6) hours for employer and fund office administrative, clerical, and supervisory time. The estimated aggregate average annual cost burden for the next 3 years for the information collection request in part 4262 is $1,931,800 ($1,530,000 + $4,800 + $360,000 + $4,000 + $33,000) for approximately 4,830 contract hours assuming an average hourly rate of $400 for work done by outside actuaries and attorneys. The actual hour burden and cost burden per plan will vary depending on plan size and other factors.

The existing collection of information under the regulation has been approved by OMB under control number 1212–0074 (expires May 31, 2024). On December 20, 2023, PBGC published in the **Federal Register** (88 FR 88138) a notice informing the public of its intent to request an extension of this collection of information. No comments were received. PBGC is requesting that OMB extend approval of the collection of information for 3 years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Issued in Washington, DC.

Gregory Katz,

Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2024–06589 Filed 3–27–24; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket No. PI2024–2; Order No. 7017]

Public Inquiry on Zone 10 Packages Pursuant to 39 U.S.C. 3642

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is initiating a public inquiry proceeding and appoint a presiding officer to serve as an investigator to explore the appropriate classification of Zone 10 packages pursuant to 39 U.S.C. 3642. This notice informs the public of the filing and takes other administrative steps.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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II. Background
III. Public Inquiry
IV. Ordering Paragraphs

I. Introduction

In Order No. 7016, the Commission stated that it would initiate a public inquiry proceeding and appoint a presiding officer to serve as an investigator to explore the appropriate classification of Zone 10 packages pursuant to 39 U.S.C. 3642 and whether the implementation of Zone 10 prices raises a material issue of fact concerning whether a violation of 39 U.S.C. 403(c) has occurred if the Postal Service elects to implement the Zone 10 prices.[1] The Commission establishes this docket to facilitate examination of those issues.

II. Background

On November 22, 2023, the Postal Service filed notice with the Commission of its intent to establish a new Zone 10 for Priority Mail Express, Priority Mail, and USPS Ground Advantage and proposed associated Zone 10 rates.[2] The Postal Service states that the changes will take effect no earlier than July 1, 2024, with a specific date to be determined by the Postal Service in the future. Docket No. CP2024–72 Notice at 1.

Currently, Priority Mail Express, Priority Mail, and USPS Ground Advantage packages are charged prices based on weight and zone. For packages mailed within the United States, a package is assigned Zone 1–8 based on the distance the package must travel to reach its destination. The proposed new Zone 10 and associated prices will apply to (1) packages originating in the Lower 48 States and destined to Alaska, Hawaii, or the U.S. Territories (which include Puerto Rico, the U.S. Virgin Islands, and territories in the Pacific, including Guam and American Samoa); (2) packages originating in Alaska and destined to Hawaii or the U.S. Territories; (3) packages originating in Hawaii or a territory in the Pacific Ocean and destined to Alaska, Puerto Rico, or the U.S. Virgin Islands; and (4) packages originating in Puerto Rico or the U.S. Virgin Islands and destined to Alaska, Hawaii, or a territory in the Pacific Ocean. *Id.* at 2–3. The proposed Zone 10 does not apply to packages that originate in Alaska, Hawaii, or the U.S. Territories and are destined to the Lower 48 States. *Id.* at 4.

To explain the rationale for its proposal, the Postal Service states that the new Zone 10 and associated prices ''will better align with the zoning practices of [its] competitors, who currently have separate zones for offshore destinations.'' *Id.* at 3. The Postal Service states that its ''competitors charge significantly more for shipments from the Lower 48 states to offshore locations than for shipments in the reverse direction.'' [3] The Postal Service also states that its decision to establish Zone 10 is ''cost-based in

[1] Docket No. CP2024–72, Order Approving Price Adjustments and Classification Changes for Domestic Competitive Products, March 22, 2024, at 3, 28, 29–31 (Order No. 7016).

[2] Docket No. CP2024–72, USPS Notice of Changes in Rates and Classifications of General Applicability for Competitive Products, November 22, 2023 (Docket No. CP2024–72 Notice).

[3] Docket No. CP2024–72, USPS Response to Chairman's Information Request No. 1, With Portions Filed Under Seal, December 20, 2023, question 2.c.

nature'' because ''[t]he cost of transport to offshore locations is higher on average than it is to transport to non-offshore destinations.'' Docket No. CP2024–72 Notice at 3. Specifically, the Postal Service explains that there are more limited transportation options to offshore destinations, and the use of air transportation, the mix of air transportation providers, and the need to use higher cost providers all contribute to higher costs.[4] The Postal Service does not, however, provide specific data and sources demonstrating these cost factors or otherwise demonstrating support for the ''cost-based'' nature of the new Zone 10 prices and has yet to undertake the effort to disaggregate Zone 10 costs and confirm that its cost-based assumption is supported by its available transportation data. *See* Docket No. CP2024–72 Response to CHIR No. 2, question 1.

In Order No. 7016, the Commission acknowledged that its role in reviewing proposed Competitive product rate and classification changes was limited by law. Order No. 7016 at 1–2, 32–33. Because the proposed rate and classification changes complied with 39 U.S.C. 3633(a), 39 CFR part 3035, and Order Nos. 1062 and 6249,[5] the Commission approved the proposed price and classification changes as consistent with applicable law and found that it had no legal basis to reject the proposed changes. Order No. 7016 at 15–22. However, the Commission also identified numerous concerns with the Postal Service's proposal and approach and urged the Postal Service to reconsider whether it is prudent or necessary to implement its proposal. *Id.* at 2, 22–32. The Commission also identified two areas that were particularly suited to further exploration in a separate public inquiry proceeding: (1) the question of whether Zone 10 packages are appropriately classified as Competitive products pursuant to 39 U.S.C. 3642 and (2) the question of whether the implementation of Zone 10 prices raises a material issue of fact concerning whether a violation of 39 U.S.C. 403(c) has occurred if the Postal Service elects to implement the Zone 10 prices. *Id.* at 28, 30–32.

Classification of Zone 10 packages. Postal products are separated into two distinct classifications: Market Dominant and Competitive. 39 U.S.C. 3621, 3631, 3642. Section 3642 of Title 39 governs the addition of products to, removal of products from, or transfer of products (or components of a product) between the Market Dominant and Competitive product lists.[6] The Commission may consider a change to a product's classification upon request of the Postal Service, upon request of users of the mail, or upon its own initiative. 39 U.S.C. 3642(a). There is nothing to prevent transfer of only part of a product between product lists. 39 U.S.C. 3642(c).

The criteria for assigning a product to either the Market Dominant or Competitive product list are described in 39 U.S.C. 3642(b). Section 3642(b)(1) defines a Market Dominant product as a product over which ''the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.'' 39 U.S.C. 3642(b)(1). Competitive products are defined as ''all other products.'' *Id.* Products covered by the postal monopoly are not subject to transfer from the Market Dominant category. 39 U.S.C. 3642(b)(2). Additional considerations in determining the correct classification of a postal product include the availability and nature of private sector competitors, the views of users of the product, and the likely impact on small businesses. 39 U.S.C. 3642(b)(3).

In Docket No. CP2024–72, several commenters raised concerns relevant to an inquiry pursuant to 39 U.S.C. 3642, and the Commission recognized that the concerns raised by commenters may call into question whether the proposed Zone 10 volumes are correctly classified as Competitive. Order No. 7016 at 28–29. As a result, the Commission determined that this issue would be appropriate to consider in a public inquiry proceeding. *Id.* The Commission stated that it intended to appoint a presiding officer to serve as an investigator in the public inquiry proceeding to further explore the appropriate classification of these packages and to provide analysis and recommendations to the Commission on that issue. *Id.*

Violation of 39 U.S.C. 403(c). 39 U.S.C. 403(c) prohibits the Postal Service from making ''any undue or unreasonable discrimination among users of the mails'' ''in establishing classifications, rates, and fees.'' 39 U.S.C. 403(c). In order to find that undue or unreasonable price discrimination exists in violation of 39 U.S.C. 403(c), the Commission must find that: (1) a mailer has been offered less favorable rates or terms and conditions than one or more other mailers; (2) the mailer is ''similarly situated'' to the mailer or mailers who have been offered the more favorable rates or terms and conditions; and (3) there is no rational or legitimate basis for the Postal Service to deny the more favorable rates or terms and conditions offered to others.[7] The Commission has the authority to take action to bring the Postal Service into compliance with 39 U.S.C. 403(c) if it finds the Postal Service is not operating in conformance with that provision based on a complaint raising such non-conformance. 39 U.S.C. 3662(a), (c). The Commission has the authority to appoint an officer of the Commission representing the interests of the general public to bring a complaint for violation of 39 U.S.C. 403(c) or any other provision enumerated in 39 U.S.C. 3662(a). 39 U.S.C. 3662(a).

In Order No. 7016, the Commission noted that the Postal Service was not required to justify its Zone 10 rates on a cost basis beyond showing compliance with 39 U.S.C. 3633(a). Order No. 7016 at 30–32. However, the Commission also noted that it previously found costs are a relevant consideration under the 39 U.S.C. 403(c) analysis and that costs may be particularly relevant in the case of Zone 10 because one of the Postal Service's rationales for its Zone 10 proposal is that it is ''cost-based in nature.'' *See id.* at 30; Order No. 5491 at 8; Docket No. CP2024–72 Notice at 3.

The Commission stated that the Postal Service's cost-based rationale for its proposal appeared reasonable on its face given the Postal Service's representations regarding transportation costs to offshore areas; however, it also raised concern that the Postal Service failed to undertake the effort to disaggregate Zone 10 costs and confirm that its assumption regarding higher transportation costs for Zone 10 packages was supported by its available transportation data. Order No. 7016 at 31–32. The Commission directed the

[4] Docket No. CP2024–72, USPS Response to Chairman's Information Request No. 2, With Portions Filed Under Seal, January 12, 2024, question 1.a. (Docket No. CP2024–72 Response to CHIR No. 2).

[5] *See* 39 U.S.C. 3633(a); 39 CFR part 3035; Docket No. CP2012–2, Order Approving Changes in Rates of General Applicability for Competitive Products, December 21, 2011 (Order No. 1062); Docket Nos. CP2022–22 and CP2022–62, Order Granting in Part the United States Postal Service's Motions for Clarification of Order Nos. 6071 and 6195, August 15, 2022 (Order No. 6249).

[6] 39 U.S.C. 3642. The implementing regulations for this section appear in 39 CFR part 3040.

[7] Docket No. C2020–2, Order Granting the Postal Service's Motion to Dismiss Complaint with Prejudice, April 28, 2020, at 8 (Order No. 5491) (citing Docket No. C2009–1, Order on Complaint, April 20, 2011, at 28 (Order No. 718)).

Postal Service to file a rulemaking proceeding proposing and supporting the methodological changes necessary to derive separate Zone 10 transportation costs for Priority Mail and USPS Ground Advantage within 90 days of the date of Order No. 7016. *Id.* at 27.

The Commission was concerned that if the Postal Service's actual cost data differed from the Postal Service's assumptions, the Postal Service's cost-based justification for the Zone 10 rates could be invalid and concerns of violation of 39 U.S.C. 403(c) could arise. *Id.* at 30–32. As a result, the Commission stated that it intended to appoint a presiding officer to serve as an investigator to gather information and explore whether the Postal Service would be in violation of 39 U.S.C. 403(c) if the Postal Service elects to implement the new Zone 10 and related prices. *Id.* The Commission also stated that the investigator may also consider whether violation of any other provision enumerated in 39 U.S.C. 3662(a) has occurred. *Id.* at 32. The Commission further stated that after gathering applicable information, the investigator shall issue a public, written report to the Commission as to whether the implementation of Zone 10 raises a material issue of fact concerning whether a violation of 39 U.S.C. 403(c) or any other provision enumerated in 39 U.S.C. 3662(a) has occurred. *Id.*

III. Public Inquiry

The Commission establishes this proceeding to appoint and direct a presiding officer to serve as an investigator to explore the appropriate classification of Zone 10 packages pursuant to 39 U.S.C. 3642 and whether the implementation of Zone 10 prices raises a material issue of fact concerning whether a violation of 39 U.S.C. 403(c) has occurred if the Postal Service elects to implement the Zone 10 prices. Pursuant to 39 CFR 3010.106, the Commission appoints John Avila to serve as presiding officer in this docket. In that role, the Commission expects the presiding officer to serve an investigatory role similar to the one envisioned by 39 CFR 3022.21 to procure applicable information, examine issues, and report back to the Commission with his analysis and recommendations.[8]

In addition to consideration of 39 U.S.C. 403(c) and 3642, the underlying regulations, Commission precedent, the record of Docket No. CP2024–72, and the disaggregated costs the Postal Service has been directed to file within 90 days, the Commission anticipates that the presiding officer may need additional information from the Postal Service prior to conducting analysis and reaching any conclusions and expects him to issue presiding officer information requests as he deems appropriate to gather such information. 39 CFR 3010.106(c).

Once the presiding officer serving as investigator has sufficient information to analyze and assess whether Zone 10 packages should remain classified as Competitive pursuant to 39 U.S.C. 3642, the underlying regulations, and Commission precedent, the presiding officer shall file a public, written report to the Commission in this proceeding detailing his analysis and recommendations to the Commission on that issue. Once the presiding officer serving as investigator has sufficient information to assess whether the implementation of Zone 10 raises a material issue of fact concerning whether a violation of 39 U.S.C. 403(c) has occurred, the presiding officer shall issue a public, written report to the Commission as to whether the implementation of Zone 10 raises a material issue of fact concerning whether a violation of 39 U.S.C. 403(c) has occurred. The investigator may also consider whether violation of any other provision enumerated in 39 U.S.C. 3662(a) has occurred. Upon receipt of these reports, the Commission will consider if further action in this docket or separate proceedings is appropriate.

Materials filed in this proceeding will be available for review on the Commission's website unless the information contained therein is subject to an application for non-public treatment. The Commission's rules on non-public materials (including access to documents filed under seal) appear in 39 CFR part 3011. Additional information may be accessed via the Commission's website at *http://www.prc.gov.*

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. PI2024–2 to review issues related to the appropriate classification of Zone 10 packages pursuant to 39 U.S.C. 3642 and whether the implementation of Zone 10 prices raises a material issue of fact concerning whether a violation of 39 U.S.C. 403(c) has occurred if the Postal Service elects to implement the Zone 10 prices.

2. Pursuant to 39 CFR 3010.106, the Commission appoints John Avila to serve as presiding officer in this docket. The presiding officer shall serve in an investigatory role and make filings in this docket as described in the body of this Order.

3. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2024–06611 Filed 3–27–24; 8:45 am]

BILLING CODE 7710–FW–P

[8] *See* 39 CFR 3022.21. 39 CFR 3022.21 contemplates the appointment of an investigator in the context of procuring information and examining issues before reporting back to the Commission during a complaint proceeding.

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* March 28, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 51 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–212, CP2024–218.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–06571 Filed 3–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* March 28, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 21, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 204 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–210, CP2024–216.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–06569 Filed 3–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* March 28, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 203 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–209, CP2024–215.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–06568 Filed 3–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* March 28, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 202 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–208, CP2024–214.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–06567 Filed 3–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* March 28, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 21, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 205 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–211, CP2024–217.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–06570 Filed 3–27–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99838; File No. SR–CBOE–2024–015]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Exchange Rule 5.33, Complex Orders

March 22, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2024, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 5.33. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 5.33. Complex Orders

Trading of complex orders (as defined in Rule 1.1) is subject to all other Rules applicable to the trading of orders, unless otherwise provided in this Rule 5.33.

(a) *Definitions.* For purposes of this Rule 5.33, the following terms have the meanings below. A term defined elsewhere in the Rules has the same meaning with respect to this Rule 5.33, unless otherwise defined below.

* * * * *

Complex Strategy

The term ''complex strategy'' means a particular combination of components and their ratios to one another. New complex strategies can be created *by the Exchange or* as the result of the receipt of a complex instrument creation request or complex order for a complex strategy that is not currently in the System. The Exchange may limit the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

number of new complex strategies that may be in the System or entered for any EFID (which EFID limit would be the same for all Users) at a particular time.

* * * * *

(b) *Types of Complex Orders.* Complex orders are available in all classes listed for trading on the Exchange. Complex orders may be market or limit orders.

(1) The Exchange determines which Times-in-Force of Day, GTC, GTD, IOC, or OPG as such terms are defined in Rule 5.6(d) are available for complex orders (including for eligibility to enter the COB and initiate a COA).

(2) The Exchange determines which Capacities are eligible for COA or for entry into the COB. Complex orders submitted to the Exchange with Capacities not eligible for COA or entry into the COB route to PAR for manual handling or are cancelled, subject to a User's instructions. [(A)] In a class in which the Exchange determines complex orders with Capacity M or N are not eligible for entry into the COB, the Exchange may determine that a complex order with Capacity M or N may enter the COB:

(A) in complex strategies designated by the Exchange or

(B) if:

(i) the complex order is on the opposite side of (a) a Priority Customer complex order(s) resting in the COB with a price not outside the SNBBO; or (b) orders on the same side of the market in the same complex strategy that initiated a COA(s) if there are ''x'' number of COAs within ''y'' milliseconds, counted on a rolling basis (the Exchange determines the number ''x'' (which must be at least two) and the time period ''y'' (which may be no more than 2,000); and

(ii) the User cancels the complex order, if it remains unexecuted, no later than a specified time (which the Exchange determines and may be no more than five minutes) after the time the COB receives the M or N complex order.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules related to complex orders. Rule 5.33 governs the electronic processing of complex orders on the Exchange, and Rule 5.33(a) sets forth the definition of ''complex strategy.'' Rule 5.33(a) defines complex strategy as a particular combination of components and their ratios to one another. Pursuant to Rule 5.33(a), new complex strategies may be created as the result of the receipt of a complex instrument creation request or complex order for a complex strategy that is not currently in the System. Additionally, Rule 5.33(b)(2) states the Exchange determines which Capacities (*i.e.,* non-broker-dealer public customer, broker-dealers that are not market-makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange) are eligible for COA or entry into the Complex Order Book (''COB'').[3] Further, Rule 5.33(b)(2)(A) provides that, in a class in which the Exchange determines complex orders of Market-Makers and away market-makers are not eligible for entry into the COB,[4] the Exchange may determine that Market-Makers and away market-makers may enter complex orders into the COB if (1) their complex orders are on the opposite side of (A) a priority customer complex order(s) resting in the COB with a price not outside the national spread market (''NSM'')[5] or (B) order(s) on the same side of the market in the same strategy that initiated a COA(s) if there are ''x'' number of COAs within ''y'' milliseconds, counted on a rolling basis (the Exchange will determine the number ''x'' (which must be at least two) and time period ''y'' (which may be no more than 2,000)) and (2) they cancel their complex orders, if such orders remain unexecuted, no later than a specified time (which the Exchange determines and may be no more than five minutes) after the time the COB receives the order. To the extent an origin type is not eligible for entry into the COB or does not meet the requirements of Rule 5.33(b)(2)(A), complex orders with that origin type may still be entered into the System as opening-only or immediate-or-cancel, as such orders would not rest in the COB when the Exchange is open for trading.

The Exchange understands from market participants that electronic trading in complex strategies may be limited for a variety of reasons, including fragmentation of liquidity across multiple customer-created complex instruments expressing a similar exposure (*i.e.,* risk) profile and the need to search for a desired complex strategy. To enhance electronic trading of commonly traded complex strategies, the Exchange proposes to amend its Rules to encourage increased, consolidated liquidity in complex strategies on the complex order book (''COB''). Specifically, the Exchange first proposes to amend the definition of complex strategy in Rule 5.33(a) to provide that new complex strategies can be created by the Exchange in addition to, as today, as the result of the receipt of a complex instrument creation request or complex order for a complex strategy that is not currently in the System. The Exchange believes that permitting it to create complex strategies, including commonly traded ones, would allow for the consolidation of liquidity within a single complex strategy that is currently spread across multiple customer-created complex instruments expressing the same or similar exposure profiles. For example, if a market participant wishes to execute a trade in a complex strategy to achieve a certain level of risk exposure, if the Exchange has created a complex strategy that provides that level of risk exposure already, then the market participant may submit an order within that strategy as opposed to creating a separate one with different strikes that would still result in the same level of risk exposure. The Exchange regularly observes consistencies in trading for certain complex strategies, thus highlighting a potential for consolidation of liquidity. Specifically,

[3] Currently, orders entered with any capacity, including Market-Maker (origin code ''M'') and market-maker or specialist on another options exchange (''away market-makers'') (origin code ''N'') orders, are eligible for entry and may rest on the COB in all classes except in S&P 500 Index options (''SPX''). In SPX options, M and N complex orders are not eligible for entry into the COB except as set forth in Rule 5.33(b)(2)(A). *See* US Options Complex Book Process, Section 2.3.3.

[4] As noted above, currently, the only class for which the Exchange has determined that M and N orders are not eligible for entry into the COB is SPX options.

[5] *See* Rule 1.1 (definition of ''National Spread Market'').

the Exchange regularly observes in various common complex strategies that, while market participants may use a large number of strikes to comprise a specific complex strategy, a significant amount of the trading volume within that complex strategy occurs using a small percentage of those strikes. For example, in jelly rolls executed on the Exchange in 2023 in SPX, the Exchange observed that more than 90% of the volume executed using a jelly roll occurred using fewer than 20% of the strikes used for all the jelly rolls executed.[6] The Exchange believes this proposed change may aggregate liquidity of market participants within a single set of strikes for a complex strategy (as opposed to across many varying strikes) looking and willing to take on that level of risk exposure, which may increase execution opportunities at more competitive prices. Under the proposed rule change, customers may continue to create complex instruments as they do today.

Second, the Exchange proposes to amend Rule 5.33(b)(2)(A). As noted above, Rule 5.33(b)(2) states that the Exchange may determine which complex orders are eligible for entry into the COB, based on Capacity. As described above, Rule 5.33(b)(2)(A) provides that, in a class in which the Exchange determines that M and N complex orders are not eligible for entry into the COB,[7] the Exchange may determine that M and N complex orders may rest in the COB in defined circumstances. The Exchange proposes to amend Rule 5.33(b)(2)(A) to provide in a class in which it determines complex orders of Market-Makers and away market-makers are not eligible for entry into the COB, the Exchange may also determine that Market-Makers and away market-makers may enter complex orders into the COB if the complex order is in a complex strategy designated by the Exchange.[8] The Exchange believes that providing it with the ability to designate complex strategies in which M and N complex orders are eligible for entry into the COB may further the consolidation of liquidity within a single complex strategy that is currently spread across multiple customer-created complex instruments expressing the same or similar exposure profiles. The proposed rule change permits the Exchange to designate complex strategies created either by users or by the Exchange in the COB in which M and N complex orders would be eligible to rest. Given that market participants often execute the same complex strategy within a small number of strikes (as demonstrated by the jelly roll example above), if the Exchange designated a single instrument for a common strategy in which M and N orders could rest, the Exchange believes a significant amount of market participants looking to execute that strategy may ultimately do so with that specific instrument, given the existence of liquidity and price competition on the COB. The Exchange believes this aggregation of liquidity of market participants looking and willing to take on that level of risk exposure, which may increase execution opportunities at more competitive prices.

For example, as noted above, the Exchange has determined that M or N complex orders for SPX options are not eligible for entry into the COB. Under the proposed rule, the Exchange may determine to permit M or N complex orders for SPX options to be eligible for entry into the COB in designated complex strategies (either user or Exchange-created) under the proposed rule.[9]

Unlike leg markets, in which market-makers provide liquidity through regularly updated quotes that indicate to customers the price at which liquidity providers are willing to trade against their orders, market-makers do not quote on the COB.[10] As a result, the COB may contain limited resting orders from liquidity providers within a complex strategy to indicate to customers the price at which many liquidity providers are willing to trade that complex strategy. The Exchange believes that providing it with the ability to permit M and N complex orders to rest orders in the COB in designated complex strategies would, as discussed above, potentially consolidate liquidity for complex strategies (particularly commonly traded complex strategies) with similar risk profiles within a single strategy that provides the same exposure. This may result in the COB for these complex strategies (such as those that are commonly traded) providing customers with this information, which may ultimately result in additional price competition and execution opportunities for customers. As previously noted, the Exchange determines which Capacities are eligible for entry into the COB, and currently, in SPX options, M and N complex orders are not eligible for entry into the COB except as set forth in Rule 5.33(b)(2)(A). The Exchange believes that it is more beneficial from a trading and efficiency perspective to designate strategies in which M and N orders are eligible for COB entry, rather than determine that M and N complex orders in all complex strategies (including SPX options) are eligible for COB entry, as Market-Makers may not be willing to rest in the number of large number of complex strategies that exist in the COB.

The proposed changes would allow the Exchange to create complex strategies, in addition to those strategies that are created today by users through receipt of a complex instrument creation request or complex order for a complex strategy that is not currently in the System. The proposed changes have no impact on the current process for complex strategy creation from a user perspective, as users will still be able to create complex strategies; however, the changes may promote trading efficiencies, as the user may (but is not required to) choose to trade in an Exchange-created strategy (rather than create a new, additional strategy), should it reflect the desired complex strategy to be traded. The changes would also provide the Exchange with the ability to designate complex strategies (which may be created by users or, as proposed, created by the Exchange) in which M and N complex orders are eligible for entry into the COB. Trading in strategies the Exchange does not designate as being eligible for M and N orders to rest will continue as it does today. The Exchange will maintain on its publicly available website a list of designated complex strategies. This will allow liquidity providers to easily determine in which complex strategies they are able to rest their orders (if they so choose) and better management their risk. Current rules permit the Exchange to allow M and N orders into the COB for complex strategies in certain circumstances if the Exchange has otherwise determined that M and N orders are not eligible for COB entry; the rule change merely provides the Exchange with flexibility to allow this also in designated complex strategies. Such designated complex

[6] A jelly roll is a trading strategy created by entering into two separate positions simultaneously: one position involves buying a put and selling a call with the same strike price and expiration and the second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position. The same delta effect may be achieved by trading different strikes.

[7] As noted above, the Exchange has determined that M and N complex orders are not eligible for entry into the COB only in SPX options.

[8] Symbol reference data for those complex strategies designated by the Exchange will be publicly available on the Exchange's website, and disseminated to subscribers to the Exchange's data feeds that deliver complex order information.

[9] This would be in addition to letting M and N complex orders for SPX options enter the COB as set forth in current Rule 5.33(b)(2)(A).

[10] *See* Interpretation and Policy .01 to Rule 5.33.

strategies may include, for example, those strategies that are or may become commonly traded, based on trading activity and market feedback. As noted, the COB may contain limited resting orders from liquidity providers within a complex strategy to indicate to customers the price at which many liquidity providers are willing to trade that complex strategy. The Exchange believes permitting M and N complex orders to enter the COB for designated complex strategies will create potential execution opportunities for customers in these designated complex strategies.

By way of illustration, consider the following example:

Assume that on January 22, 2024, a trader sells the following box spread for $998.31, expiring on February 2, 2024, for purposes of raising cash.

- Sell 2024–02–02 SPX call with a strike of $4,000
- Buy 2024–02–02 SPX put with a strike of $4,000
- Buy 2024–02–02 SPX call with a strike of $5,000
- Sell 2024–02–02 SPX put with a strike of $5,000

Upon the sale, the trader receives a net premium (equivalent to a short-term loan that is due on the expiration date of February 2) of $99,831. At expiry, the trader will have to pay $100,000, which implies a rate of 5.5309%. However, this box spread trade is not the only trade that can provide this exposure. There are many box spreads with this expiration date that could replicate the same exposure created by the above box spread, such as box spreads with the same expiry date and a strike distance of 1,000, like the following Alternatives 1 and 2:

Alternative 1

- Sell 2024–02–02 SPX call with a strike of $3,000
- Buy 2024–02–02 SPX put with a strike of $3,000
- Buy 2024–02–02 SPX call with a strike of $4,000
- Sell 2024–02–02 SPX put with a strike of $4,000

Alternative 2

- Sell 2024–02–02 SPX call with a strike of $4,100
- Buy 2024–02–02 SPX put with a strike of $4,100
- Buy 2024–02–02 SPX call with a strike of $5,100
- Sell 2024–02–02 SPX put with a strike of $5,100

While alternatives 1 and 2 may not have the same quoted price as the original order, they would offer the same term of risk exposure. However, this demonstrates that liquidity for commonly traded complex strategies with similar risk profiles may be spread across multiple complex strategies. This may limit price competition and execution opportunities for customers. Pursuant to the proposed rule change, the Exchange could permit M and N complex orders to rest in the COB for one of the above complex strategies, which may permit the consolidation of liquidity from liquidity providers willing to assume the risk exposure of the above box spreads.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[11] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[12] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[13] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors, by potentially consolidating liquidity for complex strategies and increasing execution opportunities for customers. As noted above, the Exchange understands from market participants that electronic trading in complex strategies may be limited, in part due to the fragmentation of liquidity across multiple customer-created complex instruments expressing a similar exposure profile. The Exchange believes that permitting it to create complex strategies, including commonly traded ones, would allow for the consolidation of liquidity within a single complex strategy that is currently spread across multiple customer-created complex instruments expressing the same or similar exposure profiles, which may increase execution opportunities at more competitive prices, to the benefit of investors. Under the proposed change, if market participants wish to execute a trade in a complex strategy to achieve a certain level of risk exposure and the Exchange has created a complex strategy that already provides that level of risk exposure, then market participants could choose to submit an order within that strategy, as opposed to creating a new one. As noted above, customers may continue to create complex instruments as they do today.

Additionally, the Exchange believes the proposed change to allow it to determine, in a class in which it determines complex orders of Market-Makers and away market-makers are not eligible for entry into the COB, that Market-Makers and away market-makers may enter complex orders into the COB if the complex order is in a complex strategy designated by the Exchange, will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors. The Exchange believes that providing it with the ability to permit M and N complex orders to rest in the COB in designated complex strategies (in addition to resting in the COB for complex strategies as set forth in current Rule 5.33(b)(2)(A)) would also potentially consolidate liquidity for complex strategies (particularly commonly traded complex strategies) with similar risk profiles within a single strategy that provides the same exposure. As noted above, unlike the leg markets, in which market-makers provide liquidity through quotes, the COB has no market-maker quotes that indicate to customers the price at which liquidity providers are willing to trade against their orders, market-makers do not quote on the COB. As a result, the COB may contain limited resting orders from liquidity providers within a complex strategy to indicate to customers the price at which many liquidity providers are willing to trade that complex strategy. The Exchange believes that permitting it to determine M and N complex orders in designated complex strategies are eligible for entry in the COB (which may be created by users or, as proposed, created by the Exchange) would potentially consolidate liquidity for complex strategies (particularly commonly traded complex strategies) with similar risk profiles within a single

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

strategy that provides the same exposure, which may result in the COB for these complex providing customers with this information, which may ultimately result in additional price competition and execution opportunities for customers. As previously noted, current rules permit the Exchange to allow M and N orders into the COB for complex strategies in certain circumstances if the Exchange has otherwise determined that M and N orders are not eligible for COB entry; the rule change merely provides the Exchange with flexibility to allow this also in designated complex strategies.

Finally, the Exchange believes the proposed changes are equitable and non-discriminatory, as the changes will apply to all market participants uniformly. As noted above, under the proposed rule change, customers may continue to create complex instruments as they do today. When determining which complex strategies to create and in which complex strategies M and N orders are eligible for COB entry, the Exchange represents it intends to make such determinations based on objective, nondiscriminatory factors, including strategy type, orders and executions within a strategy type using close by strikes, and market participant feedback, in order to incentive market participants to trade within these strategies. The Exchange believes determining such strategies for this purpose would increase the likelihood of achieving the purpose of the proposed rule change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe 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 because it will apply in the same manner to all market participants. The Exchange notes that any complex strategy it could create under the proposed rule change could be created today by a user. Further, under current rules, the Exchange may, in a class in which the Exchange determines M and N complex orders are not eligible for entry into the COB, determine that such orders may be entered into the COB in complex strategies in defined circumstances, as described above; the proposed rule change provides the Exchange with additional flexibility to designate complex strategies in which M and N complex orders may be entered into the COB.

The Exchange does not believe that the proposed change will impose an unnecessary or inappropriate burden on intermarket competition, as it relates to complex strategies that may be created for trading on the Exchange and orders that the Exchange permits to rest on the COB. The Exchange notes that it operates in a highly competitive market, with many other options exchanges offering the ability to trade complex orders and at least one other options exchange that has the authority to create complex strategies.[14]

Additionally, current rules permit the Exchange to allow M and N orders to rest in the COB in designated classes (and thus permit the Exchange to not allow M and N orders to rest in the COB in designated classes). The proposed change related to orders that the Exchange permits to rest in the COB merely provides the Exchange with flexibility to expand the defined circumstances in those classes the Exchange does not otherwise permit M and N orders to do so, in addition to the circumstances set forth in Rule 5.33(b)(2)(A). As noted above, Exchange believes that it is more beneficial from a trading and efficiency perspective to designate strategies in which M and N orders are eligible for COB entry, rather than determine that M and N complex orders in all complex strategies (including SPX options) are eligible for COB entry, as Market-Makers may not be willing to rest in the number of large number of complex strategies that exist in the COB.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period 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 Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–CBOE–2024–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CBOE–2024–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2024–015 and should be submitted on or before April 18, 2024.

[14] *See* MIAX Rule 518(a)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06587 Filed 3–27–24; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99849; File No. SR–NYSEAMER–2024–20]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the Connectivity Fee Schedule

March 22, 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 March 14, 2024, NYSE American LLC (''NYSE American'' 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.

[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 Connectivity Fee Schedule regarding colocation services and fees to update the list of included data products. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to update the list of included data products (''Included Data Products'').

Currently, the table of Included Data Products in Colocation Note 4 sets forth the market data feeds that Users [4] can connect to at no additional cost when they purchase a service that includes access to the LCN or IP network.[5]

Each of the Exchange and the Affiliate SROs has filed to establish an ''Aggregated Lite'' market data feed (the ''Aggregated Lite Feeds'').[6] Accordingly, the Exchange proposes to update the table of Included Data Products to include the Aggregated Lite Feeds. To implement the change, the Exchange proposes to update the table of Included Data Products of the NYSE, NYSE American and NYSE Arca as follows (proposed additions underlined):

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[4] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates the New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago''), and NYSE National Inc. (''NYSE National'' and together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2024–17, SR–NYSEARCA–2024–28, SR–NYSECHX–2024–13, and SR–NYSENAT–2024–11.

[5] *See* Securities Exchange Act Release No. 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR–NYSEMKT–2016–126) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule Related to Colocation Services To Increase LCN and IP Network Fees and Add a Description of Access To Trading and Execution Services and Connectivity to Included Data Products).

[6] *See* Securities Exchange Act Release No. 99718 (March 12, 2024) (SR–NYSEAMER–2024–14).

NYSE:
NYSE Aggregated Lite
NYSE Alerts
NYSE BBO
NYSE Integrated Feed
NYSE OpenBook
NYSE Order Imbalances
NYSE Trades
NYSE American:
NYSE American Aggregated Lite
NYSE American Alerts
NYSE American BBO
NYSE American Integrated Feed
NYSE American OpenBook
NYSE American Order Imbalances
NYSE American Trades
NYSE American Options
NYSE Arca:
NYSE Arca Aggregated Lite
NYSE ArcaBook
NYSE Arca BBO
NYSE Arca Integrated Feed
NYSE Arca Order Imbalances
NYSE Arca Trades

When NYSE Chicago and NYSE National were added to the Included Data Products, the individual market data feeds offered were not broken out.[7] Accordingly, in addition to adding the Aggregated Lite Feeds, the Exchange proposes to break out the NYSE Chicago and NYSE National market data feeds in Included Data Products, as follows (proposed additions underlined):

NYSE Chicago
NYSE Chicago Aggregated Lite
NYSE Chicago BBO
NYSE Chicago Integrated Feed
NYSE Chicago Trades
NYSE National
NYSE National Aggregated Lite
NYSE National BBO
NYSE National Integrated Feed
NYSE National Trades

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The Exchange expects that the present filing will become operative immediately upon the filings to establish a fee for the Aggregated Lite Feed becoming operative. The Exchange expects such operative date or dates to be no later than the second quarter of 2024. It will announce the date or dates through a customer notice.

The Exchange does not charge for connectivity to the Included Data Feeds. Accordingly, it would not charge for connectivity to the Aggregated Lite Feeds.

General

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather,

[7] *See* Securities Exchange Act Releases No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–12) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of NYSE Chicago, Inc.), and 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Co-Location Services and Fees In Connection With the Re-Launch of Trading on the Exchange and To Amend Its Schedule of Fees and Rebates To Provide for Such Co-Location Services).

they would apply to all Users equally. As is currently the case, the purchase of any colocation service, including connectivity to the Aggregated Lite Feeds, would be completely voluntary and the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers 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,[8] in general, and furthers the objectives of section 6(b)(5) of the Act,[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with section 6(b)(4) of the Act,[10] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and 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 rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the Exchange believes that the proposed change is reasonable because the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. As now, a User would be able to determine which Included Data Products, if any, to which it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

The Exchange believes that the proposed rule change is reasonable because, as with the other Included Data Products, it believes it is not the exclusive method to connect to the Aggregated Lite Feeds. As alternatives to connecting to the Aggregated Lite Feeds as Included Data Products, a User may connect to the market data feeds through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, as it would ensure that the description of Included Data Products was complete, ensuring that it is accessible and transparent, and providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks.

The Proposed Change Is Equitable and Not Unfairly Discriminatory

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory since, as is true now, the proposed change would not apply differently to distinct types or sizes of Users but would apply to all Users equally. Moreover, adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. As now, a User would be able to determine which Included Data Products, if any, to which it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory, as it would ensure that the description of Included Data Products was complete, ensuring that it is accessible and transparent, and providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of section 6(b)(8) of the Act.[11]

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because adding the Aggregated Lite Feeds would

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(8).

increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. In this way, the proposed changes would enhance competition by, as now, enabling a User to determine to which Included Data Products, if any, it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as with the other Included Data Products, it believes it is not the exclusive method to connect to the Aggregated Lite Feeds. As alternatives to connecting to the Aggregated Lite Feeds as Included Data Products, a User may connect to the market data feeds through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed additions to the description of Included Data Products would make the description more accessible and transparent. In this manner, the proposed change would provide market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks, thereby enhancing competition by ensuring that all Users have access to the same information regarding the Included Data Products.

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 [12] and Rule 19b–4(f)(6) thereunder.[13] 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.[14]

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) [15] 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–NYSEAMER–2024–20 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–2024–20. 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–2024–20 and should be submitted on or before April 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06582 Filed 3–27–24; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange 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.

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99843; File No. SR–DTC–2024–002]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the DTC Corporate Actions Distributions Service Guide and the DTC Settlement Service Guide

March 22, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2024, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the DTC Corporate Actions Distributions Service Guide (''Distributions Guide'') [5] and the DTC Settlement Service Guide (''Settlement Guide'') [6] (collectively, ''Guides'') [7] to make technical revisions to the Guides in anticipation of the U.S. market transition to a shortened standard settlement cycle from the current two business days after trade date (''T+2'') to one business day after trade date (''T+1''), as described in greater detail below.[8]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend the DTC Corporate Actions Distributions Service Guide (''Distributions Guide'') [9] and the DTC Settlement Service Guide (''Settlement Guide'') [10] (collectively, ''Guides'') [11] to make technical revisions to the Guides in anticipation of the U.S. market transition to a shortened standard settlement cycle from the current two business days after trade date (''T+2'') to one business day after trade date (''T+1''), as described below. The proposed rule changes to the Guides would become effective on May 28, 2024.[12]

The standard settlement cycle for certain securities was last changed in 2017, when the Commission adopted the current version of Rule 15c6–1(a) [13] under the Act, which (subject to certain exceptions) prohibits any broker-dealer from entering into a contract for the purchase or sale of a security that provides for payment and delivery later than two business days after the trade date, unless otherwise expressly agreed to by the parties at the time of the transaction.[14] The implementation of this change moved the length of the settlement cycle from three business days after trade date (T+3) to T+2.

To further reduce market and counterparty risk, decrease clearing capital requirements, reduce liquidity demands, and strengthen and modernize securities settlement in the U.S. financial markets, the financial services industry, in coordination with its regulators, has been working on shortening the standard settlement cycle from T+2 to T+1. In connection therewith, the Commission has adopted a rule change to shorten the standard settlement cycle from T+2 to T+1, with a compliance date of May 28, 2024.[15]

Effect on DTC

DTC provides depository and book-entry services pursuant to its Rules and Procedures, including, but not limited to, its service guides and Operational Arrangements.[16] DTC services include custody of securities certificates and other instruments, and settlement and asset services for types of eligible securities including, among others, equities, warrants, rights, corporate debt and notes, municipal bonds, government securities, asset-backed securities, depositary receipts and money market instruments.

DTC, through its nominee, Cede & Co., is the registered holder of securities on the books of the issuer or its transfer agent; that is, DTC is the direct holder of legal title to the securities on the books of the issuer. DTC receives distributions, dividends, and corporate actions from the issuer and passes them to its Participants.

DTC processes transactions for settlement, subject to its risk controls, on the same day it receives them. Distributions on securities held at DTC on behalf of its Participants pass through DTC and are credited to the accounts of Participants on the same day that they are paid to DTC. As a result, DTC's Rules and Procedures are not generally affected by the industry's move to T+1.

However, certain provisions in the Distributions Guide and Settlement Guide relating to distributions on securities held at DTC and settlement timeframes are based on a presumption that transactions settle on a two-day settlement cycle (*i.e.,* T+2). This would change as the securities industry switches to a standard T+1, as noted above. Therefore, DTC proposes to make the below described changes.

Distributions Guide Changes

DTC would modify the Distributions Guide text relating to (i) the DTC interim accounting process and (ii) the impact of the shortened settlement cycle

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] *Available at www.dtcc.com/-/media/Files/Downloads/legal/service-guides/Service-Guide-Distributions.pdf.*

[6] *Available at www.dtcc.com/-/media/Files/Downloads/legal/service-guides/Settlement.pdf.*

[7] The Guides are Procedures of DTC. Pursuant to the Rules, the term ''Procedures'' means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. *See* Rule 1, Section 1, *infra* note 8. They are binding on DTC and each Participant in the same manner that they are bound by the Rules. *See* Rule 27, *infra* note 8.

[8] Each capitalized term not otherwise defined herein has its respective meaning as set forth the Rules, By-Laws and Organization Certificate of DTC (the ''Rules''), *available at www.dtcc.com/legal/rules-and-procedures.*

[9] *Supra* note 5.

[10] Supra note 6.

[11] *Supra* note 7.

[12] DTC will post a version of the relevant sections of the respective Guides reflecting the changes as they would appear upon the effectiveness of the subsequent proposed rule change mentioned above and will include a note on the cover page of the Guides to advise Participants of these changes.

[13] 17 CFR 240.15c6–1.

[14] *See* Securities Exchange Act Release No. 80295 (Mar. 22, 2017), 82 FR 15564 (Mar. 29, 2017).

[15] *See* Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (S7–05–22) (Shortening the Securities Transaction Settlement Cycle).

[16] *Available at www.dtcc.com/legal/rules-and-procedures.*

on the timing of the allocation of stock distributions.

Interim Accounting Process

Interim accounting is an important part of the entitlement and allocation process relating to distributions. During the interim accounting period, DTC facilitates the entitlements and allocation process systematically for both the buyer and seller of a transaction conducted in the marketplace and submitted to NSCC's Continuous Net Settlement service (''CNS'').[17] The interim accounting period is defined as the time period during which a trade settling has income or a due bill attached to it.[18] The interim accounting period (also referred to as the due bill period) is determined in accordance with market rules [19] and currently extends for the time from the record date [20] plus one day up to the ex-date plus one day.[21]

In order to prepare for the migration to T+1 settlement, DTC would modify the interim accounting process to account for the shortened period. In this regard, DTC would revise the Distributions Guide to state that the interim accounting period would reflect the anticipated due bill period that would be recognized by the industry, in light of the T+1 settlement cycle, such that the interim accounting period would extend from the record date plus one day up to the due bill redemption date (typically ex-date for equities and payable date minus one day for debt). Proposed changes to the text of the Distributions Guide relating to the interim accounting period would be reflected in the text of the subsections of the Interim Accounting section of the Distributions Guide.

''Overview'' Subsection

The subsection titled ''Overview'' provides a general description of the Interim Accounting process. The proposed rule change would make a technical change to remove a typo from a sentence that provides a general description for when the interim accounting process relating to a distribution begins and ends. The same sentence would also be revised to reflect a timing change to the interim account period necessitated by the shortening of the settlement cycle.

''Reasons for Interim Accounting'' Subsection

The subsection titled ''Reasons for Interim Accounting'' describes that normally, the registered holder of a security on the close of business on the record date is entitled to the distribution. The subsection provides examples of common reasons when this does not occur. One of these is where an exchange declares a late or irregular ex-date for an equity issue. The Distributions Guide describes that for equity issues, there are times when the listed exchange would declare an ex-date that is not one business day prior to the record date (*e.g.,* an ex-date that equals payable date plus one day). The Distributions Guide also states that at such times, a buyer is entitled to the distribution when the registered holder of an equity issue sells the security prior to the ex-date.

The proposed rule change would amend text in the ''Reasons for Interim Accounting'' section to revise the description of the timing relating to an exchange's declaration of a late or irregular ex-date for an equity issue. In this regard, the text would be revised to describe that there are times for equity issues when the listed exchange would declare an ex-date that is not ''equal to'' the record date, rather than declaring an ex-date that is ''one business day prior to'' the record date, as described above.

''Without DTC's Interim Accounting'' Subsection

The subsection titled ''Without DTC's Interim Accounting'' would be revised to correct a typographical error by removing an errant comma.

''Interim Accounting Usage'' Subsection

Activation of DTC's Interim Accounting process depends on the type of distribution. The ''Interim Accounting Usage'' subsection within the Distributions Guide provides a table that describes the conditions under which interim accounting occurs for types of distributions. The proposed rule change would revise this table to adjust timeframes relating to activation of Interim Accounting for certain types of distributions to account for the shortening of the settlement cycle:

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[17] Securities movements for transactions processed through CNS occur free of payment at DTC. *See* DTC Settlement Service Guide, *available at www.dtcc.com/-/media/Files/Downloads/legal/service-guides/Settlement.pdf,* at 15.

[18] In the absence of DTC's interim accounting process, trades scheduled to settle after the record date ''with distribution'' (those that entitle the receiver to the distribution) would have a due bill or income payment attached to detail the entitlement and associated obligations between the seller and buyer relating to the distribution. The distribution entitlement would then need to be handled between the seller and the buyer of the security outside of DTC's Distributions Service.

[19] *E.g.,* New York Stock Exchange (''NYSE'') Rules 255–259, *available at www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_Rules.pdf.*

[20] The record date is the date when an investor must be on the issuer's books as a shareholder to receive a distribution.

[21] The ex-date is determined in accordance with the applicable market procedures. *E.g.,* NYSE Listed Company Manual, Section 703.03 (part 2) (Stock Split/Stock Rights/Stock Dividend Listing Process), *available at www.nysemanual.nyse.com/lcm/Help/mapContent.asp?sec=lcm-sections&title=sx-ruling-nyse-policymanual_703.02(part2)&id=chp_1_8_3_4.*

For	Interim accounting is used[a]
Cash dividends	When the ex-date is not equal to record date ~~– 1 business days~~, and DTC is aware of the ex-date prior to the payable date. In this case, the interim period runs from record date +1 through close of business on ex-date~~+1~~.
Stock distributions	A stock distribution with an ex-date that is not equal to record date~~=1~~. In this case, the interim period runs from record date +1 through close of business on ex-date ~~+1~~. Note: Stock splits are allocated to your general free and pledged accounts on the business day following the close of the due bill period. Shares allocated to the pledged account automatically become additional collateral for the loan.

For	Interim accounting is used[a]
Rights	When the ex-date is not equal to record date~~−1~~, and there is adequate time for you to submit your rights instructions to DTC for presentation to the paying agent prior to the expiration date. In this case, the interim period runs from record date +1 through close of business on ex-date ~~+1~~. Note: If there is not adequate time for you to submit your rights instructions to DTC for presentation to the paying agent prior to the expiration date, DTC will credit your account based on your record date position. You must settle due bills outside DTC's Distribution event processing service.
***	
Supplemental due bills	For special large cash dividends, when the ex-date is the day after the announced payable date. In this case: The interim period runs from record date +1 through payable date −1 Allocation is made on payable date, and Interim accounting starts again on the payable date and continues on a daily basis through ex-date ~~+1~~. Allocation is made on the business day following the day of delivery by crediting the money settlement account of the receiver and debiting the money settlement account of the deliverer.

[a] Bold, strike-through text indicates a deletion.

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''Interim Accounting for an Ex-Date Change Due to Unscheduled Closing of a Stock Exchange'' Subsection

Occasionally, there is an unscheduled closing of one or more stock exchanges (*e.g.,* a National Day of Mourning, an event causing significant market disruption or regional impact, etc.). During an unscheduled closing, a listed exchange would typically move ex-dates that were scheduled for that date to the next business day that the exchange is open, which is usually the record date. Such a move is necessary because ex-dates must occur on a business day that the listed exchange is open.[22]

When there is an unscheduled closing of a stock exchange and an ex-date is moved, DTC does not apply the interim accounting process described above.[23] This is because it is DTC's general understanding that when there is an unscheduled closure, the intent is for the last day of trading with a due bill to be the business day prior to the unscheduled closure because there should not be any executed trades in the security on the day of closure.[24]

Pursuant to the proposed rule change, DTC would modify the text of the section of the Distributions Guide that describes DTC's process in this regard to reflect the effect of the shortened period on interim accounting (*i.e.,* that it is not applied) between trade date and settlement date by modifying an example included within the text. The text change would revise references to certain dates, including sample calendar dates for a hypothetical ex-date and unscheduled closure date, as well as text describing how the ex-date falls in relation to a hypothetical record date depending on standard practice under the timing set forth in the example, as well as in the event an exchange changes the ex-date due to an unscheduled closure.

''Allocations'' Subsection

DTC would adjust descriptions relating to stock distributions in the section of the Distributions Guide titled Allocations relating to the date on which certain stock distributions, the timing for which are tied to the settlement cycle, are allocated. Specifically, the table would be revised for affected distribution types, as follows to account for the shortening of the settlement cycle:

[22] *See, e.g.,* FINRA Rule 11140—Transactions in Securities ''Ex-Dividend,'' ''Ex-Rights'' or ''Ex-Warrants'' *available at www.finra.org/rules-guidance/rulebooks/finra-rules/11140.*

[23] *See* Securities Exchange Act Release No. 90747 (Dec. 21, 2020), 85 FR 85249 (Dec. 29, 2020) (SR–DTC–2020–019).

[24] *Id.*

For this type of distribution[a]	Allocation normally occurs[b]
Stock dividends with a late ex-date	On the payable date or ex-date +~~2~~***1***, whichever comes later.
Stock splits, with ex-distribution beginning on the business day following the payable date	For the split shares on ex-date +~~2~~***1***.
Stock spinoffs to a DTC-eligible security	On the payable date, or ex-date +~~2~~***1***, whichever comes later.

[a] Stock distribution types unaffected by the proposed rule change are not shown.

[b] Bold, strike-through text indicates a deletion. Bold, italicized text indicates an addition.

Settlement Guide Changes

Moving settlement to the end of trade date would compress certain activities and processes required to achieve settlement on T+1. In the current T+2 settlement environment, DTC processes certain transactions for settlement during the day on settlement date and other transactions the night before settlement date (''S–1'') during the so called ''night cycle,'' which begins at 8:30 p.m. on S–1.

Processing transactions during the night cycle allows for earlier settlement of certain transactions that are included in the night cycle, thereby reducing counterparty risk and, with respect to transactions that are cleared through NSCC, enables such transactions to be removed from members' marginable portfolios, which in turn reduces such members' NSCC margin requirements. DTC uses a process called the ''Night Batch Process'' to control the order of processing of transactions in the night cycle. During the Night Batch Process, DTC evaluates each participant's available positions, transaction priority and risk management controls, and identifies the transaction processing order that optimizes the number of transactions processed for settlement. The Night Batch Process allows DTC to run multiple processing scenarios until it identifies an optimal processing scenario.

At approximately 8:30 p.m. on S–1, DTC subjects all transactions eligible for processing to the Night Batch Process, which is run in an ''offline'' batch that is not visible to Participants, allowing DTC to run multiple processing scenarios until the optimal processing scenario is identified. The results of the Night Batch Process are incorporated back into DTC's core processing environment on a transaction-by-transaction basis. Changing from settling on a standard T+2 to a T+1 basis would require DTC and Participants to initiate and complete certain settlement-related processes sooner relative to the time a trade is executed. This would require changes to certain timeframes for settlement activities that occur on S–1.

In this regard, DTC would modify provisions of the Settlement Guide relating to certain settlement processing timeframes to accommodate the move to T+1.

First, cutoffs in the settlement processing schedule relating to authorization and exemption (''ANE'') of institutional transactions would be changed from 6:30 p.m. to 10:45 p.m. The order of where this item appears in the list of settlement processing timeframes would also be adjusted to reflect that it would occur later in the settlement processing schedule than certain items for which timeframes are not changing. This change

accommodates a change to the institutional processing affirmation cutoff by the matching utility, DTCC ITP Matching (US) LLC (''ITP''),[25] to 9 p.m. on T from 11:30 a.m. on T+1. This change would allow time for affirmed trades processed by ITP to be input into DTC for timely settlement processing upon the transition to T+1. A second stated time for the cutoff for ANE for 7:30 p.m. on S–1 would be removed as it relates to certain operational transaction input processes that are no longer used.

The start of the night cycle would be moved to a later time to accommodate the above-mentioned adjustment relating to night cycle processing. This adjustment would allow additional time for input of transactions into DTC's night cycle. As mentioned above, the Night Batch Process starts at approximately 8:30 p.m. ET on the business day prior to settlement date. Pursuant to the proposed rule change, the start of the Night Batch Process would be moved to 11:30 p.m. on S–1.

Considering the proposed time for the start of the Night Batch Process, the final cutoff for submission of Deliveries to the Night Cycle, or Night Deliver Orders would be moved from 8 p.m. to 11 p.m. on S–1.

Second, the section of the Settlement Guide relating to the ID Net Service, which is designed to facilitate more streamlined processing of certain transactions between brokers and custodians, would be modified to change the time a matching utility (such as ITP) must submit affirmed transactions for them to be ID Net eligible. Like the change relating to the processing of ANE described above, this change accommodates a change to the affirmation cutoff by ITP described above. Currently, the Settlement Guide requires such affirmed transactions to be submitted to DTC no later than 11:30 a.m. on S–1. The proposed rule change would modify this deadline to become 9 p.m. on S–1.

Finally, the section of the Settlement Guide relating to the Night Batch Process would be revised to reflect the above-described change on the timing of the start of the Night Batch Process, which would be modified from the current time of 8 p.m. on S–1 to 11:30 p.m. on S–1.

Implementation Date

The proposed rule changes to the Guides would take effect on May 28, 2024.

[25] DTC also processes book-entry transfers for institutional trades of its Participants, affirmed and matched by an applicable settlement matching service, including its affiliate, ITP.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act[26] requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change is consistent with this provision because it would allow settlement transactions and distributions to continue to be processed when the U.S. market standard settlement cycle is shortened. Thus, by allowing processing of transactions in settlement and the Distributions Service in accordance with standard U.S. settlement timeframes (including when the standard settlement cycle is shortened), the proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact on competition because the proposed rule change consists of conforming and technical changes to the texts of the Guides that would correspond with the industry's transition to a T+1 settlement cycle.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, they would be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

DTC reserves the right to not respond to any comments received.

[26] 15 U.S.C. 78q–1(b)(3)(F).

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)[27] of the Act and paragraph (f)[28] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–DTC–2024–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR–DTC–2024–002. 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

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f).

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 DTC and on DTCC's website (*dtcc.com/legal/sec-rule-filings*). 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–DTC–2024–002 and should be submitted on or before April 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06576 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–305, OMB Control No. 3235–0346]

Submission for OMB Review; Comment Request; Extension: Rule 34b–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 34b–1 under the Investment Company Act (17 CFR 270.34b–1) governs sales material that accompanies or follows the delivery of a statutory prospectus (''sales literature''). Rule 34b–1 deems to be materially misleading any investment company (''fund'') sales literature required to be filed with the Securities and Exchange Commission (''Commission'') by Section 24(b) of the Investment Company Act (15 U.S.C. 80a–24(b)) that includes performance data, unless the sales literature also includes the appropriate uniformly computed data and the legend disclosure required in investment company advertisements by rule 482 under the Securities Act of 1933 (17 CFR 230.482) (''rule 482''). Additionally, rule 34b–1 deems to be materially misleading any fund sales literature intended for distribution to prospective investors that includes fee and expense information, unless that sales literature complies with the disclosure and timeliness requirements of rule 482.[1] These requirements are designed to prevent misleading performance claims by funds and to enable investors to make meaningful comparisons among funds.

The Commission estimates that on average approximately 8,289[2] responses that include the information required by rule 34b–1 each year. The burden resulting from the collection of information requirements of rule 34b–1 is estimated to be 11 hours per response.[3] The total hourly burden for rule 34b–1 is approximately 91,179 hours per year in the aggregate.[4]

The collection of information under rule 34b–1 is mandatory. The information provided under rule 34b–1 is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by April 29, 2024 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov* .

Dated: March 25, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06627 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

[1] These provisions of rule 34b–1 apply to any registered investment company or business development company advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors in connection with a public offering. *See* rule 34b–1(c).

[2] The estimated average number of responses to rule 34b–1 for the two-year period from October 1, 2021, to November 30, 2023, comprises 7,912 filings submitted to FINRA and 377 filings submitted to the Commission.

[3] Previous PRA extensions for rule 34b–1 assumed an estimated annual burden of 6 hours per response in complying with paragraphs a and b of rule 34b–1, 3 hours per response in complying with the fee and expense figure disclosure requirements of paragraph c, and 2 hours for the fee waivers/expense reimbursement arrangements disclosure requirements of paragraph c, while estimating that only 96% of relevant responses would need to comply with all of the paragraph c requirements; for purposes of this extension, we are assuming that 100% of the responsive filings identified will incur burdens for all of the rule's requirements, such that a total of 11 hours per response per year (6 + 3 + 2 = 11); we recognize that this might overstate the total burden.

[4] 8,289 responses × 11 hours per response = 91,179 hours.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99834; File No. SR–MSRB–2024–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify the Calculation of the Annual Fee on Municipal Advisors Under MSRB Rule A–11

March 22, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 21, 2024, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change to amend Supplementary Material .01 to MSRB Rule A–11, on assessments for municipal advisor professionals (''Rule A–11''), to clarify that the calculation of the annual fee on municipal advisors for covered professionals[3] under Rule A–11(b) (the ''Municipal Advisor

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Rule A–11(a), the term ''covered professional'' shall mean a person associated with a municipal advisor who is qualified as a municipal advisor representative in accordance with MSRB Rule G–3 and for whom the municipal advisor has on file with the Commission an active Form MA–I as of January 31 of each year.

Professional Fee'') is based on the number of covered professionals as of January 31, 2024, rather than January 31, 2023, for the fees to be assessed in 2024, and as of January 31 of each subsequent year thereafter (the ''proposed rule change''). The MSRB has designated the proposed rule change for immediate effectiveness.[4]

The text of the proposed rule change is available on the MSRB's website at *https://msrb.org/2024-SEC-Filings,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Supplementary Material .01, on Annual Rate Card Fee, to Rule A–11 to clarify that the calculation of the Municipal Advisor Professional Fee for 2024 would be based on the number of covered professionals as of January 31, 2024, rather than January 31, 2023, and as of January 31 of each subsequent year thereafter. This amendment makes the calculation of the Municipal Advisor Professional Fee for municipal advisors based on the number of covered professionals for whom the municipal advisor has on file with the Commission an active Form MA–I as of January 31 of each applicable year, consistent with the intent of Rule A–11(a), rather than as of January 31, 2023 without regard to the year for which the fees are to be assessed. Without this amendment, municipal advisors may pay an inaccurately high or low fee for municipal professionals whose status as covered professionals has changed since January 31, 2023.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(J) of the Exchange Act,[5] which states that the MSRB's rules shall provide that each municipal advisor shall pay to the MSRB such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the MSRB. Such rules, among other things, must specify the amount of such fees and charges.[6] The proposed rule change provides clarity regarding the specific amount of such fees and charges to be paid by municipal advisors based on the number of covered professionals in each applicable year. In addition, the MSRB believes that it is more reasonable for each year's fee to be calculated based on the number of covered professionals in that same year, rather than based on the number from a prior year. As a result, the MSRB believes that the proposed rule change satisfies the applicable requirements of section 15B(b)(2)(J) of the Exchange Act.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act[8] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The MSRB has considered the economic impact of the proposed rule change.[9] The MSRB does not believe the proposed rule change imposes any burden on competition, as it applies equitably and non-discriminatorily across all municipal advisors and ensures that municipal advisors pay the correct Municipal Advisor Professional Fee based on an accurate count of covered professionals as of each respective year for which such fees shall be paid, consistent with Rule A–11(a). Additionally, the proposed rule change does not unduly burden any municipal advisor, and in fact it would, in some cases, relieve the burden of overpaying for individuals whose status as a covered professional may have changed since January 31, 2023. Finally, the MSRB 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 Exchange Act.

Section 15B(b)(2)(L)(iv) of the Exchange Act[10] requires that MSRB rules not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud. The MSRB believes that the proposed rule change would not impose an unnecessary or inappropriate regulatory burden on small municipal advisors, as the fees assessed would be proportionate to the actual number of municipal advisors within each firm. The proposed rule change clarifies that the Municipal Advisor Professional Fee, payable by each municipal advisory firm under Rule A–11(b), is based on the number of covered professionals with Forms MA–I filed by a firm on January 31 of each applicable year, rather than January 31, 2023, as currently stated in Supplementary Material .01 to Rule A–11. By providing that the Municipal Advisor Professional Fee each year be based on an accurate covered professional count for the applicable year, the proposed rule change removes regulatory burdens stemming from payment of an inaccurate fee.

For the reasons noted above, the MSRB 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 Exchange Act.[11]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change. The MSRB previously included the amendment reflected in this proposed rule change in its withdrawn proposal to amend MSRB Rules A–11 and A–13 to establish the

[4] The MSRB has designated the proposed rule change as establishing or changing a due, fee, or other charge under section 19(b)(3)(A)(ii) of the Exchange Act (15 U.S.C. 78s(b)(3)(A)(ii)) and Rule 19b–4(f)(2) (17 CFR 240.19b–4(f)(2)) thereunder. While the proposed rule change does not change the rate of the Municipal Advisor Professional Fee, the number of covered professionals is a necessary element of the calculation of the amount of Municipal Advisor Professional Fees assessed.

[5] 15 U.S.C. 78*o*–4(b)(2)(J).

[6] *Id.*

[7] *Id.*

[8] 15 U.S.C. 78*o*–4(b)(2)(C).

[9] *See* Policy on the Use of Economic Analysis in MSRB Rulemaking, available at *https://www.msrb.org/Policy-Use-Economic-Analysis-MSRB-Rulemaking.* In evaluating whether there was any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, the MSRB was guided by its principles that required the MSRB to consider costs and benefits of a rule change, its impact on efficiency, capital formation and competition, and the main reasonable alternative regulatory approaches. For those rule changes which the MSRB files for immediate effectiveness under section 19(b)(3)(A) of the Exchange Act (15 U.S.C. 78s(b)(3)(A)), while not subject to the policy, the MSRB usually focuses its examination exclusively on the burden of competition on regulated entities.

[10] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

[11] 15 U.S.C. 78*o*–4(b)(2)(C).

2024 rate card fees for dealers and municipal advisors. *See* Exchange Act Release No. 99096 (Dec. 6, 2023), 88 FR 86188 (Dec. 12, 2023), File No. SR–MSRB–2023–06 (the ''2024 Rate Card Filing'').[12] Although the Commission received comment letters from four commenters on other aspects of the 2024 Rate Card Filing, none addressed the amendment reflected in this proposed rule change.[13]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[14] and paragraph (f) of Rule 19b–4 thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2024–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2024–02. 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 (*http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2024–02 and should be submitted on or before April 18, 2024.

For the Commission, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06586 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

[12] On January 29, 2024, the Commission suspended the 2024 Rate Card Filing, which had gone into effect on January 1, 2024. *See* Exchange Act Release No. 99444 (Jan. 29, 2024), 89 FR 7424 (Feb. 2, 2024) (File No. SR–MSRB–2023–06). On February 16, 2024, the MSRB withdrew the 2024 Rate Card Filing. *See* Exchange Act Release No. 99577 (Feb. 21, 2024), 89 FR 14552 (Feb. 27, 2024) (File No. SR–MSRB–2023–06).

[13] The comment letters are available at *https://www.sec.gov/comments/sr-msrb-2023-06/srmsrb202306.htm.*

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99851; File No. SR–NYSECHX–2024–13]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

March 22, 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 March 15, 2024, the NYSE Chicago, Inc. (''NYSE Chicago'' 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to update the list of included data products. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to update the list of included data products (''Included Data Products'').

Currently, the table of Included Data Products in Colocation Note 4 sets forth the market data feeds that Users[4] can

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 at n.6 (November 1, 2019) (SR–NYSECHX–2019–12). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates the New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National Inc. (''NYSE National'' and together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2024–17, SR–NYSEAMER–

connect to at no additional cost when they purchase a service that includes access to the LCN or IP network.[5]

Each of the Exchange and the Affiliate SROs has filed to establish an ''Aggregated Lite'' market data feed (the ''Aggregated Lite Feeds'').[6] Accordingly, the Exchange proposes to update the table of Included Data Products to include the Aggregated Lite Feeds. To implement the change, the Exchange proposes to update the table of Included Data Products of the NYSE, NYSE American and NYSE Arca as follows (proposed additions underlined):

NYSE:
NYSE Aggregated Lite
NYSE Alerts
NYSE BBO
NYSE Integrated Feed
NYSE OpenBook
NYSE Order Imbalances
NYSE Trades
NYSE American:
NYSE American Aggregated Lite
NYSE American Alerts
NYSE American BBO
NYSE American Integrated Feed
NYSE American OpenBook
NYSE American Order Imbalances
NYSE American Trades
NYSE American Options
NYSE Arca:
NYSE Arca Aggregated Lite
NYSE ArcaBook
NYSE Arca BBO
NYSE Arca Integrated Feed
NYSE Arca Order Imbalances
NYSE Arca Trades

When NYSE Chicago and NYSE National were added to the Included Data Products, the individual market data feeds offered were not broken out.[7] Accordingly, in addition to adding the Aggregated Lite Feeds, the Exchange proposes to break out the NYSE Chicago and NYSE National market data feeds in Included Data Products, as follows (proposed additions underlined):

NYSE Chicago
NYSE Chicago Aggregated Lite
NYSE Chicago BBO
NYSE Chicago Integrated Feed
NYSE Chicago Trades
NYSE National
NYSE National Aggregated Lite
NYSE National BBO
NYSE National Integrated Feed
NYSE National Trades

2024–20, SR–NYSEARCA–2024–28, and SR–NYSENAT–2024–11.

[5] *See* 84 FR 58778, *supra* note 4.

[6] *See* Securities Exchange Act Release No. 99691 (March 7, 2024), 89 FR 18468 (March 13, 2024) (SR–NYSECHX–2024–08).

[7] *See* 84 FR 58778, *supra* note 4, and Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Co-Location Services and Fees In Connection With the Re-Launch of Trading on the Exchange and To Amend Its Schedule of Fees and Rebates To Provide for Such Co-Location Services).

The Exchange expects that the present filing will become operative immediately upon the filings to establish a fee for the Aggregated Lite Feed becoming operative. The Exchange expects such operative date or dates to be no later than the second quarter of 2024. It will announce the date or dates through a customer notice.

The Exchange does not charge for connectivity to the Included Data Feeds. Accordingly, it would not charge for connectivity to the Aggregated Lite Feeds.

General

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the purchase of any colocation service, including connectivity to the Aggregated Lite Feeds, would be completely voluntary and the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers 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,[8] in general, and furthers the objectives of section 6(b)(5) of the Act,[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with section 6(b)(4) of the Act,[10] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and 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 rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the Exchange believes that the proposed change is reasonable because the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. As now, a User would be able to determine which Included Data Products, if any, to which it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

The Exchange believes that the proposed rule change is reasonable because, as with the other Included Data Products, it believes it is not the exclusive method to connect to the Aggregated Lite Feeds. As alternatives to connecting to the Aggregated Lite Feeds as Included Data Products, a User may connect to the market data feeds through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, as it would ensure that the description of Included Data Products was complete, ensuring that it is accessible and transparent, and providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks.

The Proposed Change Is Equitable and Not Unfairly Discriminatory

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory since, as is true now, the proposed change would not apply differently to distinct types or sizes of Users but would apply to all Users equally. Moreover, adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. As now, a User would be able to determine which Included Data Products, if any, to which it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory, as it would ensure that the description of Included Data Products was complete, ensuring that it is accessible and transparent, and providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(4).

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of section 6(b)(8) of the Act.[11]

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. In this way, the proposed changes would enhance competition by, as now, enabling a User to determine to which Included Data Products, if any, it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as with the other Included Data Products, it believes it is not the exclusive method to connect to the Aggregated Lite Feeds. As alternatives to connecting to the Aggregated Lite Feeds as Included Data Products, a User may connect to the market data feeds through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed additions to the description of Included Data Products would make the description more accessible and transparent. In this manner, the proposed change would provide market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks, thereby enhancing competition by ensuring that all Users have access to the same information regarding the Included Data Products.

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[12] and Rule 19b–4(f)(6) thereunder.[13] 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.[14]

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)[15] 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–NYSECHX–2024–13 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–NYSECHX–2024–13. 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–NYSECHX–2024–13 and should be submitted on or before April 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06584 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange 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.

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99852; File No. SR–NYSENAT–2024–11]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

March 22, 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 March 15, 2024, NYSE National, Inc. (''NYSE National'' 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to update the list of included data products. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to update the list of included data products (''Included Data Products'').

Currently, the table of Included Data Products in Colocation Note 4 sets forth the market data feeds that Users [4] can connect to at no additional cost when they purchase a service that includes access to the LCN or IP network.[5]

Each of the Exchange and the Affiliate SROs has filed to establish an ''Aggregated Lite'' market data feed (the ''Aggregated Lite Feeds'').[6] Accordingly, the Exchange proposes to update the table of Included Data Products to include the Aggregated Lite Feeds. To implement the change, the Exchange proposes to update the table of Included Data Products of the NYSE, NYSE American and NYSE Arca as follows (proposed additions underlined):

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 at n.9 (June 6, 2018) (SR–NYSENAT–2018–07). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates the New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE Chicago, Inc. (''NYSE Chicago'' and together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2024–17, SR–NYSEAMER–2024–20, SR–NYSEARCA–2024–28, and SR–NYSECHX–2024–13.

[5] *See* 83 FR 26314, *supra* note 4.

[6] *See* Securities Exchange Act Release No. 99715 (March 12, 2024) (SR–NYSENAT–2024–06).

NYSE: NYSE Aggregated Lite NYSE Alerts NYSE BBO NYSE Integrated Feed NYSE OpenBook NYSE Order Imbalances NYSE Trades
NYSE American: NYSE American Aggregated Lite NYSE American Alerts NYSE American BBO NYSE American Integrated Feed NYSE American OpenBook NYSE American Order Imbalances NYSE American Trades
NYSE American Options
NYSE Arca: NYSE Arca Aggregated Lite NYSE ArcaBook NYSE Arca BBO NYSE Arca Integrated Feed NYSE Arca Order Imbalances NYSE Arca Trades

When NYSE Chicago and NYSE National were added to the Included Data Products, the individual market data feeds offered were not broken out.[7] Accordingly, in addition to adding the Aggregated Lite Feeds, the Exchange proposes to break out the NYSE Chicago and NYSE National market data feeds in Included Data Products, as follows (proposed additions underlined):

NYSE Chicago NYSE Chicago Aggregated Lite NYSE Chicago BBO NYSE Chicago Integrated Feed NYSE Chicago Trades
NYSE National NYSE National Aggregated Lite NYSE National BBO NYSE National Integrated Feed NYSE National Trades

The Exchange expects that the present filing will become operative immediately upon the filings to establish a fee for the Aggregated Lite Feed becoming operative. The Exchange expects such operative date or dates to be no later than the second quarter of 2024. It will announce the date or dates through a customer notice.

The Exchange does not charge for connectivity to the Included Data Feeds. Accordingly, it would not charge for connectivity to the Aggregated Lite Feeds.

General

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the purchase of any colocation service, including connectivity to the Aggregated Lite

[7] *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–12) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of NYSE Chicago, Inc.), and 83 FR 26314, *supra* note 4.

Feeds, would be completely voluntary and the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers 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,[8] in general, and furthers the objectives of section 6(b)(5) of the Act,[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with section 6(b)(4) of the Act,[10] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and 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 rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the Exchange believes that the proposed change is reasonable because the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. As now, a User would be able to determine which Included Data Products, if any, to which it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

The Exchange believes that the proposed rule change is reasonable because, as with the other Included Data Products, it believes it is not the exclusive method to connect to the Aggregated Lite Feeds. As alternatives to connecting to the Aggregated Lite Feeds as Included Data Products, a User may connect to the market data feeds through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, as it would ensure that the description of Included Data Products was complete, ensuring that it is accessible and transparent, and providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks.

The Proposed Change Is Equitable and Not Unfairly Discriminatory

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory since, as is true now, the proposed change would not apply differently to distinct types or sizes of Users but would apply to all Users equally. Moreover, adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. As now, a User would be able to determine which Included Data Products, if any, to which it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory, as it would ensure that the description of Included Data Products was complete, ensuring that it is accessible and transparent, and providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of section 6(b)(8) of the Act.[11]

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(8).

IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. In this way, the proposed changes would enhance competition by, as now, enabling a User to determine to which Included Data Products, if any, it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as with the other Included Data Products, it believes it is not the exclusive method to connect to the Aggregated Lite Feeds. As alternatives to connecting to the Aggregated Lite Feeds as Included Data Products, a User may connect to the market data feeds through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed additions to the description of Included Data Products would make the description more accessible and transparent. In this manner, the proposed change would provide market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks, thereby enhancing competition by ensuring that all Users have access to the same information regarding the Included Data Products.

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 [12] and Rule 19b–4(f)(6) thereunder.[13] 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.[14]

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) [15] 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–NYSENAT–2024–11 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–NYSENAT–2024–11. 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–NYSENAT–2024–11 and should be submitted on or before April 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06585 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange 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.

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–777, OMB Control No. 3235–0729]

Submission for OMB Review; Comment Request; Extension: Form N–CEN

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously

approved collection of information discussed below.

The title for the collection of information is ''Form N–CEN under the Investment Company Act of 1940.'' Form N CEN is used to collect annual, census-type information for registered funds. Filers must submit this report electronically using the Commission's electronic filing system ''(EDGAR'') in Extensible Markup Language (''XML'') format. The purpose of Form N–CEN is to satisfy the filing and disclosure requirements of Section 30 of the Investment Company Act, and of rule 30a–1 thereunder.

We estimate that the average annual hour burden to complete the generally applicable items on Form N–CEN response will be 18 hours per year. We estimate that the aggregate annual hour burden to complete the generally applicable items will be 59,490 hours per year. We therefore estimate that filers would have total average annualized paperwork related expenses related to complete the generally applicable items of $605,520 for reports on Form N–CEN.

The requirements of this collection of information are mandatory. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by April 29, 2024 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*.

Dated: March 25, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06630 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35163; File No. 812–15446]

Coller Secondaries Private Equity Opportunities Fund, et al.

March 22, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit certain business development companies and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

Applicants: Coller Secondaries Private Equity Opportunities Fund; Coller Private Market Secondaries Advisors, LLC; Coller Investment Management Limited; Coller Capital, Inc.; Coller Capital Limited; Coller Credit Secondaries Investment Management Limited; Coller International Partners IX—A, L.P.; Coller International Partners IX—B, L.P.; Coller International Partners IX—C, SLP; Coller LP Secondaries—A, L.P.; Coller LP Secondaries—B, L.P.; Coller LP Secondaries—C, SLP; Coller GP-led and Direct Secondaries—A, L.P.; Coller GP-led and Direct Secondaries—B, L.P; Coller GP-led and Direct Secondaries—C, SLP; Coller International Partners VIII, L.P.; Coller International Partners VIII Parallel Fund, L.P.; Coller International Partners VIII Luxembourg, SLP; Coller Credit Opportunities I—A, L.P.; Coller Credit Opportunities I—B, L.P.; Coller Credit Opportunities I—D, SLP; Coller Credit Opportunities I Annex II, L.P.; Coller Credit Secondaries—Opportunities Fund II—A, L.P.; Coller Credit Secondaries—Opportunities Fund II—B, L.P.; Coller Credit Secondaries—Opportunities Fund II—C, SLP; Coller Credit Secondaries—Opportunities Fund II—Annex I—A, L.P.; Coller Credit Secondaries—Opportunities Fund II—Annex I—B, L.P.; Coller Credit Secondaries—Opportunities Fund II—Annex I—C, SLP; Coller Credit Secondaries—Special Situations Fund I—A, L.P.; Coller Credit Secondaries—Special Situations Fund I—B, L.P.; CIP VIII Strategic Co-Investment Vehicle L.P.; Mondriaan Co-Investments SLP; CKPF SLP; Coller International Partners VII, L.P.; Coller International Partners VII Parallel Fund, L.P.; Coller International Partners VII Luxembourg, SLP; Coller International Partners VI, L.P.; Coller International Partners VI Parallel Fund, L.P.; and Coller International Partners VI Parallel Fund (Latin America), L.P.

Filing Dates: The application was filed on March 24, 2023, and amended on February 12, 2024.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on, April 16, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Richard Jason Elmhirst, at *cccompliance@collercapital.com;* and Rajib Chanda, Esq., and Nathan Somogie, Esq., Simpson Thacher & Bartlett LLP, at *rajib.chanda@stblaw.com* and *nathan.somogie@stblaw.com.*

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' amended and restated application, dated February 12, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *http://www.sec.gov/edgar/searchedgar/*

legacy/companysearch.html. You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06541 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–614, OMB Control No. 3235–0682]

Submission for OMB Review; Comment Request; Extension: Rule 13h–1 and Form 13H

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in Rule 13h–1 (17 CFR 240.13h–1) and Form 13H—registration of large traders [1] submitted pursuant to section 13(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 13h–1 and Form 13H under section 13(h) of the Exchange Act established a large trader reporting framework.[2] The framework assists the Commission in identifying and obtaining certain baseline information about traders that conduct a substantial amount of trading activity, as measured by volume or market value, in the U.S. securities markets.

The identification, recordkeeping, and reporting framework provides the Commission with a mechanism to identify large traders and obtain additional information on their trading activity. Specifically, the rule requires large traders to identify themselves to the Commission and file certain interim updates with the Commission on Form 13H. Upon receipt of Form 13H, the Commission issues a unique identification number to the large trader, which the large trader then provides to its registered broker-dealers. Certain registered broker-dealers are required to maintain transaction records for each large trader and are required to report that information to the Commission upon request.[3] In addition, certain registered broker-dealers are required to adopt procedures to monitor their customers for activity that would trigger the identification requirements of the rule.

The respondents to the collection of information required by Rule 13h–1 and Form 13H are large traders and registered broker-dealers. The Commission estimates that the total annual time burden associated with Rule 13h–1 and Form 13H is approximately 131,415 hours per year. This burden is comprised of 31,140 hours for initial filings by large traders on Form 13H, 75,300 hours for updates by large traders, 22,200 hours for broker-dealer reporting, and 2,775 hours for broker-dealer monitoring.

Compliance with Rule 13h–1 is mandatory. The information collection under Rule 13h–1 is considered confidential subject to the limited exceptions provided by the Freedom of Information Act.[4]

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

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by April 29, 2024 to (i) *www.reginfo.gov/public/do/PRAMain;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: March 25, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06631 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

[1] Rule 13h–1(a)(1) defines ''large trader'' as any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level or voluntarily registers as a large trader by filing electronically with the Commission Form 13H.

[2] *See* Securities Exchange Act Release No. 64976 (July 27, 2011), 76 FR 46959 (August 3, 2011).

[3] The Commission, pursuant to Rule 17a–25 (17 CFR 240.17a–25), currently collects transaction data from registered broker-dealers through the Electronic Blue Sheets (''EBS'') system to support its regulatory and enforcement activities. The large trader framework added two new fields, the time of the trade and the identity of the trader, to the EBS system. Additionally, pursuant to Rule 613 (17 CFR 242.613), the Commission requires each national securities exchange and national securities association to collect transaction data from registered broker-dealers through the consolidated audit trail, to which the agency has access, to support regulatory and enforcement activities. This data includes the time of each trade and the LTID number of the person exercising investment discretion over the trade, the latter of which is assigned by the Commission pursuant to Rule 13h–1.

[4] *See* 5 U.S.C. 552 and 15 U.S.C. 78m(h)(7).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99850; File No. SR–NYSEARCA–2024–28]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

March 22, 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 March 14, 2024, NYSE Arca, Inc. (''NYSE Arca'' 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to update the list of included data products. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to update the list of included data products (''Included Data Products'').

Currently, the table of Included Data Products in Colocation Note 4 sets forth the market data feeds that Users [4] can connect to at no additional cost when they purchase a service that includes access to the LCN or IP network.[5]

Each of the Exchange and the Affiliate SROs has filed to establish an ''Aggregated Lite'' market data feed (the ''Aggregated Lite Feeds'').[6] Accordingly, the Exchange proposes to update the table of Included Data Products to include the Aggregated Lite Feeds. To implement the change, the Exchange proposes to update the table of Included Data Products of the NYSE, NYSE American and NYSE Arca as follows (proposed additions underlined):

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NYSE:
<u>NYSE Aggregated Lite</u>
NYSE Alerts
NYSE BBO
NYSE Integrated Feed
NYSE OpenBook
NYSE Order Imbalances
NYSE Trades
NYSE American:
<u>NYSE American Aggregated Lite</u>
NYSE American Alerts
NYSE American BBO
NYSE American Integrated Feed
NYSE American OpenBook
NYSE American Order Imbalances
NYSE American Trades
NYSE American Options
NYSE Arca:
<u>NYSE Arca Aggregated Lite</u>
NYSE ArcaBook
NYSE Arca BBO
NYSE Arca Integrated Feed
NYSE Arca Order Imbalances
NYSE Arca Trades

When NYSE Chicago and NYSE National were added to the Included Data Products, the individual market data feeds offered were not broken out.[7] Accordingly, in addition to adding the Aggregated Lite Feeds, the Exchange

[4] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates the New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Chicago, Inc. (''NYSE Chicago''), and NYSE National Inc. (''NYSE National'' and together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2024–17, SR–NYSEAMER–2023–20, SR–NYSECHX–2024–13, and SR–NYSENAT–2024–11.

[5] *See* Securities Exchange Act Release No. 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEArca–2016–172) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule and the NYSE Arca Equities Schedule of Fees and Charges Related to Co-Location Services To Increase LCN and IP Network Fees and Add a Description of Access to Trading and Execution Services and Connectivity to Included Data Products).

[6] *See* Securities Exchange Act Release No. 99713 (March 12, 2024) (SR–NYSEArca–2024–22).

[7] *See* Securities Exchange Act Releases No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–12) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of NYSE Chicago, Inc.), and 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Co-Location Services and Fees In Connection With the Re-Launch of Trading on the Exchange and To Amend Its Schedule of Fees and Rebates To Provide for Such Co-Location Services).

proposes to break out the NYSE Chicago and NYSE National market data feeds in Included Data Products, as follows (proposed additions underlined):

NYSE Chicago NYSE Chicago Aggregated Lite NYSE Chicago BBO NYSE Chicago Integrated Feed NYSE Chicago Trades
NYSE National NYSE National Aggregated Lite NYSE National BBO NYSE National Integrated Feed NYSE National Trades

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The Exchange expects that the present filing will become operative immediately upon the filings to establish a fee for the Aggregated Lite Feed becoming operative. The Exchange expects such operative date or dates to be no later than the second quarter of 2024. It will announce the date or dates through a customer notice.

The Exchange does not charge for connectivity to the Included Data Feeds. Accordingly, it would not charge for connectivity to the Aggregated Lite Feeds.

General

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the purchase of any colocation service, including connectivity to the Aggregated Lite Feeds, would be completely voluntary and the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers 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,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and 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 rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the Exchange believes that the proposed change is reasonable because the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. As now, a User would be able to determine which Included Data Products, if any, to which it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

The Exchange believes that the proposed rule change is reasonable because, as with the other Included Data Products, it believes it is not the exclusive method to connect to the Aggregated Lite Feeds. As alternatives to connecting to the Aggregated Lite Feeds as Included Data Products, a User may connect to the market data feeds through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, as it would ensure that the description of Included Data Products was complete, ensuring that it is accessible and transparent, and providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks.

The Proposed Change Is Equitable and Not Unfairly Discriminatory

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(4).

using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory since, as is true now, the proposed change would not apply differently to distinct types or sizes of Users but would apply to all Users equally. Moreover, adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. As now, a User would be able to determine which Included Data Products, if any, to which it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory, as it would ensure that the description of Included Data Products was complete, ensuring that it is accessible and transparent, and providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[11]

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. In this way, the proposed changes would enhance competition by, as now, enabling a User to determine to which Included Data Products, if any, it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as with the other Included Data Products, it believes it is not the exclusive method to connect to the Aggregated Lite Feeds. As alternatives to connecting to the Aggregated Lite Feeds as Included Data Products, a User may connect to the market data feeds through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed additions to the description of Included Data Products would make the description more accessible and transparent. In this manner, the proposed change would provide market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks, thereby enhancing competition by ensuring that all Users have access to the same information regarding the Included Data Products.

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[12] and Rule 19b–4(f)(6) thereunder.[13] 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.[14]

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)[15] 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:

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange 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.

[15] 15 U.S.C. 78s(b)(2)(B).

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–2024–28 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–2024–28. 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–2024–28 and should be submitted on or before April 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06583 Filed 3–27–24; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99847; File No. SR–LCH SA–2024–002]

Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to the CDSClear Select Membership Model

March 22, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2024, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been primarily prepared by LCH SA. The Commission is publishing this notice to solicit comments on the Proposed Rule Change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

LCH SA is proposing to amend its CDS Clearing Rule Book (''Rule Book'') and CDS Clearing Procedures (''Procedures'') to incorporate new terms and to make conforming, clarifying and clean-up changes to implement the new model of CDSClear select membership (the ''Proposed Rule Change'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA included statements concerning the purpose of and basis for the Proposed Rule Change and discussed any comments it received on the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In accordance with the current Rule Book, Select Members can provide clearing services in respect of credit default swaps (''CDS'') and options on CDS (collectively, the ''CDSClear Clearing Services'') to Affiliates only. LCH SA is proposing to extend the possibility for Select Members to provide CDSClear Clearing Services to any client, including Affiliates (the ''New Select Membership'') to allow some prospective clearing members that wish to provide clearing services to non-affiliated clients without becoming General Members. General Members must participate in Competitive Bidding for Auction Packages and submit prices to LCH SA, and thus the New Select Membership would allow some clearing members to provide clearing services to non-affiliated clients even if they do not have the capacity to participate in competitive bidding or to submit prices to LCH SA.

Pursuant to the New Select Membership, LCH SA is proposing to remove the requirement for Select Members to participate in Competitive Bidding for Auction Packages, including trades belonging to the Product Families they have elected to clear with LCH SA. Indeed, as part of the competitive auction process applicable in the context of the default management process implemented in respect of the default of a Clearing Member, each non-defaulting Clearing Member is required to submit bids in respect of any portfolio of trades reflecting the Cleared Transactions of the Defaulting Clearing Member, subject to exceptions provided for in the Rule Book; among them, a non-defaulting Clearing Member which is a Select Member shall submit bids only in respect of a portfolio of trades that does not include any trade which does not belong to the relevant Select Member's Products Families, currently defined as the categories of credit default swaps (''CDS'') and options on CDS in respect of which LCH SA provides clearing services and that may be selected by a Select Member in the relevant form (the ''Product Family Form''). Instead, LCH SA is proposing to add the option for Select Members to elect to participate in Competitive Bidding for Auction Packages at their own discretion, in addition to participating in the CDS Default Management Group and CDS Default Management Committee. Unlike Clearing Members admitted as General Members, Select Members will not benefit from the possibility to subscribe to the unlimited tariff allowing them to clear an unlimited number of trades for their own account for an annual fixed fee set out in the CDSClear fee grid.[3]

Pursuant to the New Select Membership, LCH SA also is proposing to change the method by which Select

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The CDSClear fee grid is available on LCH SA's website at the following link: *https://www.lch.com/services/cdsclear/fees.*

Members submit prices to LCH SA. Currently, Select Members shall submit prices to LCH SA in respect of its open positions belonging to the Product Families elected by the relevant Select Member. Select Members would be able to choose whether to submit prices under the New Select Membership in respect of the relevant Trading Cities they have selected in the new ''Select Member Form,'' as discussed below.

At this time, LCH SA is not proposing to amend the Risk Management Framework or its free grid as a result of providing the New Select Membership. General Members will continue to have an unlimited fee tariff option, unlike Select Members, and General Members on variable tariff pay will have both lower fixed fee and lower variable fees than Select Members. General Members who clear for clients may also be able to give their clients the same liquidity margin as other General Members, unlike Select Members, who may incur a higher liquidity margin, including a liquidity concentration charge, for large positions, including large client positions.

In order to implement the Proposed Rule Change, LCH SA is proposing to amend the Rule Book and Section 1 and Section 5 of the Procedures to reflect the amended terms and conditions of the New Select Membership model.

Proposed Revisions to the Rule Book and Procedures

(i) CDSClear Client Clearing Services

LCH SA is proposing to extend the possibility for Select Members to provide CDSClear clearing services to any client, in addition to Affiliates.

LCH SA is proposing to delete the defined term, ''Affiliated Firm'' since it was used only in respect of the current Select Member model pursuant to which a Select Member may provide client clearing services to Affiliated Firms, which include their Affiliates and any entity that is otherwise a member to the same institutional protection scheme as the Clearing Member. Since Select Members will be permitted to provide clearing services to any client, regardless of whether it is an Affiliated Firm, there is no need to keep such defined term and therefore any reference to ''Affiliated Firm(s)'' or to the provision of client clearing services to Affiliated Firm(s) is proposed to be deleted from the definitions of ''CCM'', ''FCM/BD Clearing Member'' and ''Select Member'', as well as from Article 2.2.1.1(iv) and (v), Article 2.2.2.1(iv), Article 4.2.7.2(ii), and Article 5.1.1.1. Indent (i) of Articles 5.1.1.2 and 6.1.1.2 of the Rule Book will be also removed since such indent is currently providing for the condition pursuant to which a Select Member may provide client clearing services to an Affiliated Firm only.

As a result of the removal of the condition that a Select Member may provide client clearing services to Affiliated Firms only, the term ''Affiliated Firm'' will be revised to ''Affiliate'' (as that term is defined in the Rule Book) in the definition of the following defined terms: ''CCM Indirect Gross Segregated Account Client'', ''CCM Indirect Net Segregated Account Client'', ''CCM Individual Segregated Account Client'' and ''FCM/BD Client'' and in Article 6.1.1.2.

The definition of ''Select Member'' would also be revised to clarify that Select Members may offer CDSClear Clearing Services to any client, including Affiliates.

LCH SA is proposing to revise Article 4.2.7.2(ii) by deleting reference to ''General Member'' and ''Select Member'' as well as ''Affiliated Firms'', as this distinction would no longer be relevant with Select Members having the option to be a Price Contribution Participant and providing CDS Client Clearing Services to any client.

(ii) Deletion of Obligation To Participate in Competitive Bidding

LCH SA is proposing to delete the defined terms, ''Product Family'' and ''Product Family Form'', as these defined terms are only applicable when participation in Competitive Bidding is mandatory for all Select Members in respect of the Product Families they have selected in the Product Family Form. Because of the new options Select Members will have, there is no longer a need to use the Product Family Form.

As a result, LCH SA is proposing to delete any reference to ''Product Family Form'' and ''Product Family'' in Section 1.1.1, Article 2.2.0.4, Article 3.1.6.2(ii), Article 3.1.6.5, and Clause 5.4.1(ii) and Clause 6.1 of Appendix 1 (*CDS Default Management Process*), and replace these terms with the new defined term of ''Select Member Form'' (as further explained in sub-paragraph (iii) below), where relevant (*e.g.,* in the definition of ''CDS Clearing Documentation'').

LCH SA is also proposing to delete Article 3.1.6.8 related to ''Product Family Form'' in its entirety as it is no longer relevant as a result of the changes made pursuant to this subparagraph (ii).

Finally, any reference to a General Member or a Select Member will be removed from current Clause 6.1.2(ii)(a) of Appendix 1 (*CDS Default Management Process*) because of the removal of the ''Product Family Form''. Specifically, there is no longer a need to make a distinction between both memberships for the purposes of the registration process for the Index Swaption service in the context of the transfer of positions resulting from the auction process.

(iii) Select Member Form

LCH SA is proposing to add a new defined term, ''Select Member Form'', in Section 1.1.1 of the Rule Book, to define the form by which the Select Member could make the elections (including the option to participate in Competitive Bidding)—as further elaborated in renumbered Article 2.2.0.4 of the Rule Book and Section 1 and Section 5 of the Procedures.

LCH SA is proposing to revise Section 1.1 (*Application Procedure*), indent (c), entitled ''*CDSClear Application Form*'' in the Procedures to replace the term ''Product Family Form'', which is no longer relevant, by the term ''Select Member Form''. LCH SA is also proposing to clarify that the Select Member Form will be made available by LCH SA's CDSClear Business Development & Relationship Management team.

This Select Member Form would be used by Select Members to elect to participate in Competitive Bidding for selected Trading Cities. The election to participate in Competitive Bidding would have to be received within 1 hour of the declaration of an Event of Default by LCH SA—as noted in revised Clause 5.4.1(ii) of Appendix 1 of the Rule Book. In addition, Clause 5.4.1(ii) of Appendix 1 would provide that the Select Member would have to comply with the criteria referenced in Article 2.2.1.1(xi) of the Rule Book.

LCH SA is proposing to revise renumbered Article 2.2.0.4 of the Rule Book to add the possibility for Select Members to elect to participate in Competitive Bidding subject to the conditions set forth in Article 2.2.1.1 of the Rule Book (*Membership Requirements*).

Article 2.2.1.1 of the Rule Book sets forth the conditions that any Applicant wishing to be admitted as a Clearing Member by LCH SA must satisfy. As such conditions apply to both General Members and Select Members, LCH SA is proposing to remove reference to ''Select Member'' and ''General Member'' from Article 2.2.1.1(iv) and (v) and Article 2.2.2.1(iv) of the Rule Book. In addition, LCH SA is proposing to specify in Article 2.2.1.1(xi) that Select Members wishing to elect to participate in Competitive Bidding would have to demonstrate being able to successfully participate in the implementation of the

CDS Default Management Process and in regular fire drills run by LCH SA in accordance with the Rule Book.

Provided that Select Members comply with the conditions referenced in Article 2.2.1.1 of the Rule Book, LCH SA is proposing to revise Article 2.2.0.5 (now renumbered as Article 2.2.0.4) of the Rule Book to include the possibility for Select Members to:

(i) be a Price Contribution Participant in respect of one or more Trading City(ies); if a Select Member has elected to be a Price Contribution Participant, and therefore to receive the Price Requirements Files in respect of the relevant Trading Cities, it will be bound by all obligations of any Price Contribution Participant as set out in the Rule Book and Section 5 of the Procedures. Under current Article 2.2.05, the Select Member has the possibility to contribute to prices by submitting Market Data (and therefore to be a Price Contribution Participant) in accordance with Section 5 of the Procedures but is under no obligation to do so, which would be no longer the case under the New Select Membership model; indeed, once a Select Member will elect to be a Price Contribution Participant for one or more Trading Cities, it will be subject to the obligation to provide the Market Data for the Trading Cities in respect of which it has Open Positions;

(ii) participate in Competitive Bidding as further detailed in Clause 5 of the CDS Default Management Process, subject to Article 2.2.1.1(xi); it will be also clarified that a Select Member which has elected to participate in Competitive Bidding will be subject to the provisions of the clearing rules which apply to any non-defaulting Clearing Member which is required to participate in Competitive Bidding for each Auction Package;

(iii) nominate DMG Representatives in accordance with Clause 11.2.2 of the CDS Default Management Process, whereas, in accordance with the current version of Clause 11.2.2 of the CDS Default Management Process, each Clearing Member, including any Select Member, shall nominate DMG Representatives. Since the participation to the Competitive Bidding process will be no longer required in respect of Product Families for a Select Member, the obligation to participate in the CDS Default Management Group will become optional for consistency purposes. LCH SA would expect that Select Members that have elected to participate in Competitive Bidding will be interested in participating in the CDS Default Management Group and therefore nominate DMG Representatives for that purpose; and/or

(iv) nominate representatives to be appointed as members of the CDS Default Management Committee in accordance with Clause 10.2 of the CDS Default Management Process. Similarly to the nomination of DMG Representatives as described in previous indent (iii), each Clearing Member, including any Select Member, shall nominate representatives to be appointed as members of the CDS Default Management Committee in accordance with current Clause 10.2 of the CDS Default Management Process and for the same reasons, this will become only an option for the Select Member which might be interested in participating in the CDS Default Management Committee if they were to select the possibility to participate in Competitive Bidding.

Since a Select Member will need to make the above listed elections under the New Select Membership model, the possibility to change its election in respect of its contribution to prices as currently provided for in Article 2.2.0.5 has been extended to all the new elections to be made as well; hence, the Select Member will be able to change any of its elections by providing LCH SA with a copy of a duly signed updated Select Member Form, in accordance with the conditions set out in Section 5 of the Procedures pursuant to the revised Article 2.2.0.5 (now renumbered as Article 2.2.0.4).

In addition, LCH SA is proposing to revise the definition of ''Price Contribution Participant'' in Section 1.1.1 of the Rule Book to clarify that it includes Select Members that have opted for submitting Market Data in accordance with Article 2.2.0.4, rather than Section 5 of the Procedures.

In addition, LCH SA is proposing to revise Section 5.18.1 (*Market Data submission*) of the Procedures to delete a paragraph that notes that a Select Member may decide to receive or stop receiving Price Requirement Files and provides instructions for how a such Select Member can choose to receive or stop receiving Price Requirement Files. Indeed, the election to be a Price Contribution Participant will be made by the Select Member by using the new Select Member Form and this election can be updated by updating such form in the conditions set out in amended paragraph (c) of Section 5.11 of the Procedures.

Furthermore, Clauses 10.2.1 and 11.2.2 of Appendix 1 (*CDS Default Management Process*) would be revised to include representatives nominated by Select Members to the CDS Default Management Group and CDS Default Management Committee since the Select Members will be permitted to opt for the possibility to participate in the CDS Default Management Group and/or the CDS Default Management Committee in accordance with amended Article 2.2.0.4 (currently Article 2.2.0.5) as further explained in page 11 above.

LCH SA is also proposing to amend indent (d) entitled ''*Due diligence and review process*'' of Section 1.1 (*Application Procedure*) of the Procedures to include the obligation for Select Members to successful carry out tests as referenced in Article 2.2.1.1 (xi) of the Rule Book.

Finally, LCH SA is proposing to revise Section 5.11(c) (*Update of the Select Member Form*) of the Procedures to also specify that the Select Member, having elected to participate in Competitive Bidding, will be required to participate in Competitive Bidding for each Auction Package.

(iv) Updated Select Member Form

LCH SA is proposing to revise Article 2.2.0.5 to enable Select Members to elect to opt out of Competitive Bidding and all other elections in sub-paragraphs (i) to (iv) of Article 2.2.0.5, under conditions set forth in Section 5 of the Procedures as this is currently the case but in respect of the contribution to prices only. The Select Member Form will allow the Select Member to notify its elections to LCH SA and also to update it should it wish to change any of its elections, in accordance with the amended provisions of Section 5.11 of the Procedures, as further described below.

LCH SA would revise Section 5.11(c), ''*Update of the Select Member Form*'', (formerly, ''*Update of the Product Family Form*'') of the Procedures to cover the update process of the Select Member Form, as the Product Family Form, and any reference thereto, is no longer relevant. Any update to the Select Member Form may be subject to passing requisite tests prescribed by LCH SA and if the update pertains to the Select Member no longer participating in the Competitive Bidding Process, such update will be effective on the eighth Clearing Day following the Clearing Day on which the updated Select Member Form is received, in order to ensure that the Select Member will still be required to participate in Competitive Bidding if an Event of Default is declared in respect of another Clearing Member at the same time the updated Select Member Form of such Select Member is received by LCH SA.

LCH SA is also proposing to specify that Select Members should be able to

change any of its election(s) via provision of an updated Select Member Form to the CDSClear Business Development & Relationship Management team via email.

(v) Additional Amendments

LCH SA also proposes to make other revisions to the Rule Book and Section 1 and Section 5 of the Procedures to correct certain cross-references, grammar and/or typographical errors, and to provide additional clarification. For example, Article 1.2.2.4 of the Rule Book will be amended to clarify that the reference to ''days'' means ''calendar days'' for the avoidance of doubt.

2. Statutory Basis

LCH SA believes the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, including with section 17A(b)(3)(B) [4] and section 17A(b)(3)(F) of the Act.[5] section 17A(b)(3)(B) of the Act requires, *inter alia,* that the rules of a clearing agency provide that any registered broker or dealer, bank or other person or class of persons may become a participant in such clearing agency.[6] Section 17A(b)(3)(F) of the Act requires, *inter alia,* that a clearing agency's rules are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds in the custody or control of LCH SA, and are not designed to permit the unfair discrimination in the admission of participants or among participants in the use of the clearing agency.[7]

Per LCH SA's current CDSClear Rule Book, a Clearing Member may either be designated as a General Member or a Select Member.[8] A General Member is either a CCM [9] or an FCM/BD Clearing Member [10] that has been admitted by LCH SA as a General Member in accordance with Section 1 of the Procedures.[11] A Select Member is either a CCM or an FCM/BD Clearing Member that: (a) does not provide CDS Client Clearing Services to Clients other than Affiliated Firms; and (b) has been admitted by LCH SA as a Select Member in accordance with Section 1 of the Procedures.[12] LCH SA is proposing to amend the definition of a Select Member to allow Select Members to offer client clearing to any client, including Affiliates. In doing so, LCH SA is proposing to remove the obligation that Select Members participate in Competitive Bidding for Auction Packages including trades belonging to the Product Families they actively trade. Instead, Select Members would have the ability to elect to participate in Competitive Bidding for Auction Packages at their own discretion. Furthermore, Select Members may elect to contribute end of day prices and participate in the Default Management Process and Default Management Committee. This will enhance LCH SA's ability to contain losses and manage a clearing member default. Select Members would also be incentivized to become General Members for purposes of participating in default auctions as their client clearing activity grows. By expanding its membership for Select Members to include any client, including Affiliates and thus expand participation in clearing, LCH SA believes such changes are consistent with section 17A(b)(3)(B) [13] and section 17A(b)(3)(F) [14] of the Act such that its rules are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds in the custody or control of LCH SA, and are not designed to permit the unfair discrimination in the admission of participants or among participants in the use of the clearing agency.

LCH SA also believes the Proposed Rule Change is consistent with Rule 17Ad–22(e)(1) of the Act which requires, *inter alia,* that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[15] LCH SA believes the changes to its Rule Book and Procedures are clear, understandable, and consistent with the relevant laws and regulations applicable to LCH SA. In addition, LCH SA believes changes to the Rule Book and Procedures regarding the extension of the possibility for Select Members to provide CDSClear clearing services to any client, including Affiliates and publishing such changes on its public website provides greater transparency to Clearing Members and their customers, and to the general public. Therefore, LCH SA believes that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(1).[16]

LCH SA also believes that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(13) [17] of the Act which requires, *inter alia,* that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations.[18] Select Members were previously required to bid during default management auctions if the auction package contained products in the product family they subscribed to, regardless of whether the Select Member actively traded the product. The requirement to participate in such default auctions presents challenges for certain Select Members that don't actively trade in the products being auctioned, and thus may serve as an obstacle to clearing agency membership. Select Members also may not have the operational capacity to participate in default auctions as General Members. This is evidenced by LCH SA's experience facilitating fire drill exercises requiring participation by Select Members.[19] LCH SA's proposed changes to the mandatory obligation to bid in default auctions for Select Members will address this issue. Furthermore, LCH SA believes the existing pool of General Members required to bid, in addition to the Select

[4] 15 U.S.C. 78q–1(b)(3)(B).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] *Id.*

[7] *Id.*

[8] *See* Section 1.1.1. (''Terms defined in the CDS Clearing Rule Book'') of the CDSClear Rule Book. *https://www.lch.com/system/files/media_root/CDSClear_Rule_Book_26.09.2023.pdf.*

[9] A ''CCM'' is defined in the current CDS Clearing Rule Book as any legal entity admitted as a clearing member in accordance with the CDS Clearing Rules and party to the CDS Admission Agreement, provided that if such entity wishes to provide CDS CCM Client Clearing Services described in TITLE V, it shall either (i) be a General Member or (ii) provide such CDS CCM Client Clearing Services to its Affiliated Firms only. If such entity is an FCM/BD, it must satisfy LCH SA that it is able to provide the CDS Client Clearing Services in accordance with Title V prior to offering such services.

[10] A ''FCM/BD Clearing Member'' is defined in the current CDS Clearing Rule Book as any FCM, BD or a legal entity that is both FCM and BD that has been admitted as a clearing member in accordance with the CDS Clearing Rules and is a party to the CDS Admission Agreement and which has not elected to become a CCM, provided that if such FCM/BD Clearing Member wishes to provide CDS Client Clearing Services described in TITLE VI, it shall either (i) be a General Member or (ii) provide such CDS Client Clearing Services to its Affiliated Firms only.

[11] *See* Section 1 (''Membership'') of the CDS Clearing Procedures. *CDSClear_Section_1_Procedures__18.07.2019.pdf* (*lch.com*).

[12] *Id.*

[13] 15 U.S.C. 78q–1(b)(3)(B).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 240.17Ad–22(e)(1).

[16] *Id.*

[17] 17 CFR 240.17Ad–22(e)(13).

[18] *Id.*

[19] For example, Select Members have historically required assistance managing default files and have routinely requested assistance addressing questions during fire drill exercises.

Members that opt in to bidding on default auction portfolios provides sufficient participation for purposes of ensuring LCH SA can take timely action to contain losses and liquidity demands and continue to meet its obligations. Therefore, LCH SA believes that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(13).[20]

Finally, LCH SA believes that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(18)[21] under the Act. Rule 17Ad–22(e)(18) under the Act requires, *inter alia,* that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.[22] LCH SA is proposing to expand its membership criteria for Select Members by allowing Select Members to clear for any clients, including Affiliates. LCH SA is proposing to remove the obligation that Select Members participate in Competitive Bidding for Auction Packages including trades belonging to the Product Families they actively trade. Instead, Select Members would have the ability to elect to participate in Competitive Bidding for Auction Packages at their own discretion. LCH SA believes this proposed change more accurately captures the risk profile of Select Members as it pertains to their size and operational capabilities. Specifically, Select Members are typically non-CDS market-making banks (price takers) and thus, smaller Clearing Members. In addition, Select Members may not have the operational capacity to bid on products they don't actively trade during a default management auction. As such, LCH SA believes that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(18) under the Act.[23]

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[24]

LCH SA does not believe the Proposed Rule Change would impose burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Proposed Rule Change will contribute to offer access to clearing services to any client of Select Members expanding the client clearing activity. The Proposed Rule Change will also remove the burden of Select Members from having the obligation to bid on products they don't actively trade in default management auctions. LCH SA further believes the Proposed Rule Change is equitable for both General Members and Select Members, as clearing members will continue to have discretion in electing to be either General Members or Select Members under the new membership model. Furthermore, existing General Members will not be prevented from switching to become Select Members under the Proposed Rule Change. The increased access to clearing services under the Proposed Rule Change may result in increased liquidity in the service as membership grows. Therefore, LCH SA does not believe that the Proposed Rule Change would impose burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the Proposed Rule Change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

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 such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–LCH SA–2024–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–LCH SA–2024–002. 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 such filings will also be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at *http://www.lch.com/resources/rules-and-regulations/proposed-rule-changes-0.*

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–LCH SA–2024–002 and should be submitted on or before April 18, 2024.

[20] 17 CFR 240.17Ad–22(e)(13).

[21] 17 CFR 240.17Ad–22(e)(18).

[22] *Id.*

[23] *Id.*

[24] 15 U.S.C. 78q–1(b)(3)(I).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06580 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35162; File No. 812–15473]

Oaktree Fund Advisors, LLC and Oaktree Diversified Income Fund Inc.

March 22, 2024

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under sections 6(c) and 23(c)(3) of the Investment Company Act of 1940 (the ''Act'') for an exemption from rule 23c–3 under the Act.

Summary of Application: Applicants request an order under sections 6(c) and 23(c)(3) of the Act for an exemption from certain provisions of rule 23c–3 to permit certain registered closed-end investment companies to make repurchase offers on a monthly basis.

Applicants: Oaktree Fund Advisors, LLC and Oaktree Diversified Income Fund Inc.

Filing Dates: The application was filed on June 2, 2023, and amended on December 28, 2023.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on April 16, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Brian F. Hurley, Esq., Oaktree Diversified Income Fund Inc., Brookfield Place, 250 Vesey Street, 15th Floor, New York, NY 10281–1023, with copies to Michael R. Rosella, Esq. and Thomas D. Peeney, Esq., Paul Hastings LLP, 200 Park Avenue, New York, NY 10166.

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended and restated application, dated December 28, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06540 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99842; File No. SR–NYSEARCA–2023–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Grayscale Ethereum Futures Trust (ETH) ETF Under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts)

March 22, 2024.

On September 19, 2023, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Grayscale Ethereum Futures Trust (ETH) ETF (''Trust'') under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts). The proposed rule change was published for comment in the **Federal Register** on October 3, 2023.[3]

On November 15, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On December 18, 2023, the Commission instituted proceedings under section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7]

Section 19(b)(2) of the Act [8] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on October 3, 2023.[9] The 180th day after publication of the proposed rule change is March 31, 2024. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[10] designates May 30, 2024, as the date by which the Commission shall either approve or disapprove the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98567 (Sept. 27, 2023), 88 FR 68171. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nysearca-2023-63/srnysearca202363.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 98944, 88 FR 81171 (Nov. 21, 2023).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 99198, 88 FR 88694 (Dec. 22, 2023).

[8] 15 U.S.C. 78s(b)(2).

[9] *See supra* note 3 and accompanying text.

[10] 15 U.S.C. 78s(b)(2).

rule change (File No. SR–NYSEARCA–2023–63).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06575 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–821, OMB Control No. 3235–0776]

Submission for OMB Review; Comment Request; Extension: Rule 18f–4

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 18f–4 (17 CFR 270.18f–4) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act'') permits a fund to enter into derivatives transactions, notwithstanding the prohibitions and restrictions on the issuance of senior securities under section 18 of the Investment Company Act. A fund that relies on rule 18f–4 to enter into derivatives transactions generally is required to: adopt a derivatives risk management program; have its board of directors approve the fund's designation of a derivatives risk manager and receive direct reports from the derivatives risk manager about the derivatives risk management program; and comply with a VaR-based test designed to limit a fund's leverage risk consistent with the investor protection purposes underlying section 18 of the Investment Company Act. Rule 18f–4 includes an exception from the derivatives risk management program requirement and limit on fund leverage risk if a fund limits its derivatives exposure to 10% of its net assets (the fund may exclude from this calculation derivatives transactions that it uses to hedge certain currency and interest rate risks). A fund relying on this exception will be required to adopt policies and procedures that are reasonably designed to manage its derivatives risks.

Rule 18f–4 also includes an exception from the VaR-based limit on leverage risk for a leveraged/inverse fund that cannot comply with rule 18f–4's limit on fund leverage risk and that, as of October 28, 2020, is: (1) in operation, (2) has outstanding shares issued in one or more public offerings to investors, and (3) discloses in its prospectus that it has a leverage multiple or inverse multiple that exceeds 200% of the performance or the inverse of the performance of the underlying index (for purposes of this Supporting Statement, such a fund is an ''over-200% leveraged/inverse fund''). A fund relying on this exception must disclose in its prospectus that it is not subject to rule 18f–4's limit on fund leverage risk.

Finally, rule 18f–4 permits funds to enter into reverse repurchase agreements (and similar financing transactions) and ''unfunded commitments'' to make certain loans or investments, and to invest in securities on a when-issued or forward-settling basis, or with a non-standard settlement cycle, subject to conditions tailored to these transactions.

The respondents to rule 18f–4 are registered open- and closed-end management investment companies and BDCs. Compliance with rule 18f–4 is mandatory for all funds that seek to engage, in reliance on the rule, in derivatives transactions and certain other transactions that the rule addresses, which would otherwise be subject to the restrictions of section 18 of the Investment Company Act.

The information collection requirements of rule 18f–4 are designed to ensure that funds maintain the required written derivatives risk management programs that promote compliance with the federal securities laws and protect investors, and otherwise comply with the requirements of the rule. The information collections also assist the Commission's examination staff in assessing the adequacy of funds' derivatives risk management programs and their compliance with the other requirements of the rule, and identifying weaknesses in a fund's derivatives risk management if violations occur or are uncorrected.

The respondents to rule 18f–4 are registered open- and closed-end management investment companies and BDCs. Compliance with rule 18f–4 is mandatory for all funds that seek to engage, in reliance on the rule, in derivatives transactions and certain other transactions that the rule addresses, which would otherwise be subject to the restrictions of section 18 of the Investment Company Act. To the extent that records required to be created and maintained by funds under the rule are provided to the Commission in connection with examinations or investigations, such information will be kept confidential subject to the provisions of applicable law.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by April 29, 2024 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: March 25, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06628 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–636, OMB Control No. 3235–0679]

Submission for OMB Review; Comment Request; Extension: Form PF & Rule 204(b)–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 204(b)–1 (17 CFR 275.204(b)–1) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) implements sections 404 and 406 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') by requiring private fund advisers that have at least $150 million in private fund assets under management to report certain

information regarding the private funds they advise on Form PF. These advisers are the respondents to the collection of information.

Form PF is designed to facilitate the Financial Stability Oversight Council's (''FSOC'') monitoring of systemic risk in the private fund industry and to assist FSOC in determining whether and how to deploy its regulatory tools with respect to nonbank financial companies. The Commission and the Commodity Futures Trading Commission may also use information collected on Form PF in their regulatory programs, including examinations, investigations and investor protection efforts relating to private fund advisers.

Form PF divides respondents into two broad groups, Large Private Fund Advisers and smaller private fund advisers. ''Large Private Fund Advisers'' are advisers with at least $1.5 billion in assets under management attributable to hedge funds (''large hedge fund advisers''), advisers that manage ''liquidity funds'' and have at least $1 billion in combined assets under management attributable to liquidity funds and registered money market funds (''large liquidity fund advisers''), and advisers with at least $2 billion in assets under management attributable to private equity funds (''large private equity fund advisers''). All other respondents are considered smaller private fund advisers.

The Commission estimates that most filers of Form PF have already made their first filing, and so the burden hours applicable to those filers will reflect only ongoing burdens, and not start-up burdens. Accordingly, the Commission estimates the total annual reporting and recordkeeping burden of the collection of information for each respondent is as follows:

(a) For smaller private fund advisers making their first Form PF filing, an estimated amortized average annual burden of 13 hours for each of the first three years;

(b) for smaller private fund advisers that already make Form PF filings, an estimated amortized average annual burden of 15 hours for each of the next three years;

(c) for smaller private fund advisers, an estimated average annual burden of 5 hours for event reporting for smaller private equity fund advisers for each of the next three years;

(d) for large hedge fund advisers making their first Form PF filing, an estimated amortized average annual burden of 108 hours for each of the first three years;

(e) for large hedge fund advisers that already make Form PF filings, an estimated amortized average annual burden of 600 hours for each of the next three years;

(f) for large hedge fund advisers, an estimated average annual burden of 10 hours for current reporting for each of the next three years;

(g) for large liquidity fund advisers making their first Form PF filing, an estimated amortized average annual burden of 67 hours for each of the first three years;

(h) for large liquidity fund advisers that already make Form PF filings, an estimated amortized average annual burden of 284 hours for each of the next three years;

(i) for large private equity fund advisers making their first Form PF filing, an estimated amortized average annual burden of 84 hours for each of the first three years;

(j) for large private equity fund advisers that already make Form PF filings, an estimated amortized average annual burden of 128 hours for each of the next three years; and

(k) for large private equity fund advisers, an estimated average annual burden of 5 hours for event reporting for each of the next three years.

With respect to annual internal costs, the Commission estimates the collection of information will result in approximately 122.89 burden hours per year on average for each respondent. With respect to external cost burdens, the Commission estimates a range from $0 to $50,000 per adviser. Estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The changes in burden hours are due to the staff's estimates of the time costs and external costs that result from the adopted amendments, the use of updated data, and the use of different methodologies to calculate certain estimates. Compliance with the collection of information requirements of Form PF is mandatory for advisers that satisfy the criteria described in Instruction 1 to the Form. Responses to the collection of information will be kept confidential to the extent permitted by law. The Commission does not intend to make public information reported on Form PF that is identifiable to any particular adviser or private fund, although the Commission may use Form PF information in an enforcement action. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by April 29, 2024 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: March 25, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06629 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99845; File No. SR–FICC–2024–802]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Extension of Review Period of Advance Notice To Modify the GSD Rules (i) Regarding the Separate Calculation, Collection and Holding of Margin for Proprietary Transactions and That for Indirect Participant Transactions, and (ii) To Address the Conditions of Note H to Rule 15c3–3a

March 22, 2024.

Pursuant to section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[2] notice is hereby given that on March 14, 2024, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the advance notice as described in Items I, II and III below, which Items have been prepared by the clearing agency.[3] The Commission is publishing this notice to solicit comments on the

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] On March 14, 2024, FICC filed this advance notice as a proposed rule change (SR–FICC–2024–007) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4. A copy of the proposed rule change is *available at dtcc.com/legal/sec-rule-filings.*

advance notice from interested persons and to extend the review period of the Advance Notice.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice consists of modifications to FICC's Government Securities Division (''GSD'') Rulebook (''Rules'')[4] to (1) provide for FICC to calculate, collect, and hold margin for the proprietary transactions of a Netting Member separately and independently from the margin for transactions that the Netting Member submits to FICC on behalf of indirect participants; (2) simplify and revise the account types through which Members may record transactions at FICC and adopt a new Rule 2B to provide clearer public disclosures through the Rules regarding the GSD account structure; (3) allow Netting Members to elect for margin for indirect participant transactions to be calculated on a gross basis (*i.e.,* an indirect participant-by-indirect participant basis) and legally segregated from the margin for the Netting Member's proprietary transactions (as well as those of other indirect participants); (4) align FICC's margin calculation methodology with the expanded account types and enhance public disclosure through the Rules of that calculation methodology; and (5) simplify the requirements for brokered transactions so that they only apply to transactions executed by an Inter-Dealer Broker Netting Member on the trading platform offered by that Inter-Dealer Broker Netting Member.

These proposed rule changes are primarily designed to ensure that FICC has appropriate rules regarding the separate and independent calculation, collection, and holding of margin for proprietary transactions and that for indirect participant transactions in accordance with the requirements of Rule 17Ad–22(e)(6)(i) under the Act, and that FICC has appropriate rules to satisfy the conditions of Note H to Rule 15c3–3a under the Act for a broker-dealer to record a debit in the customer and broker-dealer proprietary account reserve formulas.[5]

[4] Terms not defined herein are defined in the Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.*

[5] *See* Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (S7–23–22) (''Adopting Release'', and the rules adopted therein referred to herein as ''Treasury Clearing Rules''). *See also* 17 CFR 240.15c3–3a.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the SEC's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

FICC reserves the right not to respond to any comments received.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

Executive Summary of Proposed Changes

On December 13, 2023, the Commission adopted amendments to the covered clearing agency standards that apply to covered clearing agencies that clear transactions in U.S. Treasury securities (each a ''Treasury CCA''), including FICC.[6] These amendments require, among other things, that FICC ''calculates, collects, and holds margin amounts from a direct participant for its proprietary positions in U.S. Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access the covered clearing agency's payment, clearing, or settlement facilities.''[7] As described below, the proposed rules are designed to comply with these requirements.

Additionally, in the Treasury Clearing Rules, the Commission amended its broker-dealer customer protection rule (''Rule 15c3–3'')[8] and the reserve formulas thereunder (''Rule 15c3–3a'')[9] to permit broker-dealers to include margin required and on deposit at a Treasury CCA as a debit item in the reserve formulas under certain conditions.[10] The proposed rules are also designed to satisfy these conditions and, therefore, would permit broker-dealer Netting Members of FICC to include margin collected from their customers and on deposit at a Treasury CCA as a debit item in the reserve formulas.

First, the proposed changes would provide for the separate and independent calculation, collection, and holding of (i) margin deposited by a Netting Member to support its proprietary transactions and (ii) margin deposited by a Netting Member to support the transactions of an indirect participant. Specifically, FICC would provide in a new Rule 2B that FICC can establish proprietary Accounts to record the transactions that the Netting Member enters into for its own benefit and separately establish indirect participant Accounts to record transactions that the Netting Member submits to FICC for clearance and settlement on behalf of an indirect participant. Under this proposed Rule 2B, only proprietary transactions may be recorded in a proprietary Account, and only indirect participant transactions may be recorded in an indirect participant Account. FICC is also proposing revisions in Rule 4 to identify what types of transactions may be included together in a Margin Portfolio that FICC utilizes to determine a Netting Member's margin requirement. Specifically, FICC would revise the Margin Portfolio definition to make clear that a Margin Portfolio cannot include both proprietary and indirect

[6] *See supra* note 5.

[7] 17 CFR 240.17Ad–22(e)(6)(i).

[8] 17 CFR 240.15c3–3.

[9] 17 CFR 240.15c3–3a.

[10] *See supra* note 5.

participant Accounts. Because proposed Rule 2B would not permit transactions of indirect participants to be recorded in the same Account as a Netting Member's proprietary transactions, a Margin Portfolio would only be able to consist of the same type of proprietary or indirect participant transactions, not both. As a result, the transactions a Netting Member submits to FICC on behalf of an indirect participant would no longer be netted against a Netting Member's proprietary transactions for purposes of calculating a Netting Member's margin requirements. In addition, to ensure separate collection and holding of margin deposited for proprietary and indirect participant transactions, FICC is specifying its practice in Rule 4 that a Netting Member must identify the different Account types for which a deposit is made on its wire instructions.

In order to facilitate these proposed changes, the rule changes would clarify the types of accounts in which Netting Members may record transactions. FICC's ''Accounts'' are not custodial accounts in which FICC holds assets, but rather a mechanism for FICC to record and group transactions. These records are utilized by FICC in connection with its calculation of a Netting Member's margining, settlement, and other obligations. The proposed rule changes would provide greater clarity regarding the purpose and use of these accounts through the public disclosures in the Rules. The proposed rules would do this by revising the definition of ''Account'' in Rule 1 and changing the names of certain Accounts to better reflect their function. The proposed rule changes would also create in a new Rule 2B a roadmap of the types of Accounts FICC maintains and what is recorded in those Accounts.

Second, the proposed rule changes would allow for the segregation of certain customer margin in a manner that satisfies the conditions for a broker-dealer to record a debit in the customer or PAB reserve formula under recently added Note H to Rule 15c3–3a.[11] As noted above, the Commission amended Rule 15c3–3a to permit broker-dealers to include margin required and on deposit at a Treasury CCA as a debit item in the reserve formulas under certain conditions, including that the margin be collected in accordance with the rules of the Treasury CCA that impose the certain requirements.[12]

Such requirements are set forth in the Treasury Clearing Rules and Section (b)(2) of Note H to Rule 15c3–3a, and include, among other things, (1) the margin must be calculated separately for each customer and the broker-dealer must deliver that amount of margin for each customer on a gross basis; (2) the margin must be held in an account of the broker-dealer at the Treasury CCA that is segregated from any other account of the broker-dealer at the Treasury CCA and that is, among other things, used exclusively to clear, settle, novate, and margin U.S. Treasury securities transactions of the customers of the broker-dealer; and (3) the Treasury CCA has systems, controls, policies, and procedures to return the assets to the broker-dealer that are no longer needed to meet current margin requirements resulting from positions in U.S. Treasury securities of the customers of the broker-dealer.[13] The proposed changes are designed to comply with these requirements.

Specifically, FICC is proposing to permit a Netting Member, including a non-broker-dealer Netting Member, to designate any of its indirect participants Accounts for segregation. For any Account so designated, FICC would calculate the margin requirements applicable to the Account on a gross basis, meaning that FICC would not net the transactions of one indirect participant against the transactions of another indirect participant. In addition, FICC would segregate the margin deposited to support the transactions in the Account from any margin securing a Netting Member's proprietary positions, both on FICC's own books and records and at FICC's custodians. FICC would only be able to use such segregated margin to satisfy the obligations of the customer for whom such margin is held. FICC would not be able to apply such margin to the proprietary obligations of the Netting Member that deposited it with FICC or to the obligations of any other Netting Member or participant. FICC would also set forth specific procedures to allow Netting Members to obtain the return of excess segregated margin. The aim of these changes is both to allow broker-dealer Netting Members to collect margin from customers and deposit it with FICC and to provide all customers, including those that access FICC through non-broker-dealers, to be able to segregate margin they deposit.

Third, the proposed rules would align the description of FICC's margin methodology with the revised Account types, consolidate the terms relating to margin calculation in a single, easily identifiable schedule, and make certain changes to the methodology to increase precision and predictability. To achieve these goals, the proposed rules would move the margin calculation methodology, including the relevant defined terms currently located in various Rules, into a new Margin Component Schedule. The proposed rules would also revise Rule 4 to make clear that a Netting Member's margin requirement is the sum of the margin amounts calculated for each type of Account in which transactions are recorded for the Netting Member. Further, the proposed rules would set forth a method for allocating net unsettled positions to individual indirect participants for purposes of calculating margin requirements. In addition, the proposed rules would revise and clarify the calculation of the excess capital premium component of the Clearing Fund, to cap such amount at two times the amount by which a Netting Member's VaR Charge exceeds its Netting Member Capital, clarify the capital amounts that are used in the calculation of such amount, limit FICC's discretion to waive the amount, and provide that FICC may calculate the premium based on updated available information. The proposed changes would also take steps to ensure that the excess capital premium does not result in differential treatment of indirect participants simply because of the particular capital level of the Netting Member providing access to FICC's clearance and settlement systems.

Lastly, the proposed rule changes would modify the terms relating to brokered transactions to require that only transactions that an Inter-Dealer Broker Netting Member executes on the Inter-Dealer Broker Netting Member's own trading platform benefit from favorable loss allocation treatment.[14] FICC believes that making these changes would improve FICC's risk management and promote access by ensuring that its differential treatment of different parties and transactions has a sound risk management justification.

Background

FICC, through GSD, serves as a central counterparty and provider of clearance and settlement services for the U.S. government securities markets. Margin is a key tool that FICC uses to manage its credit exposures to its members. The aggregated amount of all GSD members'

[11] 17 CFR 240.15c3–3a.

[12] *See supra* note 5.

[13] *See* 17 CFR 240.15c3–3a. *Supra* note 5.

[14] *See* Rule 4, Section 7 (''Notwithstanding the foregoing, however, an Inter-Dealer Broker Netting Member, or a Non-IDB Repo Broker with respect to activity in its Segregated Repo Account, shall not be subject to an aggregate loss allocation in an amount greater than $5 million pursuant to this Section 7 for losses and liabilities resulting from an Event Period.''), *supra* note 4.

margin constitutes the GSD Clearing Fund (referred to herein as the ''Clearing Fund''). The objective of the Clearing Fund is to mitigate potential losses to FICC associated with liquidating a member's portfolio in the event FICC ceases to act for that member (hereinafter referred to as a ''default'').[15]

Under Rule 4 (Clearing Fund and Loss Allocation), Netting Members are required to make deposits to the Clearing Fund in an amount (''Required Fund Deposit'') determined by reference to certain components. In determining a Netting Member's Required Fund Deposit, FICC may consider not only the Netting Member's proprietary transactions, but also the transactions that the Netting Member submits on behalf of indirect participants. However, the treatment of the indirect participant transactions for purposes of calculating the Required Fund Deposit can vary depending on whether those transactions are cleared under the Sponsored Service or prime brokerage/correspondent clearing services. Netting Members are required to instruct FICC to record those transactions in one of the position-keeping accounts (each, an ''Account'') that FICC establishes and maintains for the Netting Member. The Account in which a transaction is recorded is relevant for determining the margin requirement associated with that transaction under the Rules. Currently, a Netting Member may instruct FICC to record in the same Account, currently known as a ''Netting Member Account,'' both the proprietary transactions of the Netting Member and transactions that the Netting Member carries for indirect participants through the prime brokerage/correspondent clearing services. Sponsored Member Trades, discussed in greater detail below, must be recorded in a separate Account.

Under Rule 4, a Netting Member's Clearing Fund requirement, other than that arising from Sponsored Member Trades, is calculated on a net basis across all transactions recorded in the same Account of the Netting Member (or, if the Netting Member has elected to have multiple Accounts form part of the same ''Margin Portfolio,'' all transactions recorded in all such Accounts).[16]

The Sponsored Service permits Netting Members that are approved to be ''Sponsoring Members,'' to sponsor certain institutional firms, referred to as ''Sponsored Members,'' into GSD membership.[17] FICC establishes and maintains a ''Sponsoring Member Omnibus Account'' on its books in which it records the transactions of the Sponsoring Member's Sponsored Members (''Sponsored Member Trades'').[18] To determine a Sponsoring Member's Clearing Fund requirement in relation to Sponsored Member Trades recorded in the Sponsoring Member's Sponsoring Member Omnibus Account, FICC calculates the ''VaR Charge'' [19] and the ''MLA Charge'' [20] component for each Sponsored Member such that it does not net the Sponsored Member Trades of one Sponsored Member against the Sponsored Member Trades of another Sponsored Member, even though those Sponsored Member Trades are recorded in the same Sponsoring Member Omnibus Account.[21] For all of the other components, FICC calculates the components by reference to the Sponsoring Member Omnibus Account as a whole (*i.e.,* without regard to which Sponsored Member entered into which Sponsored Member Trade). In no instance does FICC net transactions recorded in a Sponsoring Member's Sponsoring Member Omnibus Account against other transactions of the Sponsoring Member for purposes of calculating the Sponsoring Member's Required Fund Deposit.

As an alternative to the Sponsored Service, a Netting Member (in such capacity, a ''Submitting Member'') may submit to FICC eligible transactions on behalf of the Submitting Member's customers (each, in such capacity, an ''Executing Firm'') through FICC's existing prime broker/correspondent clearing services.[22] As noted above, under the current Rules, a Submitting Member may instruct FICC to record such a transaction in the same Account at FICC as the Submitting Member's proprietary transactions. Accordingly, if transactions a Submitting Member submits on behalf of Executing Firms through the prime broker/correspondent clearing services are recorded in the same Account as the Netting Member's proprietary transactions (or in an Account that forms part of the same Margin Portfolio as an Account in which a Netting Member's proprietary transactions are recorded), FICC nets such transactions against one another in calculating the Netting Member's Required Fund Deposit.[23]

As noted above, the proposed rules would implement the amendments to Rule 17Ad–22(e)(6)(i) that require FICC to calculate, collect, and hold margin from a direct participant for its proprietary transactions in U.S. Treasury securities separately and independently from the margin calculated and collected for the U.S. Treasury transactions of an indirect participant that relies on the services provided by the direct participant to access FICC's payment, clearing, or settlement facilities.[24] The proposed rules would also clarify and simplify FICC's account structure and improve the transparency of FICC's public disclosures of its margining methodology.

The proposed rules are also designed to allow broker-dealer Netting Members of FICC to collect margin from their customers and deposit that margin with FICC. As stated above, a Netting Member is responsible for the Clearing Fund obligations arising from the activity of indirect participant customers (*i.e.,* Sponsored Members and Executing Firms). FICC understands from engagement with broker-dealer Netting Members and their indirect participant customers that, due to the requirements of Rule 15c3–3 [25] and Rule 15c3–3a,[26] broker-dealer Netting Members are effectively unable to deposit with FICC any margin collected from indirect participants to support those indirect participants' transactions and must instead use proprietary resources.

The Treasury Clearing Rules' recent amendments to Rule 15c3–3a permit

[15] The Rules identify when FICC may cease to act for a member and the types of actions FICC may take. For example, FICC may suspend a firm's membership with FICC or prohibit or limit a member's access to FICC's services in the event that member defaults on a financial or other obligation to FICC. *See* Rule 21 (Restrictions on Access to Services), *supra* note 4.

[16] *See* Rule 4, *supra* note 4.

[17] *See* Rule 3A, *supra* note 4.

[18] *See* Rule 1 (definition of ''Sponsored Member Trades''), *supra* note 4.

[19] *See* Rule 1 (definition of ''VaR Charge''), *supra* note 4.

[20] *See* Rule 1 (definition of ''MLA Charge''), *supra* note 4.

[21] *See* Rule 3A, Section 10 (describing how the Required Fund Deposit for Sponsored Member Trades is calculated), *supra* note 4.

[22] *See* Rule 8, *supra* note 4.

[23] Contemporaneously with this proposed rule change, FICC has submitted a separate proposed rule change (File No. SR–FICC–2024–005) under which FICC is proposing to rename its primer broker/correspondent clearing services the ''Agent Clearing Service,'' ''Submitting Members'' as ''Agent Clearing Members'', and ''Executing Firms'' as ''Executing Firm Customers.'' This separate proposed rule change would require that a Netting Member using the Agent Clearing Service submit transactions for Executing Firm Customers through an Agent Clearing Member Omnibus Account, to be recorded separately from its other clearing activity, including its proprietary activity. It would also add a definition for transactions eligible to be submitted by an Agent Clearing Member on behalf of its Executing Firm Customers (''Agent Clearing Transactions''). These proposed terms are used throughout this filing. These proposed changes are pending regulatory approval. A copy of this proposed rule change is *available at www.dtcc.com/legal/sec-rule-filings.*

[24] 17 CFR 240.17Ad–22(e)(6)(i). *See supra* note 5.

[25] 17 CFR 240.15c3–3.

[26] 17 CFR 240.15c3–3a.

broker-dealers to include margin required and on deposit at a Treasury CCA as a debit item in the reserve formulas under certain conditions.[27] As described in more detail below, the proposed changes would address those conditions. Therefore, the proposal would allow broker-dealer Netting Members to collect margin from customers and deposit it with FICC and to permit all customers, including those that access FICC through non-broker-dealers, to segregate margin they deposit.

Finally, the proposed rule changes would address the treatment of transactions submitted to FICC by Inter-Dealer Broker Netting Members and certain Netting Members that operate similarly to Inter-Dealer Broker Netting Members (''Non-IDB Repo Brokers''). The Rules currently cap the amount of loss allocation that may applied to an Inter-Dealer Broker Netting Member or Non-IDB Repo Broker in respect of transactions submitted by such Netting Members to FICC for clearance and settlement (''Brokered Transactions''). This treatment is based on the more limited risk that Brokered Transactions present relative to other transactions.

Description of Proposed Rule Changes

1. Segregate Indirect Participant Margin Requirements and Amend the GSD Account Structure

The proposed rule changes would provide for the separate calculation, collection, and holding of margin supporting a Netting Member's Proprietary Transactions and the margin supporting the transactions a Netting Member submits on behalf of indirect participants, in accordance with the requirements of Rule 17Ad–22(e)(6)(i), adopted under the Treasury Clearing Rules.[28] In connection with these changes, the proposal would also clarify the types of accounts in which Netting Members may record transactions and adopt a roadmap to its account structure in a new Rule 2B.

A. Separately Calculate, Collect and Hold Indirect Participant and Proprietary Margin Requirements

i. Limit Margin Portfolios to Accounts of the Same Type

The separate calculation of proprietary and customer margin would be accomplished by clarifying that each Margin Portfolio may only include Accounts of the same Type (*i.e.,* Dealer Accounts, Broker Accounts, Agent Clearing Member Omnibus Account, and Sponsoring Member Omnibus Accounts).

FICC would make this clarification by amending the definition of ''Margin Portfolio'' in Rule 1 and revising Rule 4, Section 1a, which would be renumbered Section 1b in light of changes described below, to provide that each Margin Portfolio may not contain more than one Type of Account (even if such Accounts are both Segregated Indirect Participants Accounts).

By virtue of these changes, transactions recorded in different Types of Accounts could not be netted against each other when calculating Required Fund Deposit or Segregated Customer Margin Requirements. Since Proprietary Transactions and transactions submitted for indirect participants could not (by virtue of the changes described below) be recorded in the same Type of Account, the changes relating to Margin Portfolios would result in margin for a Netting Member's Proprietary Transactions being calculated separately and independently from margin calculated for the transactions that the Netting Member submits on behalf of indirect participants. As conforming changes, paragraphs (b) and (c) of Section 1b, which currently provide for such separate margin calculations in certain contexts, would no longer be needed since the Margin Portfolio definition and other changes described above would achieve such separate calculations.

ii. Required Fund Deposit Portions and Segregated Customer Margin Requirements

To further clarify how FICC would calculate and collect a Netting Member's margin requirements, the proposed rule changes would make other revisions to Rule 4. Specifically, Rule 4, Section 2, which currently describes a Netting Member's Required Fund Deposit requirement, would be revised to provide that a Netting Member's Required Fund Deposit consists of the sum of amounts (each, a ''Required Fund Deposit Portion'') calculated for each Type of Account, other than Segregated Indirect Participants Accounts. For Segregated Indirect Participants Accounts, there would, as mentioned below, be a Segregated Customer Margin Requirement, which would be the sum of the amounts calculated for the Netting Member's (i) Sponsoring Member Omnibus Accounts designated as Segregated Indirect Participants Accounts and (ii) Agent Clearing Member Omnibus Accounts designated as Segregated Indirect Participants Accounts.

In connection with these changes, FICC would add a corresponding definition of ''Required Fund Deposit Portion'' to Rule 1. FICC would also adopt a defined term referring to the Required Fund Deposit Portion for a Netting Member's Agent Clearing Member Omnibus Account (''Agent Clearing Member Omnibus Account Required Fund Deposit'') and amend the defined term for the Required Fund Deposit Portion for a Netting Member's Sponsoring Member Omnibus Account (the Sponsoring Member Omnibus Account Required Fund Deposit). In addition, conforming changes would be made to the separately proposed Rule 8, Section 7(g) that would describe the requirement of an Agent Clearing Member to make and maintain an Agent Clearing Member Omnibus Account Required Deposit and that the calculation of such requirement would be performed separately from the calculation for Margin Portfolios consisting of the Agent Clearing Member's Proprietary Transactions. Similar conforming changes would be made to Rule 3A, Section 10 relating to a Sponsoring Member's Sponsoring Member Omnibus Account Required Fund Deposit.

iii. Separate Deposit IDs To Facilitate Separate Collection and Holding of Margin

To ensure that margin for Proprietary Transactions is not only calculated separately and independently but also collected and held separately and independently of margin for indirect participant transactions, a new Rule 4, Section 2a would be added to the Rules. This section would require each Required Fund Deposit Portion to be made to FICC using a separate Deposit ID, which is an existing operational mechanism used by Netting Members to identify the type of Account for which a Required Fund Deposit is being made.

A new Rule 4, Section 2b would impose a similar requirement in respect of Segregated Customer Margin Requirements. The use of these separate Deposit IDs would result in margin for each Type of Account being separately transferred to FICC and FICC recording on its books the separate margin amounts for each Type of Account. FICC would also adopt a definition of ''Deposit ID'' in Rule 1.

Rule 4, Sections 2a and 2b would also require FICC to report a Netting Member's Required Fund Deposit and Segregated Customer Margin Requirement twice daily, which is the same timing interval on which FICC currently reports a Netting Member's margin requirement. The report would

[27] *See supra* note 5.

[28] 17 CFR 240.17Ad–22(e)(6)(i).

also specify the amount of margin attributable to each Required Fund Deposit Portion or Segregated Indirect Participants Account, as applicable, so that the Netting Member can transfer the different margin amounts separately.

iv. Eliminate Permitted Margin Affiliates

In connection with these proposed rule changes, the proposal would eliminate the concept of Permitted Margin Affiliates, which allows a Member to elect to include its Accounts in the same Margin Portfolio with the Accounts of an affiliate that is also a Member, in accordance with the Rules.[29] In this way, a Member and its affiliate can net their transactions for purposes of calculating their margin requirements.

In order to support the proposed change described above, which are designed to provide for the separate calculation, collection, and holding of margin, FICC believes that retaining the option for Members to designate Permitted Margin Affiliates would create unnecessary complexity. No Netting Member currently has a Permitted Margin Affiliate, and FICC would need to examine how such a cross-affiliate margining arrangement would function within the context of the proposed revisions to the account structure and margin methodology in order to determine what steps would be needed to implement such an arrangement consistently with the standards applicable to covered clearing agencies. Therefore, FICC is proposing to eliminate the Permitted Margin Affiliate concept at this time.

In order to implement this change, the proposal would remove the definition of ''Permitted Margin Affiliate'' from Rule 1, and remove references to Permitted Margin Affiliates from Rule 4, Section 1a (to be renamed Section 1b, as noted above); Rule 4, Section 1b (which would be removed and replaced by disclosures in the proposed Margin Component Schedule, as discussed below); Rule 4, Sections 4 and 6; Rule 21, Section 1; Rule 22, Section 2; and Rule 29, Section (a).

B. Proposed Roadmap to Account Structure Through New Rule 2B and Revision to Account Structure

FICC is proposing to adopt a new Rule 2B that would describe the types of Accounts FICC is able to maintain for Netting Members, identify the activity that would be recorded in each type of Account, and generally provide a roadmap to market participants of FICC's account structure.

i. Section 1—Establishment of Proprietary Accounts

Rule 2B, Section 1 would provide that FICC can establish and maintain certain ''Proprietary Accounts'' to record transactions that a Netting Member enters into for its own benefit (''Proprietary Transactions''), rather than for the benefit of indirect participants. Proprietary transactions would not include transactions that a Netting Member enters into on behalf of an affiliate.

The Proprietary Accounts available for recording Proprietary Transactions would include ''Dealer Accounts,'' which would be available for all Netting Members, and ''Cash Broker Accounts'' and ''Repo Broker Accounts,'' which would only be available for Inter-Dealer Broker Netting Members. Dealer Accounts would be for purposes of recording a Netting Member's Proprietary Transactions (other than, in the case of an Inter-Dealer Broker Netting Member, its Brokered Transactions), while Cash Broker Accounts would be for purposes of recording an Inter-Dealer Broker Netting Member's Brokered Transactions (other than Brokered Repo Transactions), and Repo Broker Accounts would be for purposes of recording an Inter-Dealer Broker Netting Member's Brokered Repo Transactions. Rule 2B, Section 1 would make clear that, as under FICC's existing Rules, FICC can establish multiple Proprietary Accounts of the same Type for the Netting Member.

In connection with these changes, FICC is proposing to adopt new, corresponding definitions of Proprietary Transactions, Proprietary Accounts, and Cash Broker Accounts in Rule 1, and to make corresponding amendments to the definitions of Dealer Account and Repo Broker Account. FICC is also proposing to remove from Rule 1 the defined term ''Netting Member Account'' and replace references to such Account with references to Dealer Account.

ii. Section 2—Establishment of Non-Proprietary Accounts

Rule 2B, Section 2 would provide that FICC can establish and maintain certain ''Indirect Participants Accounts'' to record transactions that a Netting Member submits to FICC on behalf of Sponsored Members and Executing Firm Customers. These Indirect Participants Accounts would include, in the case of a Sponsoring Member, Sponsoring Member Omnibus Accounts for purposes of recording Sponsored Member Trades, and, in the case of an Agent Clearing Member, Agent Clearing Member Omnibus Accounts for purposes of recording Agent Clearing Transactions of its Executing Firm Customers. Rule 2B, Section 2 would also make clear that FICC can establish multiple Indirect Participants Accounts of the same Type for the Netting Member.

In connection with these changes, FICC is proposing to add to Rule 1 a new definition of Indirect Participants Account, which would include Agent Clearing Member Omnibus Accounts and Sponsoring Member Omnibus Accounts, and to correspondingly amend the definition of Sponsoring Member Omnibus Accounts.

iii. Section 3—Segregation Designations for Indirect Participants Accounts

Rule 2B, Section 3 would permit a Sponsoring Member or Agent Clearing Member to designate any of its Indirect Participants Accounts as a segregated customer account (a ''Segregated Indirect Participants Account''). The purpose of such a designation, as further described below, would be to give Netting Members a mechanism to direct FICC to calculate and segregate margin deposited in connection with the Account in accordance with the conditions described in Note H to Rule 15c3–3a (''Note H''), as further described below.[30]

In connection with this revision, a new definition for ''Segregated Indirect Participant'' would be added to Rule 1 to mean a Sponsored Member or an Executing Firm Customer whose transactions are recorded in a Segregated Indirect Participants Account.

Rule 2B, Section 3 would provide that the designation of an Account as a Segregated Indirect Participants Account constitutes a representation to FICC by the Netting Member that the Netting Member intends to meet all margin requirements with respect to such Account using assets deposited by the Segregated Indirect Participants with the Netting Member, with the exception of temporary ''prefunding'' by the Netting Member while a margin call to the Segregated Indirect Participant is outstanding. The purpose of this representation is to ensure that only margin deposited by customers, not the Netting Member's proprietary assets, is eligible for segregation.

Rule 2B, Section 3 would further provide that the margin requirement (''Segregated Customer Margin

[29] *See* Rule 1 (defining ''Permitted Margin Affiliates'') and Rule 4, Section 1a(a) and (b) (permitting Members to include Accounts of their Permitted Margin Affiliates in their Margin Portfolio). *Supra* note 4.

[30] 17 CFR 240.15c3–3a.

Requirement'') calculated for a Segregated Indirect Participants Account would equal the sum of the margin requirements that apply to each Segregated Indirect Participant whose transactions are recorded in the Account, as though each such Segregated Indirect Participant were a Netting Member. By virtue of this change and as further described below, in calculating the Segregated Customer Margin Requirement for a Segregated Indirect Participants Account, FICC would not net the transactions of multiple Segregated Indirect Participants against one another. A corresponding definition of ''Segregated Customer Margin Requirement'' would be added to Rule 1 to mean the amount of cash and securities that a Netting Member is required to deposit with FICC to support the obligations arising under transactions recorded in its Segregated Indirect Participants Accounts. As described in greater detail below, such amounts would be further described and addressed in Rule 4, Section 2(a)(v) and (vi).

iv. Section 4—Designation of Account When Submitting Transactions

Lastly, Rule 2B, Section 4 would require a Netting Member, at the time it submits a Transaction to FICC for clearance and settlement, to designate the Account in which the particular transaction should be recorded. Any such designation would constitute a representation to FICC that the transaction is of a type that may be recorded in that Account in accordance with the Rules. The purpose of such representation would be to ensure that Netting Members record only their Proprietary Transactions in Proprietary Accounts, which separate recordation is necessary for the separate and independent calculation, collection, and holding of margin for direct participant and indirect participant transactions.

In addition, Rule 2B, Section 4 would provide that, when submitting a transaction on behalf of a Sponsored Member or Executing Firm Customer, a Netting Member must include an identifier for the applicable Sponsored Member or Executing Firm Customer. This requirement is consistent with an existing requirement in the Schedule of Required Data Submission Items in the Rules and ensures that FICC continues to have the ability to accurately calculate the Required Fund Deposit and Segregated Customer Margin Requirements appropriately. This requirement also facilitates FICC's ability to engage in risk management and market surveillance in accordance with the covered clearing agency standards.

In connection with these changes, FICC also proposes to remove from Rule 1 the term ''Netting Member Account,'' as such defined term would no longer be used. References to Netting Member Accounts throughout the Rules would be revised to ''Dealer Accounts'', which would more clearly distinguish these Accounts from Broker Accounts, the other type of Proprietary Accounts. FICC would also remove Section 11 of Rule 3, which currently concern the types of Accounts that Netting Members may open. Rule 2B would now describe the Types of Accounts Netting Members may request as well as the transactions that may be recorded in such Accounts.

The foregoing changes are designed to ensure that proprietary and indirect participant transactions are recorded in separate Accounts. This would assist FICC in tracking and managing the risks associated with a Netting Member's proprietary and indirect participant transactions. It would also facilitate compliance with the revised covered clearing agency standards regarding the separate calculation, collection, and holding of indirect participant and proprietary margin, which is described in further detail below.

v. Simplification and Revision of Account Structure

To support the foregoing changes, FICC is proposing to provide further clarity on what an Account is for purposes of the Rules. Under the Rules, ''Accounts'' at FICC are not cash, securities, or other kinds of custodial accounts through which FICC holds assets for a Netting Member. Instead, FICC Accounts are a recordkeeping mechanism by which FICC records certain transactions submitted by Netting Members to FICC for clearance and settlement. This recordkeeping mechanism allows FICC to determine which transactions should be netted against one another in determining various obligations of the Netting Member, including its funds-only settlement amount and securities settlement obligations and its Required Fund Deposit. As discussed above, generally speaking, all transactions recorded in the same Account are netted for purposes of determining these obligations (though certain components of the Required Fund Deposit arising from Sponsored Member Trades are calculated on a gross basis, as described above). FICC is proposing to amend the definition of ''Account'' in Rule 1 to make clear that an ''Account'' means an account maintained by FICC to record transactions. In addition, FICC is proposing to adopt a new defined term, ''Type of Account'' or ''Type,'' to refer to the different kinds of Accounts described above.

FICC is also proposing to eliminate the concept of a Market Professional Cross-Margining Account, which refers to an Account carried by FICC for a Netting Member that is limited to Eligible Positions of Market Professionals or an Account that is carried by a Netting Member for Market Professionals that are party to a Market-Professional Agreement for Cross-Margining. FICC does not currently have in place a cross-margining arrangement for market professional indirect participants and would need to examine how such an arrangement would function within the context of the proposed revisions to the Account structure and margin methodology in order to determine what steps would be needed to implement such an arrangement consistently with the standards applicable to covered clearing agencies. Therefore, FICC is proposing to eliminate the Market Professional Cross-Margining Account concept at this time.

In order to implement this change, the proposal would remove the definition of ''Market Professional Cross-Margining Account'' from Rule 1 and remove provisions concerning Market Professional Cross-Margining Accounts from Rule 1, Rule 4 and Rule 29.

2. Proposed Rule Changes Relating to Note H of Rule 15c3–3a

As described above, FICC would permit Netting Members to designate certain Indirect Participants Accounts as Segregated Indirect Participants Accounts. Such a designation would have the effect of causing FICC to calculate, collect, and hold the required margin for transactions recorded in such Accounts in accordance with the conditions for recording a debit in the customer reserve formula set forth in Note H of Rule 15c3–3a.[31]

A. Gross Calculation of Segregated Customer Margin Requirements

In order to satisfy the requirement of Section (b)(2)(i) of Note H to Rule 15c3–3a that the margin requirement be calculated on a gross basis,[32] new Rule 2B would, as noted above, provide that when calculating the Segregated Customer Margin Requirement, FICC would not net the transactions of multiple Segregated Indirect Participants, but would net the transactions of a single Segregated

[31] 17 CFR 240.15c3–3a.

[32] *Id.*

Indirect Participant that are recorded in the same Account.

In addition, the revised Rule 4, Section 1b would require FICC to calculate a Netting Member's Segregated Customer Margin Requirement with respect to a particular Segregated Indirect Participants Account as the sum of the margin requirements applicable to each Segregated Indirect Participant whose transactions are recorded in such Account, as though each Segregated Indirect Participant were a separate Netting Member with a single Margin Portfolio consisting of such transactions. These provisions would result in FICC calculating separate margin amounts for each Segregated Indirect Participant and for such amounts to be collected on a gross basis.

FICC would also include language in the new Margin Component Schedule to achieve gross margining of Segregated Indirect Participants Accounts. Specifically, in Section 1 of the new Margin Component Schedule discussed below, new language would require each Netting Member for which FICC maintains a Segregated Indirect Participants Account to deposit with FICC Segregated Customer Margin equal to the sum of the Segregated Customer Margin Requirements for all such Accounts. Such language would further provide that each Segregated Customer Margin Requirement will be calculated twice daily and equal the sum of the amounts calculated pursuant to Section 3 of the Margin Component Schedule for each Segregated Indirect Participant whose transactions are recorded in the relevant Segregated Indirect Participants Account.

Section 3 of the new Margin Component Schedule, in turn, would set out the methodology for calculating such margin amounts. That section would provide for FICC to perform substantially the same calculation it currently performs when determining a Netting Member's Required Fund Deposit, except (i) such calculation would be performed on a Segregated Indirect Participant-by-Segregated Indirect Participant basis as though each Segregated Indirect Participant represented a separate Margin Portfolio and (ii) FICC would not impose an Excess Capital Premium.

With regard to the latter, FICC does not believe it would be appropriate to require an indirect participant to deposit with FICC additional margin on account of the capital position of its Netting Member. The Excess Capital Premium is designed to address the risk that a Netting Member with low capital relative to its VaR Charge will not be able to perform its obligations. However, Segregated Customer Margin cannot be applied to a Netting Member's obligations (other than to perform on behalf of the individual indirect participant for whom the Segregated Customer Margin is held). Accordingly, requiring indirect participants to deposit an additional Excess Capital Premium would not serve a risk management purpose. Further, requiring indirect participants who access FICC's clearance and settlement systems through a Netting Member with low capital to deposit more margin than indirect participants who access FICC's clearance and settlement system through other Netting Members would treat similarly situated indirect participants differently without an appropriate basis to do so. Moreover, it could lead to concentration among Netting Members, as indirect participants would be disincentivized to access clearing through smaller Netting Members, since smaller Netting Members typically have lower net capital.

For similar reasons, FICC would not add Segregated Customer Margin to Section 4 of the Margin Component Schedule, which describes FICC's ability to impose increased Required Fund Deposits under certain circumstances. However, when determining whether to increase the Required Fund Deposit of a Netting Member under the circumstances described in Section 4, FICC may consider the risk presented by a Netting Member in view of all activity it submits to FICC, including activity of indirect participants.

As a conforming change, FICC would revise the definitions of most of the components utilized for calculating a Netting Member's Segregated Customer Margin Requirement as well as associated definitions to provide that these apply to Segregated Indirect Participants on a Segregated Indirect Participant-by-Segregated Indirect Participant basis. These definitions include the Backtesting Charge, the Holiday Charge, the Intraday Supplemental Fund Deposit, the Margin Liquidity Adjustment or MLA Charge, the Margin Proxy, the Minimum Margin Amount,[33] the Portfolio Differential Charge, the Unadjusted GSD Margin Portfolio Amount, and the VaR Charge.

B. Segregation of Customer Margin Deposits

In order to satisfy the segregation requirements of Section (b)(2)(iii) of Note H to Rule 15c3–3a,[34] FICC is proposing a number of changes to the Rules. First, FICC is proposing to adopt a new definition of ''Segregated Customer Margin'' in Rule 1, which definition would refer to ''all securities and funds deposited by a Sponsoring Member or an Agent Clearing Member with the Corporation to satisfy its Segregated Customer Margin Requirement.'' FICC would also adopt a new Rule 4, Section 1a. That provision would require a Netting Member to deposit Segregated Customer Margin with FICC equal to the Netting Member's Segregated Customer Margin Requirement in accordance with the timing provisions generally applicable to Required Fund Deposits.

i. Establishment of Segregated Accounts

In order to satisfy the requirements of Section (b)(2)(iii) of Note H that margin ''be held in an account of the broker or dealer at the qualified clearing agency that is segregated from any other account of the broker or dealer at the qualified clearing agency,'' [35] Rule 4, Section 1a would provide for FICC to establish on its books and records for each Netting Member that deposits Segregated Customer Margin a ''Segregated Customer Margin Custody Account'' corresponding to each Segregated Indirect Participants Account of such Netting Member. Segregated Customer Margin Custody Account would be defined in Rule 1 as ''a securities account within the meaning of the NYUCC maintained by the Corporation, in its capacity as securities intermediary as such term is used in the NYUCC, for an Agent Clearing Member or Sponsoring Member for the benefit of such Member's Segregated Indirect Participants.'' In other words, in contrast to the other FICC Accounts, which, as discussed above, are position record-keeping accounts rather than custodial accounts, each Segregated Customer Margin Custody Account would be a ''securities account'' within the meaning of the NYUCC.

As noted above, FICC is also proposing to amend the definition of ''Account'' in Rule 1 to make clear that such term refers only to an account maintained by FICC for a Netting Member to record transactions submitted by that Netting Member. FICC believes this change would help to

[33] FICC has filed a proposed rule change and related advance notice to adopt a Minimum Margin Amount at GSD (File Nos. SR–FICC–2024–003 and SR–FICC–2024–801). This proposal is pending regulatory approval, and the filings are *available at www.dtcc.com/legal/sec-rule-filings.*

[34] 17 CFR 240.15c3–3a.

[35] *Id.*

distinguish ''Accounts,'' which are simply a transaction recordation mechanism, from the ''Segregated Customer Margin Custody Account,'' which is a traditional custodial account to which FICC would credit cash and securities.

Rule 4, Section 1a would further provide that any assets credited to the Segregated Customer Margin Custody Account would be treated as financial assets within the meaning of the NYUCC. These changes would have the effect of making FICC the ''securities intermediary'' in respect of each Segregated Customer Margin Custody Account and the Netting Member, on behalf of its Segregated Indirect Participants, the ''entitlement holder'' under the NYUCC.[36] By virtue of these designations, the Segregated Customer Margin held by FICC would be reserved for the Netting Member (on behalf of its Segregated Indirect Participants), including in an FICC insolvency.[37]

Rule 4, Section 1a would further provide that all Segregated Customer Margin deposited with FICC to support the obligations arising under the transactions recorded in a given Segregated Indirect Participants Account be credited to the corresponding Segregated Customer Margin Custody Account. In other words, rather than treat Segregated Customer Margin as general Clearing Fund, FICC would record such margin in a specific Segregated Customer Margin Custody Account maintained by FICC on its books and records for the Netting Member that deposited such Segregated Customer Margin, which Account would be separate from any other Accounts maintained by FICC for the Netting Member, including fellow Segregated Customer Margin Custody Accounts. In furtherance of the goal of segregation, FICC would also amend Rule 4, Section 3a to provide that any interest on Segregated Customer Margin consisting of cash be paid to Netting Members.[38]

ii. Exclusive Use, Account Designation, and Exclusive Benefit

To satisfy the requirements of Section (b)(2)(iii)(A) of Note H that customer margin be ''used exclusively to clear, settle, novate, and margin U.S. Treasury securities transactions of the customers of the broker or dealer;'' [39] FICC would provide in Rule 4, Section 1a that the Segregated Customer Margin credited to a Segregated Customer Margin Custody Account would be used exclusively to settle and margin transactions in U.S. Treasury securities recorded in the corresponding Segregated Indirect Participants Account.

Rule 4, Section 1a would also provide that the Segregated Customer Margin Custody Account would be designated on FICC's books and records as a ''Special Clearing Account for the Exclusive Benefits of the Customers of [the relevant Sponsoring Member or Agent Clearing Member].'' This is in accordance with the designation requirements of Section (b)(2)(iii)(B) of Note H.[40]

Section (b)(2)(iii)(C) of Note H requires that the account at the clearing agency to which customer margin is credited be subject to a written notice from the clearing agency to the broker-dealer stating that the margin credited to the account is being held ''for the exclusive benefit of the customers of the broker or dealer in accordance with the regulations of the Commission and [is] being kept separate from any other accounts maintained by the broker or dealer or any other clearing member at the qualified clearing agency.'' [41] Rule 4, Section 1a would provide for FICC to provide this notice to any Netting Member that is a Registered Broker or Registered Dealer and has designated an account as a Segregated Indirect Participants Account.

iii. Limitation on Permitted Liens and Use of Margin Deposits

FICC is also proposing changes to the Rules to satisfy the condition of Section (b)(2)(iii)(D) of Note H that the account established pursuant to Section (b)(2)(iii), *i.e.,* each Segregated Customer Margin Custody Account, be subject to a written contract providing that the customer margin in the account, *i.e.,* the Segregated Customer Margin, not be available to cover claims arising from the broker-dealer or any other clearing member defaulting on an obligation to the Treasury CCA, or be subject to any other right, charge, security interest, lien, or claim of any kind in favor of the qualified clearing agency or any person claiming through the qualified clearing agency, except a right, charge, security interest, lien, or claim resulting from a cleared U.S. Treasury securities transaction of a customer of the broker-dealer effected in the account.[42]

Specifically, FICC is proposing to amend the security interest each Netting Member provides to FICC under Rule 4, Section 4. That security interest, which is binding on the Netting Member and FICC through the incorporation of the Rules into the membership agreement between FICC and such Netting Member, currently applies to all cash and securities deposited by a Netting Member with FICC pursuant to Rule 4 and Rule 13 (defined in the Rules as the ''Actual Deposit'') and secures all obligations of the Netting Member to FICC. FICC is proposing to amend Rule 4, Section 4 to exclude Segregated Customer Margin from the scope of the Actual Deposit. Such Segregated Customer Margin would instead be subject to a separate security interest pursuant to which the Segregated Customer Margin would secure only obligations arising out of Segregated Indirect Participants Accounts. FICC would also make a conforming change to Rule 3A, Section 10(f) to make clear that the security interest described therein only applies to the security interest granted in the Actual Deposit.

In addition, the bulk of the provisions of the Rules concerning Clearing Fund, including those relating to FICC's ability to use Clearing Fund, would not apply to Segregated Customer Margin since such margin would not form part of the Clearing Fund. The only exceptions are the language in Rule 3A, Section 10(f) stating that margin obligations are secured by the Actual Deposit; the language in Rule 3A, Section 10(g) concerning fines applicable to a failure to meet margin requirements; the language in Rule 4, Section 3a concerning the requirement that cash margin deposits be made in immediately available funds; the language in Rule 4, Section 3b regarding the haircutting, delivery, qualification, and substitution requirements for securities margin; and the language in Rule 4, Section 9 relating to the requirement of Netting Members to deliver margin. These changes would ensure that FICC's broad use rights in respect of Clearing Fund, *e.g.,* for loss mutualization, do not apply to Segregated Customer Margin.

In addition, FICC is proposing to amend Rule 4, Section 5 to provide that, on each Business Day, FICC would

[36] UCC § 8–102(7) (''Entitlement holder' means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. . . .'').

[37] *See* UCC § 8–503.

[38] Rule 4, Section 1a would also specify New York as the ''securities intermediary's jurisdiction'' for purposes of the NYUCC and specify that New York law would govern all issues specified in Article 2(1) of the Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary, July 5, 2006, 17 U.S.T. 401, 46 I.L.M. 649 (entered into force Apr. 1, 2017) (the ''Hague Securities Convention''). These changes are designed to ensure that New York law governs each Segregated Customer Margin Custody Account.

[39] 17 CFR 240.15c3–3a.

[40] *Id.*

[41] *Id.*

[42] *Id.*

calculate the portion of Segregated Customer Margin that supports each Segregated Indirect Participant's transactions. FICC may only use such portion to secure or settle the performance of the obligations of that Segregated Indirect Participant (or its Sponsoring Member or Agent Clearing Member with respect to the Segregated Indirect Participant) or for permitted investment purposes described below. It would further provide that FICC would not be permitted to use Segregated Customer Margin supporting one Segregated Indirect Participant's transaction to secure or settle any other person's transactions, including those of a fellow Segregated Indirect Participant.

These changes would thus not only prohibit FICC from using Segregated Customer Margin to cover the obligations of the broker-dealer Netting Member in respect of its Proprietary Transactions or those of any other Netting Member in accordance with the requirements of Section (b)(2)(iii)(D) of Note H, but they would also limit ''fellow customer risk'' for Segregated Indirect Participants (*i.e.,* the risk that one customer incurs a loss on account of a default of another customer because the clearing organization applies margin deposited by the first customer to the second customer's obligations).[43] FICC believes these changes would facilitate greater access to its clearance and settlement services.

FICC is proposing to require that the Segregated Margin Requirement be no lower than $1 million per Segregated Indirect Participant, and that the same form of deposit requirements set forth in Rule 4, Section 3 apply to Segregated Customer Margin such that no less than $1 million per Segregated Indirect Participant consist of cash. These changes would be accomplished through a new subsection (c) of Rule 4, Section 3 and reflected in the Margin Component Schedule.

First, this minimum requirement is consistent with the $1 million minimum cash requirement applicable to each Margin Portfolio of a Netting Member. FICC believes it is appropriate to apply the same minimum cash requirement to each Segregated Indirect Participant that it currently applies to each Margin Portfolio because, as described above, FICC would be required to calculate the margin requirements for these participants on a gross basis, as if each Segregated Indirect Participant were a separate Margin Portfolio, and would be restricted from using these funds to address any losses other than losses resulting from the participant for whom the funds are held.

Second, because FICC would be restricted from using these funds to address any losses other than losses resulting from the indirect participant for whom these funds are deposited, FICC believes this minimum requirement is appropriate to mitigate the risk exposures presented by this limitation. FICC's daily backtesting of the sufficiency of Clearing Fund deposits has revealed a heightened likelihood of backtesting deficiencies for those Members with lower deposits that are not sufficient to mitigate any abrupt intraday change in their exposures.[44] Based on the analysis and impact studies FICC conducted in connection with a recent increase to minimum Required Fund Deposit for Netting Members,[45] FICC has determined that a $1 million minimum requirement is the appropriate minimum amount to optimize the balance between financial impact of the requirement to Members and FICC's ability to continue to meet its regulatory obligation to maintain a backtesting performance coverage ratio above its 99 percent coverage target.

FICC is not able to predict how many indirect participants may elect to submit activity to FICC through a Segregated Indirect Participants Account, or the size and volume of that activity. However, because the margin requirements for each Segregated Indirect Participant would be calculated in the same manner as the requirements for each Margin Portfolio, it believes that these studies provide it with an appropriate approximation of the risks it may face if margin deposits for these Accounts are not subject to a minimum requirement.

C. Holding Segregated Customer Margin Deposits in Bank and FRBNY Accounts

To satisfy the eligible custodian conditions set forth in Section (b)(2)(iv) of Note H,[46] FICC is proposing to amend Rule 4, Section 1a to provide that all Segregated Customer Margin be held in an account of FICC at a bank within the meaning of the Act that is insured by the Federal Deposit Insurance Corporation, or at the Federal Reserve Bank of New York. Rule 4, Section 1a would also provide that such account would be segregated from any other account of FICC and would be used exclusively to hold Segregated Customer Margin, in accordance with Section (b)(2)(iv)(A) of Note H to Rule 15c3–3a.[47] To satisfy the requirements of Sections (b)(2)(iv)(B) and (C) of Note H,[48] Rule 4, Section 1a would further provide that each such account would be subject to (i) a written notice of the bank or Federal Reserve Bank provided to and retained by FICC that the account is being held by the bank or Federal Reserve Bank pursuant to Rule 15c3–3 and is being kept separate from any other accounts maintained by FICC or any other person at the bank or Federal Reserve Bank and (ii) a written contract between FICC and the bank or Federal Reserve Bank which provides that the Segregated Customer Margin in the account is subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or Federal Reserve Bank or any person claiming through the bank or Federal Reserve Bank.

D. Investment Restrictions on Segregated Customer Margin Cash

In accordance with Section (b)(2)(ii) of Note H,[49] Rule 4, Section 1a would be amended to require FICC to only invest Segregated Customer Margin consisting of cash in U.S. Treasury securities with a maturity of one year or less. FICC will propose changes to the Clearing Agency Investment Policy by a separate proposed rule change filing to address the separate holding and investment of Segregated Customer Margin cash, consistent with the disclosures proposed to be added to Rule 4. Pursuant to those changes, FICC would only hold Segregated Customer Margin consisting of cash in a cash deposit account at the Federal Reserve Bank of New York or, pending the opening of such account, another FDIC-insured bank and does not intend to make any other investment of these funds.

E. Return of Segregated Customer Margin

Lastly, in order to satisfy the condition in section (b)(2)(v) of Note H

[43] In the event of the insolvency, resolution, or liquidation of a Netting Member, a Segregated Indirect Participant's ability to recover any funds or securities it has posted to its Netting Member in connection with an FICC-cleared transaction or that the Netting Member receives from FICC in connection with such a transaction will depend on the relevant insolvency, resolution, or liquidation regime. FICC would not, except as directed by the relevant insolvency, resolution, or liquidation officials in accordance with applicable law, make any payments or transfer any assets directly to an indirect participant.

[44] As a covered clearing agency, FICC is required under Rule 17Ad–22(e)(6)(vi) to conduct backtests of its margin model at least once a day. 17 CFR 240.17Ad–22(e)(6)(vi). FICC's backtesting performance target is 99 percent.

[45] *See* Securities Exchange Act Release No. 96136 (Oct. 24, 2022), 87 FR 65268 (Oct. 28, 2022) (SR–FICC–2022–006).

[46] 17 CFR 240.15c3–3a.

[47] *Id.*

[48] *Id.*

[49] *Id.*

that a Treasury CCA adopt rules requiring systems, controls, policies, and procedures to return excess customer margin to a broker-dealer,[50] FICC is proposing to adopt certain amendments to Rule 4, Section 10. Under the proposed rule changes, Rule 4, Section 10 would be revised to require FICC to calculate twice each Business Day the excess of a Netting Member's Segregated Customer Margin over the Segregated Customer Margin Requirement (such amount, the ''Excess Segregated Customer Margin'').[51] In addition, FICC would adopt a new Rule 4, Section 10(b) that would require FICC to return a Netting Member's Excess Segregated Customer Margin at the Netting Member's request. In order to manage the risk of a Segregated Indirect Participant's transactions in accordance with the requirements of Rule 17Ad–22(e)(6) under the Act,[52] FICC would retain the discretion to retain such Excess Segregated Customer Margin if the Netting Member has any outstanding payment or margin obligation with respect to the transactions of any Segregated Indirect Participant.

However, proposed Section 10(b) of Rule 4 would provide that, unlike in the case with Clearing Fund, FICC would not be able to retain Excess Segregated Customer Margin due to any obligation of the Netting Member that is unrelated to the Segregated Indirect Participants Account, unless FICC is either required to do so by applicable law or is authorized to do so by the Commission.

3. Align Margin Methodology With Proposed Account Structure and Enhance Public Disclosures of Margin Components and Clearing Fund Methodology

FICC is proposing changes to the Rules to reorganize, clarify, and refine its margin calculation methodology. FICC is not changing the method by which it calculates the various margin components.

A. Consolidate Margin Components and Clearing Fund Calculation Methodology in Proposed Margin Component Schedule

In order to improve the clarity and transparency of its margin components and Clearing Fund calculation methodology, FICC is proposing to move the calculation methodology from Rule 4, Sections 1b, and 2a, Rule 3, Section 14, and Rule 3A, Section 10, as well as the associated definitions of the margin components and associated terms, including Backtesting Charge, Blackout Period Exposure Adjustment, Excess Capital Differential, Excess Capital Ratio, Excess Capital Premium, Holiday Charge, Intraday Supplemental Fund Deposit, Margin Liquidity Adjustment Charge or MLA Charge, Margin Proxy, Minimum Margin Amount,[53] Portfolio Differential Charge, Unadjusted GSD Margin Portfolio Amount, VaR Charge, VaR Floor and VaR Floor Percentage Amount to a new Margin Component Schedule. As noted above, this methodology would not change, and would continue to be substantively the same as that which currently exists under Rule 4 and Rule 3A, Section 10.

The Margin Component Schedule would include existing and refined descriptions of the manner and method by which FICC would calculate a Netting Member's Required Fund Deposit and Segregated Customer Margin Requirement. FICC believes that describing its margin calculation methodology in a single schedule would facilitate access to its clearing and settlement services by making it easier for market participants to identify and review that methodology. FICC would also make conforming changes to provisions of the Rules that reference the margin calculation methodology of Rule 4 so that such provisions reference the Schedule of Margin Components.

Section 1 of the Margin Component Schedule would provide that both a Netting Member's Required Fund Deposit and its Segregated Customer Margin Requirement would be calculated twice each Business Day and that the Netting Member would be required to meet such requirements. This is the same time interval in which FICC currently calculates and collects a Netting Member's margin requirements. Section 2 of the Margin Component Schedule would set forth the methodology for calculating a Netting Member's Required Fund Deposit. As discussed above, Section 3 of the Margin Component Schedule would set forth the methodology for calculating a Netting Member's Segregated Customer Margin Requirement. Section 4 of the Margin Component Schedule would set forth the terms under which FICC may impose increased Required Fund Deposits. These terms would be substantively the same as those currently in Rule 4 and Rule 3A, Section 10.

Section 5 of the Margin Component Schedule would contain the relevant definitions for the margin methodology calculation. These would be substantively the same as the existing definitions in Rule 1, with certain changes. As noted above, the definitions of Backtesting Charge, Blackout Period Exposure Adjustment, Excess Capital Differential, Excess Capital Ratio, Excess Capital Premium, Holiday Charge, Intraday Supplemental Fund Deposit, Margin Liquidity Adjustment or MLA Charge, Margin Proxy, Minimum Margin Amount,[54] Portfolio Differential Charge, Unadjusted GSD Margin Portfolio Amount, VaR Charge, VaR Floor and VaR Floor Percentage Amount would be revised to provide for such charges to be calculated for purposes of Segregated Customer Margin Requirements on a Segregated Indirect Participant-by-Segregated Indirect Participant basis. In addition, the MLA Charge definition would be amended to provide that, if a Segregated Indirect Participant clears through multiple Accounts (including Accounts of different Netting Members), then the MLA Charge applicable to its transactions carried in a given Segregated Indirect Participants Account would equal the greater of (i) an amount calculated only with regard to the transactions maintained in that Account (*i.e.,* without regard to the other Accounts in which the Segregated Indirect Participant's transactions are recorded) and (ii) an amount calculated on a consolidated portfolio basis (*i.e.,* taking into account the transactions carried in each of the Accounts). This is currently the same methodology that is used for Sponsored Members that clear through multiple Accounts.

B. Revise Definition of ''Current Net Settlement Positions''

In order to refine its margin calculation methodology, FICC is also proposing to amend the definition in Rule 1 of Current Net Settlement Positions to provide for Current Net Settlement Positions in a Sponsoring Member Omnibus Account or Segregated Indirect Participants Account that are not clearly allocable to an individual Sponsored Member or Segregated Indirect Participant to be allocated, for purposes of calculating margin requirements, pro rata to the Sponsored Members or Segregated Indirect Participants that had, as of the end of the preceding Business Day, positions in the same direction and CUSIP as the un-allocable Current Net Unsettled Positions. This situation could arise if, for example, a transaction

[50] *Id.*

[51] The twice each Business Day interval would also apply to the calculation of a Netting Member's excess Required Fund Deposit, since that is the interval on which FICC currently performs such calculation.

[52] 17 CFR 240.17Ad–22(e)(6).

[53] *Supra* note 33.

[54] *Supra* note 33.

recorded in a Sponsoring Member Omnibus Account or Segregated Indirect Participants Account fails to settle. FICC believes this methodology facilitates a reasonable and fair allocation for purposes of calculating gross margin requirements.

FICC would make a corresponding deletion to the language of Rule 3A, Section 7 that addresses the treatment of such positions in Sponsoring Member Omnibus Accounts. Currently Rule 3A, Section 7(a)(i) provides that Net Settlement Positions per CUSIP shall be calculated for each Sponsored Member in the same manner set forth in Rule 11 for Netting Members. The proposed changes to the definition of Current Net Settlement Positions would, however, result in a different calculation of the Net Settlement Positions per CUSIP for Sponsored Members whose positions are recorded in a Sponsoring Member Omnibus Account than for Netting Members. Therefore, the statement in Rule 3A, Section 7 would no longer be correct and would be removed from the Rules.

C. Enhance the Methodology for Calculating the Excess Capital Premium

FICC is also proposing to amend the terms related to the Excess Capital Premium, one of the components of the Required Fund Deposit calculation, in order to make such calculation more precise and predictable. Currently, the Excess Capital Premium applicable to a Netting Member equals the Netting Member's ''Excess Capital Ratio'' (*i.e.,* its VaR Charge divided by its Netting Member Capital) multiplied by its ''Excess Capital Differential'' (*i.e.,* the amount by which a Netting Member's VaR Charge exceeds its Netting Member Capital). However, FICC currently reserves the right to collect less than this amount or to return some or all of this amount.

FICC is proposing to make the Excess Capital Premium more precise and predictable by revising the definition to (i) cap such amount at two times a Netting Member's Excess Capital Differential, (ii) provide that FICC would use the Netting Member Capital amounts set forth in the Netting Member's most recent Form X–17–A–5 (Financial and Operational Combined Uniform Single (''FOCUS'') Report or Consolidated Report of Condition and Income (''Call Report''), as applicable, (iii) permit FICC in its discretion to accept updated amounts provided by a Netting Member prior to the issuance of the Netting Member's next financial report, and (iv) set forth a specific procedure through which FICC may waive the Excess Capital Premium. With regard to (iv), the proposed rule changes would provide that only a Managing Director in FICC's Group Chief Risk Office could grant waiver of an Excess Capital Premium and only in exigent circumstances if FICC observed extreme market conditions or other unexpected changes in factors, based on all relevant facts and circumstances, including the degree to which a Netting Member's capital position and trading activity compare or correlate to the prevailing exigent circumstances and whether FICC can effectively address the risk exposure presented by a Netting Member without the collection of the Excess Capital Premium from that Netting Member. Any such waiver would need to be documented in a written report made available to the relevant Netting Member. FICC believes that these changes, which are substantially similar to changes recently adopted by the National Securities Clearing Corporation, would enhance the ability of Netting Members to identify what their Excess Capital Premium will be and to ensure such amount is accurately calibrated.[55]

FICC would also amend the defined term ''Netting Member Capital'' in Rule 1 to refer to a Netting Member's Net Capital, Net Assets, or Equity Capital, as applicable based on the Netting Member's type of regulation. The definition of ''Net Capital,'' in turn, would be revised to refer specifically to the net capital of a Netting Member as reported on its most recent FOCUS Report or, if a Netting Member is not required to file a FOCUS Report, on its most recent financial statements or equivalent reporting. ''Equity Capital'' would be defined in Rule 1 to mean the equity capital of a Netting Member as reported on its most recent Call Report, or if a Netting Member is not required to file a Call Report, on its most recent financial statements or equivalent reporting. FICC believes these changes would increase predictability and understanding of how FICC calculates the Excess Capital Premium.

FICC would also remove obsolete references to margin requirements for pending transactions since FICC does not apply margin requirements to such transactions.

D. Exclude Segregated Customer Margin From Calculation of Excess Capital Premium Charge

FICC is also proposing to revise the definitions of Excess Capital Ratio and Excess Capital Differential in the Margin Component Schedule to exclude the VaR Charge calculated with respect to Segregated Indirect Participants.

The VaR Charge assessed for each Segregated Indirect Participant would be satisfied by the Segregated Indirect Participant, and not by the Netting Member. As noted above, the Excess Capital Premium is designed to address the risk that a Netting Member with low capital relative to value-at-risk is not able to perform its obligations. However, Segregated Customer Margin cannot be applied to satisfy a Netting Member's obligations (other than to perform on behalf of the individual indirect participant for whom the Segregated Customer Margin is held). Therefore, including the VaR Charge that is calculated for a Segregated Indirect Participant and is satisfied by the capital of that Segregated Indirect Participant in the calculation of the Netting Member's Excess Capital Premium could result in assessing an Excess Capital Premium for that Netting Member that is greater than the amount required to mitigate the risk that the Excess Capital Premium is designed to address.

The proposed change is also designed to ensure that the Excess Capital Premium does not result in differential treatment of Netting Members that act as intermediaries for Segregated Indirect Participants.

E. Other Clarifications and Conforming Changes

In connection with the changes described above, FICC would make other clarifications and conforming changes to the Rules. First, FICC would move the definition of ''Legal Risk'' from Rule 4 to the definitions in Rule 1. This term refers to the risk that FICC may be unable to either access Required Fund Deposits or take action following the insolvency or bankruptcy of a Netting Member as the result of a law, rule or regulation applicable to the Netting Member.[56] Because this term is used in multiple places in the Rules, including in the new Margin Component Schedule, moving the definition to Rule 1 would make it easier for a reader to find that definition.

FICC would also delete the definition of the term ''Minimum Charge'' from Rule 1 and move the use of this term from Rule 4 to Sections 2(c) and 3(c) of the Margin Component Schedule. While FICC would continue to apply a requirement that Netting Members maintain a minimum amount for each Margin Portfolio or Segregated Margin Requirement, as discussed above, FICC

[55] *See* Securities Exchange Act Release No. 96786 (Feb. 1, 2023), 88 FR 8013 (Feb. 7, 2023) (SR–NSCC–2022–005).

[56] *See* Rule 4, Section 2(d), *supra* note 4.

believes using a defined term for this concept is not necessary and could cause confusion about the requirement. The proposed change to remove the defined term and instead just explain the requirement in these sections of the Margin Component Guide would simplify and, therefore, clarify, the Rules in this regard.

4. Clarifications to Treatment of Brokered Transactions

FICC is proposing to refine the definition of Brokered Transactions and remove conditions that Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers must meet in order to receive favorable loss allocation treatment.

Currently, Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers must meet a set of conditions described in Section 8 of Rule 3 to be subject to a cap on the application of FICC's loss allocation procedure of no greater than $5 million.[57] FICC believes this favorable loss allocation treatment is appropriate because the Netting Member is not undertaking a directional position with respect to the transactions. Instead, each transaction has a counterparty other than the Netting Member that will ultimately deliver the securities or pay the cash.

FICC is proposing to revise the Rules related to Brokered Transactions so that the favorable loss allocation treatment applies only to the transactions that present this limited risk. In particular, FICC is proposing to revise the definition of Brokered Transactions to only encompasses transactions entered into by an Inter-Dealer Broker Netting Member on the Inter-Dealer Broker Netting Member's own trading platform. This rule change would limit the definition of these transactions to transactions for which an Inter-Dealer Broker is standing in between two counterparties and is thus completely flat.

In connection with this change, FICC would eliminate the conditions that Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers must meet in order to be subject to such favorable treatment. As noted above, the proposed Rule 2B would clarify that only Inter-Dealer Broker Netting Members are able to maintain Cash Broker Accounts or Repo Broker Accounts, and that only Brokered Transactions may be submitted through such Accounts, as appropriate. Therefore, FICC believes the revised definition of Brokered Transactions and the revisions to the Account structure would collectively serve the risk-mitigation function that the conditions in Rule 3, Section 8 achieve, but in a much more effective manner and in a manner that is easier for FICC to monitor. As such, those conditions would be removed from the Rules.

Finally, FICC would remove the category of Non-IDB Repo Brokers from the Rules. Non-IDB Repo Brokers are currently defined as Netting Members other than Inter-Dealer Broker Netting Members that operate in the same manner as a Broker and have agreed to meet the same requirements imposed on Inter-Dealer Broker Netting Members.[58] As described above, FICC believes the favorable loss allocation treatment is appropriate only for Inter-Dealer Broker Netting Members that submit Brokered Transactions, as such term would be defined. Therefore, FICC would delete the references to such parties and associated terms. In connection with these changes, the proposal would delete the defined term for ''Non-IDB Repo Broker'' as that term would no longer be used in the Rules.

Implementation Timeframe

Subject to the completion of all regulatory actions required with respect to this proposal,[59] FICC expects to implement the proposal by no later than March 31, 2025, and would announce the effective date of the proposed changes by an Important Notice posted to FICC's website.

Expected Effect on Management of Risk

FICC believes that the proposed rule changes to separately and independently calculate, collect, and hold the margin for a Netting Member's proprietary transactions from the margin for the transactions of indirect participants, to limit Brokered Transactions to those entered into by an Inter-Dealer Broker Netting Member on its own trading platform, to set forth a segregation arrangement for certain indirect participant margin, and to clarify FICC's account structure and consolidate its margin methodology in a single accessible Margin Component Schedule would enhance FICC's and its Netting Members' risk management.

The separate calculation of margin for a Netting Member's proprietary and indirect participant transactions would ensure that the quantum of margin that FICC collects from a Netting Member more precisely reflects the separate risk profiles of the Netting Member's proprietary portfolio of transactions and the portfolio of transactions that the Netting Member submits to FICC on behalf of indirect participants. This approach would also provide FICC with a more detailed understanding of potential risks arising from the various types of transactions that it clears.

The revisions to the Brokered Transactions definition would also help facilitate a more precise identification and calibration of potential risks attendant to different transaction types. In this context, the revisions would ensure that only those transactions that present the limited risk for which FICC's Brokered Transactions provisions are designed benefit from a more favorable loss allocation treatment. And they would ensure that other types of transactions are maintained in Dealer Accounts, alongside other regular market activity.

FICC further believes that the proposed changes to clarify FICC's account structure and consolidate its margin methodology in a single accessible Margin Component Schedule would enhance risk management by furthering public awareness of how FICC assesses margin requirements. Such greater awareness would allow Netting Members and indirect participants to make more informed choices about how the various types of portfolios they present for clearing would be risk managed by FICC, which in turn should allow such parties to better anticipate and provision for any financial resourcing and liquidity needs that might arise from margin calls for those portfolios.

FICC additionally believes that the proposed margin segregation arrangement would reduce risk by enhancing the ability of Netting Members to collect margin from indirect participants and deposit that margin with FICC. Currently, broker-dealer Netting Members must finance the margin obligations of their indirect participants' transactions because they cannot record a debit in the Rule 15c3–3a formulas for margin deposited with FICC. In addition, non-broker-dealer Netting Members may often need to finance the margin obligations of their indirect participants' transactions because the absence of a segregation arrangement makes it impossible or undesirable for indirect participants to use their own assets to satisfy such

[57] *See* Rule 3, Section 8 (such conditions require that an Inter-Dealer Broker Netting Member ''(A) limit its business to acting exclusively as a Broker; (B) conduct all of its business in Repo Transactions with Netting Members; and (C) conduct at least 90 percent of its business in transactions that are not Repo Transactions, measured based on its overall dollar volume of submitted sides over the prior month, with Netting Members'') and Rule 4, Section 7, *supra* note 4.

[58] Currently, only one Netting Member is a Non-IDB Repo Broker.

[59] *Supra* note 3.

margin obligations. Such financing can expose Netting Members to the risk of an indirect participant default. FICC's proposed segregation arrangement would serve to reduce the need for Netting Members to provide financing by allowing Netting Members to collect margin from indirect participants and deposit that margin with FICC. Such collection and depositing would reduce the risk to a Netting Member of an indirect participant default because the Netting Member can look to the margin for credit support. As a result, collecting and depositing the indirect participant's margin in a segregated account at FICC would limit the likelihood that a default of an indirect participant gives rise to distress at the Netting Member that could limit its ability to perform to FICC. By the same token, the segregated account structure FICC is proposing to hold indirect participant margin should help those indirect participants manage their risks to their Netting Member, fellow Netting Member customers, and even FICC itself because the account structure would ensure that such margin is only available to cover losses arising from a default by the indirect participant's position.

Consistency With Section 805 of the Clearing Supervision Act

FICC believes the proposed rule changes are consistent with the Clearing Supervision Act.[60] Specifically, FICC believes these changes are consistent with the risk management objectives and principles of Section 805.[61]

1. Consistency With Section 805(b) of the Clearing Supervision Act

Section 805(b) provides that ''[t]he objectives and principles for the risk management standards prescribed under subsection (a) shall be to (1) promote robust risk management; (2) promote safety and soundness; (3) reduce systemic risks; and (4) support the stability of the broader financial system.'' [62] As described in greater detail below, the proposed rule changes to clarify FICC's account structure and margin calculation methodology would improve public understanding of FICC's margining and recordkeeping processes and thereby facilitate greater access to the systemic risk-reducing benefits of FICC's central clearing services. The proposed changes would do this by revising the definition of ''Account'' to make clear that FICC Accounts are for purposes of recording transactions, providing a roadmap in Rule 2B identifying the types of Accounts FICC maintains for Netting Members and which transactions may be recorded in such Accounts, amending Rule 4 to clarify the types of transactions that may be included in a Margin Portfolio, and consolidating the components of FICC's margin calculation methodology currently in Rules 1 and 4 into an accessible Margin Component Schedule and refining the description of FICC's margin calculation methodology. The proposed change to eliminate the Permitted Margin Affiliates from the Rules would also lead to clearer Rules and, therefore, improved public understanding of FICC's margining practices by removing a concept that is not being used by Netting Members.

The collective impact of these changes would be to enhance the ability of Netting Members and indirect participants to make more informed choices about how the various types of portfolios they present for clearing would be risk managed by FICC, which in turn should allow such parties to better anticipate and provision for any financial resourcing and liquidity needs that might arise from margin calls for those portfolios. Enhanced understanding and decision-making by market participants of FICC's risk-reducing central clearing services would promote easier and more diverse access to such services. This expanded access, in turn, would promote robust risk management across the U.S. Treasury market since expanded access also result in expanded application of FICC's risk management measures, including margin requirements. With this expanded application also comes clearer understanding by market participants of the potential financial resource and liquidity needs necessary to satisfy FICC's margin requirements, and therefore the ability of market participants to anticipate and manage those needs on a more organized and orderly basis. Thus, expanded and more transparent application of these risk management measures would promote safety and soundness across the diversity of participants in the U.S. Treasury markets, thereby also reducing systemic risk and supporting stability of the broader financial system.

The proposed changes to create a segregation arrangement for certain indirect participant margin would also facilitate broader access to the risk-reducing benefits of FICC's central clearing services. As noted above, broker-dealer and other Netting Members must often finance the margin obligations of their indirect participants. In addition to increasing a Netting Member's risk exposure to indirect participants, such financing increases the costs to the Netting Member of providing access to central clearing. The proposed rules would facilitate greater access to FICC's clearance and settlement systems by creating a segregation arrangement that would allow broker-dealer and other Netting Members to collect margin from their indirect participants and deposit that margin with FICC. Such collection and depositing would reduce the costs and attendant liquidity needs to such Netting Members of providing access to FICC's clearance and settlement services via margin payments, thereby increasing the diversity and scope of market participants able to access central clearing while also ensuring that expanded access to central clearing does not increase funding and liquidity risk for the Netting Members. By improving the position of the Netting Members in this regard, the proposed changes can reduce systemic risk that can be triggered by a large Netting Member liquidity stress event or where an indirect participant default also causes a Netting Member to default. For the same reasons, the outcome of these proposed changes promotes safety and soundness and the stability of the broader financial system.

By the same token, the segregated account structure FICC is proposing to hold indirect participant margin should help indirect participants who access central clearing to manage more effectively their risks to their Netting Member, fellow Netting Member customers, and even FICC itself because the account structure would ensure that such margin is only available to cover losses arising from a default by the indirect participant's position. Thus, the proposed changes would promote robust risk management at indirect participants and, by reducing the risk that indirect participants may not be able to access their margin upon the default of another party, also reduce the risk that the indirect participant will suffer a related default or market stress event. For this reason, the proposals further promote safety and soundness, reduce systemic risk, and support the stability of the broader financial system.

The proposed rule changes to separately and independently calculate the margin for a Netting Member's proprietary transactions from the margin for the transactions of indirect participants, adopt a method for allocating net unsettled positions to individual indirect participants for purposes of calculating margin requirements, and to limit the scope of Brokered Transactions to those executed by an Inter-Dealer Broker Netting

[60] 12 U.S.C. 5461 *et seq.*

[61] 12 U.S.C. 5464.

[62] 12 U.S.C. 5464(b).

Member on its own trading platform would also promote robust risk management, and safety and soundness at FICC by reducing the potential risk to FICC arising from indirect participant transactions and provide FICC with a better understanding of the source of potential risk arising from the transactions that it clears.[63] They would also ensure that only those transactions that present the limited risk for which FICC's Brokered Transactions provisions are designed benefit from the favorable loss allocation treatment, which further promotes robust risk management at FICC. The proposed changes would also incentivize Netting Members and indirect participants to make more informed choices about how the various types of portfolios they present for clearing would be risk managed by FICC, which in turn should allow such parties to better anticipate and provision for any financial resourcing and liquidity needs that might arise from margin calls for those portfolios. As already explained above, these outcomes applied across the various actors in the U.S. Treasury market would, in turn, reduce systemic risks and support the stability of the broader financial system.

As a result, FICC believes the proposed changes will collectively advance Section 805(b)'s objectives and principles of promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.[64]

2. Consistency With Section 805(a)(2) of the Clearing Supervision Act

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities, like FICC. Accordingly, the Commission has adopted risk management standards under this section and under section 17A of the Act.[65] The Section 17A standards require registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[66] FICC believes that the proposed changes are consistent with Rules 17Ad–22(e)(4)(i), (e)(6)(i), (e)(18)(ii), (e)(18)(iii), (e)(18)(iv)(C), (e)(19), and (e)(23)(ii), each promulgated under the Act.[67]

Rule 17Ad–22(e)(4)(i) under the Act requires that FICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.[68] The proposed rule changes to separately and independently calculate, collect, and hold the margin for a Netting Member's proprietary transactions from the margin for the transactions of indirect participants, to limit Brokered Transactions to those entered into by an Inter-Dealer Broker Netting Member on its own trading platform, and to increase the precision of the Excess Capital Premium would enhance FICC's risk management. These changes would ensure that the quantum of margin that FICC collects from a Netting Member reflects the separate risk profiles of the Netting Member's portfolio of Proprietary Transactions and portfolio transactions that the Netting Member submits to FICC on behalf of indirect participants, ensure that only those transactions that present the limited risk for which FICC's Brokered Transactions provisions are designed benefit from favorable loss allocation treatment, and calibrate the Excess Capital Premium based on the most readily available information.

Collectively, these changes would enhance the ability of FICC to manage the risk of the transactions it clears and settles and cover its credit exposure to its participants with a high degree of confidence.

The proposed change to require a minimum cash requirement of $1 million per Segregated Indirect Participant would mitigate the greater risk exposure presented to FICC by the limitations on its use of these deposits. As discussed above, FICC's daily backtesting of the sufficiency of Clearing Fund deposits has revealed a heightened likelihood of backtesting deficiencies for those Members with lower deposits that are not sufficient to mitigate any abrupt intraday change in their exposures, and a $1 million minimum requirement was appropriate to mitigate the risks of backtesting deficiencies while balancing the financial impact of this requirement on Members.[69] Because FICC is required to calculate the margin requirements for Segregated Indirect Participants on a gross basis, as if each Segregated Indirect Participant were a separate Margin Portfolio, it believes it is also appropriate to apply the same minimum requirement that it applies to each Margin Portfolio. By maintaining sufficient resources to cover its credit exposures fully with a high degree of confidence, the proposed change supports FICC's ability to identify, measure, monitor, and, through the collection of Segregated Customer Margin, manage its credit exposures to these indirect participants. Therefore, FICC believes adopting this minimum requirement is consistent with the requirements of Rule 17Ad–22(e)(4)(i) under the Act.[70]

Rule 17Ad–22(e)(6)(i) under the Act requires FICC to establish written policies and procedures reasonably designed to calculate, collect, and hold margin amounts from a direct participant for its proprietary positions in Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access FICC's payment, clearing, or settlement facilities.[71] The proposed rule changes would require that each Margin Portfolio only consist of activity from the same Type of Account, ensuring that proprietary transactions and transactions submitted to FICC on behalf of indirect participants are margined separately, and to require Netting Members to use separate Deposit IDs for different transaction types. As noted above, the proposed changes to Rule 2B, Section 3 would require FICC to calculate the Segregated Customer Margin Requirement for a particular Segregated Indirect Participants Account as the sum of the requirements applicable to each Segregated Indirect Participant whose transactions are recorded in such Account, as though each Segregated Indirect Participant were a separate Netting Member with a single Margin Portfolio consisting of such transactions. These provisions would result in FICC calculating separate margin amounts for each Segregated Indirect Participant and for such amounts to be collected on a gross basis. Finally, the proposed changes to Rule 4, Section 1a would

[63] *See* Adopting Release, *supra* note 2, at 144.

[64] *Id.*

[65] 17 CFR 240.17Ad–22(e).

[66] *Id.*

[67] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i), (e)(18)(ii), (e)(18)(iii), (e)(18)(iv)(C), (e)(19), and (e)(23)(ii).

[68] 17 CFR 240.17Ad–22(e)(4)(i).

[69] *Supra* note 45.

[70] 17 CFR 240.17Ad–22(e)(4)(i).

[71] 17 CFR 240.17Ad–22(e)(6).

provide for FICC to establish on its books and records for each Netting Member that deposits Segregated Customer Margin a ''Segregated Customer Margin Custody Account'' corresponding to each Segregated Indirect Participants Account of such Netting Member. Collectively, these proposed changes would ensure that a Netting Member's proprietary transactions are not netted with indirect participant transactions for purposes of margin calculation and that margin for indirect participant transactions is collected and held separately and independently from margin for a Netting Member's proprietary transactions.

Rule 17Ad–22(e)(18)(ii) under the Act requires FICC to establish objective, risk-based, and publicly disclosed criteria for participation, which require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in FICC.[72] The proposed changes to consolidate FICC's margin methodology in a Margin Component Schedule, to identify the particular Required Fund Deposit Portions and Segregated Customer Margin Requirements, and to elaborate on the calculation of the Excess Capital Premium and the circumstances in which FICC would waive the application of such premium would improve public disclosure of FICC's margin methodology and the obligations that Netting Members and their indirect participants would have as a result of their participation in FICC's clearance and settlement system. In particular, the proposed changes would provide Netting Members and their indirect participants with a single, standalone schedule that they can review in order to understand how FICC would calculate margin obligations for their transactions. The proposed changes would also improve public disclosure by allowing Netting Members and their indirect participants to see how the various Accounts and Margin Portfolios give rise to separate inputs into the total margin calculation and how and when a Netting Member may face an increase in margin on account of the Excess Capital Premium.

Rule 17Ad–22(e)(18)(iii) under the Act requires that FICC establish written policies and procedures reasonably designed to monitor compliance with its participant requirements on an ongoing basis.[73] The proposed changes to require Netting Members to designate the Account in which a transaction is to be recorded and to identify the Sponsored Member or Executing Firm Customer for whom the transaction is submitted on that transaction record would help facilitate FICC's ability to monitor which transactions are being entered into by which entities. This enhanced monitoring of participant activity would thus allow FICC to better monitor participants' compliance with FICC's various requirements in accordance with Rule 17Ad–22(e)(18)(iii).[74]

Rule 17Ad–22(e)(18)(iv)(C) under the Act requires, among other things, that FICC, as a covered clearing agency that provides central counterparty services for transactions in U.S. Treasury securities, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants.[75] FICC believes that the proposed changes giving Netting Members the ability to elect for margin deposited by indirect participants and deposited with FICC to be segregated would facilitate access to FICC's clearance and settlement systems by giving indirect participants greater optionality. The proposed rule changes would allow a Netting Member and its indirect participant to choose whether (i) the indirect participant will post margin under a customer protection framework that is similar to that which exists in other cleared contexts,[76] (ii) the Netting Member will finance the margin for the indirect participant's transactions, or (iii) the indirect participant will deposit margin but without the protection (or higher margin requirements) associated with a segregation arrangement. FICC believes that such optionality would facilitate access in accordance with Rule 17Ad–22(e)(18)(iv)(C) by allowing Netting Members and their indirect participants to adopt a margining arrangement that is most consistent with their business objectives and applicable regulatory, operational, and practical constraints.

Rule 17Ad–22(e)(19) under the Act requires that FICC identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in FICC rely on the services provided by direct participants to access FICC's clearance and settlement facilities.[77] The proposed changes to separately and independently calculate margin for proprietary and indirect participant transactions, adopt a method for allocating net unsettled positions to individual indirect participants for purposes of calculating margin requirements and require a Netting Member to represent that margin deposited in relation to a Segregated Indirect Participants Account is generally margin collected from an indirect participant would reduce the potential risk to FICC arising from indirect participant transactions.

These changes would ensure that the margin FICC collects from a Netting Member reflects the separate risk profiles of the Netting Member's proprietary portfolio and the portfolio of transactions it submits to FICC on behalf of indirect participants. They would also provide FICC with a better understanding of the source of potential risk arising from the transactions that it clears and incentivize Netting Members to maintain more balanced proprietary portfolios, since such portfolios would lead to lower margin requirements. In addition, the proposed representation by Netting Members that they generally intend to satisfy Segregated Customer Margin Requirements with assets collected from indirect participants rather than proprietary assets would reduce the risk of FICC's proposed margin segregation arrangement by limiting such arrangement to indirect participant assets and ensuring that proprietary assets a Netting Member deposits with FICC are available for loss mutualization purposes.

Rule 17Ad–22(e)(23)(ii) under the Act requires FICC to establish written

[72] 17 CFR 240.17Ad–22(e)(18)(ii).

[73] 17 CFR 240.17Ad–22(e)(18)(iii).

[74] *Id.*

[75] 17 CFR 240.17Ad–22(e)(18)(iv)(C). Contemporaneously with this proposed rule change, FICC and its affiliates, National Securities Clearing Corporation and The Depository Trust Company, have submitted separate proposed rule changes (File Nos. SR–FICC–2024–006, SR–NSCC–2024–003 and SR–DTC–2024–003) under which they are proposing to amend the Clearing Agency Risk Management Framework to address the requirement under Rule 17Ad–22(e)(18)(iv)(C) that FICC's Board review its policies and procedures related to compliance with that rule on an annual basis. These proposed changes are pending regulatory approval. Copies of the proposed rule changes are *available at www.dtcc.com/legal/sec-rule-filings.*

[76] Both the Options Clearing Corporation and the U.S. derivatives clearing organizations allow for, or require, the segregation of customer margin and/or positions. *See generally* OCC By-Laws Sections 3, 27 (outlining the various accounts that OCC may maintain for a clearing member and the extent to which the positions and margin recorded to such accounts may applied to other obligations); 7 U.S.C. 6d (outlining the segregation rules applicable to commodity futures and cleared swap transactions); Order Granting Conditional Exemptions under the Securities Exchange Act of 1934 in Connection with the Portfolio Margining of Cleared Swaps and Security-Based Swaps that are Credit Default Swaps, Securities Exchange Release No. 93501 (Nov. 1, 2021), 86 FR 61357 (Nov. 5, 2021) (S7–13–12) (providing that certain cleared security-based swaps may be portfolio margined in a cleared swaps account subject to the rules generally applicable to cleared swaps).

[77] 17 CFR 240.17Ad–22(e)(19).

policies and procedures providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in FICC.[78] The proposed rule changes to consolidate and clarify FICC's margin calculation methodology in the proposed Margin Component Schedule, adopt a method for allocating net unsettled positions to individual indirect participants for purposes of calculating margin requirements and to clarify the calculation of the Excess Capital Premium would make it easier for both Netting Members and indirect participants to identify and price the potential margining costs associated with how one chooses to submit transactions to FICC for clearance and settlement.

III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision 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–FICC–2024–802 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR–FICC–2024–802. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 FICC and on DTCC's website (*https://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2024–802 and should be submitted on or before April 18, 2024.

V. Date and Timing for Commission Action

Section 806(e)(1)(G) of the Clearing Supervision Act provides that FICC may implement the changes if it has not received an objection to the proposed changes within 60 days of the later of (i) the date that the Commission receives an advance notice or (ii) the date that any additional information requested by the Commission is received,[79] unless extended as described below.

Pursuant to section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.[80]

Here, as the Commission has not requested any additional information, the date that is 60 days after FICC filed the advance notice with the Commission is May 13, 2024. However, the Commission is extending the review period of the Advance Notice for an additional 60 days under section 806(e)(1)(H) of the Clearing Supervision Act[81] because the Commission finds the Advance Notice is both novel and complex, as discussed below.

The Commission believes that the changes proposed in the Advance Notice raise novel and complex issues. The Advance Notice concerns a matter of first impression for the Commission, as it concerns recently adopted margin collection and account segregation requirements for Treasury CCAs.[82] The Commission has not yet considered such a proposal pursuant to Rule 17Ad–22(e)(6)(i) and the amendments to Rule 15c3–3 under the Act[83] and the material aspects of the proposal are detailed, substantial, and interrelated with other risk management practices at FICC.

Accordingly, the Commission, pursuant to section 806(e)(1)(H) of the Clearing Supervision Act,[84] extends the review period for an additional 60 days so that the Commission shall have until July 12, 2024 to issue an objection or non-objection to advance notice SR–FICC–2024–802.

All submissions should refer to File Number SR–FICC–2024–802 and should be submitted on or before April 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[85]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06578 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

[78] 17 CFR 240.17Ad–22(e)(23)(ii).

[79] 12 U.S.C. 5465(e)(1)(G).

[80] 12 U.S.C. 5465(e)(1)(H).

[81] *Id.*

[82] *See supra* note 5.

[83] 17 CFR 240.17Ad–22(e)(6)(i) and 17 CFR 240.15c3–3.

[84] 12 U.S.C. 5465(e)(1)(H).

[85] 17 CFR 200.30–3(a)(91) and 17 CFR 200.30–3(a)(94).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99844; File No. SR–FICC–2024–007]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the GSD Rules (i) Regarding the Separate Calculation, Collection and Holding of Margin for Proprietary Transactions and That for Indirect Participant Transactions, and (ii) To Address the Conditions of Note H to Rule 15c3–3a

March 22, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 14, 2024, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to FICC's Government Securities Division (''GSD'') Rulebook (''Rules'') [4] to (1) provide for FICC to calculate, collect, and hold margin for the proprietary transactions of a Netting Member separately and independently from the margin for transactions that the Netting Member submits to FICC on behalf of indirect participants; (2) simplify and revise the account types through which Members may record transactions at FICC and adopt a new Rule 2B to provide clearer public disclosures through the Rules regarding the GSD account structure; (3) allow Netting Members to elect for margin for indirect participant transactions to be calculated on a gross basis (*i.e.,* an indirect participant-by-indirect participant basis) and legally segregated from the margin for the Netting Member's proprietary transactions (as well as those of other indirect participants); (4) align FICC's margin calculation methodology with the expanded account types and enhance public disclosure through the Rules of that calculation methodology; and (5) simplify the requirements for brokered transactions so that they only apply to transactions executed by an Inter-Dealer Broker Netting Member on the trading platform offered by that Inter-Dealer Broker Netting Member.

These proposed rule changes are primarily designed to ensure that FICC has appropriate rules regarding the separate and independent calculation, collection, and holding of margin for proprietary transactions and that for indirect participant transactions in accordance with the requirements of Rule 17Ad–22(e)(6)(i) under the Act, and that FICC has appropriate rules to satisfy the conditions of Note H to Rule 15c3–3a under the Act for a broker-dealer to record a debit in the customer and broker-dealer proprietary account reserve formulas.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Executive Summary of Proposed Changes

On December 13, 2023, the Commission adopted amendments to the covered clearing agency standards that apply to covered clearing agencies that clear transactions in U.S. Treasury securities (each a ''Treasury CCA''), including FICC.[6] These amendments require, among other things, that FICC ''calculates, collects, and holds margin amounts from a direct participant for its proprietary positions in U.S. Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access the covered clearing agency's payment, clearing, or settlement facilities.'' [7] As described below, the proposed rules are designed to comply with these requirements.

Additionally, in the Treasury Clearing Rules, the Commission amended its broker-dealer customer protection rule (''Rule 15c3–3'') [8] and the reserve formulas thereunder (''Rule 15c3–3a'') [9] to permit broker-dealers to include margin required and on deposit at a Treasury CCA as a debit item in the reserve formulas under certain conditions.[10] The proposed rules are also designed to satisfy these conditions and, therefore, would permit broker-dealer Netting Members of FICC to include margin collected from their customers and on deposit at a Treasury CCA as a debit item in the reserve formulas.

First, the proposed changes would provide for the separate and independent calculation, collection, and holding of (i) margin deposited by a Netting Member to support its proprietary transactions and (ii) margin deposited by a Netting Member to support the transactions of an indirect participant. Specifically, FICC would provide in a new Rule 2B that FICC can establish proprietary Accounts to record the transactions that the Netting Member enters into for its own benefit and separately establish indirect participant Accounts to record transactions that the Netting Member submits to FICC for clearance and settlement on behalf of an indirect participant. Under this proposed Rule 2B, only proprietary transactions may be recorded in a proprietary Account, and only indirect participant transactions may be recorded in an indirect participant Account. FICC is also proposing revisions in Rule 4 to identify what types of transactions may be included together in a Margin Portfolio that FICC utilizes to determine a Netting Member's margin requirement. Specifically, FICC would revise the Margin Portfolio definition to make clear that a Margin Portfolio cannot include both proprietary and indirect

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FICC filed this proposed rule change as an advance notice (SR–FICC–2024–802) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) under the Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is *available at dtcc.com/legal/sec-rule-filings.*

[4] Terms not defined herein are defined in the Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.*

[5] *See* Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (S7–23–22) (''Adopting Release'', and the rules adopted therein referred to herein as ''Treasury Clearing Rules''). *See also* 17 CFR 240.15c3–3a.

[6] *See supra* note 5.

[7] 17 CFR 240.17Ad–22(e)(6)(i).

[8] 17 CFR 240.15c3–3.

[9] 17 CFR 240.15c3–3a.

[10] *See supra* note 5.

participant Accounts. Because proposed Rule 2B would not permit transactions of indirect participants to be recorded in the same Account as a Netting Member's proprietary transactions, a Margin Portfolio would only be able to consist of the same type of proprietary or indirect participant transactions, not both. As a result, the transactions a Netting Member submits to FICC on behalf of an indirect participant would no longer be netted against a Netting Member's proprietary transactions for purposes of calculating a Netting Member's margin requirements. In addition, to ensure separate collection and holding of margin deposited for proprietary and indirect participant transactions, FICC is specifying its practice in Rule 4 that a Netting Member must identify the different Account types for which a deposit is made on its wire instructions.

In order to facilitate these proposed changes, the rule changes would clarify the types of accounts in which Netting Members may record transactions. FICC's ''Accounts'' are not custodial accounts in which FICC holds assets, but rather a mechanism for FICC to record and group transactions. These records are utilized by FICC in connection with its calculation of a Netting Member's margining, settlement, and other obligations. The proposed rule changes would provide greater clarity regarding the purpose and use of these accounts through the public disclosures in the Rules. The proposed rules would do this by revising the definition of ''Account'' in Rule 1 and changing the names of certain Accounts to better reflect their function. The proposed rule changes would also create in a new Rule 2B a roadmap of the types of Accounts FICC maintains and what is recorded in those Accounts.

Second, the proposed rule changes would allow for the segregation of certain customer margin in a manner that satisfies the conditions for a broker-dealer to record a debit in the customer or PAB reserve formula under recently added Note H to Rule 15c3–3a.[11] As noted above, the Commission amended Rule 15c3–3a to permit broker-dealers to include margin required and on deposit at a Treasury CCA as a debit item in the reserve formulas under certain conditions, including that the margin be collected in accordance with the rules of the Treasury CCA that impose the certain requirements.[12]

Such requirements are set forth in the Treasury Clearing Rules and Section (b)(2) of Note H to Rule 15c3–3a, and include, among other things, (1) the margin must be calculated separately for each customer and the broker-dealer must deliver that amount of margin for each customer on a gross basis; (2) the margin must be held in an account of the broker-dealer at the Treasury CCA that is segregated from any other account of the broker-dealer at the Treasury CCA and that is, among other things, used exclusively to clear, settle, novate, and margin U.S. Treasury securities transactions of the customers of the broker-dealer; and (3) the Treasury CCA has systems, controls, policies, and procedures to return the assets to the broker-dealer that are no longer needed to meet current margin requirements resulting from positions in U.S. Treasury securities of the customers of the broker-dealer.[13] The proposed changes are designed to comply with these requirements.

Specifically, FICC is proposing to permit a Netting Member, including a non-broker-dealer Netting Member, to designate any of its indirect participants Accounts for segregation. For any Account so designated, FICC would calculate the margin requirements applicable to the Account on a gross basis, meaning that FICC would not net the transactions of one indirect participant against the transactions of another indirect participant. In addition, FICC would segregate the margin deposited to support the transactions in the Account from any margin securing a Netting Member's proprietary positions, both on FICC's own books and records and at FICC's custodians. FICC would only be able to use such segregated margin to satisfy the obligations of the customer for whom such margin is held. FICC would not be able to apply such margin to the proprietary obligations of the Netting Member that deposited it with FICC or to the obligations of any other Netting Member or participant. FICC would also set forth specific procedures to allow Netting Members to obtain the return of excess segregated margin. The aim of these changes is both to allow broker-dealer Netting Members to collect margin from customers and deposit it with FICC and to provide all customers, including those that access FICC through non-broker-dealers, to be able to segregate margin they deposit.

Third, the proposed rules would align the description of FICC's margin methodology with the revised Account types, consolidate the terms relating to margin calculation in a single, easily identifiable schedule, and make certain changes to the methodology to increase precision and predictability. To achieve these goals, the proposed rules would move the margin calculation methodology, including the relevant defined terms currently located in various Rules, into a new Margin Component Schedule. The proposed rules would also revise Rule 4 to make clear that a Netting Member's margin requirement is the sum of the margin amounts calculated for each type of Account in which transactions are recorded for the Netting Member. Further, the proposed rules would set forth a method for allocating net unsettled positions to individual indirect participants for purposes of calculating margin requirements. In addition, the proposed rules would revise and clarify the calculation of the excess capital premium component of the Clearing Fund, to cap such amount at two times the amount by which a Netting Member's VaR Charge exceeds its Netting Member Capital, clarify the capital amounts that are used in the calculation of such amount, limit FICC's discretion to waive the amount, and provide that FICC may calculate the premium based on updated available information. The proposed changes would also take steps to ensure that the excess capital premium does not result in differential treatment of indirect participants simply because of the particular capital level of the Netting Member providing access to FICC's clearance and settlement systems.

Lastly, the proposed rule changes would modify the terms relating to brokered transactions to require that only transactions that an Inter-Dealer Broker Netting Member executes on the Inter-Dealer Broker Netting Member's own trading platform benefit from favorable loss allocation treatment.[14] FICC believes that making these changes would improve FICC's risk management and promote access by ensuring that its differential treatment of different parties and transactions has a sound risk management justification.

Background

FICC, through GSD, serves as a central counterparty and provider of clearance and settlement services for the U.S. government securities markets. Margin is a key tool that FICC uses to manage its credit exposures to its members. The aggregated amount of all GSD members'

[11] 17 CFR 240.15c3–3a.

[12] *See supra* note 5.

[13] *See* 17 CFR 240.15c3–3a. *Supra* note 5.

[14] *See* Rule 4, Section 7 (''Notwithstanding the foregoing, however, an Inter-Dealer Broker Netting Member, or a Non-IDB Repo Broker with respect to activity in its Segregated Repo Account, shall not be subject to an aggregate loss allocation in an amount greater than $5 million pursuant to this Section 7 for losses and liabilities resulting from an Event Period.''), *supra* note 4.

margin constitutes the GSD Clearing Fund (referred to herein as the ''Clearing Fund''). The objective of the Clearing Fund is to mitigate potential losses to FICC associated with liquidating a member's portfolio in the event FICC ceases to act for that member (hereinafter referred to as a ''default'').[15]

Under Rule 4 (Clearing Fund and Loss Allocation), Netting Members are required to make deposits to the Clearing Fund in an amount (''Required Fund Deposit'') determined by reference to certain components. In determining a Netting Member's Required Fund Deposit, FICC may consider not only the Netting Member's proprietary transactions, but also the transactions that the Netting Member submits on behalf of indirect participants. However, the treatment of the indirect participant transactions for purposes of calculating the Required Fund Deposit can vary depending on whether those transactions are cleared under the Sponsored Service or prime brokerage/correspondent clearing services. Netting Members are required to instruct FICC to record those transactions in one of the position-keeping accounts (each, an ''Account'') that FICC establishes and maintains for the Netting Member. The Account in which a transaction is recorded is relevant for determining the margin requirement associated with that transaction under the Rules. Currently, a Netting Member may instruct FICC to record in the same Account, currently known as a ''Netting Member Account,'' both the proprietary transactions of the Netting Member and transactions that the Netting Member carries for indirect participants through the prime brokerage/correspondent clearing services. Sponsored Member Trades, discussed in greater detail below, must be recorded in a separate Account.

Under Rule 4, a Netting Member's Clearing Fund requirement, other than that arising from Sponsored Member Trades, is calculated on a net basis across all transactions recorded in the same Account of the Netting Member (or, if the Netting Member has elected to have multiple Accounts form part of the same ''Margin Portfolio,'' all transactions recorded in all such Accounts).[16]

The Sponsored Service permits Netting Members that are approved to be ''Sponsoring Members,'' to sponsor certain institutional firms, referred to as ''Sponsored Members,'' into GSD membership.[17] FICC establishes and maintains a ''Sponsoring Member Omnibus Account'' on its books in which it records the transactions of the Sponsoring Member's Sponsored Members (''Sponsored Member Trades'').[18] To determine a Sponsoring Member's Clearing Fund requirement in relation to Sponsored Member Trades recorded in the Sponsoring Member's Sponsoring Member Omnibus Account, FICC calculates the ''VaR Charge'' [19] and the ''MLA Charge'' [20] component for each Sponsored Member such that it does not net the Sponsored Member Trades of one Sponsored Member against the Sponsored Member Trades of another Sponsored Member, even though those Sponsored Member Trades are recorded in the same Sponsoring Member Omnibus Account.[21] For all of the other components, FICC calculates the components by reference to the Sponsoring Member Omnibus Account as a whole (*i.e.,* without regard to which Sponsored Member entered into which Sponsored Member Trade). In no instance does FICC net transactions recorded in a Sponsoring Member's Sponsoring Member Omnibus Account against other transactions of the Sponsoring Member for purposes of calculating the Sponsoring Member's Required Fund Deposit.

As an alternative to the Sponsored Service, a Netting Member (in such capacity, a ''Submitting Member'') may submit to FICC eligible transactions on behalf of the Submitting Member's customers (each, in such capacity, an ''Executing Firm'') through FICC's existing prime broker/correspondent clearing services.[22] As noted above, under the current Rules, a Submitting Member may instruct FICC to record such a transaction in the same Account at FICC as the Submitting Member's proprietary transactions. Accordingly, if transactions a Submitting Member submits on behalf of Executing Firms through the prime broker/correspondent clearing services are recorded in the same Account as the Netting Member's proprietary transactions (or in an Account that forms part of the same Margin Portfolio as an Account in which a Netting Member's proprietary transactions are recorded), FICC nets such transactions against one another in calculating the Netting Member's Required Fund Deposit.[23]

As noted above, the proposed rules would implement the amendments to Rule 17Ad–22(e)(6)(i) that require FICC to calculate, collect, and hold margin from a direct participant for its proprietary transactions in U.S. Treasury securities separately and independently from the margin calculated and collected for the U.S. Treasury transactions of an indirect participant that relies on the services provided by the direct participant to access FICC's payment, clearing, or settlement facilities.[24] The proposed rules would also clarify and simplify FICC's account structure and improve the transparency of FICC's public disclosures of its margining methodology.

The proposed rules are also designed to allow broker-dealer Netting Members of FICC to collect margin from their customers and deposit that margin with FICC. As stated above, a Netting Member is responsible for the Clearing Fund obligations arising from the activity of indirect participant customers (*i.e.,* Sponsored Members and Executing Firms). FICC understands from engagement with broker-dealer Netting Members and their indirect participant customers that, due to the requirements of Rule 15c3–3 [25] and Rule 15c3–3a,[26] broker-dealer Netting Members are effectively unable to deposit with FICC any margin collected from indirect participants to support those indirect participants' transactions and must instead use proprietary resources.

The Treasury Clearing Rules' recent amendments to Rule 15c3–3a permit

[15] The Rules identify when FICC may cease to act for a member and the types of actions FICC may take. For example, FICC may suspend a firm's membership with FICC or prohibit or limit a member's access to FICC's services in the event that member defaults on a financial or other obligation to FICC. *See* Rule 21 (Restrictions on Access to Services), *supra* note 4.

[16] *See* Rule 4, *supra* note 4.

[17] *See* Rule 3A, *supra* note 4.

[18] *See* Rule 1 (definition of ''Sponsored Member Trades''), *supra* note 4.

[19] *See* Rule 1 (definition of ''VaR Charge''), *supra* note 4.

[20] *See* Rule 1 (definition of ''MLA Charge''), *supra* note 4.

[21] *See* Rule 3A, Section 10 (describing how the Required Fund Deposit for Sponsored Member Trades is calculated), *supra* note 4.

[22] *See* Rule 8, *supra* note 4.

[23] Contemporaneously with this proposed rule change, FICC has submitted a separate proposed rule change (File No. SR–FICC–2024–005) under which FICC is proposing to rename its primer broker/correspondent clearing services the ''Agent Clearing Service,'' ''Submitting Members'' as ''Agent Clearing Members'', and ''Executing Firms'' as ''Executing Firm Customers.'' This separate proposed rule change would require that a Netting Member using the Agent Clearing Service submit transactions for Executing Firm Customers through an Agent Clearing Member Omnibus Account, to be recorded separately from its other clearing activity, including its proprietary activity. It would also add a definition for transactions eligible to be submitted by an Agent Clearing Member on behalf of its Executing Firm Customers (''Agent Clearing Transactions''). These proposed terms are used throughout this filing. These proposed changes are pending regulatory approval. A copy of this proposed rule change is *available at www.dtcc.com/legal/sec-rule-filings.*

[24] 17 CFR 240.17Ad–22(e)(6)(i). *See supra* note 5.

[25] 17 CFR 240.15c3–3.

[26] 17 CFR 240.15c3–3a.

broker-dealers to include margin required and on deposit at a Treasury CCA as a debit item in the reserve formulas under certain conditions.[27] As described in more detail below, the proposed changes would address those conditions. Therefore, the proposal would allow broker-dealer Netting Members to collect margin from customers and deposit it with FICC and to permit all customers, including those that access FICC through non-broker-dealers, to segregate margin they deposit.

Finally, the proposed rule changes would address the treatment of transactions submitted to FICC by Inter-Dealer Broker Netting Members and certain Netting Members that operate similarly to Inter-Dealer Broker Netting Members (''Non-IDB Repo Brokers''). The Rules currently cap the amount of loss allocation that may applied to an Inter-Dealer Broker Netting Member or Non-IDB Repo Broker in respect of transactions submitted by such Netting Members to FICC for clearance and settlement (''Brokered Transactions''). This treatment is based on the more limited risk that Brokered Transactions present relative to other transactions.

Description of Proposed Rule Changes

1. Segregate Indirect Participant Margin Requirements and Amend the GSD Account Structure

The proposed rule changes would provide for the separate calculation, collection, and holding of margin supporting a Netting Member's Proprietary Transactions and the margin supporting the transactions a Netting Member submits on behalf of indirect participants, in accordance with the requirements of Rule 17Ad–22(e)(6)(i), adopted under the Treasury Clearing Rules.[28] In connection with these changes, the proposal would also clarify the types of accounts in which Netting Members may record transactions and adopt a roadmap to its account structure in a new Rule 2B.

A. Separately Calculate, Collect and Hold Indirect Participant and Proprietary Margin Requirements

i. Limit Margin Portfolios to Accounts of the Same Type

The separate calculation of proprietary and customer margin would be accomplished by clarifying that each Margin Portfolio may only include Accounts of the same Type (*i.e.,* Dealer Accounts, Broker Accounts, Agent Clearing Member Omnibus Account, and Sponsoring Member Omnibus Accounts).

FICC would make this clarification by amending the definition of ''Margin Portfolio'' in Rule 1 and revising Rule 4, Section 1a, which would be renumbered Section 1b in light of changes described below, to provide that each Margin Portfolio may not contain more than one Type of Account (even if such Accounts are both Segregated Indirect Participants Accounts).

By virtue of these changes, transactions recorded in different Types of Accounts could not be netted against each other when calculating Required Fund Deposit or Segregated Customer Margin Requirements. Since Proprietary Transactions and transactions submitted for indirect participants could not (by virtue of the changes described below) be recorded in the same Type of Account, the changes relating to Margin Portfolios would result in margin for a Netting Member's Proprietary Transactions being calculated separately and independently from margin calculated for the transactions that the Netting Member submits on behalf of indirect participants. As conforming changes, paragraphs (b) and (c) of Section 1b, which currently provide for such separate margin calculations in certain contexts, would no longer be needed since the Margin Portfolio definition and other changes described above would achieve such separate calculations.

ii. Required Fund Deposit Portions and Segregated Customer Margin Requirements

To further clarify how FICC would calculate and collect a Netting Member's margin requirements, the proposed rule changes would make other revisions to Rule 4. Specifically, Rule 4, Section 2, which currently describes a Netting Member's Required Fund Deposit requirement, would be revised to provide that a Netting Member's Required Fund Deposit consists of the sum of amounts (each, a ''Required Fund Deposit Portion'') calculated for each Type of Account, other than Segregated Indirect Participants Accounts. For Segregated Indirect Participants Accounts, there would, as mentioned below, be a Segregated Customer Margin Requirement, which would be the sum of the amounts calculated for the Netting Member's (i) Sponsoring Member Omnibus Accounts designated as Segregated Indirect Participants Accounts and (ii) Agent Clearing Member Omnibus Accounts designated as Segregated Indirect Participants Accounts.

In connection with these changes, FICC would add a corresponding definition of ''Required Fund Deposit Portion'' to Rule 1. FICC would also adopt a defined term referring to the Required Fund Deposit Portion for a Netting Member's Agent Clearing Member Omnibus Account (''Agent Clearing Member Omnibus Account Required Fund Deposit'') and amend the defined term for the Required Fund Deposit Portion for a Netting Member's Sponsoring Member Omnibus Account (the Sponsoring Member Omnibus Account Required Fund Deposit). In addition, conforming changes would be made to the separately proposed Rule 8, Section 7(g) that would describe the requirement of an Agent Clearing Member to make and maintain an Agent Clearing Member Omnibus Account Required Deposit and that the calculation of such requirement would be performed separately from the calculation for Margin Portfolios consisting of the Agent Clearing Member's Proprietary Transactions. Similar conforming changes would be made to Rule 3A, Section 10 relating to a Sponsoring Member's Sponsoring Member Omnibus Account Required Fund Deposit.

iii. Separate Deposit IDs To Facilitate Separate Collection and Holding of Margin

To ensure that margin for Proprietary Transactions is not only calculated separately and independently but also collected and held separately and independently of margin for indirect participant transactions, a new Rule 4, Section 2a would be added to the Rules. This section would require each Required Fund Deposit Portion to be made to FICC using a separate Deposit ID, which is an existing operational mechanism used by Netting Members to identify the type of Account for which a Required Fund Deposit is being made.

A new Rule 4, Section 2b would impose a similar requirement in respect of Segregated Customer Margin Requirements. The use of these separate Deposit IDs would result in margin for each Type of Account being separately transferred to FICC and FICC recording on its books the separate margin amounts for each Type of Account. FICC would also adopt a definition of ''Deposit ID'' in Rule 1.

Rule 4, Sections 2a and 2b would also require FICC to report a Netting Member's Required Fund Deposit and Segregated Customer Margin Requirement twice daily, which is the same timing interval on which FICC currently reports a Netting Member's margin requirement. The report would

[27] *See supra* note 5.

[28] 17 CFR 240.17Ad–22(e)(6)(i).

also specify the amount of margin attributable to each Required Fund Deposit Portion or Segregated Indirect Participants Account, as applicable, so that the Netting Member can transfer the different margin amounts separately.

iv. Eliminate Permitted Margin Affiliates

In connection with these proposed rule changes, the proposal would eliminate the concept of Permitted Margin Affiliates, which allows a Member to elect to include its Accounts in the same Margin Portfolio with the Accounts of an affiliate that is also a Member, in accordance with the Rules.[29] In this way, a Member and its affiliate can net their transactions for purposes of calculating their margin requirements.

In order to support the proposed change described above, which are designed to provide for the separate calculation, collection, and holding of margin, FICC believes that retaining the option for Members to designate Permitted Margin Affiliates would create unnecessary complexity. No Netting Member currently has a Permitted Margin Affiliate, and FICC would need to examine how such a cross-affiliate margining arrangement would function within the context of the proposed revisions to the account structure and margin methodology in order to determine what steps would be needed to implement such an arrangement consistently with the standards applicable to covered clearing agencies. Therefore, FICC is proposing to eliminate the Permitted Margin Affiliate concept at this time.

In order to implement this change, the proposal would remove the definition of ''Permitted Margin Affiliate'' from Rule 1, and remove references to Permitted Margin Affiliates from Rule 4, Section 1a (to be renamed Section 1b, as noted above); Rule 4, Section 1b (which would be removed and replaced by disclosures in the proposed Margin Component Schedule, as discussed below); Rule 4, Sections 4 and 6; Rule 21, Section 1; Rule 22, Section 2; and Rule 29, Section (a).

B. Proposed Roadmap To Account Structure Through New Rule 2B and Revision To Account Structure

FICC is proposing to adopt a new Rule 2B that would describe the types of Accounts FICC is able to maintain for Netting Members, identify the activity that would be recorded in each type of Account, and generally provide a roadmap to market participants of FICC's account structure.

i. Section 1—Establishment of Proprietary Accounts

Rule 2B, Section 1 would provide that FICC can establish and maintain certain ''Proprietary Accounts'' to record transactions that a Netting Member enters into for its own benefit (''Proprietary Transactions''), rather than for the benefit of indirect participants. Proprietary transactions would not include transactions that a Netting Member enters into on behalf of an affiliate.

The Proprietary Accounts available for recording Proprietary Transactions would include ''Dealer Accounts,'' which would be available for all Netting Members, and ''Cash Broker Accounts'' and ''Repo Broker Accounts,'' which would only be available for Inter-Dealer Broker Netting Members. Dealer Accounts would be for purposes of recording a Netting Member's Proprietary Transactions (other than, in the case of an Inter-Dealer Broker Netting Member, its Brokered Transactions), while Cash Broker Accounts would be for purposes of recording an Inter-Dealer Broker Netting Member's Brokered Transactions (other than Brokered Repo Transactions), and Repo Broker Accounts would be for purposes of recording an Inter-Dealer Broker Netting Member's Brokered Repo Transactions. Rule 2B, Section 1 would make clear that, as under FICC's existing Rules, FICC can establish multiple Proprietary Accounts of the same Type for the Netting Member.

In connection with these changes, FICC is proposing to adopt new, corresponding definitions of Proprietary Transactions, Proprietary Accounts, and Cash Broker Accounts in Rule 1, and to make corresponding amendments to the definitions of Dealer Account and Repo Broker Account. FICC is also proposing to remove from Rule 1 the defined term ''Netting Member Account'' and replace references to such Account with references to Dealer Account.

ii. Section 2—Establishment of Non-Proprietary Accounts

Rule 2B, Section 2 would provide that FICC can establish and maintain certain ''Indirect Participants Accounts'' to record transactions that a Netting Member submits to FICC on behalf of Sponsored Members and Executing Firm Customers. These Indirect Participants Accounts would include, in the case of a Sponsoring Member, Sponsoring Member Omnibus Accounts for purposes of recording Sponsored Member Trades, and, in the case of an Agent Clearing Member, Agent Clearing Member Omnibus Accounts for purposes of recording Agent Clearing Transactions of its Executing Firm Customers. Rule 2B, Section 2 would also make clear that FICC can establish multiple Indirect Participants Accounts of the same Type for the Netting Member.

In connection with these changes, FICC is proposing to add to Rule 1 a new definition of Indirect Participants Account, which would include Agent Clearing Member Omnibus Accounts and Sponsoring Member Omnibus Accounts, and to correspondingly amend the definition of Sponsoring Member Omnibus Accounts.

iii. Section 3—Segregation Designations for Indirect Participants Accounts

Rule 2B, Section 3 would permit a Sponsoring Member or Agent Clearing Member to designate any of its Indirect Participants Accounts as a segregated customer account (a ''Segregated Indirect Participants Account''). The purpose of such a designation, as further described below, would be to give Netting Members a mechanism to direct FICC to calculate and segregate margin deposited in connection with the Account in accordance with the conditions described in Note H to Rule 15c3–3a (''Note H''), as further described below.[30]

In connection with this revision, a new definition for ''Segregated Indirect Participant'' would be added to Rule 1 to mean a Sponsored Member or an Executing Firm Customer whose transactions are recorded in a Segregated Indirect Participants Account.

Rule 2B, Section 3 would provide that the designation of an Account as a Segregated Indirect Participants Account constitutes a representation to FICC by the Netting Member that the Netting Member intends to meet all margin requirements with respect to such Account using assets deposited by the Segregated Indirect Participants with the Netting Member, with the exception of temporary ''prefunding'' by the Netting Member while a margin call to the Segregated Indirect Participant is outstanding. The purpose of this representation is to ensure that only margin deposited by customers, not the Netting Member's proprietary assets, is eligible for segregation.

Rule 2B, Section 3 would further provide that the margin requirement (''Segregated Customer Margin

[29] *See* Rule 1 (defining ''Permitted Margin Affiliates'') and Rule 4, Section 1a(a) and (b) (permitting Members to include Accounts of their Permitted Margin Affiliates in their Margin Portfolio). *Supra* note 4.

[30] 17 CFR 240.15c3–3a.

Requirement'') calculated for a Segregated Indirect Participants Account would equal the sum of the margin requirements that apply to each Segregated Indirect Participant whose transactions are recorded in the Account, as though each such Segregated Indirect Participant were a Netting Member. By virtue of this change and as further described below, in calculating the Segregated Customer Margin Requirement for a Segregated Indirect Participants Account, FICC would not net the transactions of multiple Segregated Indirect Participants against one another. A corresponding definition of ''Segregated Customer Margin Requirement'' would be added to Rule 1 to mean the amount of cash and securities that a Netting Member is required to deposit with FICC to support the obligations arising under transactions recorded in its Segregated Indirect Participants Accounts. As described in greater detail below, such amounts would be further described and addressed in Rule 4, Section 2(a)(v) and (vi).

iv. Section 4—Designation of Account When Submitting Transactions

Lastly, Rule 2B, Section 4 would require a Netting Member, at the time it submits a Transaction to FICC for clearance and settlement, to designate the Account in which the particular transaction should be recorded. Any such designation would constitute a representation to FICC that the transaction is of a type that may be recorded in that Account in accordance with the Rules. The purpose of such representation would be to ensure that Netting Members record only their Proprietary Transactions in Proprietary Accounts, which separate recordation is necessary for the separate and independent calculation, collection, and holding of margin for direct participant and indirect participant transactions.

In addition, Rule 2B, Section 4 would provide that, when submitting a transaction on behalf of a Sponsored Member or Executing Firm Customer, a Netting Member must include an identifier for the applicable Sponsored Member or Executing Firm Customer. This requirement is consistent with an existing requirement in the Schedule of Required Data Submission Items in the Rules and ensures that FICC continues to have the ability to accurately calculate the Required Fund Deposit and Segregated Customer Margin Requirements appropriately. This requirement also facilitates FICC's ability to engage in risk management and market surveillance in accordance with the covered clearing agency standards.

In connection with these changes, FICC also proposes to remove from Rule 1 the term ''Netting Member Account,'' as such defined term would no longer be used. References to Netting Member Accounts throughout the Rules would be revised to ''Dealer Accounts'', which would more clearly distinguish these Accounts from Broker Accounts, the other type of Proprietary Accounts. FICC would also remove Section 11 of Rule 3, which currently concern the types of Accounts that Netting Members may open. Rule 2B would now describe the Types of Accounts Netting Members may request as well as the transactions that may be recorded in such Accounts.

The foregoing changes are designed to ensure that proprietary and indirect participant transactions are recorded in separate Accounts. This would assist FICC in tracking and managing the risks associated with a Netting Member's proprietary and indirect participant transactions. It would also facilitate compliance with the revised covered clearing agency standards regarding the separate calculation, collection, and holding of indirect participant and proprietary margin, which is described in further detail below.

v. Simplification and Revision of Account Structure

To support the foregoing changes, FICC is proposing to provide further clarity on what an Account is for purposes of the Rules. Under the Rules, ''Accounts'' at FICC are not cash, securities, or other kinds of custodial accounts through which FICC holds assets for a Netting Member. Instead, FICC Accounts are a recordkeeping mechanism by which FICC records certain transactions submitted by Netting Members to FICC for clearance and settlement. This recordkeeping mechanism allows FICC to determine which transactions should be netted against one another in determining various obligations of the Netting Member, including its funds-only settlement amount and securities settlement obligations and its Required Fund Deposit. As discussed above, generally speaking, all transactions recorded in the same Account are netted for purposes of determining these obligations (though certain components of the Required Fund Deposit arising from Sponsored Member Trades are calculated on a gross basis, as described above). FICC is proposing to amend the definition of ''Account'' in Rule 1 to make clear that an ''Account'' means an account maintained by FICC to record transactions. In addition, FICC is proposing to adopt a new defined term, ''Type of Account'' or ''Type,'' to refer to the different kinds of Accounts described above.

FICC is also proposing to eliminate the concept of a Market Professional Cross-Margining Account, which refers to an Account carried by FICC for a Netting Member that is limited to Eligible Positions of Market Professionals or an Account that is carried by a Netting Member for Market Professionals that are party to a Market-Professional Agreement for Cross-Margining. FICC does not currently have in place a cross-margining arrangement for market professional indirect participants and would need to examine how such an arrangement would function within the context of the proposed revisions to the Account structure and margin methodology in order to determine what steps would be needed to implement such an arrangement consistently with the standards applicable to covered clearing agencies. Therefore, FICC is proposing to eliminate the Market Professional Cross-Margining Account concept at this time.

In order to implement this change, the proposal would remove the definition of ''Market Professional Cross-Margining Account'' from Rule 1 and remove provisions concerning Market Professional Cross-Margining Accounts from Rule 1, Rule 4 and Rule 29.

2. Proposed Rule Changes Relating to Note H of Rule 15c3–3a

As described above, FICC would permit Netting Members to designate certain Indirect Participants Accounts as Segregated Indirect Participants Accounts. Such a designation would have the effect of causing FICC to calculate, collect, and hold the required margin for transactions recorded in such Accounts in accordance with the conditions for recording a debit in the customer reserve formula set forth in Note H of Rule 15c3–3a.[31]

A. Gross Calculation of Segregated Customer Margin Requirements

In order to satisfy the requirement of Section (b)(2)(i) of Note H to Rule 15c3–3a that the margin requirement be calculated on a gross basis,[32] new Rule 2B would, as noted above, provide that when calculating the Segregated Customer Margin Requirement, FICC would not net the transactions of multiple Segregated Indirect Participants, but would net the transactions of a single Segregated

[31] 17 CFR 240.15c3–3a.

[32] *Id.*

Indirect Participant that are recorded in the same Account.

In addition, the revised Rule 4, Section 1b would require FICC to calculate a Netting Member's Segregated Customer Margin Requirement with respect to a particular Segregated Indirect Participants Account as the sum of the margin requirements applicable to each Segregated Indirect Participant whose transactions are recorded in such Account, as though each Segregated Indirect Participant were a separate Netting Member with a single Margin Portfolio consisting of such transactions. These provisions would result in FICC calculating separate margin amounts for each Segregated Indirect Participant and for such amounts to be collected on a gross basis.

FICC would also include language in the new Margin Component Schedule to achieve gross margining of Segregated Indirect Participants Accounts. Specifically, in Section 1 of the new Margin Component Schedule discussed below, new language would require each Netting Member for which FICC maintains a Segregated Indirect Participants Account to deposit with FICC Segregated Customer Margin equal to the sum of the Segregated Customer Margin Requirements for all such Accounts. Such language would further provide that each Segregated Customer Margin Requirement will be calculated twice daily and equal the sum of the amounts calculated pursuant to Section 3 of the Margin Component Schedule for each Segregated Indirect Participant whose transactions are recorded in the relevant Segregated Indirect Participants Account.

Section 3 of the new Margin Component Schedule, in turn, would set out the methodology for calculating such margin amounts. That section would provide for FICC to perform substantially the same calculation it currently performs when determining a Netting Member's Required Fund Deposit, except (i) such calculation would be performed on a Segregated Indirect Participant-by-Segregated Indirect Participant basis as though each Segregated Indirect Participant represented a separate Margin Portfolio and (ii) FICC would not impose an Excess Capital Premium.

With regard to the latter, FICC does not believe it would be appropriate to require an indirect participant to deposit with FICC additional margin on account of the capital position of its Netting Member. The Excess Capital Premium is designed to address the risk that a Netting Member with low capital relative to its VaR Charge will not be able to perform its obligations. However, Segregated Customer Margin cannot be applied to a Netting Member's obligations (other than to perform on behalf of the individual indirect participant for whom the Segregated Customer Margin is held). Accordingly, requiring indirect participants to deposit an additional Excess Capital Premium would not serve a risk management purpose. Further, requiring indirect participants who access FICC's clearance and settlement systems through a Netting Member with low capital to deposit more margin than indirect participants who access FICC's clearance and settlement system through other Netting Members would treat similarly situated indirect participants differently without an appropriate basis to do so. Moreover, it could lead to concentration among Netting Members, as indirect participants would be disincentivized to access clearing through smaller Netting Members, since smaller Netting Members typically have lower net capital.

For similar reasons, FICC would not add Segregated Customer Margin to Section 4 of the Margin Component Schedule, which describes FICC's ability to impose increased Required Fund Deposits under certain circumstances. However, when determining whether to increase the Required Fund Deposit of a Netting Member under the circumstances described in Section 4, FICC may consider the risk presented by a Netting Member in view of all activity it submits to FICC, including activity of indirect participants.

As a conforming change, FICC would revise the definitions of most of the components utilized for calculating a Netting Member's Segregated Customer Margin Requirement as well as associated definitions to provide that these apply to Segregated Indirect Participants on a Segregated Indirect Participant-by-Segregated Indirect Participant basis. These definitions include the Backtesting Charge, the Holiday Charge, the Intraday Supplemental Fund Deposit, the Margin Liquidity Adjustment or MLA Charge, the Margin Proxy, the Minimum Margin Amount,[33] the Portfolio Differential Charge, the Unadjusted GSD Margin Portfolio Amount, and the VaR Charge.

B. Segregation of Customer Margin Deposits

In order to satisfy the segregation requirements of Section (b)(2)(iii) of Note H to Rule 15c3–3a,[34] FICC is proposing a number of changes to the Rules. First, FICC is proposing to adopt a new definition of ''Segregated Customer Margin'' in Rule 1, which definition would refer to ''all securities and funds deposited by a Sponsoring Member or an Agent Clearing Member with the Corporation to satisfy its Segregated Customer Margin Requirement.'' FICC would also adopt a new Rule 4, Section 1a. That provision would require a Netting Member to deposit Segregated Customer Margin with FICC equal to the Netting Member's Segregated Customer Margin Requirement in accordance with the timing provisions generally applicable to Required Fund Deposits.

i. Establishment of Segregated Accounts

In order to satisfy the requirements of Section (b)(2)(iii) of Note H that margin ''be held in an account of the broker or dealer at the qualified clearing agency that is segregated from any other account of the broker or dealer at the qualified clearing agency,'' [35] Rule 4, Section 1a would provide for FICC to establish on its books and records for each Netting Member that deposits Segregated Customer Margin a ''Segregated Customer Margin Custody Account'' corresponding to each Segregated Indirect Participants Account of such Netting Member. Segregated Customer Margin Custody Account would be defined in Rule 1 as ''a securities account within the meaning of the NYUCC maintained by the Corporation, in its capacity as securities intermediary as such term is used in the NYUCC, for an Agent Clearing Member or Sponsoring Member for the benefit of such Member's Segregated Indirect Participants.'' In other words, in contrast to the other FICC Accounts, which, as discussed above, are position record-keeping accounts rather than custodial accounts, each Segregated Customer Margin Custody Account would be a ''securities account'' within the meaning of the NYUCC.

As noted above, FICC is also proposing to amend the definition of ''Account'' in Rule 1 to make clear that such term refers only to an account maintained by FICC for a Netting Member to record transactions submitted by that Netting Member. FICC believes this change would help to

[33] FICC has filed a proposed rule change and related advance notice to adopt a Minimum Margin Amount at GSD (File Nos. SR–FICC–2024–003 and SR–FICC–2024–801). This proposal is pending regulatory approval, and the filings are *available at www.dtcc.com/legal/sec-rule-filings.*

[34] 17 CFR 240.15c3–3a.

[35] *Id.*

distinguish ''Accounts,'' which are simply a transaction recordation mechanism, from the ''Segregated Customer Margin Custody Account,'' which is a traditional custodial account to which FICC would credit cash and securities.

Rule 4, Section 1a would further provide that any assets credited to the Segregated Customer Margin Custody Account would be treated as financial assets within the meaning of the NYUCC. These changes would have the effect of making FICC the ''securities intermediary'' in respect of each Segregated Customer Margin Custody Account and the Netting Member, on behalf of its Segregated Indirect Participants, the ''entitlement holder'' under the NYUCC.[36] By virtue of these designations, the Segregated Customer Margin held by FICC would be reserved for the Netting Member (on behalf of its Segregated Indirect Participants), including in an FICC insolvency.[37]

Rule 4, Section 1a would further provide that all Segregated Customer Margin deposited with FICC to support the obligations arising under the transactions recorded in a given Segregated Indirect Participants Account be credited to the corresponding Segregated Customer Margin Custody Account. In other words, rather than treat Segregated Customer Margin as general Clearing Fund, FICC would record such margin in a specific Segregated Customer Margin Custody Account maintained by FICC on its books and records for the Netting Member that deposited such Segregated Customer Margin, which Account would be separate from any other Accounts maintained by FICC for the Netting Member, including fellow Segregated Customer Margin Custody Accounts. In furtherance of the goal of segregation, FICC would also amend Rule 4, Section 3a to provide that any interest on Segregated Customer Margin consisting of cash be paid to Netting Members.[38]

ii. Exclusive Use, Account Designation, and Exclusive Benefit

To satisfy the requirements of Section (b)(2)(iii)(A) of Note H that customer margin be ''used exclusively to clear, settle, novate, and margin U.S. Treasury securities transactions of the customers of the broker or dealer;'' [39] FICC would provide in Rule 4, Section 1a that the Segregated Customer Margin credited to a Segregated Customer Margin Custody Account would be used exclusively to settle and margin transactions in U.S. Treasury securities recorded in the corresponding Segregated Indirect Participants Account.

Rule 4, Section 1a would also provide that the Segregated Customer Margin Custody Account would be designated on FICC's books and records as a ''Special Clearing Account for the Exclusive Benefits of the Customers of [the relevant Sponsoring Member or Agent Clearing Member].'' This is in accordance with the designation requirements of Section (b)(2)(iii)(B) of Note H.[40]

Section (b)(2)(iii)(C) of Note H requires that the account at the clearing agency to which customer margin is credited be subject to a written notice from the clearing agency to the broker-dealer stating that the margin credited to the account is being held ''for the exclusive benefit of the customers of the broker or dealer in accordance with the regulations of the Commission and [is] being kept separate from any other accounts maintained by the broker or dealer or any other clearing member at the qualified clearing agency.'' [41] Rule 4, Section 1a would provide for FICC to provide this notice to any Netting Member that is a Registered Broker or Registered Dealer and has designated an account as a Segregated Indirect Participants Account.

iii. Limitation on Permitted Liens and Use of Margin Deposits

FICC is also proposing changes to the Rules to satisfy the condition of Section (b)(2)(iii)(D) of Note H that the account established pursuant to Section (b)(2)(iii), *i.e.,* each Segregated Customer Margin Custody Account, be subject to a written contract providing that the customer margin in the account, *i.e.,* the Segregated Customer Margin, not be available to cover claims arising from the broker-dealer or any other clearing member defaulting on an obligation to the Treasury CCA, or be subject to any other right, charge, security interest, lien, or claim of any kind in favor of the qualified clearing agency or any person claiming through the qualified clearing agency, except a right, charge, security interest, lien, or claim resulting from a cleared U.S. Treasury securities transaction of a customer of the broker-dealer effected in the account.[42]

Specifically, FICC is proposing to amend the security interest each Netting Member provides to FICC under Rule 4, Section 4. That security interest, which is binding on the Netting Member and FICC through the incorporation of the Rules into the membership agreement between FICC and such Netting Member, currently applies to all cash and securities deposited by a Netting Member with FICC pursuant to Rule 4 and Rule 13 (defined in the Rules as the ''Actual Deposit'') and secures all obligations of the Netting Member to FICC. FICC is proposing to amend Rule 4, Section 4 to exclude Segregated Customer Margin from the scope of the Actual Deposit. Such Segregated Customer Margin would instead be subject to a separate security interest pursuant to which the Segregated Customer Margin would secure only obligations arising out of Segregated Indirect Participants Accounts. FICC would also make a conforming change to Rule 3A, Section 10(f) to make clear that the security interest described therein only applies to the security interest granted in the Actual Deposit.

In addition, the bulk of the provisions of the Rules concerning Clearing Fund, including those relating to FICC's ability to use Clearing Fund, would not apply to Segregated Customer Margin since such margin would not form part of the Clearing Fund. The only exceptions are the language in Rule 3A, Section 10(f) stating that margin obligations are secured by the Actual Deposit; the language in Rule 3A, Section 10(g) concerning fines applicable to a failure to meet margin requirements; the language in Rule 4, Section 3a concerning the requirement that cash margin deposits be made in immediately available funds; the language in Rule 4, Section 3b regarding the haircutting, delivery, qualification, and substitution requirements for securities margin; and the language in Rule 4, Section 9 relating to the requirement of Netting Members to deliver margin. These changes would ensure that FICC's broad use rights in respect of Clearing Fund, *e.g.,* for loss mutualization, do not apply to Segregated Customer Margin.

In addition, FICC is proposing to amend Rule 4, Section 5 to provide that, on each Business Day, FICC would

[36] UCC § 8–102(7) (''Entitlement holder' means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. . . .'').

[37] *See* UCC § 8–503.

[38] Rule 4, Section 1a would also specify New York as the ''securities intermediary's jurisdiction'' for purposes of the NYUCC and specify that New York law would govern all issues specified in Article 2(1) of the Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary, July 5, 2006, 17 U.S.T. 401, 46 I.L.M. 649 (entered into force Apr. 1, 2017) (the ''Hague Securities Convention''). These changes are designed to ensure that New York law governs each Segregated Customer Margin Custody Account.

[39] 17 CFR 240.15c3–3a.

[40] *Id.*

[41] *Id.*

[42] *Id.*

calculate the portion of Segregated Customer Margin that supports each Segregated Indirect Participant's transactions. FICC may only use such portion to secure or settle the performance of the obligations of that Segregated Indirect Participant (or its Sponsoring Member or Agent Clearing Member with respect to the Segregated Indirect Participant) or for permitted investment purposes described below. It would further provide that FICC would not be permitted to use Segregated Customer Margin supporting one Segregated Indirect Participant's transaction to secure or settle any other person's transactions, including those of a fellow Segregated Indirect Participant.

These changes would thus not only prohibit FICC from using Segregated Customer Margin to cover the obligations of the broker-dealer Netting Member in respect of its Proprietary Transactions or those of any other Netting Member in accordance with the requirements of Section (b)(2)(iii)(D) of Note H, but they would also limit ''fellow customer risk'' for Segregated Indirect Participants (*i.e.,* the risk that one customer incurs a loss on account of a default of another customer because the clearing organization applies margin deposited by the first customer to the second customer's obligations).[43] FICC believes these changes would facilitate greater access to its clearance and settlement services.

FICC is proposing to require that the Segregated Margin Requirement be no lower than $1 million per Segregated Indirect Participant, and that the same form of deposit requirements set forth in Rule 4, Section 3 apply to Segregated Customer Margin such that no less than $1 million per Segregated Indirect Participant consist of cash. These changes would be accomplished through a new subsection (c) of Rule 4, Section 3 and reflected in the Margin Component Schedule.

First, this minimum requirement is consistent with the $1 million minimum cash requirement applicable to each Margin Portfolio of a Netting Member. FICC believes it is appropriate to apply the same minimum cash requirement to each Segregated Indirect Participant that it currently applies to each Margin Portfolio because, as described above, FICC would be required to calculate the margin requirements for these participants on a gross basis, as if each Segregated Indirect Participant were a separate Margin Portfolio, and would be restricted from using these funds to address any losses other than losses resulting from the participant for whom the funds are held.

Second, because FICC would be restricted from using these funds to address any losses other than losses resulting from the indirect participant for whom these funds are deposited, FICC believes this minimum requirement is appropriate to mitigate the risk exposures presented by this limitation. FICC's daily backtesting of the sufficiency of Clearing Fund deposits has revealed a heightened likelihood of backtesting deficiencies for those Members with lower deposits that are not sufficient to mitigate any abrupt intraday change in their exposures.[44] Based on the analysis and impact studies FICC conducted in connection with a recent increase to minimum Required Fund Deposit for Netting Members,[45] FICC has determined that a $1 million minimum requirement is the appropriate minimum amount to optimize the balance between financial impact of the requirement to Members and FICC's ability to continue to meet its regulatory obligation to maintain a backtesting performance coverage ratio above its 99 percent coverage target.

FICC is not able to predict how many indirect participants may elect to submit activity to FICC through a Segregated Indirect Participants Account, or the size and volume of that activity. However, because the margin requirements for each Segregated Indirect Participant would be calculated in the same manner as the requirements for each Margin Portfolio, it believes that these studies provide it with an appropriate approximation of the risks it may face if margin deposits for these Accounts are not subject to a minimum requirement.

C. Holding Segregated Customer Margin Deposits in Bank and FRBNY Accounts

To satisfy the eligible custodian conditions set forth in Section (b)(2)(iv) of Note H,[46] FICC is proposing to amend Rule 4, Section 1a to provide that all Segregated Customer Margin be held in an account of FICC at a bank within the meaning of the Act that is insured by the Federal Deposit Insurance Corporation, or at the Federal Reserve Bank of New York. Rule 4, Section 1a would also provide that such account would be segregated from any other account of FICC and would be used exclusively to hold Segregated Customer Margin, in accordance with Section (b)(2)(iv)(A) of Note H to Rule 15c3–3a.[47] To satisfy the requirements of Sections (b)(2)(iv)(B) and (C) of Note H,[48] Rule 4, Section 1a would further provide that each such account would be subject to (i) a written notice of the bank or Federal Reserve Bank provided to and retained by FICC that the account is being held by the bank or Federal Reserve Bank pursuant to Rule 15c3–3 and is being kept separate from any other accounts maintained by FICC or any other person at the bank or Federal Reserve Bank and (ii) a written contract between FICC and the bank or Federal Reserve Bank which provides that the Segregated Customer Margin in the account is subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or Federal Reserve Bank or any person claiming through the bank or Federal Reserve Bank.

D. Investment Restrictions on Segregated Customer Margin Cash

In accordance with Section (b)(2)(ii) of Note H,[49] Rule 4, Section 1a would be amended to require FICC to only invest Segregated Customer Margin consisting of cash in U.S. Treasury securities with a maturity of one year or less. FICC will propose changes to the Clearing Agency Investment Policy by a separate proposed rule change filing to address the separate holding and investment of Segregated Customer Margin cash, consistent with the disclosures proposed to be added to Rule 4. Pursuant to those changes, FICC would only hold Segregated Customer Margin consisting of cash in a cash deposit account at the Federal Reserve Bank of New York or, pending the opening of such account, another FDIC-insured bank and does not intend to make any other investment of these funds.

E. Return of Segregated Customer Margin

Lastly, in order to satisfy the condition in section (b)(2)(v) of Note H

[43] In the event of the insolvency, resolution, or liquidation of a Netting Member, a Segregated Indirect Participant's ability to recover any funds or securities it has posted to its Netting Member in connection with an FICC-cleared transaction or that the Netting Member receives from FICC in connection with such a transaction will depend on the relevant insolvency, resolution, or liquidation regime. FICC would not, except as directed by the relevant insolvency, resolution, or liquidation officials in accordance with applicable law, make any payments or transfer any assets directly to an indirect participant.

[44] As a covered clearing agency, FICC is required under Rule 17Ad–22(e)(6)(vi) to conduct backtests of its margin model at least once a day. 17 CFR 240.17Ad–22(e)(6)(vi). FICC's backtesting performance target is 99 percent.

[45] *See* Securities Exchange Act Release No. 96136 (Oct. 24, 2022), 87 FR 65268 (Oct. 28, 2022) (SR–FICC–2022–006).

[46] 17 CFR 240.15c3–3a.

[47] *Id.*

[48] *Id.*

[49] *Id.*

that a Treasury CCA adopt rules requiring systems, controls, policies, and procedures to return excess customer margin to a broker-dealer,[50] FICC is proposing to adopt certain amendments to Rule 4, Section 10. Under the proposed rule changes, Rule 4, Section 10 would be revised to require FICC to calculate twice each Business Day the excess of a Netting Member's Segregated Customer Margin over the Segregated Customer Margin Requirement (such amount, the ''Excess Segregated Customer Margin'').[51] In addition, FICC would adopt a new Rule 4, Section 10(b) that would require FICC to return a Netting Member's Excess Segregated Customer Margin at the Netting Member's request. In order to manage the risk of a Segregated Indirect Participant's transactions in accordance with the requirements of Rule 17Ad–22(e)(6) under the Act,[52] FICC would retain the discretion to retain such Excess Segregated Customer Margin if the Netting Member has any outstanding payment or margin obligation with respect to the transactions of any Segregated Indirect Participant.

However, proposed Section 10(b) of Rule 4 would provide that, unlike in the case with Clearing Fund, FICC would not be able to retain Excess Segregated Customer Margin due to any obligation of the Netting Member that is unrelated to the Segregated Indirect Participants Account, unless FICC is either required to do so by applicable law or is authorized to do so by the Commission.

3. Align Margin Methodology With Proposed Account Structure and Enhance Public Disclosures of Margin Components and Clearing Fund Methodology

FICC is proposing changes to the Rules to reorganize, clarify, and refine its margin calculation methodology. FICC is not changing the method by which it calculates the various margin components.

A. Consolidate Margin Components and Clearing Fund Calculation Methodology in Proposed Margin Component Schedule

In order to improve the clarity and transparency of its margin components and Clearing Fund calculation methodology, FICC is proposing to move the calculation methodology from Rule 4, Sections 1b, and 2a, Rule 3, Section 14, and Rule 3A, Section 10, as well as the associated definitions of the margin components and associated terms, including Backtesting Charge, Blackout Period Exposure Adjustment, Excess Capital Differential, Excess Capital Ratio, Excess Capital Premium, Holiday Charge, Intraday Supplemental Fund Deposit, Margin Liquidity Adjustment Charge or MLA Charge, Margin Proxy, Minimum Margin Amount,[53] Portfolio Differential Charge, Unadjusted GSD Margin Portfolio Amount, VaR Charge, VaR Floor and VaR Floor Percentage Amount to a new Margin Component Schedule. As noted above, this methodology would not change, and would continue to be substantively the same as that which currently exists under Rule 4 and Rule 3A, Section 10.

The Margin Component Schedule would include existing and refined descriptions of the manner and method by which FICC would calculate a Netting Member's Required Fund Deposit and Segregated Customer Margin Requirement. FICC believes that describing its margin calculation methodology in a single schedule would facilitate access to its clearing and settlement services by making it easier for market participants to identify and review that methodology. FICC would also make conforming changes to provisions of the Rules that reference the margin calculation methodology of Rule 4 so that such provisions reference the Schedule of Margin Components.

Section 1 of the Margin Component Schedule would provide that both a Netting Member's Required Fund Deposit and its Segregated Customer Margin Requirement would be calculated twice each Business Day and that the Netting Member would be required to meet such requirements. This is the same time interval in which FICC currently calculates and collects a Netting Member's margin requirements. Section 2 of the Margin Component Schedule would set forth the methodology for calculating a Netting Member's Required Fund Deposit. As discussed above, Section 3 of the Margin Component Schedule would set forth the methodology for calculating a Netting Member's Segregated Customer Margin Requirement. Section 4 of the Margin Component Schedule would set forth the terms under which FICC may impose increased Required Fund Deposits. These terms would be substantively the same as those currently in Rule 4 and Rule 3A, Section 10.

Section 5 of the Margin Component Schedule would contain the relevant definitions for the margin methodology calculation. These would be substantively the same as the existing definitions in Rule 1, with certain changes. As noted above, the definitions of Backtesting Charge, Blackout Period Exposure Adjustment, Excess Capital Differential, Excess Capital Ratio, Excess Capital Premium, Holiday Charge, Intraday Supplemental Fund Deposit, Margin Liquidity Adjustment or MLA Charge, Margin Proxy, Minimum Margin Amount,[54] Portfolio Differential Charge, Unadjusted GSD Margin Portfolio Amount, VaR Charge, VaR Floor and VaR Floor Percentage Amount would be revised to provide for such charges to be calculated for purposes of Segregated Customer Margin Requirements on a Segregated Indirect Participant-by-Segregated Indirect Participant basis. In addition, the MLA Charge definition would be amended to provide that, if a Segregated Indirect Participant clears through multiple Accounts (including Accounts of different Netting Members), then the MLA Charge applicable to its transactions carried in a given Segregated Indirect Participants Account would equal the greater of (i) an amount calculated only with regard to the transactions maintained in that Account (*i.e.,* without regard to the other Accounts in which the Segregated Indirect Participant's transactions are recorded) and (ii) an amount calculated on a consolidated portfolio basis (*i.e.,* taking into account the transactions carried in each of the Accounts). This is currently the same methodology that is used for Sponsored Members that clear through multiple Accounts.

B. Revise Definition of ''Current Net Settlement Positions''

In order to refine its margin calculation methodology, FICC is also proposing to amend the definition in Rule 1 of Current Net Settlement Positions to provide for Current Net Settlement Positions in a Sponsoring Member Omnibus Account or Segregated Indirect Participants Account that are not clearly allocable to an individual Sponsored Member or Segregated Indirect Participant to be allocated, for purposes of calculating margin requirements, pro rata to the Sponsored Members or Segregated Indirect Participants that had, as of the end of the preceding Business Day, positions in the same direction and CUSIP as the un-allocable Current Net Unsettled Positions. This situation could arise if, for example, a transaction

[50] *Id.*

[51] The twice each Business Day interval would also apply to the calculation of a Netting Member's excess Required Fund Deposit, since that is the interval on which FICC currently performs such calculation.

[52] 17 CFR 240.17Ad–22(e)(6).

[53] *Supra* note 33.

[54] *Supra* note 33.

recorded in a Sponsoring Member Omnibus Account or Segregated Indirect Participants Account fails to settle. FICC believes this methodology facilitates a reasonable and fair allocation for purposes of calculating gross margin requirements.

FICC would make a corresponding deletion to the language of Rule 3A, Section 7 that addresses the treatment of such positions in Sponsoring Member Omnibus Accounts. Currently Rule 3A, Section 7(a)(i) provides that Net Settlement Positions per CUSIP shall be calculated for each Sponsored Member in the same manner set forth in Rule 11 for Netting Members. The proposed changes to the definition of Current Net Settlement Positions would, however, result in a different calculation of the Net Settlement Positions per CUSIP for Sponsored Members whose positions are recorded in a Sponsoring Member Omnibus Account than for Netting Members. Therefore, the statement in Rule 3A, Section 7 would no longer be correct and would be removed from the Rules.

C. Enhance the Methodology for Calculating the Excess Capital Premium

FICC is also proposing to amend the terms related to the Excess Capital Premium, one of the components of the Required Fund Deposit calculation, in order to make such calculation more precise and predictable. Currently, the Excess Capital Premium applicable to a Netting Member equals the Netting Member's ''Excess Capital Ratio'' (*i.e.,* its VaR Charge divided by its Netting Member Capital) multiplied by its ''Excess Capital Differential'' (*i.e.,* the amount by which a Netting Member's VaR Charge exceeds its Netting Member Capital). However, FICC currently reserves the right to collect less than this amount or to return some or all of this amount.

FICC is proposing to make the Excess Capital Premium more precise and predictable by revising the definition to (i) cap such amount at two times a Netting Member's Excess Capital Differential, (ii) provide that FICC would use the Netting Member Capital amounts set forth in the Netting Member's most recent Form X–17–A–5 (Financial and Operational Combined Uniform Single (''FOCUS'') Report or Consolidated Report of Condition and Income (''Call Report''), as applicable, (iii) permit FICC in its discretion to accept updated amounts provided by a Netting Member prior to the issuance of the Netting Member's next financial report, and (iv) set forth a specific procedure through which FICC may waive the Excess Capital Premium. With regard to (iv), the proposed rule changes would provide that only a Managing Director in FICC's Group Chief Risk Office could grant waiver of an Excess Capital Premium and only in exigent circumstances if FICC observed extreme market conditions or other unexpected changes in factors, based on all relevant facts and circumstances, including the degree to which a Netting Member's capital position and trading activity compare or correlate to the prevailing exigent circumstances and whether FICC can effectively address the risk exposure presented by a Netting Member without the collection of the Excess Capital Premium from that Netting Member. Any such waiver would need to be documented in a written report made available to the relevant Netting Member. FICC believes that these changes, which are substantially similar to changes recently adopted by the National Securities Clearing Corporation, would enhance the ability of Netting Members to identify what their Excess Capital Premium will be and to ensure such amount is accurately calibrated.[55]

FICC would also amend the defined term ''Netting Member Capital'' in Rule 1 to refer to a Netting Member's Net Capital, Net Assets, or Equity Capital, as applicable based on the Netting Member's type of regulation. The definition of ''Net Capital,'' in turn, would be revised to refer specifically to the net capital of a Netting Member as reported on its most recent FOCUS Report or, if a Netting Member is not required to file a FOCUS Report, on its most recent financial statements or equivalent reporting. ''Equity Capital'' would be defined in Rule 1 to mean the equity capital of a Netting Member as reported on its most recent Call Report, or if a Netting Member is not required to file a Call Report, on its most recent financial statements or equivalent reporting. FICC believes these changes would increase predictability and understanding of how FICC calculates the Excess Capital Premium.

FICC would also remove obsolete references to margin requirements for pending transactions since FICC does not apply margin requirements to such transactions.

D. Exclude Segregated Customer Margin From Calculation of Excess Capital Premium Charge

FICC is also proposing to revise the definitions of Excess Capital Ratio and Excess Capital Differential in the Margin Component Schedule to exclude the VaR Charge calculated with respect to Segregated Indirect Participants.

The VaR Charge assessed for each Segregated Indirect Participant would be satisfied by the Segregated Indirect Participant, and not by the Netting Member. As noted above, the Excess Capital Premium is designed to address the risk that a Netting Member with low capital relative to value-at-risk is not able to perform its obligations. However, Segregated Customer Margin cannot be applied to satisfy a Netting Member's obligations (other than to perform on behalf of the individual indirect participant for whom the Segregated Customer Margin is held). Therefore, including the VaR Charge that is calculated for a Segregated Indirect Participant and is satisfied by the capital of that Segregated Indirect Participant in the calculation of the Netting Member's Excess Capital Premium could result in assessing an Excess Capital Premium for that Netting Member that is greater than the amount required to mitigate the risk that the Excess Capital Premium is designed to address.

The proposed change is also designed to ensure that the Excess Capital Premium does not result in differential treatment of Netting Members that act as intermediaries for Segregated Indirect Participants.

E. Other Clarifications and Conforming Changes

In connection with the changes described above, FICC would make other clarifications and conforming changes to the Rules. First, FICC would move the definition of ''Legal Risk'' from Rule 4 to the definitions in Rule 1. This term refers to the risk that FICC may be unable to either access Required Fund Deposits or take action following the insolvency or bankruptcy of a Netting Member as the result of a law, rule or regulation applicable to the Netting Member.[56] Because this term is used in multiple places in the Rules, including in the new Margin Component Schedule, moving the definition to Rule 1 would make it easier for a reader to find that definition.

FICC would also delete the definition of the term ''Minimum Charge'' from Rule 1 and move the use of this term from Rule 4 to Sections 2(c) and 3(c) of the Margin Component Schedule. While FICC would continue to apply a requirement that Netting Members maintain a minimum amount for each Margin Portfolio or Segregated Margin Requirement, as discussed above, FICC

[55] *See* Securities Exchange Act Release No. 96786 (Feb. 1, 2023), 88 FR 8013 (Feb. 7, 2023) (SR–NSCC–2022–005).

[56] *See* Rule 4, Section 2(d), *supra* note 4.

believes using a defined term for this concept is not necessary and could cause confusion about the requirement. The proposed change to remove the defined term and instead just explain the requirement in these sections of the Margin Component Guide would simplify and, therefore, clarify, the Rules in this regard.

4. Clarifications to Treatment of Brokered Transactions

FICC is proposing to refine the definition of Brokered Transactions and remove conditions that Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers must meet in order to receive favorable loss allocation treatment.

Currently, Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers must meet a set of conditions described in Section 8 of Rule 3 to be subject to a cap on the application of FICC's loss allocation procedure of no greater than $5 million.[57] FICC believes this favorable loss allocation treatment is appropriate because the Netting Member is not undertaking a directional position with respect to the transactions. Instead, each transaction has a counterparty other than the Netting Member that will ultimately deliver the securities or pay the cash.

FICC is proposing to revise the Rules related to Brokered Transactions so that the favorable loss allocation treatment applies only to the transactions that present this limited risk. In particular, FICC is proposing to revise the definition of Brokered Transactions to only encompasses transactions entered into by an Inter-Dealer Broker Netting Member on the Inter-Dealer Broker Netting Member's own trading platform. This rule change would limit the definition of these transactions to transactions for which an Inter-Dealer Broker is standing in between two counterparties and is thus completely flat.

In connection with this change, FICC would eliminate the conditions that Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers must meet in order to be subject to such favorable treatment. As noted above, the proposed Rule 2B would clarify that only Inter-Dealer Broker Netting Members are able to maintain Cash Broker Accounts or Repo Broker Accounts, and that only Brokered Transactions may be submitted through such Accounts, as appropriate. Therefore, FICC believes the revised definition of Brokered Transactions and the revisions to the Account structure would collectively serve the risk-mitigation function that the conditions in Rule 3, Section 8 achieve, but in a much more effective manner and in a manner that is easier for FICC to monitor. As such, those conditions would be removed from the Rules.

Finally, FICC would remove the category of Non-IDB Repo Brokers from the Rules. Non-IDB Repo Brokers are currently defined as Netting Members other than Inter-Dealer Broker Netting Members that operate in the same manner as a Broker and have agreed to meet the same requirements imposed on Inter-Dealer Broker Netting Members.[58] As described above, FICC believes the favorable loss allocation treatment is appropriate only for Inter-Dealer Broker Netting Members that submit Brokered Transactions, as such term would be defined. Therefore, FICC would delete the references to such parties and associated terms. In connection with these changes, the proposal would delete the defined term for ''Non-IDB Repo Broker'' as that term would no longer be used in the Rules.

Implementation Timeframe

Subject to the completion of all regulatory actions required with respect to this proposal,[59] FICC expects to implement the proposal by no later than March 31, 2025, and would announce the effective date of the proposed changes by an Important Notice posted to FICC's website.

2. Statutory Basis

FICC believes the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, FICC believes the proposed rule changes are consistent with section 17A(b)(3)(F) of the Act,[60] and Rules 17Ad–22(e)(4)(i), (e)(6)(i), (e)(18)(ii), (e)(18)(iii), (e)(18)(iv)(C), (e)(19), and (e)(23)(ii), each promulgated under the Act,[61] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of FICC be designed, among other things, to promote, and remove impediments to, the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[62] As described in greater detail below, the proposed rule changes to clarify FICC's Account structure and margin calculation methodology would improve public understanding of FICC's margining and recordkeeping processes and thereby facilitate greater cooperation between Netting Members and indirect participants and improve access to FICC's clearance and settlement systems. The proposed changes would do this by revising the definition of ''Account'' to make clear that FICC Accounts are for purposes of recording transactions, providing a roadmap in Rule 2B identifying the types of Accounts FICC maintains for Netting Members and which transactions may be recorded in such Accounts, amending Rule 4 to clarify the types of transactions that may be included in a Margin Portfolio, and consolidating the components of FICC's margin calculation methodology currently in Rules 1 and 4 into an accessible Margin Component Schedule and refining the description of FICC's margin calculation methodology. The proposed change to eliminate the Permitted Margin Affiliates from the Rules would also lead to clearer Rules and, therefore, improved public understanding of FICC's margining practices by removing a concept that is not being used by Netting Members.

The collective impact of these changes would be to enhance the ability of Netting Members and indirect participants to calculate the costs of submitting various transactions and portfolios to FICC for clearance and settlement. This greater understanding would make it easier for market participants to price accessing FICC's clearance and settlement systems and negotiate the terms of clearing arrangements. More efficient pricing and greater understanding would eliminate barriers and make it easier for a wider and more diverse array of market participants, to access clearing.

The proposed changes to create a segregation arrangement for certain indirect participant margin would also facilitate broader access to FICC's clearance and settlement systems. Currently, broker-dealer Netting Members must finance the margin obligations of their indirect participants' transactions because they cannot record a debit in the Rule 15c3–3a formulas for

[57] *See* Rule 3, Section 8 (such conditions require that an Inter-Dealer Broker Netting Member ''(A) limit its business to acting exclusively as a Broker; (B) conduct all of its business in Repo Transactions with Netting Members; and (C) conduct at least 90 percent of its business in transactions that are not Repo Transactions, measured based on its overall dollar volume of submitted sides over the prior month, with Netting Members'') and Rule 4, Section 7, *supra* note 4.

[58] Currently, only one Netting Member is a Non-IDB Repo Broker.

[59] *Supra* note 3.

[60] 15 U.S.C. 78q–1(b)(3)(F).

[61] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i), (e)(18)(ii), (e)(18)(iii), (e)(18)(iv)(C), (e)(19), and (e)(23)(ii).

[62] 15 U.S.C. 78q–1(b)(3)(F).

margin deposited with FICC. From its engagement with market participants, FICC understands that this need to provide financing for margin makes it more expensive for broker-dealer Netting Members to provide indirect participants with access to FICC's clearance and settlement systems than would be the case if the broker-dealer Netting Member were able to collect margin from an indirect participant and deposit that margin with FICC. In addition, non-broker-dealer Netting Members may often need to finance the margin obligations of their indirect participants' transactions because the absence of a segregation arrangement makes it impossible or undesirable for indirect participants to use their own assets to satisfy such margin obligations. The proposed rules would facilitate greater access to FICC's clearance and settlement systems by creating a segregation arrangement that would allow broker-dealer and other Netting Members to collect margin from their indirect participants and deposit that margin with FICC. Such collection and depositing would reduce the costs to such Netting Members of providing access to FICC's clearance and settlement services and thereby facilitate greater cooperation between Netting Members and their indirect participants. Such cooperation would improve access to clearing, which would in turn increase the diversity and scope of market participants able to utilize FICC's central counterparty services. These services can reduce the costs of securities transactions through FICC's multilateral netting, its trade guaranty and centralized default management, and mitigate and manage counterparty risks. Therefore, the proposed changes would support FICC's compliance with section 17A(b)(3)(F) of the Act by fostering cooperation and coordination between FICC's participants and promoting, and eliminating impediments to, the prompt and accurate clearance and settlement of securities.[63]

Section 17A(b)(3)(F) of the Act also requires that the rules of FICC be designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible.[64] The proposed rule changes to separately and independently calculate the margin for a Netting Member's proprietary transactions from the margin for the transactions of indirect participants, to adopt a method for allocating net unsettled positions to individual indirect participants for purposes of calculating margin requirements and to set forth a segregation arrangement for certain margin collected from indirect participants and deposited with FICC would enhance FICC's risk management and its ability to assure the safe return of funds and securities. Those changes would reduce the potential risk to FICC arising from indirect participant transactions by ensuring that the margin requirements for such transactions are based solely on such transactions and not on the Netting Member's proprietary transactions and that such margin requirements take due and appropriate account of the risk arising from net unsettled positions.[65] The proposed changes would also provide FICC with a better understanding of the source of potential risk arising from the transactions that it clears by allowing FICC to identify separately the VaR Charges and other margin components for indirect participant transactions as compared to proprietary transactions. The proposed changes would also incentivize Netting Members to maintain more balanced proprietary portfolios, since such portfolios would lead to lower margin requirements. Such balanced portfolios, greater visibility, and carefully calibrated margin requirements would limit FICC's risk to a Netting Member default and thereby enhance its ability to return funds and securities to Netting Members. In addition, the proposed segregation arrangement would facilitate the return of margin posted by an indirect participant to its Netting Member and deposited with FICC by limiting FICC's ability to use such margin except to cover the indirect participant's own obligations. These features would support FICC's compliance with Section 17A(b)(3)(F) by further assuring FICC's safeguarding of securities and funds in its control and for which it is responsible.[66]

Rule 17Ad–22(e)(4)(i) under the Act requires that FICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.[67] The proposed rule changes to separately and independently calculate, collect, and hold the margin for a Netting Member's proprietary transactions from the margin for the transactions of indirect participants, to limit Brokered Transactions to those entered into by an Inter-Dealer Broker Netting Member on its own trading platform, and to increase the precision of the Excess Capital Premium would enhance FICC's risk management. These changes would ensure that the quantum of margin that FICC collects from a Netting Member reflects the separate risk profiles of the Netting Member's portfolio of Proprietary Transactions and portfolio transactions that the Netting Member submits to FICC on behalf of indirect participants, ensure that only those transactions that present the limited risk for which FICC's Brokered Transactions provisions are designed benefit from favorable loss allocation treatment, and calibrate the Excess Capital Premium based on the most readily available information.

Collectively, these changes would enhance the ability of FICC to manage the risk of the transactions it clears and settles and cover its credit exposure to its participants with a high degree of confidence.

The proposed change to require a minimum cash requirement of $1 million per Segregated Indirect Participant would mitigate the greater risk exposure presented to FICC by the limitations on its use of these deposits. As discussed above, FICC's daily backtesting of the sufficiency of Clearing Fund deposits has revealed a heightened likelihood of backtesting deficiencies for those Members with lower deposits that are not sufficient to mitigate any abrupt intraday change in their exposures, and a $1 million minimum requirement was appropriate to mitigate the risks of backtesting deficiencies while balancing the financial impact of this requirement on Members.[68] Because FICC is required to calculate the margin requirements for Segregated Indirect Participants on a gross basis, as if each Segregated Indirect Participant were a separate Margin Portfolio, it believes it is also appropriate to apply the same minimum requirement that it applies to each Margin Portfolio. By maintaining sufficient resources to cover its credit exposures fully with a high degree of confidence, the proposed change supports FICC's ability to identify, measure, monitor, and, through the collection of Segregated Customer Margin, manage its credit exposures to these indirect participants. Therefore, FICC believes adopting this minimum requirement is consistent with the

[63] *Id.*

[64] *Id.*

[65] *See* Adopting Release, *supra* note 2, at 144.

[66] *Id.*

[67] 17 CFR 240.17Ad–22(e)(4)(i).

[68] *Supra* note 45.

requirements of Rule 17Ad–22(e)(4)(i) under the Act.[69]

Rule 17Ad–22(e)(6)(i) under the Act requires FICC to establish written policies and procedures reasonably designed to calculate, collect, and hold margin amounts from a direct participant for its proprietary positions in Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access FICC's payment, clearing, or settlement facilities.[70] The proposed rule changes would require that each Margin Portfolio only consist of activity from the same Type of Account, ensuring that proprietary transactions and transactions submitted to FICC on behalf of indirect participants are margined separately, and to require Netting Members to use separate Deposit IDs for different transaction types. As noted above, the proposed changes to Rule 2B, Section 3 would require FICC to calculate the Segregated Customer Margin Requirement for a particular Segregated Indirect Participants Account as the sum of the requirements applicable to each Segregated Indirect Participant whose transactions are recorded in such Account, as though each Segregated Indirect Participant were a separate Netting Member with a single Margin Portfolio consisting of such transactions. These provisions would result in FICC calculating separate margin amounts for each Segregated Indirect Participant and for such amounts to be collected on a gross basis. Finally, the proposed changes to Rule 4, Section 1a would provide for FICC to establish on its books and records for each Netting Member that deposits Segregated Customer Margin a ''Segregated Customer Margin Custody Account'' corresponding to each Segregated Indirect Participants Account of such Netting Member. Collectively, these proposed changes would ensure that a Netting Member's proprietary transactions are not netted with indirect participant transactions for purposes of margin calculation and that margin for indirect participant transactions is collected and held separately and independently from margin for a Netting Member's proprietary transactions.

Rule 17Ad–22(e)(18)(ii) under the Act requires FICC to establish objective, risk-based, and publicly disclosed criteria for participation, which require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in FICC.[71] The proposed changes to consolidate FICC's margin methodology in a Margin Component Schedule, to identify the particular Required Fund Deposit Portions and Segregated Customer Margin Requirements, and to elaborate on the calculation of the Excess Capital Premium and the circumstances in which FICC would waive the application of such premium would improve public disclosure of FICC's margin methodology and the obligations that Netting Members and their indirect participants would have as a result of their participation in FICC's clearance and settlement system. In particular, the proposed changes would provide Netting Members and their indirect participants with a single, standalone schedule that they can review in order to understand how FICC would calculate margin obligations for their transactions. The proposed changes would also improve public disclosure by allowing Netting Members and their indirect participants to see how the various Accounts and Margin Portfolios give rise to separate inputs into the total margin calculation and how and when a Netting Member may face an increase in margin on account of the Excess Capital Premium.

Rule 17Ad–22(e)(18)(iii) under the Act requires that FICC establish written policies and procedures reasonably designed to monitor compliance with its participant requirements on an ongoing basis.[72] The proposed changes to require Netting Members to designate the Account in which a transaction is to be recorded and to identify the Sponsored Member or Executing Firm Customer for whom the transaction is submitted on that transaction record would help facilitate FICC's ability to monitor which transactions are being entered into by which entities. This enhanced monitoring of participant activity would thus allow FICC to better monitor participants' compliance with FICC's various requirements in accordance with Rule 17Ad–22(e)(18)(iii).[73]

Rule 17Ad–22(e)(18)(iv)(C) under the Act requires, among other things, that FICC, as a covered clearing agency that provides central counterparty services for transactions in U.S. Treasury securities, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants.[74] FICC believes that the proposed changes giving Netting Members the ability to elect for margin deposited by indirect participants and deposited with FICC to be segregated would facilitate access to FICC's clearance and settlement systems by giving indirect participants greater optionality. The proposed rule changes would allow a Netting Member and its indirect participant to choose whether (i) the indirect participant will post margin under a customer protection framework that is similar to that which exists in other cleared contexts,[75] (ii) the Netting Member will finance the margin for the indirect participant's transactions, or (iii) the indirect participant will deposit margin but without the protection (or higher margin requirements) associated with a segregation arrangement. FICC believes that such optionality would facilitate access in accordance with Rule 17Ad–22(e)(18)(iv)(C) by allowing Netting Members and their indirect participants to adopt a margining arrangement that is most consistent with their business objectives and applicable regulatory, operational, and practical constraints.

Rule 17Ad–22(e)(19) under the Act requires that FICC identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in FICC rely on the services provided by direct participants

[69] 17 CFR 240.17Ad–22(e)(4)(i).

[70] 17 CFR 240.17Ad–22(e)(6).

[71] 17 CFR 240.17Ad–22(e)(18)(ii).

[72] 17 CFR 240.17Ad–22(e)(18)(iii).

[73] *Id.*

[74] 17 CFR 240.17Ad–22(e)(18)(iv)(C). Contemporaneously with this proposed rule change, FICC and its affiliates, National Securities Clearing Corporation and The Depository Trust Company, have submitted separate proposed rule changes (File Nos. SR–FICC–2024–006, SR–NSCC–2024–003 and SR–DTC–2024–003) under which they are proposing to amend the Clearing Agency Risk Management Framework to address the requirement under Rule 17Ad–22(e)(18)(iv)(C) that FICC's Board review its policies and procedures related to compliance with that rule on an annual basis. These proposed changes are pending regulatory approval. Copies of the proposed rule changes are *available at www.dtcc.com/legal/sec-rule-filings.*

[75] Both the Options Clearing Corporation and the U.S. derivatives clearing organizations allow for, or require, the segregation of customer margin and/or positions. *See generally* OCC By-Laws Sections 3, 27 (outlining the various accounts that OCC may maintain for a clearing member and the extent to which the positions and margin recorded to such accounts may applied to other obligations); 7 U.S.C. 6d (outlining the segregation rules applicable to commodity futures and cleared swap transactions); Order Granting Conditional Exemptions under the Securities Exchange Act of 1934 in Connection with the Portfolio Margining of Cleared Swaps and Security-Based Swaps that are Credit Default Swaps, Securities Exchange Release No. 93501 (Nov. 1, 2021), 86 FR 61357 (Nov. 5, 2021) (S7–13–12) (providing that certain cleared security-based swaps may be portfolio margined in a cleared swaps account subject to the rules generally applicable to cleared swaps).

to access FICC's clearance and settlement facilities.[76] The proposed changes to separately and independently calculate margin for proprietary and indirect participant transactions, adopt a method for allocating net unsettled positions to individual indirect participants for purposes of calculating margin requirements and require a Netting Member to represent that margin deposited in relation to a Segregated Indirect Participants Account is generally margin collected from an indirect participant would reduce the potential risk to FICC arising from indirect participant transactions.

These changes would ensure that the margin FICC collects from a Netting Member reflects the separate risk profiles of the Netting Member's proprietary portfolio and the portfolio of transactions it submits to FICC on behalf of indirect participants. They would also provide FICC with a better understanding of the source of potential risk arising from the transactions that it clears and incentivize Netting Members to maintain more balanced proprietary portfolios, since such portfolios would lead to lower margin requirements. In addition, the proposed representation by Netting Members that they generally intend to satisfy Segregated Customer Margin Requirements with assets collected from indirect participants rather than proprietary assets would reduce the risk of FICC's proposed margin segregation arrangement by limiting such arrangement to indirect participant assets and ensuring that proprietary assets a Netting Member deposits with FICC are available for loss mutualization purposes.

Rule 17Ad–22(e)(23)(ii) under the Act requires FICC to establish written policies and procedures providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in FICC.[77] The proposed rule changes to consolidate and clarify FICC's margin calculation methodology in the proposed Margin Component Schedule, adopt a method for allocating net unsettled positions to individual indirect participants for purposes of calculating margin requirements and to clarify the calculation of the Excess Capital Premium would make it easier for both Netting Members and indirect participants to identify and price the potential margining costs associated with how one chooses to submit transactions to FICC for clearance and settlement.

(B) Clearing Agency's Statement on Burden on Competition

FICC believes that the proposed rule changes described in this filing would promote competition by improving market participants' understanding of FICC's account structure and margin calculation methodology. By providing Members and other market participants with clearer definitions and consolidated margining and Account terms, the proposed changes would make it easier for existing Netting Members to offer competitive prices. The proposal additionally would make it easier for potential future Netting Member applicants to calibrate the resources they would need to provide intermediation services to indirect participants. These two forces should not only increase the number of Netting Members available to provide indirect participants with access to FICC's clearance and settlement services, but may also reduce some of the costs to indirect participants of accessing such services. In addition, such greater understanding and transparency would make it easier for indirect participants to negotiate terms of clearing arrangements since they would be able to calibrate what the margin requirements would be for their positions.

The proposed change to require a minimum cash margin deposit of $1 million for each Segregated Indirect Participant could impose a burden on competition if it results in a larger cash requirement for those Segregated Indirect Participants and the Netting Members who provide intermediation services to those participants. However, FICC believes that any burden on competition imposed by this proposed change would be necessary and appropriate in furtherance of FICC's efforts to mitigate risks and maintain compliance with its regulatory risk obligations under the Act.

FICC understands some indirect participants may not elect to submit activity through a Segregated Indirect Participants Account due to the size of that activity relative to this minimum requirement. Such participants may, instead, submit activity through a Sponsoring Member Omnibus Account or Agent Clearing Member Omnibus Account that is not segregated and is not required to be calculated on a gross basis, subject to the applicable limitations.

As described above, FICC's daily backtesting of the sufficiency of its Clearing Fund revealed a heightened likelihood of backtesting deficiencies for those Members with lower deposits that are not sufficient to mitigate any abrupt intraday change in their exposures.[78] FICC recently increased the minimum Required Deposit for Netting Members to the current $1 million cash deposit following this discovery and after analyzing impact study data that indicated a $1 million minimum requirement is the appropriate minimum amount to optimize the balance between financial impact of the requirement to Members and FICC's ability to continue to meet its regulatory obligation to maintain a backtesting performance coverage ratio above its 99 percent coverage target.

The proposed minimum requirement that would apply to Segregated Indirect Participants is the same minimum requirement that FICC currently applies to each Margin Portfolio.[79] Because FICC is required to calculate the margin requirements for these participants on a gross basis, as if each Segregated Indirect Participant were a separate Margin Portfolio, and would be restricted from using these funds to address any losses other than losses resulting from the indirect participant for whom the funds are held, FICC believes it is also appropriate to apply the same minimum requirement.

FICC believes that the proposed margin segregation arrangement would promote competition because it would allow Netting Members to offer greater varieties of possible clearing arrangements to indirect participants. Netting Members could offer arrangements under which they finance the margin or under which the indirect participant satisfies the margin requirement. Such greater offerings would improve competition by enhancing the available ways to access clearing. In addition, the arrangement would place broker-dealer Netting Members on a more level playing field with other Netting Members. Currently, only non-broker-dealer Netting Members may collect margin from indirect participants and deposit it with FICC. By virtue of the proposed changes, broker-dealer Netting Members would likewise be able to collect margin and deposit such margin with FICC.

FICC further believes that the proposed changes to separately and independently calculate, collect, and hold margin for proprietary transactions from margin for indirect participant

[76] 17 CFR 240.17Ad–22(e)(19).

[77] 17 CFR 240.17Ad–22(e)(23)(ii).

[78] *Supra* note 45.

[79] As noted above, FICC recently increased this minimum requirement as applied to Netting Members following Commission approval of a proposed rule change. *Supra* note 45.

transactions would not place a burden on competition. These proposed changes work together with the proposed margin segregation changes discussed above, and FICC believes that the combination of these proposed changes would allow Netting Members to offer greater varieties of possible clearing arrangements to indirect participants. With respect to the specific changes around separately and independently calculating, collecting, and holding margin for proprietary and indirect transactions, FICC further believes that such changes would serve to ensure that a Netting Member's margin requirement separately accounts for the risk profiles of its proprietary portfolio of transactions and the transactions it submits to FICC on behalf of indirect participants. These changes should not give particular Netting Members an advantage over one another or disadvantage indirect participants relative to one another. Instead, they would simply serve to limit the risk to FICC of such transactions and provide FICC with a better understanding of the source of potential risk arising from the transactions that it clears.

Lastly, FICC believes that the proposed changes to redefine Brokered Transactions as those entered into by an Inter-Dealer Broker Netting Member on its own trading platform would promote competition by limiting the scope of transactions eligible for uniquely favorable loss allocation treatment. Such limitations would ensure that similarly situated Netting Members are subject to similar requirements with regard to similar transactions and that only transactions that present relatively lower levels of risk are eligible for appropriately differential treatment.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the SEC's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

FICC reserves the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period 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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–FICC–2024–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR–FICC–2024–007. 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 FICC and on DTCC's website (*https://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2024–007 and should be submitted on or before April 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[80]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06577 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99840; File No. SR–BX–2024–011]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt an OTTO Protocol

March 22, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2024, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[80] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 adopt a new protocol, ''Ouch to Trade Options'' or ''OTTO'' and establish pricing for this new protocol.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX proposes to offer a new order entry protocol called OTTO. Today, BX Participants may enter orders into the Exchange through the ''Financial Information eXchange'' or ''FIX.''[4] The proposed new OTTO protocol is identical to the OTTO protocol offered today on 3 Nasdaq affiliated exchanges, Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX'').

The OTTO protocol is a proprietary protocol of Nasdaq, Inc. The Exchange continues to innovate and modernize technology so that it may continue to compete among options markets. The ability to continue to innovate with technology and offer new products to market participants allows BX to remain competitive in the options space which currently has seventeen options markets and potential new entrants.

OTTO Protocol

As proposed, OTTO would allow Participants and their Sponsored Customers[5] to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. OTTO features would include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) System[6] event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages. The Exchange notes that unlike FIX, which offers routing capability, OTTO does not permit routing. The Exchange proposes to include this description of OTTO in new Options 3, Section 7(e)(1)(B) and re-letter current ''B'' as ''C''.

Only one order protocol is required for a BX Participant to submit orders into BX. Only BX Participants may utilize ports on BX. Any market participant that sends orders to a BX Participant would not need to utilize a port. The BX Participant may send all orders, proprietary and agency, through one port to BX. Participants may elect to obtain multiple ports to organize their business,[7] however only one port is necessary for a Participant to enter orders on BX.

Participants may elect to enter their orders through FIX, OTTO, or both protocols, although both protocols are not necessary. Participants may prefer one protocol as compared to another protocol, for example, the ability to route may cause a Participant to utilize FIX and a Participant that desires to execute an order locally may prefer OTTO. Also, the OTTO Port offers lower latency as compared to the FIX Port, which may be attractive to Participants depending on their trading behavior. Nasdaq believes that the addition of OTTO will provide BX Participants with additional choice when submitting orders to BX.

While the Exchange has no way of predicting with certainty the amount or type of OTTO Ports market participants will in fact purchase, the Exchange anticipates that some Participants will subscribe to multiple OTTO Ports in combination with FIX Ports. The Exchange notes that Options Participants may use varying number of OTTO ports based on their business needs.

Other Amendments

In connection with offering OTTO, the Exchange proposes to amend other rules within Options 3. Each amendment is described below.

Options 3, Section 7

BX proposes to amend Options 3, Section 7, Types of Orders and Quote Protocols. Specifically, BX proposes to amend Options 3, Section 7 (b)(2) that describes the Immediate-or-Cancel'' or ''IOC'' order. Today, Options 3, Section 7(b)(2)(B) notes that an IOC order may be entered through FIX or SQF, provided that an IOC Order entered by a Market Maker through SQF is not subject to the Order Price Protection, the Market Order Spread Protection, or Size Limitation in Options 3, Section 15(a)(1), (a)(2), and (b)(2), respectively. The Exchange proposes to add ''OTTO'' to the list of protocols to note that an IOC order may also be entered through OTTO.

BX also proposes to amend the ''DAY'' order in Options 3, Section 7(b)(3) that currently provides that a Day order may be entered through FIX.

[3] The Exchange will withdraw SR–BX–2024–006, which contains pricing for BX OTTO, on March 19, 2024 and replace it with this rule change.

[4] FIX is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders and responses to and from the Exchange. Features include the following: (1) execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. In addition, a BX Participant may elect to utilize FIX to send a message and PRISM Order, as defined within Options 3, Section 13, to all BX Participants that opt in to receive Requests for PRISM requesting that it submit the sender's PRISM Order with responder's Initiating Order, as defined within Options 3, Section 13, into the Price Improvement Auction (''PRISM'') mechanism, pursuant to Options 3, Section 13 (''Request for PRISM''). *See* Options 3, Section 7(e)(1)(A).

[5] General 2, Section 22 describes Sponsored Access arrangements.

[6] The term ''System'' or ''Trading System'' means the automated system for order execution and trade reporting owned and operated by BX as the BX Options market. The BX Options market comprises: (A) an order execution service that enables Participants to automatically execute transactions in option series; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment; (B) a trade reporting service that submits ''locked-in'' trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the Options Price Reporting Authority for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a ''locked-in'' trading environment; and (C) the data feeds described in Options 3, Section 23. *See* BX Options 1, Section 1(a)(59).

[7] For example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons, segregating order flow among different trading desks, or other determinations that are specific to that Participant. A market participant may utilize multiple ports in some cases to send multiple orders through different ports to avoid any latency or queuing of orders. The Exchange notes that to the extent that different OTTO Ports are used to send multiple orders as compared to sending multiple orders through one OTTO Port the difference from a latency standpoint would be in nanoseconds.

With the addition of OTTO, a Day order may also be entered through OTTO.

BX also proposes to amend the ''Good Til Cancelled'' or ''GTC'' order which currently does not specify that a GTC order may be entered through FIX. GTC orders would only be able to be entered through FIX and not OTTO. The Exchange proposes to amend Options 3, Section 7(b)(4) to add a sentence to note that GTC orders may be entered through FIX.

Options 3, Section 8

BX proposes to amend Options 3, Section 8, Options Opening Process. BX proposes to amend Options 3, Section 8(l) that describes the Opening Process Cancel Timer. The Opening Process Cancel Timer represents a period of time since the underlying market has opened. If an option series has not opened before the conclusion of the Opening Process Cancel Timer, a Participant may elect to have orders returned by providing written notification to the Exchange. Today, these orders include all non-Good Til Cancelled Orders received over the FIX protocol. The Exchange proposes to add the OTTO protocol as well to the rule text language in that paragraph.

Options 3, Section 12

The Exchange proposes to amend the Options 3, Section 12, Crossing Orders. Specifically, the Exchange proposes to amend Customer Crossing Orders in Options 3, Section 12(a) that currently provides Public Customer-to-Public Customer Cross Orders are automatically executed upon entry provided that the execution is at or between the best bid and offer on the Exchange and (i) is not at the same price as a Public Customer Order on the Exchange's limit order book and (ii) will not trade through the NBBO. Public Customer-to-Public Customer Cross Orders must be entered through FIX. The Exchange proposes to remove the sentence that provides that Public Customer-to-Public Customer Cross Orders must be entered through FIX because they will be able to be entered through both FIX and OTTO.

Options 3, Section 17

The Exchange proposes to amend the Kill Switch at Options 3, Section 17. The Kill Switch provides Participants with an optional risk management tool to promptly cancel and restrict orders. With the introduction of OTTO, the Exchange proposes to align its Kill Switch rule text with MRX's Kill Switch.[8] The Exchange proposes to note in Options 3, Section 17(a) that BX Participants may initiate a message(s) to the System to promptly cancel and restrict their order activity on the Exchange, as is the case today, as described in section (a)(1). This amendment simply rewords the rule text without a substantive amendment to the rule text.

The Exchange proposes to renumber Options 3, Section 17(a)(i) and (ii) as (a)(1) and (2). Current Options 3, Section 17(a)(i) states, ''If orders are cancelled by the BX Participant utilizing the Kill Switch, it will result in the cancellation of all orders requested for the Identifier(s). The BX Participant will be unable to enter additional orders for the affected Identifier(s) until re-entry has been enabled pursuant to section (a)(ii).'' The Exchange proposes to instead provide, ''A BX Participant may submit a request to the System through FIX or OTTO to cancel all existing orders and restrict entry of additional orders for the requested Identifier(s) on a user level on the Exchange.'' With the addition of OTTO, the Exchange notes that both FIX and OTTO orders may be cancelled. Further, today, BX Participants utilize an interface to send a message to the Exchange to initiate a Kill Switch.[9] The Exchange notes that in lieu of the interface, BX Participants will only be able to initiate a cancellation of their orders by sending a mass purge request through FIX or OTTO. This change will align the Kill Switch functionality to that of ISE, GEMX and MRX Options 3, Section 17 and will enable BX Participants to initiate the Kill Switch more seamlessly without the need to utilize a separate interface. When initiating a cancellation of their orders by sending a mass purge request through FIX or OTTO, Participants will be able to submit a Kill Switch request on a user level only. This is a change from the ability to cancel orders on either a user or group level[10] with the interface. The Exchange proposes to amend Options 3, Section 17(a) to note this change by removing the words ''or group'' and the following sentence that applies to a group.[11]

Finally, the Exchange proposes to amend proposed Options 3, Section 17(a)(2) to align to MRX's rule text by providing ''Once a BX Participant initiates a Kill Switch pursuant to (a)(1) above. . .'' in the first sentence. This amendment simply rewords the rule text without a substantive amendment to the rule text.

Options 3, Section 18

The Exchange proposes to amend Options 3, Section 18, Detection of Loss of Communication. The Exchange proposes to add OTTO to Options 3, Section 18 as OTTO would also be subject to this rule. Today, when the SQF Port or the FIX Port detects the loss of communication with a Participant's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period, the Exchange will automatically logoff the Participant's affected Client Application and automatically cancel all of the Participant's open quotes through SQF and open orders through FIX. Quotes and orders are cancelled across all Client Applications that are associated with the same BX Options Market Maker ID and underlying issues.

At this time, the Exchange proposes to permit orders entered through OTTO to be cancelled similar to FIX orders when the Exchange's server does not receive a Heartbeat message for a certain time period. The Exchange is proposing to amend Options 3, Section 18 to also rearrange the rule text to add the word ''Definitions'' next to ''a'' and move the rule text in current ''a'' to ''b'' and re-letter the other paragraphs accordingly. Also, the Exchange proposes to define ''Session of Connectivity'' for purposes of this rule to mean each time the Participant connects to the Exchange's System. Further, each new connection, intra-day or otherwise, is a new Session of Connectivity. The Exchange proposes to use the new definition throughout Options 3, Section 18.

Similar to FIX, when the OTTO Port detects the loss of communication with a Participant's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period, the Exchange will automatically logoff the Participant's affected Client Application and automatically cancel all of the Participant's open orders through OTTO. Orders would be cancelled across all Client Applications that are associated with the same BX Options Market Maker ID and underlying issues. The Exchange proposes to update Options 3, Section 18 to provide in proposed Options 3, Section 18(a)(3) that the OTTO Port is the Exchange's

[8] *See* MRX Options 3, Section 17.

[9] *See* Securities Exchange Act Release No. 76116 (October 8, 2015), 80 FR 62147 (October 15, 2015) (SR–BX–2015–050) (Order Approving Proposed Rule Change To Adopt a Kill Switch).

[10] A permissible group could include all badges associated with a Market Maker. Today, a Participant is able to set up these groups in the interface to include all or some of the Identifiers associated with the Participant firm so that a GUI Kill Switch request could apply to this pre-defined group.

[11] The Exchange proposes to remove this sentence, ''Permissible groups must reside within a single broker-dealer'' as the group option would no longer exist.

proprietary System component through which Participants communicate their orders from the Client Application. Further, the Exchange would note in proposed Options 3, Section 18(c) that when the OTTO Port detects the loss of communication with a Participant's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period (''nn'' seconds), the Exchange will automatically logoff the Participant's affected Client Application and if the Participant has elected to have its orders cancelled pursuant to proposed Section 18(f), automatically cancel all orders. Proposed Options 3, Section 18(f) would provide that the default period of ''nn'' seconds for OTTO Ports would be fifteen (15) seconds for the disconnect and, if elected, the removal of orders. A Participant may determine another time period of ''nn'' seconds of no technical connectivity, as required in proposed paragraph (c), to trigger the disconnect and, if so elected, the removal of orders and communicate that time to the Exchange. The period of ''nn'' seconds may be modified to a number between one hundred (100) milliseconds and 99,999 milliseconds for OTTO Ports prior to each Session of Connectivity to the Exchange. This feature may be disabled for the removal of orders, however the Participant will be disconnected.

Proposed Options 3, Section 18(f)(1) would provide that if the Participant changes the default number of ''nn'' seconds, that new setting shall be in effect throughout the current Session of Connectivity and will then default back to fifteen seconds. The Participant may change the default setting prior to each Session of Connectivity. Finally, as proposed in Options 3, Section 18(f)(2), if the time period is communicated to the Exchange by calling Exchange operations, the number of ''nn'' seconds selected by the Participant will persist for each subsequent Session of Connectivity until the Participant either contacts Exchange operations by phone and changes the setting or the Participant selects another time period through the Client Application prior to the next Session of Connectivity. The trigger for OTTO Ports is event and Client Application specific. The automatic cancellation of the BX Options Market Maker's open orders for OTTO Ports entered into the respective OTTO Ports via a particular Client Application will neither impact nor determine the treatment of orders of the same or other Participants entered into the OTTO Ports via a separate and distinct Client Application. The proposed amendments for OTTO mirror the manner in which FIX Ports are treated when the Exchange's server does not receive a Heartbeat message for a certain time period for a FIX Port.[12]

Pricing

BX proposes to amend its Pricing Schedule at Options 7, Section 3, BX Options Market—Ports and other Services, to add pricing for the new OTTO protocol. Specifically, BX proposes to offer Participants the first OTTO Port at no cost. The one OTTO Port would permit BX Participants to submit orders into BX. Today, only one account number[13] is necessary to transact an options business on BX and account numbers are available to Participants at no cost. The Exchange proposes to note in the Pricing Schedule at Options 7, Section 3 that BX does not assess a fee for an account number to provide greater transparency to Participants.

The Exchange proposes to assess an OTTO Port Fee of $650 per port, per month, per account number for each subsequent port beyond the first port. This is the same fee assessed for OTTO Ports on MRX and GEMX.[14] Additional OTTO Ports beyond the first OTTO Port would be optional for Participants to utilize as the Exchange is offering the first OTTO order protocol, per Participant, at no cost and only one port is necessary to enter orders into BX.[15]

Implementation

The Exchange will implement this rule change on or before December 20, 2025. The Exchange will announce the operative date to Participants in an Options Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[16] in general, and furthers the objectives of section 6(b)(5) of the Act,[17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Additionally, the Exchange believes that its proposal furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[18] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

OTTO Protocol

The Exchange's proposal to adopt OTTO is consistent with the Act because OTTO would provide BX Participants with an alternative protocol to submit orders to the Exchange. As proposed, BX would offer the first OTTO Port at no cost to submit orders into BX, which would remove impediments to and perfect the mechanism of a free and open market. While BX Participants may elect to obtain multiple ports to organize their business,[19] only one order port is necessary for a Participant to enter orders on BX. A BX Participant may send all orders, proprietary and agency, through one port to BX without incurring any cost with this proposal. In the alternative, BX Participants may elect to obtain multiple ports to organize their business.[20]

With the addition of OTTO, a BX Participant may elect to enter their orders through FIX, OTTO, or both protocols, although both protocols are not necessary. Each BX Participant would receive one OTTO Port at no cost, thereby promoting just and equitable principles of trade. The Exchange notes that Participants may prefer one order protocol as compared to another order protocol, for example, the ability to route an order may cause a Participant to utilize FIX and a Participant that desires to execute an order locally may utilize OTTO. Also, the OTTO Port offers lower latency as compared to the FIX Port, which may be attractive to Participants depending on their trading behavior. With this proposal, BX Participant may organize

[12] The Exchange proposes to update internal cross-references to accommodate relocated text.

[13] An ''account number'' means a number assigned to a Participant. Participants may have more than one account number. *See* Options 1, Section 1(a)(2).

[14] *See* MRX Options 7, Section 6 and GEMX Options 7, Section 6, C. MRX and GEMX do not offer an OTTO Port at no cost. MRX offers the first FIX Port at no cost. The Exchange notes that OTTO Ports on GEMX and MRX are subject to a monthly cap. On GEMX and MRX, OTTO Ports, CTI Ports, FIX Ports, FIX Drop Ports and Disaster Recovery Ports are capped at $7,500 a month.

[15] The Exchange proposes to renumber the SQF Port Fee and SQF Purge Port Fee in Options 7, Section 3(i).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *See* 15 U.S.C. 78f(b)(4) and (5).

[19] For example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Participant.

[20] For example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Participant.

their business as they chose with the ability to send orders to BX at no cost. The proposed new OTTO protocol is identical to the OTTO protocol offered today on ISE, GEMX, MRX.

Other Amendments

In connection with offering OTTO, the Exchange proposes to amend other rules within Options 3 to make clear where the FIX and OTTO protocols may be utilized. IOC Orders may be entered through FIX, OTTO or SQF. A Day order may be entered through FIX or OTTO. A GTC order may only be entered through FIX. A Public Customer-to-Public Customer Cross Order may be entered through FIX or OTTO. Other processes such the Opening Cancel Timer would impact FIX and OTTO equally.

The Exchange's proposal to amend the Kill Switch at Options 3, Section 17 to align its rule text in proposed Options 3, Section 17(a) and (a)(2) with MRX's Options 3, Section 17 is consistent with the Act because it does not substantively amend the functionality beyond removing the group level cancel capability. The Exchange's proposal to amend proposed Options 3, Section 17(a)(2) to specify that FIX and OTTO orders may be cancelled is consistent with the Act as it will make clear that all orders entered on BX may be purged through the Kill Switch. Finally, allowing BX Participants to send a mass purge request through FIX or OTTO, in lieu of an interface, is consistent with Act and the protection of investors and the general public because it will enable BX Participants to initiate the Kill Switch more seamlessly without the need to utilize a separate interface. Further, utilizing the order protocols directly, in lieu of the interface, will align the Kill Switch functionality to that of ISE, GEMX and MRX. When initiating a cancellation of their orders by sending a mass purge request through FIX or OTTO, Participants will be able to submit a Kill Switch request on a user level only because the purge will be specific to a FIX or OTTO user for these ports.

Finally, the Detection of Loss of Communication would apply equally to FIX and OTTO. The Exchange believes that its proposal is consistent with the Act and protects investors as the Exchange is making clear what types of order types and other mechanisms may utilize OTTO. Today, BX Participants utilize FIX to enter their orders. Despite the fact that OTTO would not be available for the GTC Time-In-Force modifier, the Exchange notes that one OTTO Port is being provided to Participants at no cost. Today, FIX is the only manner in which to enter orders into BX.

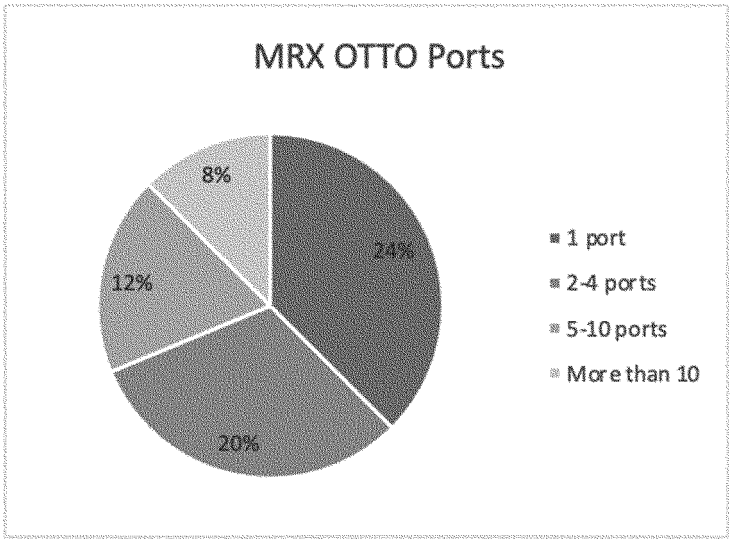
Pricing

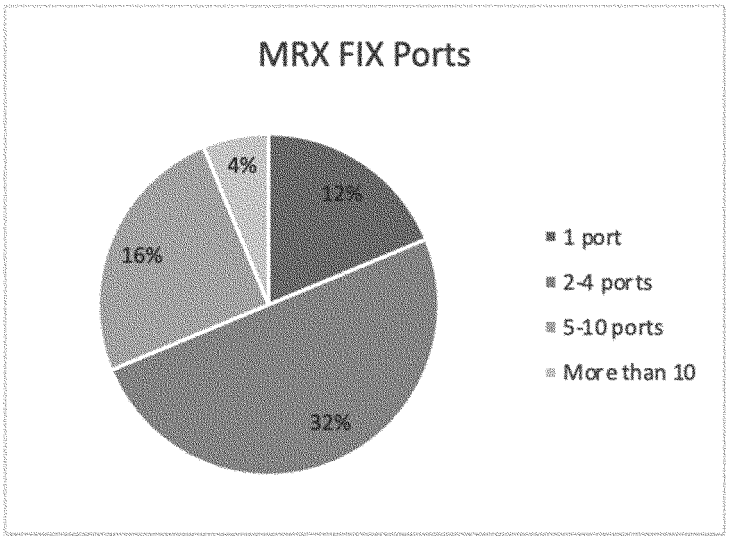
BX's proposal to amend its Pricing Schedule at Options 7, Section 3 will offer BX Participants the first OTTO Port at no cost to submit orders into BX. Only BX Participants may utilize ports on BX. A Participant can send all orders, proprietary and agency, through one port to BX. Only one order entry protocol is required for BX Participants to submit orders into BX to meet its regulatory requirements.[21] Additional ports beyond one port are not required for a BX Participant to meet its regulatory obligations. Participants may elect to obtain multiple account numbers to organize their business, however only one account number is necessary to transact options business on BX and account numbers are available to Participants at no cost.

The Exchange's proposal is reasonable, equitable and not unfairly discriminatory as BX is providing Participants the first OTTO Port to submit orders at no cost. One OTTO Port would allow a BX Participant to meet its regulatory requirements. Additional OTTO Ports, beyond the first port which is being offered at no cost, are not required for a BX Participant to meet its regulatory obligations. For the foregoing reasons, the Exchange believes that it is reasonable to assess no fee for the first OTTO Port obtained by a BX Participant as a BX Participant is able to meet its regulatory requirements with one OTTO Port. Additionally, the OTTO protocol is a proprietary protocol of Nasdaq, Inc. The Exchange continues to innovate and modernize technology so that it may continue to compete among options markets. The ability to continue to innovate with technology and offer new products to market participants allows BX to remain competitive in the options space which currently has seventeen options markets and potential new entrants.

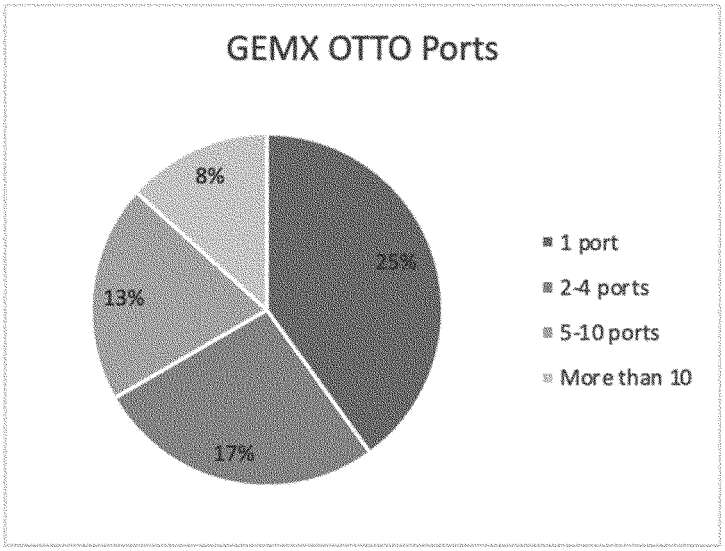
Today, a Member on ISE, GEMX, or MRX may utilize either a FIX or an OTTO Port to submit orders to the respective exchange. In analyzing the data provided below for ISE, GEMX and MRX, it is important to note that 30% of members on ISE subscribe to 1 OTTO Port and 24% of members subscribe to 1 FIX Port. ISE had a market share of 5.90% in 2023. Below are charts which display the number of members that subscribe to OTTO and FIX Ports on MRX.

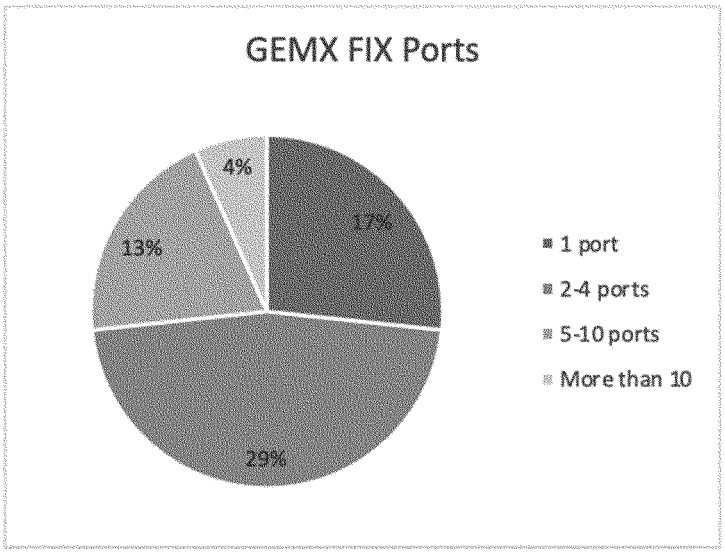
[21] BX Participants have trade-through requirements under Regulation NMS as well as broker-dealers' best execution obligations. *See* Rule 611 of Regulation NMS; 17 CFR 242.611 and FINRA Rule 5310.



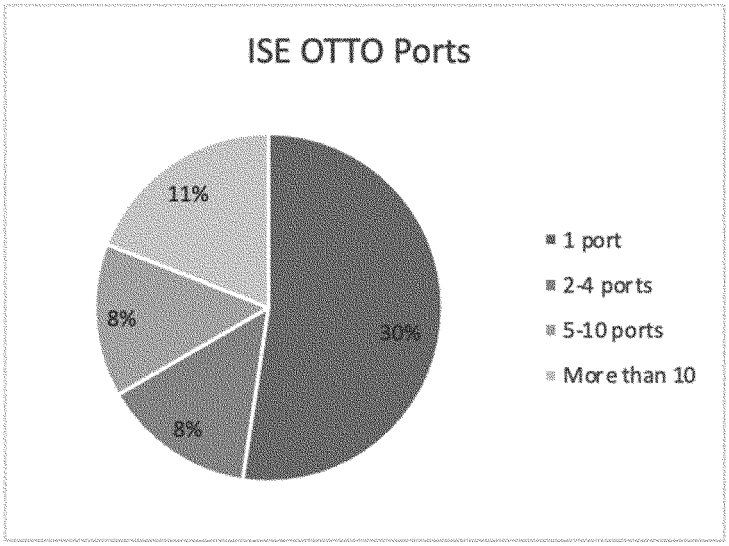


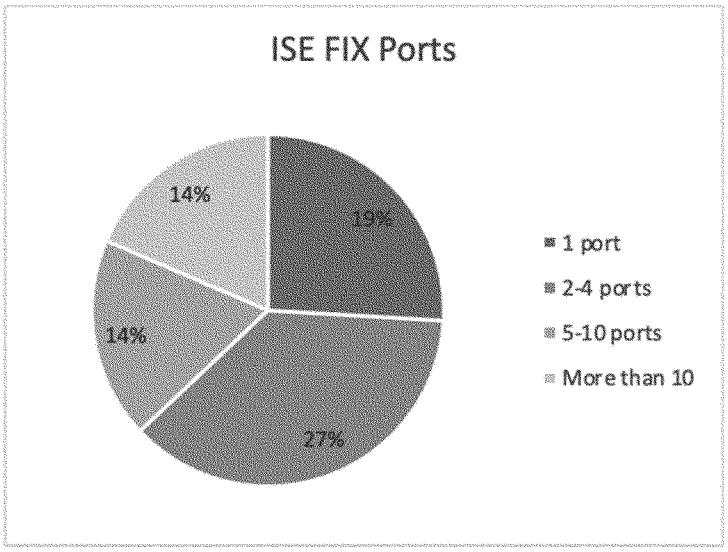
Below are charts which display the number of members that subscribe to OTTO and FIX Ports on GEMX.





Below are charts which display the number of members that subscribe to OTTO and FIX Ports on ISE.





Further it is equitable and not unfairly discriminatory to assess no fee for the first OTTO Port to a BX Participant as all BX Participants would be entitled to the first OTTO Port at no cost. With this proposal, BX Participants may organize their business in such a way as to submit orders to BX at no cost.

The Exchange's proposal to assess BX Participants $650 per port, per month, per account number for OTTO Ports beyond the first port is reasonable because these ports are not required for a member to meet its regulatory requirements. BX Participants only require one order entry port to submit orders to BX. The Exchange is offering Participants one free OTTO Port. Participants that subscribe to FIX could utilize their FIX Port to submit orders and would not need to utilize an OTTO Port. Participants electing to subscribe to more than one OTTO Port are choosing the additional ports to accommodate their business model. For example, a Participant may purchase one or more OTTO Ports for its market making business, and then purchase separate OTTO Ports for proprietary trading or customer facing businesses, allowing the firm to send multiple messages into the Exchange's System in parallel rather than sequentially. Some Participants that provide direct market access to their customers may also choose to purchase separate ports for different clients. While a smaller Participant may choose to subscribe to two OTTO Ports, a larger market participant with a substantial and diversified U.S. options business may opt to purchase multiple OTTO Ports to support both the volume and types of activity that they conduct on the Exchange. While the Exchange has no way of predicting with certainty the amount of OTTO Ports market participants will in fact purchase, the Exchange anticipates that some Participants will subscribe to multiple OTTO Ports. The Exchange believes that the proposed OTTO Port fees beyond the first port are reasonable because these ports are not required for a member to meet its regulatory requirements. Additionally, the proposed OTTO Port fee of $650 per port, per month, per account number is the same fee charged for OTTO Ports on MRX and GEMX.[22] Unlike BX, GEMX and MRX cap their OTTO Port.[23] The Exchange believes that it is reasonable to not cap OTTO Ports because unlike

[22] *See* MRX Options 7, Section 6 and GEMX Options 7, Section 6, C. MRX and GEMX do not offer an OTTO Port at no cost. MRX offers the first FIX Port at no cost.

[23] On GEMX and MRX, OTTO Ports, CTI Ports, FIX Ports, FIX Drop Ports and Disaster Recovery Ports are capped at $7,500 a month.

MRX and GEMX where the OTTO Ports have existed on those exchanges for a number of years, the OTTO Port is new to BX. The Exchange is offering Participants an alternative to the current FIX Port with this new proprietary port. Unlike BX's FIX Port, the Exchange is offering the first OTTO port at no cost. At this time, BX is not capping the port fee for OTTO, similar to other options exchanges.[24] If Participants elect to acquire a number of OTTO Ports, the Exchange may consider capping OTTO Ports at a later date.

The Exchange's proposal to assess BX Participants $650 per port, per month, per account number for OTTO Ports beyond the first port is equitable and not unfairly discriminatory because any BX Participant may elect to subscribe to additional OTTO Ports, however BX Participants only require one order entry port to submit orders to BX. The Exchange is offering Participants one free OTTO Port. Participants that subscribe to FIX could utilize their FIX Port to submit orders and would not need to utilize an OTTO Port. As noted herein, all BX Participants would be subject to the same fees for OTTO Ports. Also, as noted herein, account numbers are available on BX at no cost. The Exchange believes that it is equitable and not unfairly discriminatory to not cap OTTO Ports because the Exchange is offering the first OTTO Port at no cost and, currently, FIX Ports, CTI Ports, FIX DROP Ports, BX Depth Ports and BX TOP Ports are capped at $7,500 a month.

Unlike ISE, GEMX and MRX, BX only offers its Participants a FIX Port to submit orders to BX. As noted herein, the proposed OTTO Port Fee for additional ports is comparable to GEMX and MRX, which markets assess an OTTO Port Fee of $650 per port, per month, per account number.[25] GEMX and MRX do not offer the first OTTO Port at no cost, however MRX offers the first FIX Port at no cost.[26] Additionally, MRX and GEMX cap their OTTO Ports.[27] Cboe offers more than one order entry port. Cboe port fees [28] are within the range of the proposed fees. Cboe does not offer a free order entry port and tiers its BOE and FIX Logical ports so that each subsequent port fee is higher than BX's port fees. Additionally, Cboe limits usage on each port and assesses fees for incremental usage [29] thereby increasing the expense for ports if the usage is exceeded and potentially requiring market participants to acquire additional ports to avoid additional costs. BOX port fees [30] are within the range of the proposed fees. While BOX does not offer an order entry port at no cost, it tiers its FIX and SAIL port fees and each subsequent port fee is lower. MIAX port fees [31] are within the range of the proposed fees. MIAX Port users are allocated two (2) Full Service MEI Ports and two (2) Limited Service MEI Ports per matching engine to which they connect.[32] NYSE Arca port fees [33] are within the range of the proposed fees. For each order/quote entry port utilized, NYSE Arca Market Makers may utilize, free of charge, one port dedicated to quote cancellation or ''quote takedown,'' which port(s) will not be included in the count of order/quote entry ports utilized.[34]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The OTTO protocol is a proprietary protocol of Nasdaq, Inc. The Exchange continues to innovate and modernize technology so that it may continue to compete among options markets. The ability to continue to innovate with technology and offer new products to market participants allows BX to remain competitive in the options space which currently has seventeen options markets and potential new entrants. If BX were unable to offer and price new protocols, it would result in an undue burden on competition as BX would not have the ability to innovate and modernize its technology to compete effectively in the options space. BX's ability to offer OTTO will enable it to compete with other options markets that provide its market participants a choice as to the type of order entry protocols that may be utilized. BX's ability to offer and price new and innovative products and continue to modernize its technology, similar to other options markets, supports intermarket competition.

OTTO Protocol

The Exchange's proposal to adopt an OTTO Protocol does not impose an undue burden on intramarket competition. Today, all BX Participants utilize FIX to send orders to BX. The Exchange would offer each BX Participant the first OTTO Port at no cost with this proposal. With the addition of OTTO Ports, a BX Participant may elect to enter their orders through FIX, OTTO, or both protocols, although both protocols are not necessary. The Exchange's proposal to adopt an OTTO Protocol does not impose an undue burden on intermarket competition as other options exchanges offer multiple protocols today such as ISE, GEMX and MRX.

Other Amendments

The Exchange's proposal to amend other rules within Options 3 to make clear where the FIX and OTTO protocols may be utilized does not impose an undue burden on intramarket competition as these rules will apply in

[24] *See* note 27 below. Other options exchanges tier their ports but do not cap them. *See* notes 29, 30 and 32 below.

[25] *See* GEMX Options 7, Section 6.C and MRX Options 7, Section 6.

[26] *See* GEMX Options 7, Section 6.C and MRX Options 7, Section 6.

[27] On GEMX and MRX, OTTO Ports, CTI Ports, FIX Ports, FIX Drop Ports and Disaster Recovery Ports are capped at $7,500 a month.

[28] Cboe assesses a fee of $750 per port up to 5 BOE/FIX Logical Ports, and $800 per port for over 5 BOE/FIX Logical Ports. Cboe does not cap its ports. *See* Cboe's Fees Schedule.

[29] Each Cboe BOE or FIX Logical Port incur the logical port fee indicated when used to enter up to 70,000 orders per trading day per logical port as measured on average in a single month. For each incremental usage of up to 70,000 per day per logical port will incur an additional logical port fee of $800 per month. *See* Cboe's Fees Schedule.

[30] BOX assesses tiered FIX Port Fees as follows: $500 per port per month for the first FIX Port, $250 per port per month for FIX Ports 2–5 and $150 per port per month for over 5 FIX Ports. BOX assesses $1000 per month for all SAIL Ports for Market Making and $500 per month per port up to 5 ports for order entry and $150 per month for each additional port. *See* BOX's Fee Schedule.

[31] MIAX tiers its FIX Port fees as follows: $550 per month for the 1st FIX Port, $350 per month per port for the FIX Ports 2 through 5 and $150 per month for over 5 FIX Ports. MIAX tiers its MEI Port Fees and assesses fees per number of classes and as a percentage of National Average Daily Volume. MEI Port fees range from $5,000 to $20,500 per month. The applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurement. However, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by The Options Clearing Corporation in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable. MIAX will assess monthly MEI Port Fees on Market Makers in each month the Member has been credentialed to use the MEI Port in the production environment and has been assigned to quote in at least one class. *See* MIAX's Fee Schedule.

[32] MEI Port Fees include MEI Ports at the Primary, Secondary and Disaster Recovery data centers. MIAX Market Makers may request additional Limited Service MEI Ports for which MIAX will assess MIAX Market Makers $100 per month per additional Limited Service MEI Port for each engine. *See* MIAX's Fee Schedule.

[33] NYSE Arca assesses a tiered order/quote entry port fee of $450 for the first 40 ports and $150 per port per month for the 41 ports or greater. For purpose of calculating the number of order/quote entry ports and quote takedown ports, NYSE Arca aggregates the ports of affiliates. *See* NYSE Arca Options Fees and Charges.

[34] Any quote takedown port utilized by a NYSE Arca Market Maker that is in excess of the number of order/quote entry ports utilized will be counted and charged as an order/quote entry port. *See* NYSE Arca Options Fees and Charges.

the same manner to all Participants. The Exchange's proposal to amend other rules within Options 3 to make clear where the FIX and OTTO protocols may be utilized does not impose an undue burden on intermarket competition as other options exchanges may elect to utilize their order entry protocols in different ways.

Pricing

Nothing in the proposal burdens intermarket competition because BX's proposal to offer the first OTTO Port for free permits BX to set fees, similar to other options markets, while continuing to allow BX Participants to meet their regulatory obligations. BX's proposal would permit BX Participants the ability to submit orders to BX at no cost through OTTO. Additional OTTO Ports are not required for BX Participants to meet their regulatory obligations. The proposed port fees are similar to port fees assessed by other options markets as noted in this proposal. Further, the Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. The Exchange notes that while the manner in which an order is sent to the Exchange may have an impact on latency, the difference from a latency standpoint would be in nanoseconds, and it would depend on the manner in which the order is being sent to the Exchange. A market participant sending 30 sequential orders through an OTTO Port may experience a slight latency of certain nanoseconds (less than a few nanoseconds) to permit serialized processing in the port and the match engine per order in certain cases. This is compared to a BX participant who submits 30 orders through multiple OTTO Ports at the same time. This distinction exists today on other options exchanges that offer market participants the ability to submit order flow in bulk,[35] which results in a larger number of orders being sent to the exchange's match engine in a quicker timeframe as compared to market participants that utilize a port that does not support bulk orders. Also, as noted herein, OTTO Orders do not route and therefore have a lower latency as compared to orders sent via a FIX Port. The Exchange notes that other factors may also contribute to the time it takes for an order to be executed. For example, on an exchange that offers complex orders, such orders with a stock component, may take additional time to execute as compared to a market order. In short, while latency may play a very small factor in the quantity of ports that are being utilized to send an order to the Exchange, all market participants may elect how their order is sent to an exchange. The Exchange notes that there is no correlation between the number of orders executed on the Exchange by a Participant and the number of ports subscribed to by a Participant. There are Participants that subscribe to a larger number of ports that have lower executed volumes on BX than those with half of the number of ports. Also, not all ports subscribed to by a Participant are active. Further, all Participants are entitled to obtain additional OTTO Ports or a mix of OTTO and FIX Ports. The Exchange is providing each Participant the first OTTO Port at no cost. To the extent Participants elect to utilize different technologies and connections to the Exchange, including different numbers and combinations of ports, the Exchange believes that the combinations may result in varying latencies as is the case on all other options exchanges today. Finally, the Exchange's proposal to not cap OTTO Ports does not create an undue burden on competition because the Exchange is offering the first OTTO Port at no cost and, currently, FIX Ports, CTI Ports, FIX DROP Ports, BX Depth Ports and BX TOP Ports are capped at $7,500 a month.

Nothing in the proposal burdens intra-market competition because the Exchange would uniformly assess the OTTO Port fees to all BX Participants, as applicable. Further, other exchanges have increased or added port fees in recent years. As recently as 2020, Cboe amended its port fees.[36] Specifically, Cboe adopted certain logical ports to allow for the delivery and/or receipt of trading messages—*i.e.,* orders, accepts, cancels, transactions, etc. Cboe established tiered pricing for BOE and FIX logical ports, tiered pricing for BOE Bulk ports, and flat prices for DROP, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports. Cboe argued in its fee proposal that the proposed pricing more closely aligned its access fees to those of its affiliated exchanges, and reasonably so, as the affiliated exchanges offer substantially similar connectivity and functionality and are on the same platform that Cboe migrated to as part of its migration. Cboe also justified its pricing by stating that, ''. . . the Exchange believes substitutable products and services are in fact available to market participants, including, among other things, other options exchanges a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity and/or trading of any options product, including proprietary products, in the Over-the-Counter (OTC) markets.''[37] Cboe stated in its proposal that,

> The rule structure for options exchanges are also fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (such as Fidelity, Schwab, and eTrade) were members of the options exchanges—they are not members of the Exchange or its affiliates, they do not purchase connectivity to the Exchange, and they do not purchase market data from the Exchange. Accordingly, not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the recent significant reduction in the number of broker-dealers that are members of all options exchanges.[38]

The proposal also referenced the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''),[39] wherein the Commission discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models. The Commission

[35] Cboe offers BOE Bulk Logical Ports. *See* Cboe's Fee Schedule. *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105). Cboe amended access and connectivity fees, including port fees. Specifically, Cboe adopted certain logical ports to allow for the delivery and/or receipt of trading messages—*i.e.,* orders, accepts, cancels, transactions, etc. Cboe established tiered pricing for BOE/FIX Logical Ports, with the lowest tier starting at $750 per port, per month for 1 to 5 ports, and for BOE Bulk Logical Ports with separate tiered pricing starting at $1,5000 per port, per month for 1 to 5 ports. Cboe also established flat prices for DROP, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports.

[36] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105).

[37] *Id.* at 71676.

[38] *Id.* at 71677.

[39] *See* Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19).

acknowledged that, even if an exchange were to exit the marketplace due to its proposed fee-related change, it would not significantly impact competition in the market for exchange trading services because these markets are served by multiple competitors.[40] Further, the Commission explicitly stated that ''[c]onsequently, demand for these services in the event of the exit of a competitor is likely to be swiftly met by existing competitors.''[41] Finally, the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[42] Cboe concluded that the Exchange is subject to significant substitution-based competitive forces in pricing its connectivity and access fees.[43] Cboe stressed that the proof of competitive constraints does not depend on showing that members walked away, or threatened to walk away, from a product due to a pricing change. Rather, the very absence of such negative feedback (in and of itself, and particularly when coupled with positive feedback) is indicative that the proposed fees are, in fact, reasonable and consistent with the Exchange being subject to competitive forces in setting fees.[44]

MRX recently filed to establish port fees.[45] In SR–MRX–2023–05, MRX proposed to assess no fee for the first FIX Port obtained by an MRX Member and established fees for additional FIX Ports of $650 per port, per month for each subsequent port beyond the first port. MRX noted in SR–MRX–2023–05 that:

> Only MRX Members may utilize ports on MRX. Any market participant that sends orders to a Member would not need to utilize a port. The Member can send all orders, proprietary and agency, through one port to MRX. Members may elect to obtain multiple account numbers to organize their business, however only one account number and one port for orders and one port for quotes is necessary for a Member to trade on MRX. All other ports offered by MRX are not required for an MRX Member to meet its regulatory obligations.

MRX also established fees for OTTO Ports, which ports are identical to the ports being offered on BX, and priced them the same as the proposed OTTO fees for BX. MRX assesses an OTTO Port Fee of $650 per port, per month, per account number but does not offer the first OTTO Port at no cost because it was offering one FIX Port at no cost for order entry. Unlike BX, MRX caps its OTTO Port.[46] Unlike MRX, where the OTTO Port has existed on MRX for a number of years, the OTTO Port is new to BX. The Exchange is offering Participants an alternative to the current FIX Port with this new proprietary port. Unlike BX's FIX Port, the Exchange is offering the first OTTO port at no cost. At this time, BX is not capping the port fee for OTTO, similar to other options exchanges.[47] If Participants elect to acquire a number of OTTO Ports, the Exchange may consider capping OTTO Ports at a later date.

If the Commission were to apply a different standard of review to this proposal than it applied to other exchange fee filings, such as the Cboe or MRX fee filings,[48] it would create a burden on competition such that it would impair BX's ability to innovate new products, modernize its technology, and compete with other options markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[49] and subparagraph (f)(6) of Rule 19b–4 thereunder.[50]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–BX–2024–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–BX–2024–011. 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

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.* at 71679.

[44] *Id.* at 71680.

[45] *See* Securities Exchange Act No. 96824(February 7, 2023), 88 FR 8975 (February 10, 2023) (SR–MRX–2023–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Options 7, Section 6).

[46] On GEMX and MRX, OTTO Ports, CTI Ports, FIX Ports, FIX Drop Ports and Disaster Recovery Ports are capped at $7,500 a month.

[47] *See* note 27 below. Other options exchanges tier their ports but do not cap them. *See* notes 29, 30 and 32 below.

[48] *See* notes 30 and 39 above.

[49] 15 U.S.C. 78s(b)(3)(A)(iii).

[50] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BX–2024–011 and should be submitted on or before April 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06573 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99846; File No. SR–NASDAQ–2023–022]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, To Create a New, Non-Trading Limited Underwriter Membership Class and Impose Related Requirements for Principal Underwriting Activity

March 22, 2024.

I. Introduction

On July 12, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to create a new, non-trading limited underwriter membership class and impose related requirements for principal underwriting activity in connection with a company applying for initial listing on the exchange with a transaction involving an underwriter. The proposed rule change was published for comment in the **Federal Register** on July 31, 2023.[3]

On September 12, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 29, 2023, the Commission instituted proceedings under section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] On September 29, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.[8] On January 22, 2024, the Exchange filed Amendment No. 2 to the proposed rule change which amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety.[9] On January 26, 2024, the Commission extended the time period for approving or disapproving the proposal to March 27, 2024.[10] The proposed rule change, as modified by Amendment No. 2, was published for comment in the **Federal Register** on February 23, 2024.[11] On March 18, 2024, the Exchange filed Amendment No. 3 to the proposed rule change.[12] The Commission has received no comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 2 and 3

The Exchange is proposing to amend its rules to create a new limited membership class for underwriters that are FINRA members seeking only to serve as a principal underwriter for a company applying to list on the Exchange (and not seeking access to transact on the Exchange) and require a company applying for initial listing in connection with a transaction involving an underwriter to have a principal underwriter that is a Member [13] or a broker or dealer admitted to limited underwriting membership in the Exchange (''Limited Underwriting Member'').[14] The Exchange states that

[51] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97985 (July 25, 2023), 88 FR 49508 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 98366, 88 FR 63999 (Sept. 18, 2023). The Commission designated October 29, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 98606, 88 FR 68894 (Oct. 4, 2023).

[8] Amendment No. 1 is available at *https://www.sec.goc/comments/sr-nasdaq-2023-022/srnasdaq2023022-267740-644342.pdf* (''Amendment No. 1''). In Amendment No. 1, the Exchange, among other things: (i) removed a proposed exemption from registration for certain investment banking representatives associated solely with Limited Underwriting Members; (ii) removed proposed rule language from proposed General 3, Section 1032(a), which provided that any person shall be eligible to become associated persons of a Limited Underwriting Member; (iii) removed General 4 from the list of rules applicable to Limited Underwriting Members in proposed General 3, Section 1031(c)(1); and (iv) revised proposed General 3, Section 1031(c)(2) to clarify that associated persons of Limited Underwriting Members shall at all times be properly qualified and registered under the Financial Industry Regulatory Authority (''FINRA'') rules. Further, the Exchange provided additional reasons it is not proposing to apply certain existing rules to Limited Underwriting Members.

[9] Amendment No. 2 is available at *https://www.sec.goc/comments/sr-nasdaq-2023-022/srnasdaq2023022-414859-982462.pdf.* In Amendment No. 2, the Exchange, among other things: (i) updated the numbering in Listing Rule 5210 to account for recently added rule language and a related reference to Listing Rule 5210 in proposed General 3, Section 1031(b); (ii) excluded General 3, Section 1032 from the rules the Exchange proposes to apply to Limited Underwriting Members (*see infra* note 14 and accompanying text) under proposed General 3, Section 1031(c)(1); (iii) added General 9, Section 21 to the rules the Exchange proposes to apply to Limited Underwriting Members under proposed General 3, Section 1031(c)(1); (iv) updated Equity 7, Section 10 to reflect a recent change in the membership fee; and (v) added a statutory basis for the imposition of fees. Amendment No. 2 superseded Amendment No. 1, so the changes made in Amendment No. 1, unless otherwise amended, are incorporated into Amendment No. 2. *See supra* note 8.

[10] *See* Securities Exchange Act Release No. 99433, 89 FR 6559 (Feb. 1, 2024).

[11] *See* Securities Exchange Act Release No. 99557 (Feb. 16, 2024), 89 FR 13779 (''Amendment No. 2'').

[12] Amendment No. 3 is available at *https://www.sec.gov/comments/sr-nasdaq-2023-022/srnasdaq2023022-447779-1145462.pdf* (''Amendment No. 3''). In Amendment No. 3, the Exchange modified the proposal by: (i) adding back proposed rule language from the original proposal to General 3, Section 1031(a)(2) about eligibility to become an associated person and modifying the title of General 3, Section 1031(a) to reflect that change; (ii) adding back language from the original proposal to include General 4 (Registration Requirements), which includes registration, qualification, and continuing education requirements, to the list of rules applicable to Limited Underwriting Members in General 3, Section 1031(c)(1); and (iii) excluding General 5, Rule 9400 from the list of rules applicable to Limited Underwriting Members in General 3, Section 1031(c)(1) for the reasons described below. Amendment No. 3 also updated the purpose section to reflect the changes described above, made other clarifying changes, and added a statutory basis explanation for consistency with section 6(b)(2) of the Act.

[13] The Exchange defines the term ''member'' or ''Nasdaq Member'' (hereinafter referred to as ''Member'') to mean any registered broker or dealer that has been admitted to membership in the Exchange. *See* Nasdaq General 1, Section 1(b)(11). *See also* Nasdaq Listing Rule 5005(a)(24) (defining ''Member'' to mean a broker or dealer admitted to membership in Nasdaq).

[14] *See infra* note 23. The Exchange states that ''principal underwriter'' will have the same definition used in Rule 405 promulgated under the Securities Act of 1933 (''Securities Act''), which is an underwriter in privity of contract with the issuer of the securities as to which he is underwriter, and that such definition provides that the term ''issuer'' in the definition of ''principal underwriter'' has the meaning given in Sections 2(4) and 2(11) of the Securities Act. 17 CFR 230.405. The Exchange

Continued

underwriters play a critical role as gatekeepers to the capital markets in connection with the trading of newly issued securities and that it relies on underwriters to select the selling syndicate and ensure that the shares are placed in a way that is reasonably designed to allow liquid trading, consistent with Nasdaq's listing requirements, and the successful introduction of the company to the market place.[15] According to the Exchange, notwithstanding the important role of underwriters, it does not currently require underwriters of companies that are going public on the Exchange to be Members of the Exchange, and as such, does not have authority to require responses to investigative inquiries or to enforce its rules directly against non-Member underwriters.[16] The Exchange states that this proposal would provide the Exchange with authority to directly obtain information from Limited Underwriting Members,[17] whether pre- or post-initial public offering.[18] The Exchange states that by creating a new, limited underwriting membership class, it will provide firms seeking only to perform principal underwriting activity on the Exchange (and not seeking access to trade via the Nasdaq Market Center) [19] with the option of selecting a membership that is less burdensome (*i.e.,* to become a Limited Underwriting Member rather than a Member).[20]

The Exchange proposes to amend several of its rules in conjunction with the adoption of the new limited underwriting membership class. First, the Exchange proposes to amend its Listing Rule 5210 (Prerequisites for Applying to List on the Nasdaq Stock Market) to impose a requirement that each company applying for initial listing in connection with a transaction involving an underwriter have a principal underwriter that is a Member or Limited Underwriting Member.[21] In proposed Listing Rule 5210(m), the Exchange will also specify that ''principal underwriter'' shall have the same definition used in Rule 405 promulgated under the Securities Act.[22] Second, the Exchange proposes to add a definition of ''Limited Underwriting Member'' to General 1 (General Provisions), Section 1 to mean a broker or dealer admitted to limited underwriting membership in Nasdaq.[23] Third, as discussed in more detail below, the Exchange also proposes to add a new, limited underwriting membership rule, proposed Section 1031 to General 3 (Membership and Access), within which, the Exchange proposes to set forth the rules that will be applicable to Limited Underwriting Members and their associated persons, the requirements for persons eligible to become Limited Underwriting Members, and rules on Limited Underwriting Member access to the Exchange.[24] Finally, the Exchange proposes to amend Equity 7, Section 10 to exempt Limited Underwriting Members from being assessed a trading rights fee.[25] The Exchange states that Limited Underwriting Members would not be eligible to trade on the Exchange, and accordingly, the Exchange proposes to add language to Equity 7, Section 10(a) to specify that Limited Underwriting Members would not be charged the monthly trading rights fee.[26] Under the proposal, Limited Underwriting Members would be subject to a $2,000 application fee (per Equity 7, Section 10(b)) and a $4,000 yearly membership fee (per Equity 7, Section 10(a)).[27]

Specifically, as to proposed General 3, Section 1031 requirements on eligibility for membership, the Exchange proposes to state in General 3, Section 1031(a)(1) that any registered broker or dealer shall be eligible for limited underwriting membership in the Exchange, except such registered brokers or dealers as are excluded under General 3, Rule 1002(b) and in General 3, Section 1031(a)(2) that any person shall be eligible to become an associated persons of a Limited Underwriting Member, except such persons as are excluded under General 3, Rule 1002(b).[28] The Exchange states that proposed General 3, Section 1031(a) is consistent with the existing rules for persons eligible to become Members and associated persons of Members in General 3, Rule 1002(a).[29] Further, under the proposal to be eligible for membership, Limited Underwriting

states it proposes to apply the proposed requirements to a principal underwriter because the definition of principal underwriter points to the lead underwriter, who is generally responsible for organizing the offering, including tasks such as determining allocation of shares and the offering price, in conjunction with the issuer. Although offerings may require more than one underwriter, or a group of underwriters known as an underwriting syndicate, the Exchange proposes to focus on the lead underwriters given the substantial role they typically play in the offering process. *See* Amendment No. 2, *supra* note 11, at 13780 n.11.

[15] *See* Amendment No. 2, *supra* note 11, at 13780. The Exchange states that it highlighted the important role of underwriters as gatekeepers in the initial public offering (''IPO'') process and the applicability of market rules and the federal securities laws in its recent Equity Regulatory Alert (''Nasdaq Alert''), available at *https://www.nasdaqtrader.com/MicroNews.aspx?id=ERA2022-9.* In the Nasdaq Alert, among other things, the Exchange highlighted that ''Nasdaq members, as well as members of other self-regulatory organizations, that underwrite IPOs, and that play other roles in the offering process, should expect heightened focus when an IPO experiences unusual price movements.'' *See also https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-interpretations/2022/NYSER_Reg_Memo_-_Regulatory_Scrutiny_in_Connection_with_IPOs_(2022.11.17_final).pdf; https://www.finra.org/rules-guidance/notices/22-25* (similar regulatory alerts issued by the New York Stock Exchange and FINRA, respectively).

[16] *See* Amendment No. 2, *supra* note 11, at 13781. The Exchange states, however, that it has broad discretionary authority over the initial and continued listing of securities in the Exchange and over its Members in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. According to the Exchange, it may request information from companies that are going public on the Exchange and from Members who are permitted to trade on the Exchange, who are required to respond to those requests. The Exchange also states it may request information from non-Members, including non-Member underwriters, but they are not required to respond to these requests. *See id.* at 13781 n.17.

[17] *See infra* note 23 and accompanying text.

[18] *See* Amendment No. 2, *supra* note 11, at 13781 n.17. The Exchange explains in its proposal that in the fall of 2022 it observed, immediately following the pricing of certain IPOs on the Exchange, instances of unusually high price spikes immediately followed by dramatic price declines to at or below the offering price. This occurred mostly with respect to small cap companies with offerings of less than $25 million. According to the Exchange, these extreme spikes may occur ''in the opening trade on an exchange or in continuous trading on the day of, or days immediately following the listing.'' *Id.* at 13780.

[19] The Exchange defines ''Nasdaq Market Center'' to mean the automated system for order execution and trade reporting owned and operated by Nasdaq. *See* Nasdaq Equity 1, Section 1(a)(3).

[20] The Exchange submitted a revised Membership Application as Exhibit 3, in which the Exchange proposes to add a category for Limited Underwriting Members and clarify that Limited Underwriting Members are not subject to the requirement to provide an NSCC account number.

[21] *See* Amendment No. 2, *supra* note 11, at 13781. The Exchange states that this rule would cross reference the definition of ''Limited Underwriting Member'' in General 1, Section 1. The Exchange further states that this proposed rule change primarily impacts membership rules and other non-listing rules, which would apply to the underwriters themselves. *See id.*

[22] *See id.*

[23] *See id.* at 13781–82.

[24] *See id.*

[25] *See id.* at 13782–83. Specifically, the Exchange proposes to exempt Limited Underwriting Members from the trading rights fee of $1,250 per month that is charged to Members. *See id.*

[26] *See id.*

[27] *See id.* These are the application and yearly membership fees that currently apply to Members.

[28] *See id.;* Amendment No. 3, *supra* note 12, at 3–4 and 7–8. According to the Exchange, General 3, Rule 1002(b) provides, in relevant part, that subject to certain exceptions, no registered broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if such broker, dealer, or Member fails or ceases to satisfy the qualification requirements established by the Exchange rules, or if such broker, dealer, or Member is or becomes subject to a statutory disqualification, or if such broker, dealer, or Member fails to file such forms as may be required in accordance with such process as the Exchange may prescribe. *See id.* at 13781 n.20; Amendment No. 3, *supra* note 12, at 3–4 and 7–8.

[29] *See* Amendment No. 3, *supra* note 12, at 8.

Members shall at all times be members of FINRA and associated persons of Limited Underwriting Members shall at all times be properly qualified and registered under FINRA rules.[30]

Proposed General 3, Section 1031(b) will also provide that (i) a limited underwriting membership provides no rights to transact on the Exchange and (ii) a limited underwriting membership is solely to allow a firm that is not otherwise a Member to serve as a principal underwriter for a company seeking to list on the Exchange, as set forth in proposed Listing Rule 5210(m).[31] Proposed General 3, Section 1031(c)(1) also states that, for purposes of interpreting and applying the rules applicable to Limited Underwriting Members (as described below), references to ''Member,'' ''Members,'' or ''membership'' shall be functionally equivalent to ''Limited Underwriting Member,'' ''Limited Underwriting Members,'' or ''limited underwriting membership,'' respectively.[32]

The Exchange proposes to apply a limited ruleset to its newly proposed limited underwriting membership class.[33] Specifically, the Exchange proposes to provide in new General 3, Section 1031(c)(1) that Limited Underwriting Members and their associated persons are subject only to the following rules:[34] General 1 (General Provisions); General 2 (Organization and Administration), with the exception of Sections 6(a) and 22; General 3 (Membership and Access), with the exception of Section 1032; General 4 (Registration Requirements); General 5 (Discipline), with the exception of Rules 8211, 9400, and 9557; General 9 (Regulation), Sections 1, 20, and 21; and Equity 7, Section 10 (Pricing Schedule, Membership Fees).[35] The Exchange states that it proposes to apply only those rules it deems appropriate to a firm serving as a principal underwriter, including those rules it deems critical to such firms.[36] The Exchange further states that a firm registering as a Limited Underwriting Member on the Exchange would remain subject to all applicable rules of the Commission and any other self-regulatory organization (''SRO'') of which it is a member, including the FINRA.[37]

In its proposal, the Exchange set forth its reasons for including the specified rules in General 3, Section 1031(c)(1) that apply to Limited Underwriting Members. As to its proposal to apply General 1 to Limited Underwriting Members and their associated persons,[38] the Exchange states that General 1 provides defined terms that would be applicable to Limited Underwriting Members and will also add a definition of ''Limited Underwriting Member'' to General 1.[39] The Exchange also proposes to apply General 2 (with the exception of Sections 6(a) and 22) to Limited Underwriting Members and their associated persons.[40] The Exchange states that the rules in General 2 relate to organization and administration including requirements surrounding fees, limitations on affiliations, and a requirement for an executive representative, among other obligations.[41] The Exchange proposes to specifically exclude General 2, Sections 6(a) and Section 22, as General 2, Section 6(a) states that General Equity and Options Rules and Equity Rules shall apply to all members and persons associated with a member, which, according to the Exchange, is not accurate in the case of Limited Underwriting Members, and General 2, Section 22 relates to sponsored participants[42] and client access to the Nasdaq Market Center via a Member, which, according to the Exchange, is not applicable to underwriting activity.[43]

The Exchange also proposes to subject Limited Underwriting Members and their associated persons to General 3 with the exception of Section 1032.[44] The Exchange states that General 3 contains membership rules, including an obligation to follow specified procedures for applying to be a member, making changes to membership, or terminating membership.[45] In addition, the Exchange states that General 4 specifies registration, qualification, and continuing education requirements, including requirements for persons engaged in the securities business of a Member, and proposed to apply General 4 to Limited Underwriting Members and their associated persons.[46] The Exchange states these requirements apply in the same manner as such registration, qualification, and continuing education requirements that apply to current Members.[47] Limited Underwriting Members and their associated persons would also be subject to FINRA's registration and qualification rules, including, for example, requirements regarding relevant examinations for underwriting (Series 79, Investment Banking, IB) and supervision of underwriting (Series 79 plus Series 24, Investment Banking Principal).[48]

Limited Underwriting Members and their associated persons would also have to comply with General 5 (with the exception of Rules 8211, 9400, and 9557), which, according to the Exchange, is critical to subject Limited Underwriting Members to, as it contains the Exchange's disciplinary rules.[49] In particular, the Exchange notes General 5, Rule 8210 that provides the Exchange with authority to require information

[30] *See* Amendment No. 2, *supra* note 11, at 13782. According to the Exchange, Limited Underwriting Members would be eligible to waive-in to Exchange membership, as provided for in General 3, Section 1013(b). Prospective Limited Underwriting Members would need to submit a membership application in which they would select ''Waive-In Membership'' for the application type and ''Limited Underwriting Member of NQX'' for the nature of intended activity. For ''waive-in'' applicants, the Exchange states it relies substantially upon FINRA's determination to approve the applicant for FINRA membership when the Exchange evaluates the applicant for Exchange membership. *See id.* at 13782 n.23.

[31] *See id.* Proposed Listing Rule 5210(m) applies to companies seeking to initially list on the Exchange in connection with a transaction involving an underwriter. *See also supra* notes 21–22 and accompanying text.

[32] *See* Amendment No. 2, *supra* note 11, at 13782.

[33] *See id.* at 13781. The Exchange states that Members, unlike Limited Underwriting Members, are subject to all of the Exchange's rules (which includes the limited ruleset applicable to the newly proposed limited underwriting membership class). *See id.* at 13781 n.21.

[34] There are multiple sections and rules under the various ''General Rules'' numerical provisions. References to ''rules'' herein generally include all the sections and rules within the applicable General numerical provisions that would apply to Limited Underwriter Members with the exceptions noted.

[35] *See id.* at 13781; Amendment No. 3, *supra* note 12, at 4–5.

[36] *See* Amendment No. 2, *supra* note 11, at 13781.

[37] *See id.*

[38] *See id.* at 13782.

[39] *See id.*

[40] *See id.*

[41] *See id.*

[42] *See* Nasdaq General 2, Section 22.

[43] *See* Amendment No. 2, *supra* note 11, at 13782.

[44] The proposed rule change would also add new Section 1031 to General 3, as described above, that is applicable to limited underwriting memberships. *See supra* note 24 and accompanying text. The Exchange states that it proposes to specifically exclude General 3, Section 1032 because such section includes requirements related to Nasdaq Market Center Participant registration, which, according to the Exchange, is inapplicable to Limited Underwriting Members because they are not permitted to transact on the Nasdaq Market Center. *See* Amendment No. 2, *supra* note 11, at 13782.

[45] *See* Amendment No. 2, *supra* note 11, at 13781.

[46] *See* Amendment No. 3, *supra* note 12, at 4–5 and 9–10.

[47] *See id.* at 10.

[48] *See* Amendment No. 2, *supra* note 11, at 13783. *See also* FINRA Rules 1210 (Registration Requirements) and 1220 (Registration Categories).

[49] *See* Amendment No. 2, *supra* note 11, at 13783. According to the Exchange, General 5, Rule 8001 provides that the Exchange and FINRA are parties to the FINRA Regulatory Contract (often referred to as a Regulatory Services Agreement (''RSA'')) pursuant to which FINRA has agreed to perform certain functions described in the Exchange's rules on behalf of the Exchange. The Exchange does not anticipate that the proposed rule change would have any material impact on the current RSA. *See id.* at 13782 n.22.

from its Members.[50] The Exchange is proposing to specifically exclude General 5, Rules 8211, 9400, and 9557, which the Exchange represents are not relevant to underwriting activity because these rules relate, respectively, to trading data, expedited client suspension proceedings for violations of General 9, Section 53 (concerning disruptive quoting and trading), and FINRA carrying or clearing members.[51] The Exchange also states that the excluded rules from General 5 are inapplicable to Limited Underwriting Members because such members are not permitted to transact on the Exchange.[52]

Further, the Exchange proposes to subject Limited Underwriting Members and their associated persons to General 9, Sections 1, 20, and 21.[53] The Exchange states that it believes it is important to subject Limited Underwriting Members to General 9, Section 1, which includes general standards by which Members must abide, including the requirement to observe just and equitable principles of trade.[54] The Exchange further states that General 9, Sections 20 and 21 require Members to establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules, to identify principals who must establish, maintain, and enforce a system of supervisory control policies and procedures that, among other things, test that the member's supervisory procedures are reasonably designed with respect to the activities of the member and its associated persons, and to achieve compliance with applicable securities laws and regulations, and with applicable Nasdaq rules.[55] The Exchange states its belief that it is important to apply these provisions on supervision, as it would provide the Exchange with authority to assess whether a Limited Underwriting Member has an adequate supervisory system and written supervisory procedures in place.[56] The Exchange states that it does not propose to apply other sections of General 9, except for Sections 1, 20, and 21, to Limited Underwriting Members at this time.[57] The Exchange states that although it acknowledges certain other sections of General 9 could be applied to underwriters, it is targeting limited inclusion of rules that it deems critical.[58] Finally, the Exchange proposes to include Equity 7, Section 10 in General 3, Section 1031(c)(1).[59] The Exchange states that Equity 7, Section 10 includes the membership and application fees applicable to Limited Underwriting Members.[60]

The Exchange states that it proposes to avoid applying all those Exchange rules not specified in proposed General 3, Section 1031(c)(1) to Limited Underwriting Members in an effort to impose minimal burden on Limited Underwriting Members, while still allowing the Exchange to have regulatory authority over such Members.[61] The Exchange states that the Exchange rules that Limited Underwriting Members would not be subject to under the proposal primarily relate to trading activity and are, therefore, not relevant to the activities of Limited Underwriting Members.[62] The Exchange states that it proposes to apply a limited ruleset, primarily to provide the Exchange with the authority to require information directly from the Limited Underwriting Members and enhance its tools for oversight with respect to the role the underwriter plays in connection with a company listing on the Exchange.[63]

The Exchange, in addition to the excluded rules described above, has not proposed to apply the following rules to Limited Underwriting Members at this time: General 6; General 7; General 8; Equity Rules (with the exception of Equity 7, Section 10); and Options Rules.[64] Specifically, the Exchange states that General 6 relates generally to FINRA arbitration rules to which the Limited Underwriting Members would be subject to directly by virtue of their FINRA membership and that the Exchange does not propose to apply General 7 to Limited Underwriting Members because it governs consolidated audit trail compliance and would not apply to underwriting activity.[65] The Exchange also states that General 8 governs connectivity to the Exchange and would not be relevant to Limited Underwriting Members given their lack of access to trade on the Exchange, and similarly, the Equities Rules and the Options Rules are generally not relevant to the activities of Limited Underwriting Members due to their lack of access to trade on the Exchange.[66]

Finally, the Exchange is proposing to make the proposed rule change described herein operative 60 days after publication of the Commission's approval order of SR–NASDAQ–2023–022 in the **Federal Register**, as this delay will allow time for firms involved with upcoming IPOs to become Limited Underwriting Members, if they choose, and for companies planning IPOs to select alternative underwriters if their current firm is not, and does not intend to become, a Member or Limited Underwriting Member.[67]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[68] Specifically, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with section 6 of the Act. In particular, the Commission finds that the proposal, as modified by Amendment Nos. 2 and 3, is consistent with section 6(b)(5)[69] of the Act, which requires, among other

[50] *See id.* at 13782. Nasdaq General 5, Rule 8210 states information must be provided by a member or persons associated with a member or subject to Nasdaq's jurisdiction ''[f]or the purpose of an investigation, complaint, examination or proceeding authorized by the Nasdaq By-Laws or Rules, Nasdaq Regulation Department, including FINRA staff.'' Nasdaq General 5, Rule 8210(a).

[51] *See id.* at 13782; Amendment No. 3, *supra* note 12, at 10–11.

[52] *See* Amendment No. 3, *supra* note 12, at 11.

[53] *See* Amendment No. 2, *supra* note 11, at 13782.

[54] *See id.*

[55] *See id.*

[56] *See id.*

[57] *See id.*

[58] *See id.* The Exchange further states that many of the standards in General 9 are FINRA rules that are incorporated by reference into the Exchange's rules; therefore, Limited Underwriting Members would be subject to such FINRA rules by virtue of their FINRA membership. *See id. See, e.g.,* Nasdaq General 9, Section 30 (incorporating by reference FINRA Rule 4511).

[59] *See* Amendment No. 2, *supra* note 11, at 13782.

[60] *See id.* The Exchange acknowledges that there are additional, existing rules that it could propose to apply to Limited Underwriting Members but it is proposing to apply only a narrow ruleset, as it does not intend to create comprehensive rules to regulate underwriting activity. *See id.* at 13781–82.

[61] *See id.* at 13782.

[62] *See id.*

[63] *See id.* at 13781. The Exchange represents that it will consider whether additional existing rules that are not proposed in the limited ruleset for Limited Underwriting Members or new rules are warranted as the Exchange gains more experience in applying the rules proposed. *See id.* at 13781–82.

[64] *See id.* at 13783.

[65] *See id.*

[66] *See id.* The Exchange states that although Limited Underwriting Members could access the Exchange via other means, such as trading through another Member, Limited Underwriting Members would have no direct access to trade on the Exchange. *See id.*

[67] *See id.*

[68] In approving this proposed rule change, as modified by Amendment Nos. 2 and 3, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[69] 15 U.S.C. 78f(b)(5).

things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, 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 are not designed to permit unfair discrimination between customers, issuers and brokers, or dealers.[70] Further, the Commission finds that the proposed rule change, as amended, is consistent with (i) section 6(b)(1) of the Act,[71] which requires, among other things, that a national securities exchange be able to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the exchange, (ii) section 6(b)(2) of the Act[72] which requires that exchange rules provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange and any person may become associated with a member thereof, and (iii) sections 6(b)(6)[73] and 6(b)(7)[74] of the Act, which require, among other things, that a national securities exchange provide appropriate discipline for violations of the Act, rules and regulations thereunder and exchange rules and fair procedures for the disciplining of members and persons associated with its members and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.[75]

The proposal, as modified by Amendment Nos. 2 and 3, amends the rules of the Exchange to provide for a new limited underwriting membership class and would require companies applying to initially list on the Exchange in connection with a transaction involving an underwriter to use a principal underwriter that is either a Member or Limited Underwriting Member of the Exchange.[76] The Exchange has proposed to add Section 1031 to General 3 (Membership and Access) that sets forth the requirements applicable to Limited Underwriting Members including certain limitations on Limited Underwriting Members.[77] In particular, a limited underwriting membership provides no rights to trade on the Exchange and such limited underwriting membership is solely for the purpose of allowing a firm that is not otherwise a Member to serve as a principal underwriter for a company seeking to initially list on the Exchange.[78] A Limited Underwriting Member is defined to mean a broker or dealer admitted to limiting underwriting membership in the Exchange.[79] As described above, similar to the existing eligibility requirements for Members and their associated persons, General 3, Section 1031(a) provides that any registered broker or dealer is eligible for a limited underwriting membership and any person shall be eligible to become an associated person of a Limited Underwriting Member, except for those registered broker or dealers or persons that are excluded under General 3, Rule 1002(b).[80] These provisions on eligibility are consistent with the Act, including section 6(b)(2) of the Act, which requires the rules of an exchange to provide that any registered broker or dealer or natural person associated with a broker or dealer may become a member of such exchange or associated with a member thereof subject to the provisions of section 6(c) of the Act.[81]

In its proposal, as modified by Amendment Nos. 2 and 3, the Exchange seeks to apply certain of its rules as set forth in General 1 through General 9 to Limited Underwriting Members while excluding the application of others.[82] The Exchange seeks to apply only specific rules to Limited Underwriter Members that fall under areas related to general provision definitions and standards, organization and administration, membership and access, registration requirements, discipline, regulation, and membership fees.[83] As stated by the Exchange, it proposes to apply only those rules it believes are appropriate to a firm serving as a principal underwriter, and will, among other things, provide the Exchange with authority to require information from such underwriters thereby aiding in its oversight of its market and helping to ensure fair and orderly markets.[84] The Exchange has also stated that firms registering as a Limited Underwriting Members would still be subject to all applicable rules of the Commission and any other SRO of which it is a member, including FINRA.[85]

Specifically, among others, the Exchange has proposed to apply General 1 to Limited Underwriting Members because it contains defined terms and standards that currently apply to Members that are equally applicable to Limited Underwriting Members as well.[86] The Exchange also proposes to subject Limited Underwriting Members to General 2 (with the exception of sections 6(a) and 22) because it relates to organization and administration including, among others, limitations on affiliations[87] and requirements to have an exchange representative.[88] The Exchange is applying General 3 (with the exception of Section 1032 that applies to members who trade on Nasdaq's Market Center) because

[70] *See id.* In addition, the Commission finds that the proposed rule change as to the applicable fees is consistent with section 6(b)(4) of the Act that requires the Exchange's rules to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. 15 U.S.C. 78f(b)(4).

[71] 15 U.S.C. 78f(b)(1).

[72] 15 U.S.C. 78f(b)(2).

[73] 15 U.S.C. 78f(b)(6).

[74] 15 U.S.C. 78f(b)(7).

[75] The Commission previously found that the provisions on Nasdaq Member voting for the Exchange Board of Directors ''including that twenty percent of the directors be 'Member Representative Directors' and the means by which they are elected by members provides for the fair representation of members in the selection of directors and the administration of the Exchange consistent with the requirement of section 6(b)(3) of the Act.'' *See* Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550, 3553 (Jan. 23, 2006) (Commission order approving Nasdaq for registration as a national securities exchange) (''Nasdaq Exchange Registration Order''). The By-Laws of Nasdaq apply to Limited Underwriting Members as they do to current Members. *See, e.g.,* Nasdaq By-Laws Article 1(t) (defining ''Nasdaq Member'' as ''any registered broker or dealer that has been admitted to membership in the national security exchange operated by the Company''). Limited Underwriting Members would therefore also have the right to nominate, and vote for, candidates for election as Member Representative Directors under the By-Laws, as do current Members. *See id.* Article II (Annual Election of Member Representative Directors and Other Actions by Nasdaq Members). Given that the existing By-Law provisions apply equally to Limited Underwriting Members, the proposal is similarly consistent with section 6(b)(3) of the Act.

[76] *See supra* notes 13 and 14 and accompanying text.

[77] *See supra* note 24.

[78] *See supra* note 31.

[79] *See supra* note 23.

[80] *See supra* note 28.

[81] 15 U.S.C. 78f(b)(2) and 15 U.S.C. 78f(c).

[82] *See* proposed Nasdaq General 3, Section 1031(c)(1).

[83] *See supra* notes 33–35.

[84] *See supra* note 63.

[85] *See supra* note 37. Proposed General 3, Section 1031(c)(2) would require a Limited Underwriting Member to, at all times, be a member of FINRA. *See supra* note 30.

[86] *See supra* notes 38–39 and accompanying text.

[87] General 2, Section 4 states that no member or person associated with a member shall be the beneficial owner of greater than twenty percent (20%) of the then-outstanding voting securities of the Nasdaq Stock Market, Inc. The Commission previously has stated that ownership and voting restrictions are consistent with the Act and that these ownership limitations should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act. *See* Nasdaq Exchange Registration Order, *supra* note 75, at 3551–52. For the same reasons, the Commission believes it is appropriate to apply General 2, Section 4 to the limited underwriting membership class.

[88] *See supra* notes 40–41 and accompanying text.

General 3 contains membership rules, including an obligation to follow specified procedures for applying to be a member, making changes to membership, or terminating membership.[89]

General 4, which includes registration, qualification, and continuing education requirements for Members and persons engaged in the securities business of a Member, would also apply to Limited Underwriting Members and their associated persons.[90] General 4 would apply in the same manner as it applies to current Members and their associated persons.[91] Under the proposal, Limited Underwriting Members must at all times be members of FINRA and their associated persons shall at all times be properly qualified and registered under FINRA rules.[92] Associated persons of Limited Underwriting Members would therefore also be subject to FINRA's registration and qualification requirements that includes examination requirements for persons involved in underwriting and supervision of underwriting as well as FINRA continuing education requirements.[93]

The Exchange has additionally proposed to subject Limited Underwriting Members to General 5 which contains the Exchange's disciplinary rules,[94] with the exception of Rules 8211 (submission of trading data), 9400 (expedited client suspension proceedings for violations of General 9, Section 53 concerning disruptive quoting and trading activity), and 9557 (procedures for regulating activities on FINRA carrying and clearing members).[95] General 5, Rule 8210 provides, among other things, the Exchange with authority to require information from Exchange Members, persons associated with Exchange Members, and persons subject to the Exchange's jurisdiction for ''the purpose of an investigation, complaint, examination or proceeding authorized by the Nasdaq By-Laws or Rules, Nasdaq Regulation Department including FINRA staff.'' [96] General 5, Rule 9000 Series also provides, among other things, the process and procedural requirements for review of disciplinary matters including the opportunity for a hearing.

The disciplinary rules that will be applicable to Limited Underwriting Members and their associated persons (with the exception of Rules 8211, 9400, and 9557 that are not relevant to the new membership type as described above) [97] are the same as those that apply to existing Members of the Exchange and associated persons of such Members. The Commission previously found that the Exchange's disciplinary rules are consistent with the requirements of sections 6(b)(6) and 6(b)(7) of the Act in that they provide a fair procedure for the disciplining of members and persons associated with members.[98] For similar reasons, the Commission believes that, consistent with the requirements of sections 6(b)(6) and 6(b)(7),[99] the Exchange's disciplinary rules and procedures should provide a fair procedure for the disciplining of Limited Underwriting Members and persons associated with such members, and for prohibiting or limiting access with respect to services offered by the Exchange. The Commission also believes for similar reasons as previously found, consistent with the requirements of section 6(b)(1) of the Act,[100] that the proposed rules should provide the Exchange with the ability to enforce compliance as to Limited Underwriting Members and their associated persons with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.[101]

The Exchange has also proposed to subject Limited Underwriting Members to General 9, Sections 1, 20, and 21. General 9, Section 1 includes general standards by which Members must abide, such as requiring Members to observe high standards of commercial honor and just and equitable principles of trade. General 9, Section 20 requires Members to establish and maintain a system to supervise the activities of each registered representative and associated person. General 9, Section 21 requires, among other things, for Members to test that their supervisory procedures are reasonably designed to achieve compliance with applicable securities laws and regulations and applicable Exchange rules and requires an annual certification as to those procedures and processes.[102] As the Exchange states, applying provisions related to supervision would provide the Exchange with authority to assess whether a Limited Underwriting Member has an adequate supervisory system and written supervisory procedures in place as to its activities.[103] Further, applying standards of just and equitable principles of trade to Limited Underwriting Members is consistent with the requirements in section 6(b)(5) of the Act which states rules of the exchange must be designed to promote such principles.[104]

The Exchange has also proposed to exclude certain rules in addition to the ones discussed above.[105] As the Exchange described in its proposal and above, many of the excluded rules are not relevant to underwriting activities of Limited Underwriting Members because these rules apply to those Members that have trading rights on the Exchange in Nasdaq's Market Center [106] and Limited Underwriting Members would have no rights to directly transact on the Exchange.[107] As to the exclusion of General 6, as the Exchanges states, these rules generally relate to FINRA arbitration rules and Limited Underwriting Member activities would be subject to such arbitration rules by virtue of being FINRA members.[108]

The Exchange states it is proposing a limited ruleset to apply the rules it believes are most critical, including providing the Exchange authority to require information directly from

[89] *See supra* notes 44–45.

[90] *See supra* note 46.

[91] *See* Amendment No. 3, *supra* note 12, at 10.

[92] *See* proposed General 3, Section 1031(c).

[93] *See supra* note 48 and accompanying text.

[94] *See supra* notes 49–52.

[95] *See supra* note 51.

[96] *See supra* note 50. In its filing, the Exchange states that while it may request information from non-Members, including non-Member underwriters, they are not required to respond to these requests unlike companies going public on the Exchange and Members. *See supra* note 16 and accompanying text.

[97] *See supra* notes 49–52 and accompanying text.

[98] *See* Nasdaq Exchange Registration Order, *supra* note 75, at 3558. Any changes to the disciplinary rules since the original approval would have had to be submitted to the Commission under section 19(b) of the Act and be consistent with the Act, in particular with Section 6.

[99] *See* 15 U.S.C. 78(b)(6) and (7).

[100] *See* 15 U.S.C. 78(b)(1).

[101] *See* Nasdaq Exchange Registration Order, *supra* note 75, at 3558.

[102] *See supra* note 55. The Exchange's General 9, Sections 20 and 21 incorporate by reference several FINRA rules on these matters. Although the Exchange acknowledges that certain other sections of General 9 could apply to underwriters, the Exchange states it has excluded the other rules in General 9 because it is targeting limited inclusion of the rules it deems critical. The Exchange further noted that many of the standards in General 9 are FINRA rules that are incorporated by reference into the Exchanges rules and therefore Limited Underwriting Members would be subject to such FINRA rules as a result of their FINRA membership. *See supra* note 58.

[103] *See supra* note 56.

[104] 15 U.S.C. 78f(b)(5).

[105] *See supra* note 66 and accompanying text.

[106] *See* Nasdaq General 7 and General 8 (governing consolidated audit trail and connectivity requirements, respectively); Equity Rules and Options Rules (with the exception of Equity 7, Section 10). *See also supra* notes 64–66 and accompanying text.

[107] *See supra* note 62. *See also* Amendment No. 2, *supra* note 11, at 13784. Limited Underwriting Members could access the Exchange via other means, such as trading through another Member but have no direct access to trade on the Exchange. *See supra* note 66.

[108] *See supra* note 65.

Limited Underwriting Members, to enhance its oversight and deter potential violative conduct.[109] The Commission believes that the application of only specific Exchange rules to Limited Underwriting Members and the exclusion of certain other rules, as proposed by the Exchange, are reasonable and strikes the appropriate balance between regulating Limited Underwriting Members and not imposing a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[110] The limited ruleset is consistent with the purpose of a limited underwriting membership that does not confer any access to trading on the Exchange and only permits such member to act as a principal underwriter for a company applying to initially list on the Exchange.[111]

Further, as described above, in conjunction with the new limited underwriting membership class, proposed Listing Rule 5210(m) will require a company to use, as a prerequisite for applying for initial listing on the Exchange with an underwriter, a principal underwriter that is either a Member or Limited Underwriting Member. The Commission has previously stated that listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[112] As the Exchange states, it relies on underwriters to ensure shares are placed in a way that is reasonably designed to allow liquid trading,[113] and the proposal will allow it to require responses from underwriters that currently are not Members of the Exchange in response to investigative inquires.[114] The requirement in Listing Rule 5210(m) can help to support the Exchange in determining a company's suitability for listing in order to, among other things, prevent fraudulent and manipulative acts and practices and maintain fair and orderly markets.

As described above, the proposal should provide greater transparency and certainty with respect to the ability of, and the manner in which, the Exchange is able to obtain information necessary to meet its regulatory obligations and ensure fair and orderly markets in connection with the listing of securities of a company applying for initial listing on the Exchange with a transaction involving an underwriter. Based on the above, the Commission finds that the proposed rule change is reasonably designed, consistent with section 6(b)(5) of the Act, among others, to prevent fraudulent and manipulative and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest.[115]

Finally, as is described above, the Exchange has proposed to apply Equity 7, Section 10 to Limited Underwriting Members, as this section includes the membership and application fees applicable to Limited Underwriting Members.[116] The Exchange has proposed to exempt Limited Underwriting Members from the trading rights fee of $1,250 per month that is normally charged to Members because such Limited Underwriting Members have no direct trading rights on the Exchange.[117] Limited Underwriting Members would be subject to same $2,000 application fee (per Equity 7, Section 10(b)) and $4,000 yearly membership fee (per Equity 7, Section 10(a)) as other Members are currently charged.[118] The Commission believes that the proposed fees applicable to Limited Underwriting Members, in addition to the exclusion of the member trading fee, is consistent with Section 6(b)(4) in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.[119]

For the forgoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with the Act.

IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2023–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2023–022. 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,

[109] *See supra* note 63. *See also* Amendment No. 2, *supra* note 11, at 13783. The Exchange represented that as it adopts new rules over time, it also would consider whether to apply such rules to Limited Underwriting Members. *See supra* note 63.

[110] 15 U.S.C. 78f(b)(8).

[111] *See* proposed General 3, Section 1031(b). The Exchange has represented that it would consider whether additional existing rules that are not proposed in the limited ruleset for Limited Underwriting Members or new rules are warranted as the Exchange gains more experience in applying the rules proposed. The Exchange acknowledged that there are other existing rules that it could propose to apply to the new class of limited underwriting membership, but stated it is only proposing a narrow rule set to enhance its oversight with respect to the role the underwriter plays in connection with a company listing on the Exchange. *See supra* note 63.

[112] *See, e.g.,* Securities Exchange Act Release Nos. 95220 (July 7, 2022), 87 FR 41780, 41785 (July 13, 2022) (SR–NASDAQ–2022–027) (order approving direct listing with a capital raise); 86314 (July 5, 2019), 84 FR 33102, 33110 (July 11, 2019) (SR–NASDAQ–2019–009) (order approving revisions to initial listing standard calculations related to liquidity).

[113] *See supra* note 15. *See also* Securities Exchange Act Release No. 86314 (July 5, 2019) 84 FR 33102, 33111 (July 11, 2019) (stating that the proposal ''should allow the Exchange to more accurately determine whether a security has adequate distribution and liquidity and is thus suitable for listing and trading on the Exchange'').

[114] *See supra* notes 16–18.

[115] 15 U.S.C. 78f(b)(5).

[116] *See supra* note 25.

[117] *See supra* notes 25–26.

[118] *See supra* note 27.

[119] 15 U.S.C. 78f(b)(4). The Exchange has also proposed to delay implementation of its proposal until sixty days after publication of the Commission's approval order of the filing discussed herein. *See supra* note 67. This appears to be reasonable to allow underwriters representing companies that have applied, or about to apply, to list to become a Limited Underwriting Member or Member if not already a Member or in the alternative allow a company to select an alternative underwriter if such underwriter firm chooses not to become a Limited Underwriting Member or Member.

Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2023–022 and should be submitted on or before April 18, 2024.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment Nos. 2 and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 2 and 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment Nos. 2 and 3 in the **Federal Register**. In Amendment No. 2, the Exchange amended the proposal to, among other things, (i) exclude Section 1032 of General 3, a new provision, from the rules the Exchange proposes to apply to Limited Underwriting Members under General 3, Section 1031(c); (ii) add General 9, Section 21 to the rules the Exchange proposes to apply to Limited Underwriting Members under General 3, Section 1031(c); (iii) update existing rule language in Equity 7, Section 10 to reflect changes in current text; (iv) remove a proposed exemption from registration for certain banking representatives associated with Limited Underwriting Members; and (v) add language to General 3, Section 1031(c)(2) to clarify that associated persons of Limited Underwriting Members shall at all times be properly qualified and registered under FINRA rules.[120] Amendment No. 2 also made some numbering updates, provided additional rationale for the inclusion and exclusion of certain rules, and provided additional language in the statutory basis.[121] Amendment No. 2 was published for comment in the **Federal Register** and no comments were received.[122]

In its Amendment No. 3, the Exchange added back proposed rule language to General 3, Section 1032(a)(2) that was in the original proposal about the eligibility of any person to become an associated person of a Limited Underwriting Member, except such persons as are excluded under General 3, Rule 1002(b).[123] In Amendment No. 3, the Exchange also provided additional language on the consistency of General 3, Section 1032(a)(1) and (a)(2) with the requirements of section 6(b)(2) of the Act.[124] In Amendment No. 3, the Exchange also amended the proposal to add General 4 (Registration Requirements) back into the list of rules that a Limited Underwriting Member and their associated persons must comply with, as originally proposed.[125] The proposed rule language changes to the proposal, as described above, are identical to provisions that were in the original proposal and published for comment.[126] No comments were received in response to that Notice. Amendment No. 3 also excluded General 5, Rule 9400 from the list of rules that Limited Underwriting Members must comply with because that rule relates to expedited procedures for certain trading activity and Limited Underwriting Members have no trading rights on the Exchange.[127] Amendment No. 3 also provided updates and other clarifying changes to, and justification for, the proposed rule change in addition to adding the provisions described above.[128]

The Commission believes Amendment Nos. 2 and 3 will help to strengthen the Exchange proposal and support its consistency with the Act. Amendment Nos. 2 and 3 assist the Commission in evaluating the Exchange's proposal and in determining that it is consistent with the Act. Amendment Nos. 2 and 3 also have raised no new or novel issues. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[129] to approve the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[130] that the proposed rule change (SR–NASDAQ–2023–022), as modified by Amendment Nos. 2 and 3, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[131]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06579 Filed 3–27–24; 8:45 am]

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[120] *See supra* note 9.

[121] *See id.* Amendment No. 2 also removed proposed rule language from proposed General 3, Section 1032(a), which provided that any person shall be eligible to become an associated persons of a Limited Underwriting Member, and removed General 4 from the list of rules applicable to Limited Underwriting Members in proposed General 3, General 1031(c)(1). As discussed below, these provisions were put back into the proposal in Amendment No. 3. Additionally, some of the changes described in Amendment No. 2 were originally proposed in Amendment No. 1 but included in Amendment No. 2 since Amendment No. 2 superseded Amendment No. 1. *See supra* notes 8 and 11.

[122] *See supra* note 11. The Commission notes that the full 21-day comment period has already ended.

[123] *See supra* note 28.

[124] *See* Amendment No. 3, *supra* note 12, at 12–13.

[125] *See supra* notes 35 and 46.

[126] *See* Notice, *supra* note 3. As noted above, these provisions were removed from the proposal in Amendment No. 2. *See* Amendment No. 2, *supra* note 11.

[127] *See supra* note 51.

[128] *See* Amendment No. 3, *supra* note 12.

[129] 15 U.S.C. 78s(b)(2).

[130] *Id.*

[131] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99848; File No. SR–NYSE–2024–17]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

March 22, 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 March 15, 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to update the list of included data products. 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.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to update the list of included data products (''Included Data Products'').

Currently, the table of Included Data Products in Colocation Note 4 sets forth the market data feeds that Users [4] can connect to at no additional cost when they purchase a service that includes access to the LCN or IP network.[5]

Each of the Exchange and the Affiliate SROs has filed to establish an ''Aggregated Lite'' market data feed (the ''Aggregated Lite Feeds'').[6] Accordingly, the Exchange proposes to update the table of Included Data Products to include the Aggregated Lite Feeds. To implement the change, the Exchange proposes to update the table of Included Data Products of the NYSE, NYSE American and NYSE Arca as follows (proposed additions underlined):

NYSE:
NYSE Aggregated Lite
NYSE Alerts
NYSE BBO
NYSE Integrated Feed
NYSE OpenBook
NYSE Order Imbalances
NYSE Trades
NYSE American:
NYSE American Aggregated Lite
NYSE American Alerts
NYSE American BBO
NYSE American Integrated Feed
NYSE American OpenBook
NYSE American Order Imbalances
NYSE American Trades
NYSE American Options
NYSE Arca:
NYSE Arca Aggregated Lite
NYSE ArcaBook
NYSE Arca BBO
NYSE Arca Integrated Feed
NYSE Arca Order Imbalances
NYSE Arca Trades

When NYSE Chicago and NYSE National were added to the Included Data Products, the individual market data feeds offered were not broken out.[7] Accordingly, in addition to adding the Aggregated Lite Feeds, the Exchange proposes to break out the NYSE Chicago and NYSE National market data feeds in Included Data Products, as follows (proposed additions underlined):

[4] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAMER–2024–20, SR–NYSEARCA–2024–28, SR–NYSECHX–2024–13, and SR–NYSENAT–2024–11.

[5] *See* Securities Exchange Act Release No. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR–NYSE–2016–92) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange's Price List Related to Colocation Services To Increase LCN and IP Network Fees and Add a Description of Access To Trading and Execution Services and Connectivity to Included Data Products).

[6] *See* Securities Exchange Act Release No. 99689 (March 7, 2024), 89 FR 18468 (March 13, 2024) (SR–NYSE–2024–12).

[7] *See* Securities Exchange Act Releases No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–12) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of NYSE Chicago, Inc.), and 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Co-Location Services and Fees In Connection With the Re-Launch of Trading on the Exchange and To Amend Its Schedule of Fees and Rebates To Provide for Such Co-Location Services).

NYSE Chicago NYSE Chicago Aggregated Lite NYSE Chicago BBO NYSE Chicago Integrated Feed NYSE Chicago Trades
NYSE National NYSE National Aggregated Lite NYSE National BBO NYSE National Integrated Feed NYSE National Trades

The Exchange expects that the present filing will become operative immediately upon the filings to establish a fee for the Aggregated Lite Feed becoming operative. The Exchange expects such operative date or dates to be no later than the second quarter of 2024. It will announce the date or dates through a customer notice.

The Exchange does not charge for connectivity to the Included Data Feeds. Accordingly, it would not charge for connectivity to the Aggregated Lite Feeds.

General

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the purchase of any colocation service, including connectivity to the Aggregated Lite Feeds, would be completely voluntary and the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers 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,[8] in general, and furthers the objectives of section 6(b)(5) of the Act,[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with section 6(b)(4) of the Act,[10] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and 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 rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the Exchange believes that the proposed change is reasonable because the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. As now, a User would be able to determine which Included Data Products, if any, to which it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

The Exchange believes that the proposed rule change is reasonable because, as with the other Included Data Products, it believes it is not the exclusive method to connect to the Aggregated Lite Feeds. As alternatives to connecting to the Aggregated Lite Feeds as Included Data Products, a User may connect to the market data feeds through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, as it would ensure that the description of Included Data Products was complete, ensuring that it is accessible and transparent, and providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks.

The Proposed Change Is Equitable and Not Unfairly Discriminatory

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the Exchange

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(4).

believes that the proposed change is equitable and not unfairly discriminatory because the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory since, as is true now, the proposed change would not apply differently to distinct types or sizes of Users but would apply to all Users equally. Moreover, adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. As now, a User would be able to determine which Included Data Products, if any, to which it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory, as it would ensure that the description of Included Data Products was complete, ensuring that it is accessible and transparent, and providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of section 6(b)(8) of the Act.[11]

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. In this way, the proposed changes would enhance competition by, as now, enabling a User to determine to which Included Data Products, if any, it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as with the other Included Data Products, it believes it is not the exclusive method to connect to the Aggregated Lite Feeds. As alternatives to connecting to the Aggregated Lite Feeds as Included Data Products, a User may connect to the market data feeds through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed additions to the description of Included Data Products would make the description more accessible and transparent. In this manner, the proposed change would provide market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks, thereby enhancing competition by ensuring that all Users have access to the same information regarding the Included Data Products.

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[12] and Rule 19b–4(f)(6) thereunder.[13] 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.[14]

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)[15] 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–2024–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange 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.

[15] 15 U.S.C. 78s(b)(2)(B).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–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–NYSE–2024–17 and should be submitted on or before April 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06581 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99839; File No. SR–CBOE–2024–014]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Its Fees Schedule in Connection With the Exchange's Plans To List and Trade Options That Overlie a Reduced Value of the MSCI World Index, the Full Value of the MSCI ACWI Index, and a Reduced Value of the MSCI USA Index

March 22, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2024, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to update its Fees Schedule in connection with the Exchange's plans to list and trade options that overlie a reduced value of the MSCI World Index, the full value of the MSCI ACWI Index, and a reduced value of the MSCI USA Index. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule in connection with its plans to list and trade options that overlie a reduced value of the MSCI World Index (''MXWLD options''), the full value of the MSCI ACWI Index (''MXACW options''), and a reduced value of the MSCI USA Index (''MXUSA options''), effective March 18, 2024.

Background

Each of the MSCI World, ACWI, and USA Indexes is a free float-adjusted market capitalization index designed to measure equity market performance throughout the world (MSCI World and ACWI Indexes) or the United States (MSCI USA Index). The MSCI World, ACWI, and USA Indexes are calculated by MSCI Inc. (''MSCI''), which is a provider of investment support tools.[3] Each of these indexes is calculated in U.S. dollars on a real-time basis from the open of the first market on which the components are traded to the closing of the last market on which the components are traded. The methodology used to calculate each index is similar to the methodology used to calculate the value of other benchmark market-capitalization weighted indexes (including the MSCI MXEA and MXEF Indexes, on which the Exchange may currently list options).[4]

MXACW options are options that are based on the value of the MSCI ACWI Index. The MSCI ACWI Index is a free float-adjusted market capitalization index that is designed to measure the equity performance of developed markets and emerging markets. The MSCI ACWI Index consists of component stocks from 23 developed markets[5] and 24 emerging markets.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 4.12(c).

[4] *See* Rule 4.10(h); *see also* Securities Exchange Act Release No. 74681 (April 8, 2015), 80 FR 20032 (April 14, 2015) (SR–CBOE–2015–023) (order approving proposed rule change to adopt rules to permit listing and trading of options on the MSCI EAFE Index (''MXEA options'') and the MSCI EM Index) (''MXEF options'').

[5] These developed markets include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Hong Kong, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

[6] These emerging markets include Brazil, Chile, China, Colombia, Czech Republic, Egypt, Greece,

The MSCI ACWI Index consists of large- and mid-cap components across these markets, has 2,946 constituents, and covers approximately 85% of the global investable equity opportunity set.[7]

MSWLD options are options that are based on 1/100th of the value of the MSCI World Index. The MSCI World Index is a free float-adjusted market capitalization index that is designed to measure the equity market performance of developed markets. The MSCI World Index consists of component stocks from 23 developed markets.[8] The MSCI World Index consists of large- and mid-cap components across these markets, has 1,509 constituents, and covers approximately 85% of the free float-adjusted market capitalization in each country.[9]

MXUSA options are options that are based on 1/100th of the value of the MSCI USA Index. The MSCI USA Index is a free float-adjusted market capitalization index that is designed to measure the performance of the large- and mid-cap segments of the U.S. market. The MSCI USA Index consists of large- and mid-cap components from the United States, has 625 constituents, and covers approximately 85% of the free float-adjusted market capitalization in the United States.[10]

With a smaller index value, MXWLD and MXUSA options may be more accessible to a broad base of customers with diverse investment objectives, ranging from asset owners aiming to track benchmark index exposure, registered investment advisers in search of new sources of yield, or individual investors seeking straightforward exposure to options linked to global benchmark indices. The Exchange believes that MXWLD and MXUSA options, with a smaller index value, will attract a greater source of customer business and may enhance investors' opportunities to hedge, or speculate on, the market risk associated with the stocks comprising the MSCI World Index and MSCI USA Index, respectively. Additionally, the Exchange believes investors will benefit from the availability of MXWLD and MXUSA options, as investors will be able to use this trading vehicle while extending a smaller outlay of capital. The Exchange believes this may attract additional investors, and, in turn, create a more active and liquid trading environment.

The MSCI World Index, MSCI ACWI Index, and MSCI USA Index are calculated using methodology as the MSCI MXEA Index and the MSCI MXEF Index on which the Exchange currently lists options. The Exchange believes offering MXACW, MXWLD, and MXUSA options with similar terms as MXEA and MXEF options will benefit investors, as it will provide market participants with additional investment and hedging strategies consisting of options over each of these indexes.

The Exchange now proposes to amend its Fees Schedule to accommodate the planned listing and trading of MXACW, MXUSA, and MXWLD options. The Exchange notes that because MXEA, MXEF, MXACW, MXUSA, and MXWLD options are intended for the same investor-base, the majority of the proposed changes amend the Fees Schedule in connection with trading in MXACW, MXUSA, and MXWLD options in a manner that is generally consistent with the way in which existing transactions fees and programs currently apply to trading in MXEA and MXEF options, with slight differences to account for the lower spot value of underlying indexes of MXACW, MXUSA, and MXWLD options, as compared to the underlying indexes of MXEA and MXEF options.

Standard Transaction Rates and Surcharges

First, the Exchange proposes to adopt certain standard transaction fees in connection with MXWLD, MXACW, and MXUSA options. Specifically, the proposed rule change adopts certain fees for MXWLD, MXACW, and MXUSA options in the Rate Table for All Products Excluding Underlying Symbol A,[11] as follows:

- Adopts fee code CG, appended to all Customer (capacity ''C'') orders in MXWLD, MXACW, and MXUSA options and assesses a fee of $0.05 per contract; [12]
- Adopts fee code MG, which is appended to all Market-Maker (capacity ''M'') orders in MXWLD, MXACW, and MXUSA options and assesses a fee of $0.10 per contract;
- Adopts fee code FG, appended to all Firm (*i.e.,* Clearing Trading Permit Holders (capacity ''F'')) and Non-Clearing Trading Permit Holder Affiliates (capacity ''L'')) orders in MXWLD, MXACW, and MXUSA options and assesses a fee of $0.15 per contract;
- Adopts fee code BG, appended to all non-Customer, non-Market-Maker, non-Firm (*i.e.,* Broker-Dealers (capacity ''B''), Joint Back-Offices (capacity ''J''), Non-Trading Permit Holder Market-Makers (capacity ''N''), and Professionals (capacity ''U'')) orders in MXWLD, MXACW, and MXUSA options and assesses a fee of $0.20 per contract.

In addition to the above transaction fees, the proposed rule change also adopts certain surcharges to MXWLD and MXACW options transactions within the Rate Table—All Products Excluding Underlying Symbol List A. Currently, the MXEA and MXEF Index License Surcharge Fee assesses a $0.12 charge for transactions in MXEA and MXEF options. The proposed rule change applies the MXEA and MXEF Index License Surcharge Fee to all Firm, Market-Maker and Non-Customer transactions in MXWLD and MXACW options and amends the fee name accordingly. The proposed rule change also adds MXWLD, MXACW, and MXUSA options to the list of options for which the FLEX Surcharge Fee of $0.10 (capped at $250 per trade) applies to electronic FLEX orders executed by all capacity codes, except for Cboe Compression Services (''CCS'') and FLEX Micro transactions.[13]

Fees Programs

The Exchange proposes to exclude MXACW, MXUSA, and MXWLD options from the Liquidity Provider Sliding Scale, which offers credits on Market-Maker orders where a Market-Maker achieves certain volume thresholds based on total national Market-Maker volume in all underlying symbols, excluding Underlying Symbol List A, MRUT, NANOS, XSP, and FLEX Micros during the calendar month.

Hungary, India, Indonesia, Korea, Kuwait, Malaysia, Mexico, Peru, Philippines, Poland, Qatar, Saudi Arabia, South Africa, Taiwan, Thailand, Turkey, and the United Arab Emirates.

[7] *See* MSCI ACWI Index fact sheet (dated November 30, 2023), *available at* MSCI ACWI Index.

[8] These developed markets include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Hong Kong, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

[9] *See* MSCI World Index fact sheet (dated November 30, 2023), *available at* MSCI World Index.

[10] *See* MSCI USA Index fact sheet (dated November 30, 2023), *available at* MSCI USA Index.

[11] Underlying Symbol List A includes OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXW), SPESG and VIX. *See* Exchange Fees Schedule, Footnote 34.

[12] Under the proposed changes, the Customer Large Trade Discount Program, set forth in the Exchange Fees Schedule, will apply to Customer orders in MXWLD, MXACW, and MXUSA (included in ''Other Index Options'' under the program). Under the program, a customer large trade discount program in the form of a cap on customer (''C'' capacity code) transaction fees is in effect for the options set forth in the Customer Large Trade Discount table. For MXWLD, MXACW, and MXUSA options, regular customer transaction fees will only be charged for up to 5,000 contracts per order, similar to other index options other than VIX, SPX/SPXW, SPESG, and XSP.

[13] The FLEX Surcharge Fee will only be charged up to the first 2,500 contracts per trade. *See* Exchange Fees Schedule, Footnote 17.

Specifically, the proposed rule change updates the Liquidity Provider Sliding Scale table to provide that volume thresholds are based on total national Market-Maker volume in all underlying symbols excluding Underlying Symbol List A, MRUT, MXACW, MXUSA, MXWLD, NANOS, XSP, and FLEX Micros during the calendar month, and that it applies in all underlying symbols excluding Underlying Symbol List A, MRUT MXACW, MXUSA, MXWLD, NANOS, XSP, and FLEX Micros. The proposed rule change also updates Footnote 10 (appended to the Liquidity Provider Sliding Scale) to provide that the Liquidity Provider Sliding Scale applies to Liquidity Provider (Exchange Market-Maker, DPM and LMM) transaction fees in all products except (1) Underlying Symbol List A, MRUT, MXACW, MXUSA, MXWLD, NANOS, XSP, and FLEX Micros, (2) volume executed in open outcry, and, and (3) volume executed via AIM Responses.

The proposed rule change updates the Volume Incentive Program (''VIP'') table to exclude MXWLD, MXACW, and MXUSA volume from the VIP, which currently offers a per contract credit for certain percentage threshold levels of monthly Customer volume in all underlying symbols, excluding Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF, NANOS, XSP and FLEX Micros. The proposed rule change also amends Footnote 36 (appended to the VIP table) to reflect the proposed exclusion of MXWLD, MXACW, and MXUSA from the VIP by providing (in relevant part) that: the Exchange shall credit each TPH the per contract amount resulting from each public customer (''C'' capacity code) order transmitted by that TPH which is executed electronically on the Exchange in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXACW, MXEA, MXEF, MXUSA, MXWLD, NANOS, XSP, FLEX Micros, QCC trades, public customer to public customer electronic complex order executions, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 5.67, provided the TPH meets certain percentage thresholds in a month as described in the Volume Incentive Program (VIP) table; the percentage thresholds are calculated based on the percentage of national customer volume in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, MRUT, MXACW, MXEA, MXEF, MXUSA, MXWLD, NANOS, DJX, XSP, and FLEX Micros entered and executed over the course of the month; and in the event of a Cboe Options System outage or other interruption of electronic trading on Cboe Options, the Exchange will adjust the national customer volume in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, MRUT, MXACW, MXEA, MXEF, MXUSA, MXWLD, NANOS, DJX, XSP, and FLEX Micros for the entire trading day.

The proposed rule change excludes MXACW, MXUSA, and MXWLD options from the list of products eligible to receive Break-Up Credits in orders executed in AIM, SAM, FLEX AIM, and FLEX SAM, by amending the Break-Up Credits table to exclude MXACW, MXUSA, and MXWLD along with the products currently excluded—Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF, NANOS, XSP and FLEX Micros.

The Exchange proposes to exclude MXACW, MXUSA, and MXWLD options from the Marketing Fee Program by updating the Marketing Fee table to provide that the marketing fee will be assessed on transactions of Market-Makers (including DPMs and LMMs), resulting from customer orders at the per contract rate provided above on all classes of equity options, options on ETFs, options on ETNs and index options, except that the marketing fee shall not apply to Sector Indexes, DJX, MRUT, MXEA, MXEF, MXACW, MXUSA, MXWLD, XSP, NANOS, FLEX Micros or Underlying Symbol List A. The Exchange notes that, in this way, MXACW, MXUSA, and MXWLD options will be treated as most of the Exchange's other exclusively listed products that are currently excluded from the Marketing Fee Program. The Exchange does believe that it is necessary at the point of newly listing and trading for MXACW, MXUSA, and MXWLD options to be eligible for the Marketing Fee Program and may determine in the future to submit a fee filing to add MRUT to the Marketing Fee Program if the Exchange believes it would potentially generate more customer order flow in MXACW, MXUSA, and MXWLD options.

The proposed rule change also updates the Select Customer Options Reduction (''SCORe'') program table to include MXWLD, MXACW, and MXUSA volume in the SCORe program, which currently offers a per Retail contract discount for certain percentage threshold levels of monthly Retail,[14] Non-FLEX Customer (''C'' origin code) volume in the following options classes: SPX (including SPXW), VIX, RUT, MXEA, MXEF & XSP (''Qualifying Classes''). The SCORe program is available to any Trading Permit Holder (''TPH'') Originating Clearing Firm or non-TPH Originating Clearing Firm that sign up for the program.[15] The SCORe program utilizes Discount Tiers to determine the Originating Firm's applicable corresponding discounts. To determine the Discount Tier, an Originating Firm's Retail volume in the Qualifying Classes will be divided by total Retail volume in the Qualifying Classes executed on the Exchange. The program then provides a discount per retail contract, based on the determined Discount Tier thereunder. The proposed rule change also amends Footnote 48 (appended to the SCORe program table) to reflect the proposed inclusion of MXWLD, MXACW, and MXUSA in the SCORe program by providing (in relevant part) that: ''Qualifying Classes'' will be defined as SPX (including SPXW), VIX, RUT, MXEA, MXEF, MXWLD, MXACW & MXUSA.

The Exchange proposes to exclude MXACW, MXUSA, and MXWLD options from the Floor Broker Sliding Scale Rebate Program, which offers rebates for Firm Facilitated and non-Firm Facilitated orders that correspond to certain volume tiers and is designed to incentivize order flow in multiply-listed options to the Exchange's trading floor. The Exchange proposes to update the Floor Broker Sliding Scale Rebate Program to provide that the Floor Broker Sliding Scale Rebate Program applies to all products except Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF, MXACW, MXUSA, MXWLD, NANOS, XSP and FLEX Micros.

The Exchange next proposes to exclude MXWLD, MXACW, and MXUSA options from eligibility for the Order Router Subsidy (''ORS'') and Complex Order Router Subsidy (''CORS'') Programs, in which Participating TPHs or Participating Non-Cboe TPHs may receive a payment from the Exchange for every executed contract routed to the Exchange through their system in certain classes. Specifically, the proposed rule change

[14] For purposes of this program ''Retail'' orders will be defined as Customer orders for which the original order size (in the case of a simple order) or largest leg size (in the case of a complex order) is 100 contracts or less.

[15] For this program, an ''Originating Clearing Firm'' is defined as either (a) the executing clearing Options Clearing Corporation (''OCC'') number on any transaction which does not also include a Clearing Member Trading Agreement (''CMTA'') OCC clearing number or (b) the CMTA in the case of any transaction which does include a CMTA OCC clearing number.

updates the ORS/CORS Program tables to provide that ORS/CORS participants whose total aggregate non-customer ORS and CORS volume is greater than 0.25% of the total national volume (excluding volume in options classes included in Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXACW, MXEA, MXEF, MXUSA, MXWLD, NANOS, XSP or FLEX Micros) will receive an additional payment for all executed contracts exceeding that threshold during a calendar month, and updates Footnotes 29 [16] and 30 (appended to the ORS/CORS Program tables) to accordingly provide that Cboe Options does not make payments under the program with respect to executed contracts in options classes included in Underlying Symbols List A, Sector Indexes, DJX, MRUT, MXACW, MXEA, MXEF, MXUSA, MXWLD, NANOS, XSP or FLEX Micros.

The Exchange also proposes to amend Footnote 6, which states that in the event of an Exchange System outage or other interruption of electronic trading on the Exchange that lasts longer than 60 minutes, the Exchange will adjust the national volume in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, MRUT, MXEA, MXEF, NANOS, DJX, XSP and FLEX Micros for the entire trading day. The Exchange proposes to add MXACW, MXUSA, and MXWLD options to the list of options, similar to MXEA and MXEF options.

LMM Incentive Programs

Finally, the Exchange proposes to adopt financial programs in connection with MXACW, MXUSA, and MXWLD options for LMMs appointed to the programs (collectively, the ''LMM Incentive Programs'').[17] Each LMM Incentive Program provides a rebate to TPHs with LMM appointments to the respective incentive program that meet certain quoting standards in the applicable series in a month. The Exchange notes that meeting or exceeding the quoting standards (as proposed; described in further detail below) in each of the LMM Incentive Program products to receive the applicable rebate (as proposed; described in further detail below) is optional for an LMM appointed to a program. Rather, an LMM appointed to an incentive program is eligible to receive the corresponding rebate if it satisfies the applicable quoting standards, which the Exchange believes encourages the LMM to provide liquidity in the applicable class and trading session. The Exchange may consider other exceptions to the programs' quoting standards based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM appointed to an incentive program meets the applicable program's quoting standards each month, the Exchange excludes from the calculation in that month the business day in which the LMM missed meeting or exceeding the quoting standards in the highest number of the applicable series. The heightened quoting requirements offered by each of the LMM Incentive Programs are designed to incentivize LMMs appointed to the LMM Incentive Programs to provide significant liquidity in MXACW, MXUSA, and MXWLD options during the trading day upon their listing and trading on the Exchange, which, in turn, would provide greater trading opportunities, added market transparency and enhanced price discovery for all market participants in MXACW, MXUSA, and MXWLD options.

The Exchange first proposes to adopt a MXACW LMM Incentive Program. As proposed, the MXACW LMM Incentive Program provides that if the LMM appointed to the MXACW LMM Incentive Program provides continuous electronic quotes during Regular Trading Hours that meet or exceed the proposed heightened quoting standards (below) in at least 90% of the series 90% of the time in a given month, the LMM will receive a payment for that month in the amount of $10,000 (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month).

Premium level	Expiring		Near term		Mid term		Long term	
	6 days or less		7 days to 60 days		61 days to 270 days		271 days or greater	
	Width	Size	Width	Size	Width	Size	Width	Size
$0.00–$1.00	$0.35	10	$0.25	20	$0.40	10	$0.50	5
$1.01–$2.00	0.40	10	0.35	15	0.60	7	1.00	5
$2.01–$4.00	0.90	7	0.40	15	1.00	5	2.00	5
$4.01–$8.00	1.00	5	0.80	10	2.00	4	3.00	4
$8.01–$16.00	2.50	3	1.30	5	3.50	3	5.00	3
$16.01–$32.00	5.00	2	2.00	2	4.00	2	6.00	2
Greater than $32.00	10.00	2	8.00	2	10.00	2	12.00	2

The proposed rule change also adopts a performance payment under the MXACW LMM Incentive Program, which provides that, in addition to the above rebate, the LMM with the highest performance in satisfying the above heightened quoting standards in a month will receive a performance payment of $20,000 for that month. In order to be eligible to receive the performance payment in a month, an LMM must meet or exceed the above heightened quoting standards in that month. Highest performance is measured as the cumulative sum of series in which an LMM meets or exceeds the heightened quoting requirements by the total series each day (excluding the day in which an LMM missed meeting or exceeding the heightened quoting standard in the highest number of series).

The Exchange next proposes to adopt a MXUSA LMM Incentive Program. As proposed, the MXUSA LMM Incentive Program provides that if the LMM appointed to the MXUSA LMM Incentive Program provides continuous electronic quotes during Regular Trading Hours that meet or exceed the proposed heightened quoting standards (below) in at least 85% of the series 80% of the time in a given month, the

[16] As part of the proposed rule change, the Exchange proposes a clarifying change to add MRUT and NANOS to the list of excluded options in Footnote 29; such options are listed in the ORS table, but were inadvertently not added to Footnote 29.

[17] *See* Exchange Rule 3.55(a). In advance of the LMM Incentive Program effective date, the Exchange will send a notice to solicit applications from interested TPHs for the LMM role and will, from among those applications, select the program LMMs. Factors to be considered by the Exchange in selecting LMMs include adequacy of capital, experience in trading options, presence in the trading crowd, adherence to Exchange rules and ability to meet the obligations specified in Rule 5.55.

LMM will receive a payment for that month in the amount of $10,000 (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month).

Premium level	Expiring		Near term		Mid term		Long term	
	6 days or less		7 days to 60 days		61 days to 270 days		271 days or greater	
	Width	Size	Width	Size	Width	Size	Width	Size
$0.00–$3.00	$0.50	10	$0.60	10	$0.80	10	$1.00	10
$3.01–$5.00	1.00	10	0.80	10	1.20	5	1.50	5
$5.01–$10.00	1.50	5	1.20	10	2.50	5	2.00	5
$10.01–$20.00	5.00	5	3.50	5	6.00	5	6.00	5
Greater than $20.00	10.00	5	10.00	5	12.00	5	12.00	5

The proposed rule change also adopts a performance payment under the MXUSA LMM Incentive Program, which provides that, in addition to the above rebate, the LMM with the highest performance in satisfying the above heightened quoting standards in a month will receive a performance payment of $15,000 for that month. In order to be eligible to receive the performance payment in a month, an LMM must meet or exceed the above heightened quoting standards in that month. Highest performance is measured as the cumulative sum of series in which an LMM meets or exceeds the heightened quoting requirements by the total series each day (excluding the day in which an LMM missed meeting or exceeding the heightened quoting standard in the highest number of series).

Finally, the Exchange proposes to adopt a MXWLD LMM Incentive Program. As proposed, the MXWLD LMM Incentive Program provides that if the LMM appointed to the MXWLD LMM Incentive Program provides continuous electronic quotes during Regular Trading Hours that meet or exceed the proposed heightened quoting standards (below) in at least 90% of the series 90% of the time in a given month, the LMM will receive a payment for that month in the amount of $15,000 (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month).

Premium level	Expiring		Near term		Mid term		Long term	
	6 days or less		7 days to 60 days		61 days to 270 days		271 days or greater	
	Width	Size	Width	Size	Width	Size	Width	Size
$0.00–$3.00	$0.30	25	$0.25	25	$0.60	15	$0.80	10
$3.01–$5.00	0.60	20	0.50	20	1.00	15	1.20	10
$5.01–$10.00	0.75	10	0.65	10	1.25	10	1.50	10
$10.01–$20.00	2.00	5	1.50	5	3.00	5	4.00	5
Greater than $20.00	5.00	5	3.00	5	5.00	5	7.00	5

The proposed rule change also adopts a performance payment under the MXWLD LMM Incentive Program, which provides that, in addition to the above rebate, the LMM with the highest performance in satisfying the above heightened quoting standards in a month will receive a performance payment of $25,000 for that month. In order to be eligible to receive the performance payment in a month, an LMM must meet or exceed the above heightened quoting standards in that month. Highest performance is measured as the cumulative sum of series in which an LMM meets or exceeds the heightened quoting requirements by the total series each day (excluding the day in which an LMM missed meeting or exceeding the heightened quoting standard in the highest number of series).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[18] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[19] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[20] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act,[21] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

Standard Transaction Rates and Surcharges

The Exchange believes that the proposed amendments to the Fees Schedule in connection with standard transaction rates and surcharges for MXACW, MXUSA, and MXWLD transactions are reasonable, equitable and not unfairly discriminatory. Specifically, the Exchange believes that it is reasonable to assess fees for Customer, Market-Maker, Firm and non-Market-Maker, non-Customer, non-Firm orders in MXACW, MXUSA, and MXWLD options that are based on, but slightly less than, those fees for transactions in MXEA and MXEF options (all of which overly MSCI benchmark market-capitalization

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *Id.*

[21] 15 U.S.C. 78f(b)(4).

weighted indexes) because the underlying indexes of MXACW, MXUSA, and MXWLD options have a lower spot value than the underlying indexes of MXEA and MXEF options (and therefore, more contracts would need to be traded to achieve an equivalent notional size position).

Additionally, the Exchange believes it is reasonable to charge different fee amounts to different user types in the manner proposed because the proposed fees are consistent with the price differentiation that exists today for other index products. The Exchange also believes that the proposed fee amounts for MXACW, MXUSA, and MXWLD options orders are reasonable because the proposed fee amounts are within the range of amounts assessed for the Exchange's other index products, excluding Underlying Symbol List A.[22]

Moreover, the Exchange believes it is reasonable to apply the MXEA and MXEF Index License Surcharge Fee to all non-public customer (*i.e.* Cboe Options and non-Trading Permit Holder market-maker, Clearing Trading Permit Holder, JBO participant, and broker-dealer), including professional, transactions in MXWLD and MXACW options because the proposed surcharge helps recoup some of the costs associated with the license for MXWLD and MXACW options. Additionally, the Exchange notes that the surcharge amount will provide consistency between the fees assessed for orders in MXEA and MXEF options, which, like MXWLD and MXACW, all of which overly MSCI benchmark market-capitalization weighted indexes and are designed to offer investors lower cost options to obtain the potential benefits of options on a broad-based index option and intended for a similar investor-base. Given current trading practices, the Exchange believes that MXUSA options may have a smaller initial trading volume (as compared to MXWLD and MXACW options), and as such, wishes to incentivize trading in MXUSA. Therefore, the Exchange believes it is reasonable to not assess an Index License Surcharge fee for MXUSA options, as a way to encourage market participants to trade the newly listed product. The Exchange believes it is reasonable to apply the FLEX Surcharge Fee to MXWLD, MXACW, and MXUSA options, as the FLEX Surcharge Fee assists the Exchange in recouping the cost of developing and maintaining the FLEX system.

The Exchange believes the proposed standard transaction rates and exclusion from certain surcharges are equitable and not unfairly discriminatory because they will apply automatically and uniformly to all capacities as applicable (*i.e.,* Customer, Market-Maker, Firm and non-Market-Maker, non-Customer, non-Firm), in MXWLD, MXACW, and MXUSA options. The Exchange also believes that it is equitable and not unfairly discriminatory to assess lower fees to Customers as compared to other market participants because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The fees offered to customers are intended to attract more customer trading volume to the Exchange. Moreover, the options industry has a long history of providing preferential pricing to Customers, and the Exchange's current Fees Schedule currently does so in many places, as do the fees structures of many other exchanges. Finally, all fee amounts listed as applying to Customers will be applied equally to all Customers (meaning that all Customers will be assessed the same amount).

The Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Market-Makers as compared to other market participants other than Customers because Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. Further, these lower fees offered to Market-Makers are intended to incent Market-Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants. Additionally, the proposed fee for Market-Makers will be applied equally to all Market-Makers (meaning that all Market-Makers will be assessed the same amount). The Exchange also notes that all fee amounts described herein are intended to attract greater order flow to the Exchange in MXWLD, MXACW, and MXUSA options, which should therefore serve to benefit all Exchange market participants. Similarly, it is equitable and not unfairly discriminatory to assess lower fees to Firm orders than those of other market participants (except Customers and Market-Makers) because Firms also have a number of obligations (such as membership with the OCC), significant regulatory burdens, and financial obligations, that other market participants do not need to take on. Finally, the proposed surcharges will be assessed uniformly to all market participants to whom the FLEX Surcharge and Index License Surcharge Fee apply.

Fees Programs

The Exchange believes that the proposed updates to the Fees Schedule in connection with the application of certain fees programs to transactions in MXWLD, MXACW, and MXUSA options are reasonable, equitable and not unfairly discriminatory. The Exchange believes it is reasonable to exclude MXWLD, MXACW, and MXUSA options from the Liquidity Provider Sliding Scale, the VIP, Break-Up Credits applicable to Customer Agency Orders in AIM and SAM, the Marketing Fee, the Floor Broker Sliding Scale Rebate Program, and the ORS/CORS program because other proprietary index products are also excepted from these programs.[23] Moreover, the Exchange notes that the proposed rule change does not alter any of the existing programs, but instead, merely proposes not to include transactions in MXWLD, MXACW, and MXUSA options in those programs. Similarly, the Exchange believes it is reasonable to include transactions in MXWLD, MXACW, and MXUSA options in the SCORe program because other proprietary index products, including MXEA and MXEF options, are also included in this program.[24]

The Exchange believes that excluding MXWLD, MXACW, and MXUSA options transactions from certain fees programs is equitable and not unfairly discriminatory because the programs will equally not apply to, or exclude in the same manner, all market participants' orders in MXWLD, MXACW, and MXUSA options. Similarly, the Exchange believes that including MXWLD, MXACW, and MXUSA options transactions in the SCORe program is equitable and not unfairly discriminatory because the program will equally apply to, or include in the same manner, all market participants' orders in MXWLD, MXACW, and MXUSA options. The

[22] *See* Exchange Fees Schedule, Rate Table—All Products Excluding Underlying Symbol List A.

[23] *See* Exchange Fees Schedule, Liquidity Provider Sliding Scale, Volume Incentive Program, Break-Up Credits, Marketing Fee, Floor Broker Sliding Scale Rebate Program, Order Router Subsidy Program and Complex Order Router Subsidy Program.

[24] *See* Exchange Fees Schedule, Select Customer Options Reduction (''SCORe'') Program.

Exchange notes that the proposed rule change does not alter any of the existing program rates or volume calculations, but instead, merely proposes include (or not to) include transactions in MXWLD, MXACW, and MXUSA options in those programs and volume calculations in the same way that transactions in MXEA and MXEF options are (or are not) currently included.

LMM Incentive Programs

The Exchange believes the proposed LMM Incentive Programs are reasonable, equitable and not unfairly discriminatory. Particularly, the proposed MXWLD, MXACW, and MXUSA LMM Incentive Programs are reasonable financial incentive programs because the proposed heightened quoting standards and rebate amount for meeting the heightened quoting standards in each MXWLD, MXACW, and MXUSA series, as applicable, are reasonably designed to incentivize LMMs appointed to the Programs to meet the proposed heightened quoting standards during RTH for MXWLD, MXACW, and MXUSA, as applicable, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants, particularly in newly listed and traded products on the Exchange during the trading day.

The Exchange believes that the proposed heightened quoting standards are reasonable because they are similar to the detail and format (corresponding premiums, quote widths, and sizes) of the quoting standards currently in place for LMM Incentive Programs for other proprietary Exchange products.[25] The Exchange also believes that proposed heightened quoting requirements are reasonably tailored to reflect market characteristics of MXWLD, MXACW, and MXUSA. The Exchange believes the generally smaller premium levels and widths appropriately reflect the lower-priced MXWLD, MXACW, and MXUSA product. The Exchange believes the proposed finer premiums, smaller quote widths and smaller sizes (comparatively) in the proposed heightened quoting standards for the MXWLD, MXACW, and MXUSA LMM Incentive Programs reasonably reflect what the Exchanges believes will be typical market characteristics in MXWLD, MXACW, and MXUSA options, given their smaller spot value, their smaller notional value and general anticipated retail base, thus smaller, retail-sized orders. quoting requirements in the future to accommodate expiry categories.

The Exchange further believes that the proposed rebate amounts received for MXACW ($10,000), MXUSA ($10,000), and MXWLD ($15,000) options is reasonable because they are comparable to the rebates offered by other LMM Incentive Programs offered by the Exchange. For example, the LMM Program for MXEA and MXEF options (the ''MSCI LMM Program'') currently offers $15,000 per class, per month to appointed LMMs for MXEA and MXEF options if the heightened quoting standards are met in a given month. The Exchange believes that the proposed rebate amounts are reasonably designed to continue to incentivize an LMM appointed to the respective program to meet the applicable quoting standards for MXACW, MXUSA, and MXWLD options, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants.

Similarly, the Exchange believes that the proposed performance payments for MXACW ($20,000), MXUSA ($15,000), and MXWLD ($25,000) options provided to the LMM with the highest performance in satisfying the relevant heightened quoting standards for each of the proposed LMM Programs is reasonable and equitable as the LMM Incentive Program for MXEA and MXEF options offers a similar performance payment. All appointed LMMs are eligible for the performance payment, which is designed to incentivize LMMs in these newly listed products to provide liquid and active markets in these products to encourage their growth.

Finally, the Exchange believes it is equitable and not unfairly discriminatory to offer the financial incentive to LMMs appointed to the LMM Incentive Programs, because it will benefit all market participants trading in MXWLD, MXACW, and MXUSA during RTH by encouraging the appointed LMMs to satisfy the heightened quoting standards, which incentivizes continuous increased liquidity and thereby may provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade MXWLD, MXACW, and MXUSA, which can lead to increased volume, providing for robust markets. The Exchange ultimately proposes to offer the MXWLD, MXACW, and MXUSA LMM Incentive Programs to sufficiently incentivize the appointed LMMs to provide key liquidity and active markets in the newly listed and traded NANOS options during the trading day to encourage liquidity, thereby protecting investors and the public interest. The Exchange also notes that an LMM appointed to the Programs may undertake added costs each month to satisfy that heightened quoting standards (*e.g.,* having to purchase additional logical connectivity). The Exchange believes the proposed programs are equitable and not unfairly discriminatory because similar programs currently exist for LMMs appointed to programs in other proprietary products,[26] and the proposed programs will equally apply to any TPH that is appointed as an LMM to the each of the LMM Incentive Programs, as applicable. Additionally, if an appointed LMM does not satisfy the heightened quoting standards in MXWLD, MXACW, and MXUSA (as applicable) for any given month, then it simply will not receive the offered payment for that month.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe 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 because the proposed MXWLD, MXACW, and MXUSA transaction fees for the separate types of market participants will be assessed automatically and uniformly to all such market participants, *i.e.,* all qualifying Customer orders in MXWLD, MXACW, and MXUSA will be assessed the same amount, all Market-Maker orders in MXWLD, MXACW, and MXUSA will be assessed the same amount, all Firm orders in MXWLD, MXACW, and MXUSA will be assessed the same amount, and all non-Customer, non-Market-Maker, non-Firm orders in MXWLD, MXACW, and MXUSA will be assessed the same amount. As discussed above, while different fees are assessed to different market participants in some

[25] *See* Exchange Fees Schedule, ''MRUT LMM Incentive Program'', ''MSCI LMM Incentive Program'', ''NANOS LMM Incentive Program'', ''GTH VIX/VIXW LMM Incentive Program'', ''GTH1 SPX/SPXW LMM Incentive Program'', ''GTH2 SPX/SPXW LMM Incentive Program'', ''RTH XSP LMM Incentive Program'', ''GTH1 XSP LMM Incentive Program'', ''GTH2 XSP LMM Incentive Program'', and ''RTH SPESG LMM Incentive Program''.

[26] *Id.*

circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, Market-Makers have quoting obligations that other market participants do not have. Additionally, the proposed surcharges will be assessed uniformly to all market participants to whom the FLEX Surcharge and Index License Surcharge Fee apply.

Further, the proposed rule change will uniformly exclude all transactions in MXWLD, MXACW, and MXUSA from certain programs (*i.e.,* the VIP and ORS/CORS Programs), as it currently does for MXEA and MXEF options, and as it does for many of the Exchange's other proprietary products. In addition to this, the proposed rule change to include MXWLD, MXACW, and MXUSA in the SCORe program will apply equally to all applicable transactions in MXWLD, MXACW, and MXUSA. Overall, the proposed rule change is designed to increase incentive for customer order flow providers to submit customer order flow in a newly listed and traded product, which, as indicated above, contributes to a more robust market ecosystem to the benefit of all market participants.

The Exchange also does not believe that the proposed LMM Incentive Programs for MXWLD, MXACW, and MXUSA options would impose any burden on intramarket competition because it applies to all LMMs appointed to each of the LMM Incentive Programs in a uniform manner, in the same way similar programs apply to appointed LMMs in other proprietary products today. To the extent appointed LMMs receive a benefit that other market participants do not, these LMMs in their role as Market-Makers on the Exchange have different obligations and are held to different standards. For example, Market-Makers play a crucial role in providing active and liquid markets in their appointed products, especially in the newly developing MXWLD, MXACW, and MXUSA market, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have. The Exchange also notes that an LMM appointed to an incentive program may undertake added costs each month to satisfy that heightened quoting standards (*e.g.,* having to purchase additional logical connectivity). The Exchange also notes that the LMM Incentive Programs, like the other LMM Incentive Programs, is designed to attract additional order flow to the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule changes apply only to products exclusively listed on the Exchange. Additionally, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and director their order flow, including 16 other options exchanges, as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 13% of the market share of executed volume of options trades.[27] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [28] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[29] Accordingly, the Exchange does not believe its proposed changes to the incentive programs impose any burden on competition that is 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

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [30] and paragraph (f) of Rule 19b–4 [31] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–CBOE–2024–014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CBOE–2024–014. This file number should be included on the subject line if email is used. To help the Commission process and review your

[27] See Cboe Global Markets, U.S. Options Market Volume Summary by Month (March 6, 2024), available at *http://markets.cboe.com/us/options/market_share/*.

[28] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[29] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f).

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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2024–014, and should be submitted on or before April 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06588 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99841; File No. SR–Phlx–2024–15]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Fees for Top of PHLX Options (TOPO), PHLX Orders, and TOPO Plus Orders

March 22, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2024, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 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 Exchange's proprietary data fees for Top of PHLX Options (''TOPO''), PHLX Orders, and TOPO Plus Orders at Options 7, Section 10, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's proprietary data fees for Top of PHLX Options (''TOPO''),[3] PHLX Orders,[4] and TOPO Plus Orders at Options 7, Section 10.[5]

Top of PHLX Options (''TOPO'')

TOPO is a direct data feed that provides subscribers with PHLX Best Bid and Offer (''BBO'')[6] and last sale information.[7] The data distributed on TOPO is identical to the data simultaneously sent to the Options Price Reporting Authority (''OPRA'').[8] The TOPO feed also provides administrative information to facilitate trading on the Exchange such as, for example, the list of symbols trading on a particular day.[9] TOPO reduces the transmission and processing latencies for top of book information relative to the OPRA feed by avoiding the latencies generated by the latter in consolidating data.

Monthly fees for TOPO are currently $2,000 for Internal Distributors,[10] $2,500 for External Distributors,[11] $1 for a Non-Professional Subscriber,[12] and

[3] *See* Options 3, Section 23(a)(1) (''Top of PHLX Options ('TOPO') is a direct data feed product that includes the Exchange's best bid and offer price, with aggregate size, based on displayable order and quoting interest on Phlx and last sale information for trades executed on Phlx. The data contained in the TOPO data feed is identical to the data simultaneously sent to the processor for the OPRA and subscribers of the data feed. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only.'').

[4] *See* Options 3, Section 23(a)(1) (''PHLX Orders is a real-time full Limit Order book data feed that provides pricing information for orders on the PHLX Order book for displayed order types as well as market participant capacity. PHLX Orders is currently provided as part of the TOPO Plus Orders data product. PHLX Orders provides real-time information to enable users to keep track of the single and complex order book(s). The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, leg information on complex strategies and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only. The feed also provides auction and exposure notifications and order imbalances on opening/reopening (size of matched contracts and size of the imbalance)'').

[5] The proposed changes were initially filed on November 16, 2023, as SR–Phlx–2023–51. On December 5, 2023, SR–Phlx–2023–51 was withdrawn and replaced with SR–Phlx–2023–57. On January 29, 2024, SR–Phlx–2023–57 was withdrawn and replaced with SR–Phlx 2024–03. On March 20, 2024, SR–Phlx–2024–03 was withdrawn and replaced with the instant filing to provide additional detail regarding the proposal.

[6] The Best Bid and Offer includes aggregate size information based on displayable order and quoting interest on the Exchange.

[7] *See* PHLX, ''Top of Phlx Options,'' available at *https://www.nasdaqtrader.com/Micro.aspx?id=TOPO#:~:text=Top%20of%20PHLX%20Options%20(TOPO,in%20the%20consolidated%20market%20feed.*

[8] *See* Options 3 (Options Trading Rules), Section 23(a)(1) (Data Feeds and Trade Information) (''The data contained in the TOPO data feed is identical to the data simultaneously sent to the processor for the OPRA and subscribers of the data feed.'').

[9] *See, e.g.,* Nasdaq, ''Top of Phlx Options Interface Specifications, Version 3.4'' Section 4.3 available at *https://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/topofphlx.pdf* (describing the start of day options directory message, which lists all symbols eligible for the auction process).

[10] *See* Options 7, Section 10 (Proprietary Data Feed Fees) (Top of PHLX Options) (''A 'distributor' of Nasdaq PHLX data is any entity that receives a feed or data file . . . directly from Nasdaq PHLX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors execute a Nasdaq PHLX distributor agreement.'').

[11] *See id.*

[12] *See id.* (''A Non-Professional Subscriber is a natural person who is neither: (i) registered or

$40 for a Professional Subscriber.[13] None of these fees have changed for over a decade since January 2013.[14]

PHLX Orders

PHLX Orders is a real-time order book feed with pricing information for displayed orders on the PHLX order book.[15] The data provided for each options series includes the symbols (series and underlying security), a put or call indicator, expiration date, and the strike price of the series. It also provides the real-time status of simple and complex orders [16] on the order book, including new orders and changes to orders resting on the PHLX book for all PHLX-listed options.[17] The PHLX Orders feed includes data on the opening imbalance, Price Improvement XL (PIXL),[18] and Complex Order Live Auction (COLA).[19] A notification message is sent for symbols entering an auction.[20] PHLX Orders also furnishes an historical record of all simple and complex order message data from the PHLX Orders data feed. PHLX Orders information is not sent to OPRA.[21]

PHLX Orders is an alternative to PHLX Depth of Market. It is an optimized technical channel designed to lower technology costs, reduce processing time, and facilitate the ingestion of data while still providing customers insight beyond the top of book by viewing active buy and sell orders. PHLX Orders excludes quotations by market makers and other authorized entities that is included in PHLX Depth of Market.[22]

What is the utility of an orders-only data feed? It provides customers with the opportunity to reduce bandwidth (and therefore data processing costs) by several orders of magnitude relative to the full depth of book feed, while retaining a view of market participant orders (setting aside symbols where participants have not placed orders).

The December 2023 bandwidth report shows that the PHLX Depth of Market feed transmitted a maximum of 14.3 billion messages per day during the month of December,[23] while the PHLX Orders feed transmitted a maximum of 53.6 million messages over the same period (41.5 million messages for simple orders, and 12.1 million messages for complex orders). The Exchange's full depth of book feed requires the customer to process over 200 times more messages than the orders feed over the course of a day; replacing a depth of book feed with an orders feed allows a customer to reduce the maximum number of daily messages it receives by 99.6%.

To cite another example, the 1 millisecond bandwidth peak for PHLX Depth of Market was 13.96 million messages; the comparable number of messages for orders was 1.45 million (891 thousand for simple and 561 thousand for complex orders). Replacing depth of book with orders can therefore reduce the number of messages processed at peak at the 1 millisecond bandwidth by nearly 90%.

Approximately 56% of customers who take any data feed at all from the PHLX exchange take an orders feed (either Orders only or TOPO Plus Orders) without depth of book. Another 38% of customers take both orders and depth feeds. The remaining 6% take either top of book or depth of book alone.

What type of customer takes an orders feed in lieu of depth? In general, firms that only need information on actively trading options do so. There are a great number of use cases that fit this broad description, but, for purposes of illustration, the Exchange is aware of at least two such types of customers.

The first is the market participant that does not engage in order routing. These are broker dealers that use third parties to route orders, either because the originating broker-dealer is not a member of the exchange or to save costs. Without the need for additional information to inform routing decisions, such customers often focus on active trading alone, and therefore purchase the orders feed.

A second category of customers are those that use options data to analyze trends in other markets. One example of this type of customer is the equity trader that analyzes equity-based options to gauge market sentiment in the underlying equity. For such customers, there is relatively little utility in the full depth feed, given that market sentiment is best gauged using options that are being actively traded, rather than those that are dormant.

As noted above, there are some customers that purchase both orders and depth. Vendors are one example of this type of customer. They purchase market data solely for resale, not for trading on behalf of themselves or others. Another example is the firm that uses orders for analysis and depth for order routing. As noted above, the orders feed can be useful for assessing sentiment in equity markets, while depth is often used in order routing decisions. Firms that engage in both functions can lower overall processing requirements by using orders for analytics and depth for routing.

qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an 'investment adviser' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. A Non-Professional Subscriber may only use the data provided for personal purposes and not for any commercial purpose.'').

[13] *See id.* (''A Professional Subscriber is any Subscriber that is not a Non-Professional Subscriber. If the Nasdaq Subscriber agreement is signed in the name of a business or commercial entity, such entity would be considered a Professional Subscriber.'').

[14] *See* Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR–Phlx–2012–145).

[15] *See* Options 3 (Options Trading Rules), Section 23(a)(2) (Data Feeds and Trade Information).

[16] *See* Options 3 (Options Trading Rules), Section 23(a)(2) (Data Feeds and Trade Information); Section 14(a)(i) (''Complex Order. For purposes of the electronic trading of Complex Orders, a Complex Order is an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy.'').

[17] *See* Nasdaq, ''PHLX Orders,'' available at *https://www.nasdaqtrader.com/Micro.aspx?id=PHLXOrders.*

[18] *See* Options 3 (Options Trading Rules), Section 23(a)(2); Section 13 (Price Improvement XL) (''A member may electronically submit for execution an order it represents as agent on behalf of a Public Customer, broker-dealer, or any other entity ('PIXL Order') against principal interest or against any other order (except as provided in sub-paragraph (a)(6) below) it represents as agent (an 'Initiating Order') provided it submits the PIXL Order for electronic execution into the PIXL Auction ('Auction') pursuant to this Rule.'').

[19] *See* Options 3, Section 14(e) (describing the process for the Complex Order Live Auction (''COLA'')).

[20] Nasdaq, ''PHLX Orders Interface Specification,'' (Version 1.92) available at *https://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/topoplusorders.pdf* (describing auction notification message).

[21] *See* Limited Liability Company Agreement of Options Price Reporting Authority, LLC Article V, Section 5.2(c)(i) (January 1, 2010), available at *https://assets.website-files.com/5ba40927ac854d8c97bc92d7/;5d0bd57d87d3ccca102102d7_OPRA%20Plan%20with%20Updated%20Exhibit%20A%20-%2006-19-2019.pdf* (describing last sale and best bid and offer information disseminated by OPRA).

[22] *See* Options 3 (Options Trading Rules), Section 23(a)(3) (Data Feeds and Trade Information) (''PHLX Depth of Market is a data product that provides: (i) order *and quotation* information for *individual quotes* and orders on the order book . . .'') (emphasis added); Section 4(b) (Entry and display of Quotes) (identifying the market participants authorized to submit quotes to the Exchange).

[23] *See* Nasdaq, ''December 2023 Bandwidth Report,'' available at *https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.nasdaqtrader.com%2Fcontent%2Ftechnicalsupport%2Fspecifications%2Fdataproducts%2Fbandwidthreport.xls&wdOrigin=BROWSELINK.*

Purchase of PHLX Orders is optional. Customers can obtain all of the data contained in PHLX Orders from PHLX Depth of Market feed, and may purchase the latter if they do not realize the cost savings offered by PHLX Orders.

PHLX Orders is a derivative product designed as a lower-cost alternative to a depth of book feed. It is not a complement to any other product offered by the Exchange or any of its competitors. Customers are free to purchase PHLX Orders or not, and can reject the feed for any reason, including the fee charged.

Current monthly fees for PHLX Orders are $3,000 for Internal Distributors, $3,500 for External Distributors, $1 for a Non-Professional Subscriber, and $40 for a Professional Subscriber. None of these fees have changes for over a decade since January 2013.[24]

TOPO Plus Orders

TOPO Plus is a direct market data product that offers subscribers both TOPO and PHLX Orders for a consolidated fee that is less than the combined fee of the two products.[25]

Monthly fees for TOPO Plus Orders are currently $4,500 for Internal Distributors, $5,000 for External Distributors, $1 for a Non-Professional Subscriber, and $40 for a Professional Subscriber.

Internal Distributor fees for TOPO Plus Orders were modified in January 2018, over five years ago,[26] but the other TOPO Plus Orders fees have not changed since January 2013.[27]

Usage of TOPO, PHLX Orders, and TOPO Plus Orders

Different types of market participants purchase TOPO, PHLX Orders and TOPO Plus Orders, including market makers, vendors, banks, proprietary traders, agency brokers (brokers that route trades on behalf of other market participants), hedge funds, index providers and other firms.

In characterizing market participants, we must be clear that firms use data feeds for multiple tasks. A market maker, for example, may use market data for order routing, or for risk analysis used in quoting in their assigned option series. Banks may use market data for prime brokerage services, proprietary trading, or risk management. Market data vendors do not directly use the data at all, but rather disseminate data to market participants that use the data for a multiplicity of purposes. Other firms purchase options data to assess the value of equity securities.[28]

Characterizing firms based on what we understand to be their primary market activity, and understanding that firms play multiple roles, we estimate that approximately half of the customers that take top of book data in any form, in combination with other products or alone, are market makers, and the remaining half are market data vendors, banks, proprietary traders, agency brokers, hedge funds, index providers, and others. Roughly the same distribution applies to customers that purchase PHLX Orders, whether alone or in combination with other products. Although the distributions are roughly similar, different customers are purchasing different products in different combinations.

As explained above, firms generally purchase PHLX Orders rather than depth of book data to lower technology costs and reduce processing time, while still providing customers insight into open executable orders that could impact the BBO.

A more specific explanation of how TOPO, PHLX Orders and TOPO Plus Orders is used will vary based on use case, with many firms employing multiple use cases. Market makers, banks, hedge funds, and proprietary traders often use top of book and orders feeds for trading, order routing and analysis. Banks may use market data for prime brokerage services, proprietary trading, or risk management. The clients of market data vendors will utilize the data for many different purposes. We do not have sufficient visibility into our customers' businesses and proprietary processes to be able to determine precise data usage by customer category.

Proposed Changes

For TOPO, the Exchange proposes to increase the monthly charge for Internal Distributors from $2,000 to $2,500, and the monthly charge for External Distributors from $2,500 to $3,000. No changes are proposed for Non-Professional and Professional Subscriber fees.

For PHLX Orders, the Exchange proposes to increase the monthly charge for Internal Distributors from $3,000 to $3,500, and the monthly charge for External Distributors from $3,500 to $4,000. No changes are proposed for Non-Professional and Professional Subscriber fees.

For TOPO Plus Orders, the Exchange proposes to increase the monthly charge for Internal Distributors from $4,500 to $5,500, and the monthly charge for External Distributors from $5,000 to $6,000. No changes are proposed for Non-Professional and Professional Subscriber fees.

The proposed changes are designed to update data fees to reflect their current value, rather than their value when these fees were set 5 or 10 years ago.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[29] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[30] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on several factors.

First, exchange fees are constrained because market participants can choose among seventeen different venues for options trading, and therefore no single venue can charge excessive fees without losing customers and market share.

Second, fees for TOPO are constrained because the identical top of book data is sent to OPRA, and certain market participants may choose to rely exclusively on OPRA rather than purchasing the proprietary data product.

Third, the purchase of PHLX Orders is optional. It is designed as a lower-cost alternative to depth of book, and, as such, is not a complement to any other product offered by the Exchange or any of its competitors. Customers may purchase PHLX Orders or not, and can reject the feed for any reason, including the fee charged.

Fourth, the proposed fees are comparable to, and in some cases less than, those of similarly situated exchanges.

Fifth, the current fees do not properly reflect the value of the underlying product, as fees for the products in question have been static in nominal terms, and therefore falling in real terms (due to inflation), while the amount of

[24] *See* Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR–Phlx–2012–145).

[25] *See* PHLX, TOPO Plus PHLX Orders, available at *https://www.nasdaqtrader.com/Micro.aspx?id=TOPOPlusOrders.*

[26] *See* Securities Exchange Act Release No. 82495 (January 12, 2018), 83 FR 2839 (January 19, 2018) (SR–Phlx–2018–08).

[27] *See* Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR–Phlx–2012–145).

[28] We do not include ''High Frequency Trading Firm'' as a distinct category because many market participant may engage in low latency trading strategies to some degree, but the Exchange does not have sufficient information to be able to characterize any particular firm as a high frequency trader.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(4) and (5).

information transmitted in those fees have more than doubled in just the past five years, reflecting a substantial increase in customer value due to the significantly higher levels of liquidity currently available on the Exchange.

Sixth, higher fees for the external distribution of TOPO, PHLX Orders, and TOPO Plus Orders are based on the additional value vendors receive from distributing data to their own customers and typically charging for the service.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade options. Until recently, sixteen exchanges have offered options trading services,[31] and they are now being joined by a 17th member.[32] Not a single options exchange trades more than 11 percent of the options market by volume.[33] PHLX, the second largest options exchange by volume, only has 9 percent of the options market.[34] Only one of the 17 options exchanges have a market share over 10 percent.[35] This broad dispersion of market share demonstrates that market participants can and do exercise choice in options trading venues. As the number of exchanges continues to grow, competition will become fiercer and customer choice will continue to expand.

Most option contracts on the TOPO, TOPO Plus, and Orders data feeds are traded on multiple exchanges. A sample of trading on March 7, 2024, from The Options Clearing Corporation shows that 5,836 symbols were traded on PHLX's options exchange, of which only 53 symbols were listed on the PHLX options exchange only, and another 33 symbols were listed on multiple Nasdaq-affiliated options exchanges.

In order to remain competitive with other options exchanges, PHLX, like some options exchanges, offers several proprietary options products that are only traded on Nasdaq-affiliated exchanges. These include products based on the Nasdaq 100® Index,[36] such as NDX (Nasdaq 100 Index on PHLX, Nasdaq GEMX, LLC (''GEMX'') and Nasdaq ISE, LLC (''ISE'')), XND (Nasdaq 100 Micro Index on PHLX and ISE), and NQX (Nasdaq 100 Micro Index on ISE), as well as volatility products such as VOLQ (Nasdaq-100® Volatility Index), foreign currency options, and other products.

Some Nasdaq option proprietary products are subject to direct, substitution-based competition from other options exchanges. All are subject to the competition among exchanges for membership and market share. Examples of substitution-based competition include the VOLQ, which can be substituted with the Cboe Volatility Index® (''VIX'').[37] NDX (listed in PHLX, GEMX and ISE), XND (listed on PHLX and ISE) and NQX (listed on ISE) all offer different ways of gaining exposure to the Nasdaq 100® Index, are therefore each serves as a direct substitute for the others.[38] The Nasdaq 100® Index products also have alternatives among other exchanges.[39]

Exchange proprietary products are also subject to competition among exchanges for membership and market share.[40] There are many factors that may cause a market participant to decide to become a member of a particular exchange; among these are product offerings. Introducing new and innovative products to the marketplace designed to meet customer demands may attract market participants to become a member of a particular options venue by allowing market participants greater trading opportunities and new avenues to manage risks. An exchange's proprietary product offering may attract order flow to a particular exchange to trade a particular options product and generally make that exchange a more desirable venue to transaction options, thereby attracting membership to that exchange.

In light of the number of trading venues available to customers, the Exchange must price its products, including TOPO, PHLX Orders, and TOPO Plus Orders (as well as other products), competitively. If not, customers would move to other venues. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.''[41] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.''[42]

The Top of Book Data in TOPO Is Sent to OPRA

The top of book data in TOPO is sent to OPRA; under OPRA rules, proprietary options information is available to customers that have equivalent access to OPRA information, and therefore is supplementary to the OPRA feed.[43] Specifically, Section 5.2(c)(iii) of the OPRA Plan provides that ''[a] Member [of the OPRA Plan] may disseminate its Proprietary Information,'' provided that ''such dissemination is limited to other Members and to persons who also have equivalent access to consolidated Options Information disseminated by OPRA for the same classes or series of options that are included in the Proprietary Information . . . .''[44] ''Consolidated Options Information'' refers to ''consolidated Last Sale Reports combined with either consolidated

[31] *See* OPRA Plan, list of OPRA Participant Exchanges, available at *https://www.opraplan.com/faqs.* (All options exchanges are members of the OPRA Plan.).

[32] *See* Securities Exchange Act Release No. 98388 (September 14, 2023), 88 FR 64963 (September 20, 2023) (File No. 4–443) (''Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options To Add MEMX LLC as a Plan Sponsor'').

[33] *See* Nasdaq, Options Market Statistics (Last updated November 3, 2023), available at *https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary.* On November 3, 2023, the total percentage of options market volume by exchange was as follows: ARCA: 11%; PHLX: 9%; CBOE: 9%; BOX: 8%; ISE: 7%; EDGX: 7%; AMEX: 7%; MIAX: 7%; MPRL: 7%; NOM: 6%; BATS: 6%; C2: 5%; EMLD: 4%; MRX: 3%; GEMX: 3%; BXOP: 3%; MEMX: 0%.

[34] *See id.*

[35] *See id.*

[36] The NASDAQ-100 is an index which includes 100 of the world's largest non-financial companies listed on the wider NASDAQ Stock market, based on their market capitalization.

[37] *See* Securities Exchange Act Release No. 95170 (June 29, 2022), 87 FR 40295 (July 6, 2022) (SR–Phlx–2022–27) (explaining that the Nasdaq-100® Volatility Index (''VOLQ'') is subject to ''significant substitution-based competitive forces; market participants can substitute options on VOLQ for products offered by other exchanges, for example, the options on the Cboe Volatility Index® (''VIX'').'').

[38] *See, e.g.,* Securities Exchange Act Release No. 99141 (December 12, 2023), 88 FR 87466 (December 18, 2023) (SR–Phlx–2023–55) (''[M]arket participants are offered different ways to gain exposure to the Nasdaq 100 Index, whether through the Exchange's proprietary products like options overlying NDX, NDPX, or XND, or separately through multi-listed options overlying Invesco QQQ Trust (''QQQ''); Securities Exchange Act Release No. 99171 (December 14, 2023), 88 FR 88206 (December 20, 2023) (SR–ISE–2023–36) (explaining that NDX, XND and NQX provide ''market participants with a variety of choices in selecting the product they desire to utilize in order to gain exposure to the Nasdaq 100 Index.'').

[39] *See, e.g.,* Securities Exchange Act Release No. 99141 n.7 (December 12, 2023), 88 FR 87466 (December 18, 2023) (SR–Phlx–2023–55) (explaining that the fees for NDX and NDXP are in line with fees assessed by Cboe on its MXEA and MXEF options products).

[40] *See* Securities Exchange Act Release No. 95170 (June 29, 2022), 87 FR 40295 (July 6, 2022) (SR–Phlx–2022–27) (discussing the role of proprietary data products in the competition among exchanges).

[41] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca–2006–21).

[42] *Id.*

[43] *See* Limited Liability Company Agreement of Options Price Reporting Authority, LLC § 5.2(c)(iii) (January 1, 2010), available at *https://assets.website-files.com/5ba40927ac854d8c97bc92d7/5d0bd57d87d3ccca102102d7_OPRA%20Plan%20with%20Updated%20Exhibit%20A%20-%2006-19-2019.pdf* (''OPRA Plan'').

[44] *Id.*

Quotation Information or the BBO furnished by OPRA.'' [45] Access is deemed to be ''equivalent'' ''if both if both kinds of information are equally accessible on the same terminal or work station . . . .'' [46]

Any customer that purchases proprietary options data from the Exchange, including TOPO and TOPO Plus Orders, must also have equivalent access to the OPRA Plan. As noted above, the best bid and offer and last sale information available from TOPO and TOPO Plus Orders fees is identical to the information simultaneously sent to OPRA by the Exchange.[47] OPRA provides NBBO and last sale information on options transactions. TOPO and TOPO Plus Orders provide additional administrative information unique to trading on the Exchange, and also reduce the transmission and processing latencies generated through the process of consolidating data into the OPRA feed.[48] Because top of book and last sale information is available on OPRA as well as TOPO, and customers who purchase TOPO have equivalent access to the OPRA feed, certain customers may choose to rely on the OPRA feed in lieu of purchasing PHLX data, thereby limiting the ability of the Exchange from charging excessive fees for its TOPO and TOPO Plus Orders feeds.

The Purchase of PHLX Orders Is Optional

Purchase of PHLX Orders is optional. As explained above, customers can obtain all of the data contained in PHLX Orders from PHLX Depth of Market feed, and may purchase the latter if they do not realize the cost savings offered by PHLX Orders. PHLX Orders is not a complement to any other product offered by the Exchange or any of its competitors; customers are free to purchase PHLX Orders or not, and can reject the feed for any reason, including the fee charged.

The Proposed Fees Are Comparable to Those of Other Exchanges

The proposed fees are comparable to, and in some cases less than, those of other similarly situated exchange fees. Options market statistics show that PHLX has a market share of approximately 9%. ARCA, with an 11% market share, and CBOE, with a 9% market share, are its closest competitors.[49]

To obtain top of book and depth of book information for internal distribution (including both simple and complex options) from ARCA, a customer would be required to pay an Access Fee of $3,000 per month, a Non-Display fee of at least $5,000 per month for simple options, and a Non-Display fee of $1,000 for Complex Options, for a total of $9,000 per month.[50] To obtain the same information from PHLX under the new proposal, a customer would pay the Internal Distributor fee of $2,500 for TOPO, and an Internal Distributor fee of $4,000 for PHLX Depth Data,[51] for a total of $6,500 per month.

To obtain comparable information for Cboe Options, a customer would be required to pay a combined fee of $9,000 per month.[52] As noted above, a PHLX customer would pay the Internal Distributor fee of $2,500 for TOPO, and an Internal Distributor fee of $4,000 for PHLX Depth Data,[53] for a total of $6,500 per month.

As such, the proposed fees are comparable to fees charged by industry peers, and therefore presumptively reasonable.

Real Exchange Fees Have Fallen While Traffic Has Increased

As explained above, the Internal Distributor fee for TOPO Plus Orders was increased in 2018,[54] while none of the other fees have changed for over a decade, since January 2013.[55] This means that fees for TOPO, PHLX Orders, and TOPO Plus Orders have fallen in real terms due to inflation. Using data generated by the Department of Commerce to estimate inflation in the market for portfolio management and investment services,[56] inflation has increased prices by 63.9% since January 2013, when most of the fees at issue were set, and 15.7% since January 2018, when internal distributor fees for TOPO Plus Orders were last modified. At the same time, the average daily message count of PHLX has more than doubled in just five years, from approximately 3.0 billion messages per day in 2018 to approximately 8.2 billion messages in 2023.[57] PHLX grew in conjunction with options trading overall, which in the aggregate grew at a faster pace than PHLX alone. Between January 2018 and December 2023, options volume on PHLX grew by 31%, while options volume on all exchanges nearly doubled, from 467 million options to 912 million instruments.[58]

Growth in options trading means better value for the consumer. The greater variety of options contracts traded means that customers have more choice. The greater number of buyers and sellers in the market means that there is more liquidity, resulting in tighter spreads and better consumer value on each trade. Greater choice and tighter spreads mean that the consumer obtains more value from options markets overall, which should be reflected in fees for exchange services, including market data. The proposal is therefore reasonable in light of the substantial increase in customer value generate by the higher levels of liquidity

[45] *Id.*

[46] *Id.*

[47] As noted above, the TOPO feed includes administrative information (but not data) that is not provided on the OPRA feed, such as symbol directory messages. *See* Nasdaq, ''Top of Phlx Options Interface Specifications, Version 3.4'' Section 4.3 available at *https://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/topofphlx.pdf* (describing the start of day options directory message, which lists all symbols eligible for the auction process).

[48] The bid and offer and last sale information provided with the TOPO Plus Orders product is identical to the data sent to OPRA, although the ''orders'' component of TOPO Plus Orders is not.

[49] *See* Nasdaq, Options Market Statistics (Last updated November 3, 2023), available at *https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary.*

[50] *See,* NYSE Arca Options Proprietary Market Data Fees (as of July 3, 2023), available at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf.*

[51] *See* Options 7, Section 10 (Proprietary Data Feed Fees) (PHLX Depth Data). ARCA does not charge separately for top of book and depth of book. Although PHLX is not proposing to change fees for depth of book information, PHLX depth of book information is included here to maintain comparability.

[52] *See* Cboe Data Services (CDS), Market Data Product Price List (updated July 1, 2023), available at *https://cdn.cboe.com/resources/membership/US_Market_Data_Product_Price_List.pdf.*

[53] *See* Options 7, Section 10 (Proprietary Data Feed Fees) (PHLX Depth Data). ARCA does not charge separately for top of book and depth of book. Although PHLX is not proposing to change fees for depth of book information, PHLX depth of book information is included here to ensure comparability.

[54] *See* Securities Exchange Act Release No. 82495 (January 12, 2018), 83 FR 2839 (January 19, 2018) (SR–Phlx–2018–08).

[55] *See* Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR–Phlx–2012–145).

[56] Bureau of Economic Analysis, U.S. Department of Commerce, ''Personal Consumption Expenditures Price Index,'' available at *https://www.bea.gov/data/personal-consumption-expenditures-price-index.*

[57] PHLX Data (Average Daily Message Count was 2,979,919,551.32 in 2018, and 8,243,516,029.17 thus far in 2023). The significant increases in data traffic have also required technological upgrades to manage the larger traffic volume and to respond to overall technological change in the industry. *See, e.g.,* Securities Exchange Act Release No. 82495 (January 12, 2018), 83 FR 2839 (January 19, 2018) (SR–Phlx–2018–08) (discussing a number of functional enhancements to both TOPO and PHLX Orders).

[58] Options Clearing Corporation, ''Volume and Open Interest,'' available at *https://www.theocc.com/market-data/market-data-reports/volume-and-open-interest/volume-by-exchange.*

now available on the Exchange, coupled with the fall in real prices due to inflation.

External Distributors Receive Additional Value

External Distributors receive additional value not available to Internal Distributors by disseminating information externally and typically charging for the service. This additional value supports higher fees for external distribution for TOPO, PHLX Orders, and TOPO Plus Orders. Higher fees for external distribution of data are common throughout the industry, and nearly universal among exchanges. The difference in value between internal and external distribution is also reflected in the current fee schedule, which has previously been shown to be consistent with the Exchange Act.

* * * * *

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because: (i) customers have a choice in trading venue, and will exercise that choice and trade at another venue if exchange fees are not set competitively; (ii) the top of book data sent in the TOPO feed are also sent to OPRA, and customers have the option of relying on OPRA data; (iii) the purchase of PHLX Orders is entirely optional as it is a low-cost alternative to the PHLX Depth of Market product; (iv) the proposed fees are comparable to those of other exchanges; (v) exchange fees have fallen in real terms while the amount of liquidity available on the exchange has increased, and (vi) external vendors receive additional value from distributing data to their own customers and typically charging for the service, and therefore charging higher fees for external distribution is fair and reasonable.

No Unfair Discrimination

The Proposal is not unfairly discriminatory. The three market data feeds at issue here—TOPO, PHLX Orders, and TOPO Plus Orders—are used by a variety of market participants for a variety of purposes. Users include regulators, market makers, competing exchanges, media, retail, academics, portfolio managers. Market data feeds will be available to members of all of these groups on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the Proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the Proposal does not impose any burden on the ability of other options exchanges to compete. PHLX fees are comparable to, and in some cases less than, those of other exchanges, as discussed above.

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data) because PHLX market data is available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase PHLX market data can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[59]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–Phlx–2024–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–Phlx–2024–15. 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–Phlx–2024–15 and should be submitted on or before April 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06574 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

[59] 15 U.S.C. 78s(b)(3)(A)(ii).

[60] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20172 and #20173; MAINE Disaster Number ME–20003]

Presidential Declaration of a Major Disaster for the State of Maine

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of MAINE (FEMA–4764–DR), dated 03/20/2024.

Incident: Severe Storms and Flooding.

Incident Period: 01/09/2024 through 01/13/2024.

DATES: Issued on 03/20/2024.

Physical Loan Application Deadline Date: 05/20/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 12/23/2024.

ADDRESSES: Visit the MySBA Loan Portal at *https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/20/2024, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Cumberland, Hancock, Knox, Lincoln, Sagadahoc, Waldo, Washington, York.

Contiguous Counties (Economic Injury Loans Only):

Maine: Androscoggin, Aroostook, Kennebec, Oxford, Penobscot, Somerset

New Hampshire: Strafford, Rockingham, Carroll

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 201726 and for economic injury is 201730.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator Office of Disaster Recovery & Resilience.

[FR Doc. 2024–06613 Filed 3–27–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20196 and #20197; Rhode Island Disaster Number RI–20002]

Presidential Declaration of a Major Disaster for the State of Rhode Island

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Rhode Island (FEMA–4765–DR), dated 03/20/2024.

Incident: Severe Storm and Flooding.

Incident Period: 12/17/2023 through 12/19/2023.

DATES: Issued on 03/20/2024.

Physical Loan Application Deadline Date: 05/20/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 12/23/2024.

ADDRESSES: Visit the MySBA Loan Portal at *https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/20/2024, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Kent, Providence, Washington.

Contiguous Counties (Economic Injury Loans Only):

Rhode Island: Bristol

Connecticut: Windham, New London

Massachusetts: Norfolk, Worcester, Bristol

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 201966 and for economic injury is 201970.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator Office of Disaster Recovery & Resilience.

[FR Doc. 2024–06619 Filed 3–27–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20198 and #20199; Rhode Island Disaster Number RI–20003]

Presidential Declaration of a Major Disaster for the State of Rhode Island

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Rhode Island (FEMA–4766–DR), dated 03/20/2024.

Incident: Severe Storms and Flooding.

Incident Period: 01/09/2024 through 01/13/2024.

DATES: Issued on 03/20/2024.

Physical Loan Application Deadline Date: 05/20/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 12/23/2024.

ADDRESSES: Visit the MySBA Loan Portal at *https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/20/2024, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Kent, Providence, Washington.

Contiguous Counties (Economic Injury Loans Only):

Rhode Island: Bristol

Connecticut: Windham, New London

Massachusetts: Worcester, Bristol, Norfolk

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 201986 and for economic injury is 201990.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–06615 Filed 3–27–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20233 and #20234; MAINE Disaster Number ME–20005]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Maine

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of MAINE (FEMA–4764–DR), dated 03/20/2024.

Incident: Severe Storms and Flooding.

Incident Period: 01/09/2024 through 01/13/2024.

DATES: Issued on 03/20/2024.

Physical Loan Application Deadline Date: 05/20/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 12/23/2024.

ADDRESSES: Visit the MySBA Loan Portal at *https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/20/2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cumberland, Hancock, Knox, Lincoln, Sagadahoc, Waldo, Washington, York.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 202336 and for economic injury is 202340.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sanchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–06614 Filed 3–27–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

SBIC Licensing and Examination Fees Inflation Adjustment

AGENCY: Small Business Administration.

ACTION: Notice of SBIC licensing and examination fee consumer price index increases.

SUMMARY: The U.S. Small Business Administration (SBA) is providing notice of the Licensing Fee schedule and Inflation Adjustment of the Examination Fees charged in the Small Business Investment Company (SBIC) program, required under the SBIC program regulations.

DATES: The adjusted SBIC program Licensing Fees identified in this notice became effective August 17, 2023 and the adjusted Examination Fees are effective as of October 1, 2023.

FOR FURTHER INFORMATION CONTACT: Nathaniel Putnam, Office of Investment and Innovation, at 202–714–1632 or *oii.frontoffice@sba.gov.* If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: The SBIC program regulations at 13 CFR 107.300(c)(4), 107.692(b)(2), and 107.692(e) require SBA to annually adjust the Licensing and Examination Fees for SBICs using the Inflation Adjustment defined in 13 CFR 107.50. This document provides notice of that adjustment for Examination Fees payable by SBICs. The current Licensing Fees payable by SBIC Applicants became effective on August 17, 2023 as part of the SBIC Investment Diversification and Growth Final Rule, and will not require further Inflation Adjustment prior to the release of the June 2024 Consumer Price Index for All Urban Consumers, as calculated by the U.S. Bureau of Labor Statistics.

The table below identifies the current Licensing Fees payable by SBIC License Applicants and Examination Fees payable by SBICs:

SBIC fee type	Fund sequence	Fees amounts
Licensing Fees (effective under § 107.300)		(effective August 17, 2023)
Initial Licensing Fee § 107.300(a)	Fund I	$5,000
	Fund II	10,000
	Fund III	15,000
	Fund IV+	20,000
Final Licensing Fee § 107.300(b)	Fund I	10,000
	Fund II	15,000
	Fund III	25,000
	Fund IV+	30,000
Licensing Resubmission Penty Fee § 107.300(c)(3) [1]		10,000
Examination Fees (effective under § 107.692)		(effective October 1, 2023)
Minimum Base Fee (§ 107.692(b)(2))	All Funds	10,700
Maximum Base Fee for non-Leveraged SBICs (§ 107.692(b)(2))	All Funds	35,500
Maximum Base Fee for Leveraged SBICs (§ 107.692(b)(2))	All Funds	52,100
Delay Fee (§ 107.692(e))	All Funds	800

[1] *Resubmission Penalty Fee.* The Resubmission Penalty Fee means a $10,000 penalty fee assessed to an applicant that has previously withdrawn or is otherwise not approved for a license that must be paid *in addition* to the Initial and Final Licensing Fees at the time the applicant resubmits its application.

Authority: 15 U.S.C. 681(e) and 687b(b); 13 CFR 107.300 and 107.692.

Bailey DeVries,

Associate Administrator, U.S. Small Business Administration, Office of Investment and Innovation.

[FR Doc. 2024–06605 Filed 3–27–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12362]

Notice of Public Meeting in Preparation for International Maritime Organization 111th Session of the Legal Committee (LEG) Meeting

The Department of State will conduct a public meeting at 1:00 p.m. on Tuesday, April 16, 2024, both in-person at Coast Guard Headquarters in Washington, DC, and via teleconference. The primary purpose of the meeting is to prepare for the 111th session of the International Maritime Organization's (IMO) Legal Committee (LEG 111) to be held at IMO Headquarters in London, United Kingdom from Monday, April 22 to Friday, April 26, 2024.

Members of the public may participate up to the capacity of the teleconference phone line, which can handle 500 participants or up to the seating capacity of the room if attending in person. The meeting location will be the United States Coast Guard Headquarters, Room 2E16–06 and the teleconference line will be provided to those who RSVP. To RSVP, participants should contact the meeting coordinator, Mr. Stephen Hubchen, by email at *Stephen.k.hubchen@uscg.mil.* Mr. Stephen Hubchen will provide access information for in-person and virtual attendance.

The agenda items to be considered at LEG 111 include:

—Adoption of the agenda
—Report of the Secretary-General on credentials
—Facilitation of the entry into force and harmonized interpretation of the 2010 HNS Protocol
—Fair treatment of seafarers:
(a) Provision of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of, seafarers, in light of the progress of amendments to the ILO Maritime Labour Convention, 2006
(b) Fair treatment of seafarers in the event of a maritime accident
(c) Fair treatment of seafarers detained on suspicion of committing maritime crimes
(d) Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases
—Advice and guidance in connection with the implementation of IMO instruments
(a) Impact on shipping and seafarers of the situation in the Black Sea and the Sea of Azov
—Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships
—Measures to assess the need to amend liability limits
—Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
—Piracy and armed robbery against ships
—Guidance for the proper implementation and application of IMO liability and compensation conventions
—Measures to address Maritime Autonomous Surface Ships (MASS) in instruments under the purview of LEG
—Work of other IMO bodies
—Technical cooperation activities related to maritime legislation
—Review of the status of conventions and other treaty instruments emanating from the Legal Committee
—Work programme
—Election of officers
—Any other business
—Consideration of the report of the Committee on its 111th session

Please note: The IMO may, on short notice, adjust the LEG 111 agenda to accommodate the constraints associated with the virtual meeting format. Any changes to the agenda will be reported to those who RSVP.

Those who plan to participate may contact the meeting coordinator, Mr. Stephen Hubchen, by email at *Stephen.K.Hubchen@uscg.mil,* by phone at (202) 372–1198, or in writing at United States Coast Guard (CG–LMI–P), ATTN: Mr. Stephen Hubchen, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509, by April 2, 2024. Please note that, due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's. This building is accessible by taxi, public transportation, and privately owned conveyance (upon request). Additionally, members of the public needing reasonable accommodation should advise the meeting coordinator not later than April 2, 2024. Requests made after that date will be considered but might not be possible to fulfill.

Additional information regarding this and other IMO public meetings may be

found at: *https://www.dco.uscg.mil/IMO*.

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552)

Leslie W. Hunt,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2024–06662 Filed 3–27–24; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering, and Development Advisory Committee; Notice of Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: This notice announces two meetings of the Research, Engineering, and Development Advisory Committee (REDAC).

DATES: The meetings will be held on April 17, 2024, and October 9, 2024, from 10 a.m.–4:30 p.m. EST.

Requests for accommodations for a disability must be received by April 2, 2024, and September 24, 2024. Individuals requesting to speak during the meeting must submit a written copy of their remarks to DOT by April 2, 2024, and September 24, 2024. Requests to submit written materials to be reviewed during the meeting must be received no later than April 2, 2024, and September 24, 2024.

ADDRESSES: The meetings will be held in a hybrid setting to permit virtual participation. Virtual attendance information will be provided upon registration. The meetings will be held at the Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. A detailed agenda will be available on the REDAC internet website at *https://www.faa.gov/go/redac* at least one week before the meeting, along with copies of the meeting minutes after the meeting.

FOR FURTHER INFORMATION CONTACT: Chinita Roundtree-Coleman, REDAC PM/Lead, FAA/U.S. Department of Transportation, at *chinita.roundtree-coleman@faa.gov* or (609) 485–7149 or (609) 569–3729. Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The REDAC was created under the Federal Advisory Committee Act, in accordance with Public Law 100–591 (1988) and Public Law 101–508 (1990), to provide advice and recommendations to the FAA Administrator in support of the Agency's Research and Development (R&D) portfolio.

II. Agenda

At the meeting, the agenda will cover the following topics:

- FAA R&D Strategies, Initiatives, and Planning
- Impacts of emerging technologies, new entrant vehicles, and dynamic operations within the National Airspace System

III. Public Participation

DOT is committed to providing equal access to this meeting for all participants. The meeting will be ''open to the public'' per 41 CFR 102–3.150(a) meeting notice requirements. 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.

There will be 45 minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the FAA may conduct a lottery to determine the speakers. Speakers are asked to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to REDAC members before the deadline listed in the **DATES** section. All prepared remarks submitted on time will be accepted and considered as part of the meeting's record. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC.

Chinita Roundtree-Coleman,

REDAC PM/Lead, Federal Aviation Administration.

[FR Doc. 2024–06590 Filed 3–27–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0024]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for a renewal of information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on January 22, 2024. We are required to publish this notice in the **Federal Register** per the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 29, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0024 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Scott Gable, 202–366–2176, Office of Safety, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, between 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highway Safety Improvement Program.

OMB Control: 2125–0025.

Background: The Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58, also known as the ''Bipartisan Infrastructure Law'' (BIL)) continues the

Highway Safety Improvement Program (HSIP) as a core federal-aid program with the purpose to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-State-owned public roads and roads on tribal lands. The HSIP requires a data-driven, strategic approach to improving highway safety on all public roads that focuses on performance.

The existing provisions of Title 23 U.S.C. 130, Railway-Highway Crossings Program, as well as implementing regulations in 23 CFR 924, remain in effect. Included in these combined provisions are requirements for State DOTs to annually produce and submit to FHWA by August 31 reports related to the implementation and effectiveness of their HSIPs, that are to include information on: (a) progress being made to implement HSIP projects and the effectiveness of these projects in reducing traffic fatalities and serious injuries [Sections 148(h)]; and (b) progress being made to implement the Railway-Highway Crossings Program and the effectiveness of the projects in that program [Sections 130(g) and 148(h)], which will be used by FRA to produce and submit reports to Congress. To be able to produce these reports, State DOTs must have safety data and analysis systems capable of identifying and determining the relative severity of hazardous highway locations on all public roads, based on both crash experience and crash potential, as well as determining the effectiveness of highway safety improvement projects. FHWA provides an online reporting tool to support the annual HSIP reporting process. Additional information is available on the Office of Safety website at *http://safety.fhwa.dot.gov/hsip/resources/onrpttool/.* Reporting into the online reporting tool meets all report requirements and USDOT website compatibility requirements. The information contained in the annual HSIP reports provides FHWA with a means for monitoring the effectiveness of these programs and may be used by Congress for determining the future HSIP program structure and funding levels.

Respondents: 50 State Transportation Departments, the District of Columbia, and Puerto Rico.

Frequency: Annually.

Estimated Average Burden per Response: 150 hours for the Highway Safety Improvement Program (HSIP) report and 100 Railway-Highway Crossing Program (RHCP) report.

Estimated Total Annual Burden Hours: Total estimated average annual burden is 12,900 hours.

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 FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued On: March 25, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024–06597 Filed 3–27–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2023–0046; Notice 1]

FCA US LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: FCA US LLC (FCA) has determined that certain model year (MY) 2022–2023 Ram ProMaster vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays.* FCA filed a noncompliance report dated April 13, 2023, and subsequently petitioned NHTSA (the ''Agency'') on May 5, 2023, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of FCA's petition.

DATES: Send comments on or before April 29, 2024.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Frederick Smith, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–7487.

SUPPLEMENTARY INFORMATION:

I. Overview: FCA determined that certain MY 2022–2023 Ram ProMaster vehicles do not fully comply with paragraph S5.3 of FMVSS No. 101, Controls And Displays (49 CFR 571.101).

FCA filed a noncompliance report dated April 13, 2023, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* FCA petitioned NHTSA on May 5, 2023, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of FCA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 9,101 MY 2022–2023 Ram ProMaster vans, manufactured between August 30, 2021, and March 23, 2023, were reported by the manufacturer.

III. Noncompliance: FCA explains that the subject vehicles equipped with a 3.5-inch IPC and adaptive cruise control (''ACC'') may have been built with IPC software that can cause the IPC to go blank for four to five seconds while it resets, and therefore does not comply with paragraph S5.3 of FMVSS No. 101. Specifically, if the ACC is engaged and in ready mode, and if the driver rapidly presses the speed control button (three or more times in one second), the system can incorrectly detect a fault and trigger a cluster reset. During this reset, the cluster display will go blank, and the speedometer indicator will go to zero before resetting.

IV. Rule Requirements: Paragraph S5.3 of FMVSS No. 101 includes the requirements relevant to this petition. Paragraph S5.3.1(a) provides that except as provided in S5.3.1(c), the identifications of controls for which the word ''Yes'' is specified in column 5 of Table 1 must be capable of being illuminated whenever the headlamps are activated. This requirement does not apply to a control located on the floor, floor console, steering wheel, steering column, or in the area of windshield header, or to a control for a heating and air-conditioning system that does not direct air upon the windshield. Paragraph S5.3.1(e) provides that a telltale must not emit light except when identifying the malfunction or vehicle condition it is designed to indicate, or during a bulb check.

V. Summary of FCA's Petition: The following views and arguments presented in this section, ''V. Summary of FCA's Petition,'' are the views and arguments provided by FCA. They have not been evaluated by the Agency and do not reflect the views of the Agency. FCA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

The noncompliant condition can occur regardless of the use of the vehicle's headlamps. Further, the IPC reset effectively includes a bulb check function for all of the IPC Telltales as it comes back on. As mentioned above, the IPC reset occurs when the ACC is engaged, and the driver rapidly and repeatedly presses the steering wheel-mounted button to either increase or decrease the ACC set speed. Other than causing the IPC to reset, no other function of the vehicle is affected, and the vehicle does not shut off. For example, the vehicle will continue to operate with full motive power as prescribed by the ACC engaged speed last selected by the driver. Power assist for both steering and braking are also unaffected by the IPC reset event, as are headlamp and taillamp functionality. The driver will continue to be able to adjust the ACC set speed using the control buttons during and after the reset event.

FCA explains that the subject noncompliance may arise regardless of whether the vehicle's headlamps are in use. FCA adds that the IPC reset includes a bulb check function for all IPC Telltales upon reactivation. The IPC reset occurs when the ACC is activated, and the ''driver rapidly and repeatedly presses the steering wheel-mounted button to either increase or decrease the ACC set speed.'' FCA notes that aside from initiating the IPC reset, no other vehicle function is affected, and the vehicle does not shut off. FCA says the vehicle will continue to function with full motive power based on the ACC engaged speed last chosen by the driver. Further, FCA says that power assist for both steering and braking remains unaffected by the IPC reset event, as do headlamp and taillamp functionalities. According to FCA, throughout and after the reset event, the driver retains the ability to adjust the ACC set speed using the control buttons. FCA asserts that the subject noncompliance is not a significant hazard that diverts the driver's attention from the driving task or results in control selection mistakes (FCA refers to FMVSS No. 101 S2). Therefore, FCA believes that the subject noncompliance should be deemed inconsequential to motor vehicle safety for following reasons:

1. The reset occurs only if the driver ''repeatedly and quickly'' presses a button on the steering wheel to change the ACC set speed, which FCA says would indicate that the driver is ''actively engaged in the driving task.''

2. The reset does not induce any change in vehicle behavior that might prompt the driver to react unsafely.

3. All exterior lighting, including headlamps, taillamps, and turn signals, remains fully functional and unaffected by the reset event.

4. No required controls are affected, and all controls they will remain properly illuminated and functional,

5. FCA refers to paragraph S5.3.1(b) of FMVSS No. 101 which provides that except as provided in S5.3.1(c), the indicators and their identifications for which the word Yes is specified in column 5 of Table 1 must be illuminated whenever the vehicles propulsion system and headlamps are activated.

a. FCA contends that the temporary loss of illumination of the required indicators resulting from the reset event does not pose an unsafe condition for the driver. Further, FCA says that none of the required indicators identifies a condition demanding a response in less than five seconds to avoid an unsafe condition.

b. FCA says that the indicators required by FMVSS No. 101 Table 1 that are affected are: Fuel Level; Engine oil pressure; Engine coolant temperature; Electrical charge; Speedometer; Automatic transmission control position. Regarding the speedometer, FCA asserts that the driver would be aware of the vehicle speed before deciding to activate the ACC set speed change. According to FCA, the reset is triggered by the incremental adjustment of the known set speed, yet the driver remains aware of the speed at the commencement of the set speed change action and promptly after the conclusion of the reset event. Additionally, FCA says that the vehicle will consistently be in Drive for the reset event to take place, ensuring that the automatic transmission control position remains unchanged throughout the reset event.

6. FCA says that the reset event will briefly illuminate all telltales, deviating from the exception allowed by paragraph S5.3.1(e) of FMVSS No. 101. However, FCA contends that the likelihood of this brief illumination posing an unreasonable risk to safety before the reset is complete is extremely low. Further, FCA states that following

the reset event, any telltale required by an underlying condition will become properly illuminated, while all others will be extinguished.

7. FCA refers to the Federal Register Docket No. NHTSA20130134; Notice 2 in which, according to FCA, NHTSA granted a petition for a decision of inconsequential noncompliance for a condition that is substantially similar to the subject noncompliance. Like that petition, FCA says it willing to provide NHTSA with a video of the reset event or provide a vehicle for NHTSA personnel to test in real world driving conditions. The subject noncompliance is substantially similar to the previously granted noncompliance petition.

8. FCA notes that it began vehicle production with compliant IPC software on March 23, 2023, and states that it is not aware of any crashes, injuries, or customer complaints associated with the condition.

FCA concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that FCA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicles distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after FCA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2024–06653 Filed 3–27–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Revision of an Approved Information Collection; Submission for OMB Review; Bank Activities and Operations; Investment in Bank Premises

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning a revision to its information collection titled, ''Bank Activities and Operations; Investment in Bank Premises.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by April 29, 2024.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0204, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0204'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* You can find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching OMB control number ''1557–0204'' or ''Bank Activities and Operations; Investment in Bank Premises.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks the OMB to approve this revised collection.

Title: Bank Activities and Operations; Investment in Bank Premises.

OMB Control No.: 1557–0204.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Frequency of Response: On occasion; Quarterly.

Description: The information collection requirements ensure that institutions conduct their operations in a safe and sound manner and in accordance with applicable Federal banking law and regulations. The collections of information provide needed information for examiners and offer protections for institutions. The collections are necessary for regulatory and examination purposes and for national banks to ensure their compliance with Federal law and regulations.

The information collection requirements are as follows:

• *Investment in national bank or Federal savings association premises*—A national bank or Federal savings association may invest in banking premises and other premises-related investments, loans, or indebtedness by filing an application for prior approval whenever its investment in bank premises will cause it to exceed its capital stock. The application must describe the present and proposed bank premises investment and the business reason for making the investment. A bank with a composite 1 or 2 CAMELS rating entering a transaction that increases its aggregate bank premises investment to not more than 150 percent of its capital and surplus may proceed without prior OCC approval but must provide an after-the-fact notice. 12 CFR 5.37.

• *Sale of money orders at nonbanking outlets*—A national bank may designate bonded agents to sell the bank's money orders at nonbanking outlets. The responsibility of both the bank and its agent should be defined in a written agreement setting forth the duties of both parties and providing for remuneration of the agent. 12 CFR 7.1014.

• *Tax equity finance transactions*—A written request to the OCC is required to secure a waiver to participate in a tax equity finance transaction exceeding the aggregate investment limit. Prior written notification to the OCC is required for each tax equity finance transaction. 12 CFR 7.1025(d).

• *Payment systems*—Thirty (30) days advance written notice is required before joining a payment system that would expose the institution to open-ended liability. An after-the-fact written notice to the OCC must be filed within 30 days of becoming a member of a payment system that does not expose the institution to open-ended liabilities. In both cases, the notice must represent that the national bank or Federal savings association has and will continue to comply with safety and soundness review and notification requirements. 12 CFR 7.1026(c) and (d).

• *Derivatives activities*—Thirty (30) days prior written notice to the examiner-in-charge is required before a national bank may engage in certain derivatives hedging activities, expand the bank's derivatives hedging activities to include a new category of underlying for derivatives transactions, engage in certain customer-driven financial intermediation derivatives activities, or expand the bank's customer-driven financial intermediation derivatives activities to include a new category of underlying specified in the regulation. 12 CFR 7.1030(d).

• *Corporate governance procedures-Other sources of guidance*—A national bank must designate in its bylaws the body of law selected for its corporate governance procedures. 12 CFR 7.2000(b).

• *State corporate governance*—A request for the views of OCC staff on the permissibility of a national bank's adoption of a particular State corporate governance provision must include the name of the national bank, citation to the relevant State statutes or regulations, a discussion of whether a similarly situated State bank is subject to or may adopt the provision, the identification of all Federal banking statutes and regulations on the same subject, and an analysis of how the proposed practice is not inconsistent with applicable Federal statutes or regulations and is not inconsistent with safety and soundness. 12 CFR 7.2000(d).

• *Honorary directors or advisory boards*—Any listing of a national bank's honorary or advisory directors must distinguish between those directors and the bank's board of directors or indicate their advisory status. 12 CFR 7.2004.

• *Indemnification of institution-affiliated parties—Written agreement required for advancement*—A written agreement that an IAP will reimburse the institution for any portion of non-reimbursed indemnification that the IAP is found not entitled to is required before advancing funds to an IAP. 12 CFR 7.2014(c).

• *Issuing stock in certificate form*—When issuing stock in certificate form, national banks must comply with the requirements of 12 U.S.C. 52 and include the name and location of the bank, the name of the holder of record, the number and class of shares the certificate represents, information on rights of shareholders, signatures of the bank president and cashier, and the bank's seal. 12 CFR 7.2016(b).

• *Staggered terms for national bank directors*—Any national bank may adopt bylaws that provide for staggering the terms of its directors. National banks must provide the OCC with copies of any bylaws so amended. 12 CFR 7.2024(a).

• *Size of bank board*—A national bank seeking to increase the number of its directors must notify the OCC any time the proposed size would exceed 25 directors. 12 CFR 7.2024(c).

Burden Estimates:

Estimated Number of Respondents: 1,727.

Estimated Total Annual Burden: 1,138 hours.

Comments: On December 26, 2023, the OCC published a 60-day notice for this information collection, 88 FR 89026. No comments were received.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Patrick T. Tierney,

Assistant Director, Office of the Comptroller of the Currency.

[FR Doc. 2024–06594 Filed 3–27–24; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that the annual meeting of the Advisory Committee on Cemeteries and Memorials will be held May 8–9, 2024. The meeting sessions will begin and end as follows:

Date(s):	Time(s):	Location(s)	Open to the public
May 8, 2024	9:00 a.m. to 11:00 a.m. Eastern Standard Time (EST)	Andersonville National Cemetery, 496 Cemetery Road, Andersonville, GA 31711.	Yes.
May 8, 2024	2:00 p.m. to 2:45 p.m. EST	Fort Moore Post Cemetery, 64–66 Custer Road, Columbus, GA 31905.	No.
May 8, 2024	3:30 p.m. to 4:30 p.m. EST	Fort Mitchell National Cemetery, 553 Highway 165, Fort Mitchell, AL 36856.	Yes.
May 9, 2024	9:30 a.m. to 4:30 p.m. EST	Marriott Columbus, 800 Front Avenue, Columbus, GA 31901.	Yes.

Sessions are open to the public, except when the Committee is conducting a tour of the Fort Moore Post Cemetery. The Fort Moore Post Cemetery tour has enhanced opportunities for interactions that would implicate privacy and personal information disclosure concerns. Tours of VA facilities are generally closed when it is necessary to protect privacy and personal information. 5 U.S.C. 552b(c)(6). Accordingly this tour is a closed session of the Committee.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee makes recommendations to the Secretary regarding such activities.

On Wednesday, May 8, 2024, the Committee will convene an open session from 9:00 a.m. to 11:00 a.m. EST with tours to Andersonville National Cemetery and Fort Mitchell National Cemetery. The Committee will convene a closed session from 2:00 p.m. to 2:45 p.m. EST. The Committee will reconvene in an open session from 3:30 p.m. to 4:30 p.m. EST at the Fort Mitchell National Cemetery. Transportation will not be provided for the public.

On Thursday, May 9, 2024, the Committee will convene an open session from 9:30 a.m. to 4:30 p.m. EST. The agenda will include remarks by National Cemetery Administration leadership, and briefings from the Office of Cemetery Operations and Field Programs, Office of Engagement and Memorial Innovation, as well as the status of committee recommendations, public comments, and open discussion.

Any member of the public seeking additional information should contact Ms. Faith Hopkins, Designated Federal Officer, at 202–603–4499. Please leave a voice mail message. The Committee will also accept written comments. Comments may be transmitted electronically to the Committee at *faith.hopkins@va.gov.* In the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent.

Any member of the public who wishes to attend the meeting virtually on May 9, 2024, may use the following Cisco Webex Meeting Link:

Join On Your Computer Or Mobile App: https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=mfa919558f3ede94e324627e9f21022ec.

Meeting number: 2824 163 0470
Password: GYpUMKK$648
Join by phone: 404–397–1596
Access code: 2824 163 0470

Dated: March 25, 2024.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2024–06646 Filed 3–27–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Specially Adapted Housing Assistive Technology Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of funding opportunity.

SUMMARY: The Department of Veterans Affairs (VA) is publishing the announcement of the availability of funds for the Specially Adapted Housing Assistive Technology (SAHAT) Grant Program for fiscal year (FY) 2024. The objective of the grant is to encourage the development of new assistive technologies for Specially Adapted Housing (SAH) grant recipients. This notice is intended to provide applicants with the information necessary to apply for the SAHAT Grant Program. VA strongly recommends referring to the SAHAT Grant Program regulation in conjunction with this notice. The registration process described in this notice applies only to applicants who will register to submit project applications for FY 2024 SAHAT Grant Program funds.

DATES: Applications for the SAHAT Grant Program must be submitted through *www.Grants.gov* by 11:59 p.m. Eastern Standard Time on April 28, 2024. Awards made for the SAHAT Grant Program will fund operations for FY 2024. The SAHAT Grant Program application package for funding opportunity VA–SAHAT–24–09 is available through *www.Grants.gov* and is listed as VA-Specially Adapted Housing Assistive Technology Grant Program. Applications may not be sent by mail, email, or facsimile. All application materials must be in a format compatible with the *www.Grants.gov* application submission tool. Applications must be submitted as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected. Technical assistance with the preparation of an initial SAHAT Grant Program application is available by contacting the program official listed below.

FOR FURTHER INFORMATION CONTACT: Jason Latona, Assistant Director, Specially Adapted Housing, Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–461–9201 or *Jason.Latona@va.gov.* This is not a toll-free telephone number.

SUPPLEMENTARY INFORMATION: This notice is divided into eight sections. Section I provides a summary of and background information on the SAHAT Grant Program as well as the statutory authority, desired outcomes, funding priorities, definitions, and delegation of authority. Section II covers award information, including funding availability and the anticipated start date of the SAHAT Grant Program. Section III provides detailed information on eligibility and the threshold criteria for submitting an application. Section IV provides detailed application and submission information, including how to request an application, application content, and submission dates and times. Section V

describes the review process, scoring criteria, and selection process. Section VI provides award administration information such as award notices and reporting requirements. Section VII lists agency contact information. Section VIII provides additional information related to the SAHAT Grant Program. This notice includes citations from 38 CFR part 36 regarding the Specially Adapted Housing Assistive Technology Grant Program (*https://www.ecfr.gov/current/title-38/chapter-I/part-36/subpart-C/section-36.4412*), and VA Financial Policy, Volume X Grants Management Financial Policy Documents (*https://department.va.gov/financial-policy-documents/?_financial_policy_volumes=volume-x-grants-management*) which applicants and stakeholders are expected to read to increase their knowledge and understanding of the SAHAT Grant Program.

I. Program Description

A. Summary

Pursuant to the Veterans' Benefits Act of 2010 (Pub. L. 111–275, 203), the Secretary of Veterans Affairs, through the Loan Guaranty Service (LGY) of the Veterans Benefits Administration (VBA), is authorized to provide grants of financial assistance to develop new assistive technology. The objective of the SAHAT Grant Program is to encourage the development of new assistive technologies for adapted housing.

B. Background

LGY currently administers the SAH Grant Program. Through this program, LGY provides funds to eligible Veterans and Service members with certain service-connected disabilities to help purchase or construct an adapted home, or modify an existing home, to allow them to live more independently. Please see 38 U.S.C. 2101(a)(2)(B) and (C) and 38 U.S.C. 2101(b)(2) for a list of qualifying service-connected disabilities. Currently, most SAH adaptations involve structural modifications such as ramps; wider hallways and doorways; roll-in showers; and other accessible bathroom features, etc. For more detailed information about the SAH Grant Program, please visit *https://www.va.gov/housing-assistance/disability-housing-grants/.*

VA acknowledges that there are many emerging technologies and improvements in building materials that could improve home adaptions or otherwise enhance a Veteran's or Service member's ability to live independently. Therefore, in 38 CFR 36.4412(b)(2), VA has defined ''new assistive technology'' as an advancement that the Secretary determines could aid or enhance the ability of an eligible individual, as defined in 38 CFR 36.4401, to live in an adapted home. New assistive technology can include advancements in new-to-market technologies, as well as new variations on existing technologies. Examples of the latter might include modifying an existing software application for use with a smart home device; upgrading an existing shower pan design to support wheelchairs; using existing modular construction methods to improve bathroom accessibility; or using existing proximity technology to develop an advanced application tailored to blind users. In addition, the recent passage of the Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022 (Pub. L. 117–168) expanded VA health care and benefits for Veterans exposed to burn pits and other toxic substances, including those with disabilities due to inhalation injuries resulting from toxic exposures. New solutions that can potentially help VA meet the needs of SAH-eligible Veterans impacted by these injuries are of interest to the SAHAT Grant Program.

Please Note: SAHAT funding does not support the construction or modification of residential dwellings for accessibility. Veterans and Service members interested in receiving assistance to adapt a home are encouraged to visit the following website to identify home adaptation programs offered by VA: *https://www.va.gov/housing-assistance/disability-housing-grants/.*

C. Statutory Authority

Public Law 111–275, the Veterans' Benefits Act of 2010, was enacted on October 13, 2010. Section 203 of the Act added 38 U.S.C. 2108 to establish the SAHAT Grant Program. The Act authorized VA to provide grants of up to $200,000 per fiscal year, through September 30, 2016, to a ''person or entity'' for the development of SAHATs. For the purpose of this notice, VA refers to such persons or entities as grantees or grant recipients, and the terms are interchangeable.

On September 30, 2022, the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 was enacted (Pub. L. 117–180, 205). Section 205 of Pub. L. 117–180 extended the authority for VA to provide grants in the manner listed above through September 30, 2024 (see 38 U.S.C. 2108 and 38 CFR 36.4412).

D. Desired Outcomes and Funding Priorities

Grantees will be expected to leverage grant funds to develop new assistive technologies for SAH. In 38 CFR 36.4412(f)(2) (*https://www.ecfr.gov/current/title-38/chapter-I/part-36/subpart-C/section-36.4412*), VA set out the scoring criteria and the maximum points allowed for each criterion. As explained in the preambles to both the proposed and final rules, while the scoring framework is set out in the regulation text, each notice will address the scoring priorities for that particular grant cycle (79 FR 53146, 53148, September 8, 2014; 80 FR 55763, 55764, September 17, 2015). For FY 2024, the Secretary has identified the categories of innovation and unmet needs as top priorities. These categories are further described as scoring criteria 1 and 2 in Section V(A) of this notice. Although VA encourages innovation across a wide range of specialties, VA is, in this grant cycle, particularly interested in technologies that could help Veterans with disabilities associated with toxic exposures covered by the Honoring our PACT Act of 2022, such as residuals of an inhalation injury (including, but not limited to, pulmonary fibrosis, asthma, and chronic obstructive pulmonary disease) as they pertain to VA SAH adaptations. VA also has particular interest in applications that either demonstrate innovative approaches in the design and building of adaptive living spaces or would lead to new products and techniques that expedite the modification of existing spaces, to reduce the impact that adaptive projects can have on a Veteran's quality of life during the construction phase. VA notes that applications addressing these categories of special interest are not guaranteed selection, but they would, on initial review, be categorized as meeting the priorities for this grant cycle.

Additional information regarding how these priorities will be scored and considered in the final selection is contained in Section V(A) of this notice.

E. Definitions

Definitions of terms used in the SAHAT Grant Program are found at 38 CFR 36.4412(b).

F. Delegation of Authority

Pursuant to 38 CFR 36.4412(i), certain VA employees appointed to or lawfully fulfilling specific positions within VBA are delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect

to the SAHAT Grant Program authorized by 38 U.S.C. 2108.

G. Assistance Listings

The listings include the following: 64.051 Specially Adapted Housing Assistive Technology Grant Program; *SAM.gov,* 64.106 Specially Adapted Housing for Disabled Veterans; *SAM.gov,* and 64.118 Veterans Housing Direct Loans for Certain Disabled Veterans; *SAM.gov*.

II. Federal Award Information

A. Funding Availability

Funding will be provided as an assistance agreement in the form of grants. The number of assistance agreements VA will fund as a result of this notice will be based on the quality of the technology grant applications received and the availability of funding. However, the maximum amount of assistance a technology grant applicant may receive in any fiscal year is limited to $200,000.

B. Additional Funding Information

Funding for these projects is not guaranteed and is subject to the availability of funds and the evaluation of technology grant applications based on the criteria in this announcement. In appropriate circumstances, VA reserves the right to partially fund technology grant applications by funding discrete portions or phases of proposed projects that relate to adapted housing. Award of funding through this competition is not a guarantee of future funding. The SAHAT Grant Program is administered annually and does not guarantee subsequent awards. Renewal grants to provide new assistive technology will not be considered under this announcement.

C. Start Date

As discussed in Section VI(A) of this notice, the SAHAT Grant Program Office expects to announce grant recipients after April 1, 2024. The anticipated start date for funding grants awarded under this announcement is therefore after May 1, 2024.

III. Eligibility Information

A. Eligible Applicants

As authorized by 38 U.S.C. 2108, the Secretary may provide a grant to a ''person or entity'' for the development of specially adapted housing assistive technologies.

B. Cost Sharing or Matching

There is no cost sharing, matching, or cost participation for the SAHAT Grant Program.

C. Threshold Criteria

All technology grant applicants and applications must meet the threshold criteria set forth below. Failure to meet any of the following threshold criteria in the application will result in the automatic disqualification for funding consideration. Ineligible participants will be notified within 30 days of the finding of disqualification for award consideration based on the following threshold criteria:

1. Projects funded under this notice must involve new assistive technologies that the Secretary determines could aid or enhance the ability of a Veteran or Service member to live in an adapted home.
2. Projects funded under this notice must not be used for the completion of work which was to have been completed under a prior grant.
3. Applications in which the technology grant applicant is requesting assistance funds in excess of $200,000 will not be reviewed.
4. Applications that do not comply with the application and submission information requirements provided in Section IV of this notice will be rejected.
5. Applications submitted via mail, email, or facsimile will not be reviewed.
6. Applications must be received through *www.Grants.gov,* as specified in Section IV of this announcement, on or before the application deadline, as specified in the **DATES** section of this announcement. Applications received through *www.Grants.gov* after the application deadline will be considered late and will not be reviewed.
7. Technology grant applicants that have an outstanding obligation that is in arrears to the Federal Government or have an overdue or unsatisfactory response to an audit will be deemed ineligible.
8. Technology grant applicants in default by failing to meet the requirements for any previous Federal assistance will be deemed ineligible.
9. Applications submitted by entities deemed ineligible will not be reviewed.
10. Applications with project dates that extend past July 31, 2025, (this period does not include the 120-day closeout period) will not be reviewed.

All technology grant recipients, including individuals and entities formed as for-profit entities, will be subject to the rules on Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, as found at 2 CFR 200 (see 2 CFR 200.101(a)). Where the Secretary determines that 2 CFR 200 is not applicable or where the Secretary determines that additional requirements are necessary due to the uniqueness of a situation, the Secretary will apply the same standard applicable to exceptions under 2 CFR 200.102.

IV. Application and Submission Information

A. Address To Request Application Package

Technology grant applicants may download the application package from *www.Grants.gov.* Questions regarding the application process should be referred to the following program official: Oscar Hines (Program Manager), Specially Adapted Housing Program, *Oscar.Hines@va.gov*, 202–461–8316 (not a toll-free number).

B. Content and Form of Application Submission

The SAHAT Grant Program application package provided at *www.Grants.gov* (Funding Opportunity Number: VA–SAHAT–24–09) contains electronic versions of the application forms that are required. Additional attachments to satisfy the required application information may be provided; however, letters of support included with the application will not be reviewed. All technology grant applications must consist of the following:

1. Standard Forms (SF) 424, 424A and 424B. SF–424, SF–424A and SF–424B require general information about the applicant and proposed project. The project budget should be described in SF–424A. Please do not include leveraged resources in SF–424A.
2. VA Form 26–0967: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.
3. VA Form 26–0967a: Scoring Criteria for SAHAT Grants.
4. Applications: In addition to the forms listed above, each technology grant application must include the following information:

a. A project description, including the goals and objectives of the project, what the project is expected to achieve, and how the project will benefit Veterans and Service members;

b. An estimated schedule including the length of time (not to extend past July 31, 2025) needed to accomplish tasks and objectives for the project;

c. A description of what the project proposes to demonstrate and how this new technology will aid or enhance the ability of Veterans and Service members to live in an adapted home. The following link has additional information regarding adapted homes: *https://www.va.gov/housing-assistance/disability-housing-grants/;* and

d. Each technology grant applicant is responsible for ensuring that the application addresses each of the scoring criteria listed in Section V(A) of this notice.

C. System for Award Management (SAM)

Each technology grant applicant, unless the applicant is an individual or Federal awarding agency that is excepted from the requirements under 2 CFR 25.110(b) or (c) or has an exception approved by VA under 2 CFR 25.110(d), is required to:

1. Be registered in SAM prior to submitting an application;
2. Provide a valid SAM Unique Entity Identifier number in the application; and
3. Continue to maintain an active SAM registration with current information at all times during which the technology grant applicant has an active Federal award or an application under consideration by VA.

VA will not make an award to an applicant until the applicant has complied with all applicable SAM requirements. If the applicant has not fully complied with the requirements by the time VA is ready to make an award, VA will determine the applicant is not qualified to receive a Federal award.

D. Submission Dates and Times

Applications for the SAHAT Grant Program must be submitted through *www.Grants.gov* to be transmitted to VA by 11:59 p.m. Eastern Standard Time on the application deadline, as specified in the **DATES** section of this announcement. Submissions received after this application deadline will be considered late and will not be reviewed or considered. Submissions by email, mail, or fax will not be accepted.

Applications submitted through *www.Grants.gov* must be submitted by an individual registered with *www.Grants.gov* and authorized to sign applications for Federal assistance. For more information and to complete the registration process, visit *www.Grants.gov.* Technology grant applicants are responsible for ensuring that the registration process does not hinder timely submission of the application.

It is the responsibility of grant applicants to ensure a complete application is submitted via *www.Grants.gov.* Applicants are encouraged to periodically review the ''Version History Tab'' of the funding opportunity announcement in *www.Grants.gov* to identify if any modifications have been made to the funding announcement and/or opportunity package. Upon initial download of the funding opportunity package, applicants will be asked to provide an email address that will allow *www.Grants.gov* to send the applicant an email message in the event this funding opportunity package is changed and/or republished on *www.Grants.gov* prior to the posted closing date.

E. Confidential Business Information

It is recommended that confidential business information (CBI) not be included in the application. However, if CBI is included in an application, applicants should clearly indicate which portion or portions of their application they are claiming as CBI. See 2 CFR 200.334–200.338 (addressing access to a non-Federal entity's records pertinent to a Federal award).

F. Intergovernmental Review

This section is not applicable to the SAHAT Grant Program.

G. Funding Restrictions

The SAHAT Grant Program does not allow reimbursement of pre-award costs.

V. Application Review Information

Each eligible proposal (based on the Section III threshold eligibility review) will be evaluated according to the scoring criteria established by the Secretary and provided below in Section A.

A. Scoring Criteria

The Secretary will score technology grant applications based on the scoring criteria listed below. As indicated in Section I of this notice, the Secretary is placing the greatest emphasis on criteria 1 and 2. This emphasis does not establish new scoring criteria but is designed to assist technology grant applicants in understanding how scores will be weighted and ultimately considered in the final selection process. A technology grant application must receive a minimum aggregate score of 70 to receive further consideration for an award. Instructions for completion of the scoring criteria are listed on VA Form 26–0967a. This form is included in the application package materials on *www.Grants.gov.* The scoring criteria and maximum points are as follows:

1. A description of how the new assistive technology is innovative, to include an explanation of how it involves advancements in new-to-market technologies, new variations on existing technologies, or both (up to 50 points);
2. An explanation of how the new assistive technology will meet a specific, unmet need among eligible individuals, to include whether and how the new assistive technology fits within a category of special emphasis for FY 2024, as explained in Section I(D) of this notice (up to 50 points);
3. An explanation of how the new assistive technology is specifically designed to promote the ability of eligible individuals to live more independently (up to 30 points);
4. A description of the new assistive technology's concept, size and scope (up to 30 points);
5. An implementation plan with major milestones for bringing the new assistive technology into production and to the market. Such milestones must be meaningful and achievable within a specific timeframe (up to 30 points); and
6. An explanation of what uniquely positions the technology grant applicant in the marketplace. This can include a focus on characteristics such as the economic reliability of the technology grant applicant, the technology grant applicant's status as a minority or Veteran-owned business, or other characteristics that the technology grant applicant wants to include to show how it will help protect the interests of, or further the mission of, VA and the program (up to 20 points).

B. Review and Selection Process

Eligible applications will be evaluated by a review panel comprising of five VA employees. The review panel will score applications using the scoring criteria provided in Section V(A) and refer to the selecting official those applications that receive a minimum aggregate score of 70. In determining which applications to approve, the selecting official will take into account the review panel score, the priorities described in this Notice of Funding Opportunity, the governing statute, 38 U.S.C. 2108, the governing regulation, 38 CFR 36.4412 (*https://www.ecfr.gov/current/title-38/chapter-I/part-36/subpart-C/section-36.4412*), and the VA Financial Policy, Volume X Grants Management, Chapter 4 Grants Application Review and Award Process, Financial Policy Documents (*https://department.va.gov/financial-policy-documents/?_financial_policy_volumes=volume-x-grants-management*). VA will review and consider applications for funding pursuant to this notice of funding opportunity in accordance with Office of Management and Budget's (OMB) guidance located at 2 CFR 200, all applicable Federal laws, and relevant Executive guidance, except as noted.

VI. Award Administration Information

A. Award Notices

Although subject to change, the SAHAT Grant Program Office expects to announce grant recipients on or about April 1, 2024. Prior to executing any funding agreement, VA will contact successful applicants to make known the amount of proposed funding and verify the applicant's desire to receive the funding. Any communication between the SAHAT Grant Program Office and successful applicants prior to the issuance of an award notice is not authorization to begin project activities. Once VA verifies that the grant applicant is still seeking funding, VA will issue a signed and dated award notice. This will begin the performance period. VA expects that the performance period should not last longer than 15 months. The award notice will be sent by U.S. mail or electronic means to the organization listed on the Application for Federal Assistance (SF–424). All applicants will be notified by letter or email, sent by U.S. mail or electronic means to the address listed on the SF–424.

B. Administrative and National Policy Requirements

This section is not applicable to the SAHAT Grant Program.

C. Reporting

VA places great emphasis on the responsibility and accountability of grantees. Grantees must agree to cooperate with any Federal evaluation of the program and provide the following:

1. *Quarterly Progress Reports:* These reports will be submitted electronically and outline how grant funds were used, describe program progress, and describe any barriers and measurable outcomes. The format for quarterly reporting will be provided to grantees upon grant award.

2. *Quarterly Financial Reports:* These reports will be submitted electronically using the Federal Financial Report (SF–425).

3. *Grantee Closeout Report:* This final report will be submitted electronically and will detail the assistive technology developed. The grantee's Closeout Report must be submitted to the SAHAT Grant Program Office not later than 120 days after the date the performance period ends.

VII. Agency Contact(s)

For additional general information about this announcement contact the following program official: Oscar Hines (Program Manager), Specially Adapted Housing Program, *Oscar.Hines@va.gov,* 202–461–8316 (not a toll-free number).

Mailed correspondence, which should not include application material, should be sent to the following address: Loan Guaranty Service, VA Central Office, Attn: Oscar Hines (262), 810 Vermont Avenue NW, Washington, DC 20420.

All correspondence with VA concerning this announcement should reference the funding opportunity title, SAHAT Grant Program, and funding opportunity number, VA–SAHAT–24–09. Once the application deadline has passed, VA staff may not discuss this competition with applicants until the application review process has been completed.

VIII. Other Information

Section 2108 authorizes VA to provide grants for the development of new assistive technologies through September 30, 2024. Additional information related to the SAHAT Grant Program administered by LGY is available at: *http://www.benefits.va.gov/homeloans/sahat.asp.*

The SAHAT Grant is not a Veterans' benefit. As such, the decisions of the Secretary are final and not subject to the same appeal rights as decisions related to Veterans' benefits. The Secretary does not have a duty to assist technology grant applicants in obtaining a grant.

Grantees will receive payments electronically through the U.S. Department of Health and Human Services Payment Management System (PMS). All grant recipients should adhere to PMS user policies.

IX. Notices of Funding Opportunity

In accordance with the OMB's guidance located at 2 CFR part 200, and all applicable Federal laws and relevant Executive guidance, the Federal awarding agency will review and consider applications for funding pursuant to this notice of funding opportunity in accordance with the Guidance for Grants and Agreements in title 2 CFR

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on March 14, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2024–06634 Filed 3–27–24; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 89 Thursday,

No. 61 March 28, 2024

Part II

Securities and Exchange Commission

17 CFR Parts 210, 229, et al.

The Enhancement and Standardization of Climate-Related Disclosures for Investors; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR 210, 229, 230, 232, 239, and 249

[Release Nos. 33–11275; 34–99678; File No. S7–10–22]

RIN 3235–AM87

The Enhancement and Standardization of Climate-Related Disclosures for Investors

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to its rules under the Securities Act of 1933 (''Securities Act'') and Securities Exchange Act of 1934 (''Exchange Act'') that will require registrants to provide certain climate-related information in their registration statements and annual reports. The final rules will require information about a registrant's climate-related risks that have materially impacted, or are reasonably likely to have a material impact on, its business strategy, results of operations, or financial condition. In addition, under the final rules, certain disclosures related to severe weather events and other natural conditions will be required in a registrant's audited financial statements.

DATES:

Effective date: These final rules are effective on May 28, 2024.

Compliance date: See section II.O. for further information on transitioning to the final rules.

FOR FURTHER INFORMATION CONTACT: Elliot Staffin, Senior Special Counsel, and Kristin Baldwin, Special Counsel, Office of Rulemaking, at (202) 551–3430, in the Division of Corporation Finance; or Erin Nelson, Senior Special Counsel, and Meagan Van Orden, Professional Accounting Fellow, in the Office of the Chief Accountant, at (202) 551–5300, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to or adding the following rules and forms:

	Commission reference	CFR citation (17 CFR)
Regulation S–X	Article 8–01	§ 210.8–01
	Article 14–01	§ 210.14–01
	Article 14–02	§ 210.14–02
Regulation S–K	Items 1500 through 1508	§§ 229.1500 \through 229.1508
	Item 601	§ 229.601
Regulation S–T	Item 405	§ 232.405
Securities Act [1]	Rule 436	§ 230.436
	Form S–1	§ 239.11
	Form S–3	§ 239.13
	Form S–11	§ 239.18
	Form S–4	§ 239.25
	Form F–3	§ 239.33
	Form F–4	§ 239.34
Exchange Act [2]	Form 10	§ 249.210
	Form 20–F	§ 249.220f
	Form 10–Q	§ 249.308a
	Form 10–K	§ 249.310

[1] 15 U.S.C. 77a *et seq.*
[2] 15 U.S.C. 78a *et seq.*

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I. Introduction

Climate-related risks, their impacts, and a public company's response to those risks can significantly affect the company's financial performance and position.[3] Accordingly, many investors and those acting on their behalf—including investment advisers and investment management companies—currently seek information to assess how climate-related risks affect a registrant's business and financial condition and thus the price of the registrant's securities. Investors also seek climate-related information to assess a registrant's management and board oversight of climate-related risks so as to inform their investment and voting decisions. In light of these investor needs, the Commission is adopting rules to require registrants to provide certain information about climate-related risks that have materially impacted, or are reasonably likely to have a material impact on, the registrant's business strategy, results of operations, or financial condition; the governance and management of such risks; and the financial statement effects of severe weather events and other natural conditions in their registration statements and annual reports. This information, alongside disclosures on other risks that companies face, will assist investors in making decisions to buy, hold, sell, or vote securities in their portfolio.

Many companies currently provide some information regarding climate-related risks. For example, as discussed in more detail in section IV.A.5 below, some studies show that a third of public companies disclose information about climate-related risks, mostly outside of Commission filings,[4] and nearly 40 percent of all annual reports contain some climate-related discussion.[5] In addition, Commission staff analysis found that approximately 20 percent of public companies provide some information regarding their Scope 1 and 2 greenhouse gas (''GHG'') emissions, often outside of Commission filings, with the highest rate of emissions disclosures found among large accelerated filers.[6] Among companies in the Russell 1000 Index, based on one analysis, these numbers are even higher, with 90 percent publicly disclosing some climate-related information[7] and almost 60 percent providing disclosures regarding their GHG emissions.[8]

The climate-related information that these companies currently provide, however, is inconsistent and often difficult for investors to find and/or compare across companies. As a result, investors have expressed the need for more detailed, reliable, and comparable disclosure of information regarding climate-related risks. The requirements adopted in this release meet that need by providing more complete and decision-useful information about the impacts of climate-related risks on registrants, improving the consistency, comparability, and reliability of climate-related information for investors. As a result, investors will be able to make more informed investment and voting decisions.

As discussed in more detail throughout this release, disclosure of certain climate-related matters is required in a number of Federal, State, and foreign jurisdictions.[9] Companies currently often provide much of this information outside of Commission filings, in varying levels of detail, and in different documents and formats. Additionally, because of the importance of this information to investors, a variety of third parties have developed climate-related reporting frameworks.[10] Use of reporting frameworks is also often voluntary. Companies may disclose certain information under one

[3] *See infra* section I.A. For purposes of this release, we use the terms ''public companies,'' ''companies,'' ''registrants,'' and ''issuers'' interchangeably and, unless explained in the text, the use of different terms in different places is not meant to connote a significant difference.

[4] *See, e.g.,* Center for Capital Markets, *2021 Survey Report: Climate Change & ESG Reporting from the Public Company Perspective,* available at *https://www.centerforcapitalmarkets.com/wp-content/uploads/2021/08/CCMC_ESG_Report_v4.pdf,* discussed *infra* in Section IV.A.5.

[5] *See infra* notes 2638–2639 and accompanying text.

[6] *See infra* notes 2675–2676 and accompanying text.

[7] *See infra* note 2666 and accompanying text.

[8] *See infra* note 2683 and accompanying text.

[9] *See, e.g., infra* sections I.A (discussing certain international initiatives) and II.A.3 (discussing the Inflation Reduction Act and recent California laws).

[10] *See, e.g.,* Task Force on Climate-related Financial Disclosures, *About,* available at *https://www.fsb-tcfd.org/about/*; CDP Worldwide (''CDP''), *About us,* available at *https://www.cdp.net/en/info/about-us*; Sustainability Accounting Standards Board (''SASB'') Standards, *About us,* available at *https://sasb.org/about/*; and Global Reporting Initiative (''GRI''), *About GRI,* available at *https://www.globalreporting.org/about-gri/. See also infra* notes 148–151.

or more frameworks, may provide only partial disclosures, or may choose not to provide consistent information year over year. As a result, reporting is fragmented and difficult for investors to compare across companies or across reporting periods. As commenters have indicated, this lack of consistency and comparability increases costs to investors in obtaining and analyzing decision-useful information and impairs investors' ability to make investment or voting decisions in line with their risk preferences.[11] Investors have asked for this information in Commission filings, alongside other disclosures on the business, results of operations, and financial condition of a registrant and information on the other risks companies face to their business, finances, and operations. Requiring these additional disclosures in Commission filings will allow investors to evaluate together the range of risks that a company faces, the existing and potential impacts of those risks, and the way that company management assesses and addresses those risks. Providing these disclosures in Commission filings also will subject them to enhanced liability that provides important investor protections by promoting the reliability of the disclosures.

The Commission has required disclosure of certain environmental matters for the past 50 years,[12] most recently issuing guidance in 2010 (''2010 Guidance'') on how existing rules may require disclosure of climate-related risks and their impacts on a registrant's business or financial condition.[13] Since the Commission issued the 2010 Guidance, there has been growing recognition that climate-related risks affect public companies' business, results of operations, and financial condition.[14] Our experience with the 2010 Guidance and current practices regarding disclosure of this information led us to conclude that, although many companies disclose some climate-related information, there was a need to both standardize and enhance the information available to investors about such matters and thus to propose an updated approach.[15] Since the proposal, ongoing regulatory developments and market practices with respect to disclosure of climate-related risks have only underscored the need for enhanced disclosure requirements in this area.[16] Although current disclosure practices elicit some useful information about climate-related risks, there remain significant deficiencies in the consistency and completeness of this information. We have therefore concluded that additional requirements are appropriate to ensure that investors have access to more complete and reliable information that will enable them to make informed investment and voting decisions.[17]

The rules that we are adopting respond to investors' concerns regarding the adequacy of current disclosure practices while taking into account comments received on the proposed rules. In general terms, the final rules will elicit enhanced and more consistent and comparable disclosure about the material risks that companies face and how companies manage those risks by requiring:

- A description of any climate-related risks that have materially impacted or are reasonably likely to have a material impact on the registrant, including on its strategy, results of operations, and financial condition, as well as the actual or potential material impacts of those same risks on its strategy, business model, and outlook;
- Specified disclosures, regarding a registrant's activities, if any, to mitigate or adapt to a material climate-related risk or use of transition plans, scenario analysis or internal carbon prices to manage a material climate-related risk;
- Disclosure about any oversight by the registrant's board of directors of climate-related risks and any role by management in assessing and managing material climate-related risks;
- A description of any processes the registrant uses to assess or manage material climate-related risks; and
- Disclosure about any targets or goals that have materially affected or are reasonably likely to materially affect the registrant's business, results of operations, or financial condition.

In addition, to facilitate investors' assessment of particular types of risk, the final rules require:

- Disclosure of Scope 1 and/or Scope 2 emissions on a phased in basis by certain larger registrants when those emissions are material, and the filing of an attestation report covering the required disclosure of such registrants' Scope 1 and/or Scope 2 emissions, also on a phased in basis; and
- Disclosure of the financial statement effects of severe weather events and other natural conditions including costs and losses.

A further summary of the final rules is presented below.[18]

In crafting the final rules, we benefited from extensive public comments. We received over 4,500 unique comment letters on the proposed climate-related disclosure rules and over 18,000 form letters.[19] Commenters included academics, accounting and audit firms, individuals, industry groups, investor groups, law firms, non-governmental organizations, pension funds, professional climate advisors, professional investment advisers and investment management companies, registrants, standard-setters, state

[11] *See, e.g.,* letters from AllianceBernstein (June 17, 2022) (''AllianceBernstein''); Attorneys General from California and 19 other states (June 17, 2022) (''AGs of Cal. *et al.*''); California Public Employees' Retirement System (June 15, 2022) (''CalPERS''); California State Teachers' Retirement System (June 17, 2022) (''CalSTRS''); Ceres (June 17, 2022) (''Ceres''); Domini Impact Investments (June 17, 2022) (''Domini Impact''); Trillium Asset Management (Oct. 20, 2022) (''Trillium''); and Wellington Management Company (June 17, 2022) (''Wellington Mgmt.''); *see also* Proposing Release, section I.B, note 42 and accompanying text; and *infra* section IV.C. We discuss investors' need for more consistent, comparable, and decision-useful disclosure about registrants' climate-related risks in Sections I.A and II.A.3 below.

[12] *See infra* notes 202–203 and accompanying text.

[13] *See Commission Guidance Regarding Disclosure Related to Climate Change,* Release No. 33–9106 (Feb. 2, 2010) [75 FR 6290 (Feb. 8, 2010)] (''2010 Guidance''); and discussion *infra* notes 204–205 and accompanying text. *See also infra* section II.B.

[14] *See, e.g.,* letters from AllianceBernstein; Alphabet, Autodesk, Dropbox, eBay, Hewlett Packard Enterprise, HP Inc., Intel, Meta, PayPal, and Workday (June 17, 2022) (''Alphabet *et al.*''); Amazon (June 17, 2022); CalPERS; CalSTRS; Eni SpA (June 16, 2022) (''Eni SpA''); Pacific Investment Management Company (June 17, 2022) (''PIMCO''); PricewaterhouseCoopers (June 17, 2022) (''PwC''); and Wellington Mgmt. *See also infra* note 28 (discussing the Financial Stability Oversight Council's (''FSOC's'') Report on Climate-Related Financial Risk 2021).

[15] *See The Enhancement and Standardization of Climate-Related Disclosures for Investors,* Release No. 33–11042 (Mar. 21, 2022) [87 FR 21334 (Apr. 11, 2022)] (''Proposing Release'').

[16] *See infra* Section II.A.3 for a discussion of recent foreign and state regulatory developments regarding the disclosure of climate-related risks, including the announcement by several countries of their intention to adopt laws or regulations implementing the International Sustainability Standards Board's (''ISSB'') climate reporting standard in whole or part; and certain recent California laws requiring the disclosure of climate-related risks and greenhouse gas emissions by certain large companies.

[17] Even after adoption of the final rules, the 2010 Guidance will still be relevant because it discusses existing Commission rules, such as those pertaining to a registrant's description of its business and certain legal proceedings, which require disclosure regarding, among other things, compliance with environmental laws and regulations that are only tangentially mentioned in this rulemaking. Registrants should continue to consider the 2010 Guidance as they evaluate their disclosure obligations in their Description of Business, Risk Factors, Legal Proceedings, and Management's Discussion and Analysis. These disclosures should be based on the registrant's specific facts and circumstances.

[18] *See infra* section I.B.

[19] These comments are available at *https://www.sec.gov/comments/s7-10-22/s71022.htm.* Unless otherwise noted, comments referenced in this release pertain to these comments.

government officials, and U.S. Senators and Members of the House of Representatives. Many commenters generally supported the proposal to require climate-related disclosure. Others opposed the proposed rules in whole or in part. In addition, the Commission's Investor Advisory Committee offered broad support for the proposal, with recommendations for certain modifications to the proposed rules, as discussed in more detail below.[20] The Commission's Small Business Capital Formation Advisory Committee made several recommendations, including that the Commission exempt emerging growth companies (''EGCs'') [21] and smaller reporting companies (''SRCs'') [22] from the final rules or otherwise adopt scaled climate-related disclosure requirements for EGCs and SRCs.[23] We considered comments that were supportive as well as those that were critical of aspects of the proposed rules, including comments from investors as to the information they need to make informed investment or voting decisions, as well as concerns expressed by registrants, trade associations, and others with regard to compliance burdens, liability risk, and our statutory authority. After considering all comments, we are adopting final rules with modifications from the proposal to better effectuate our goals in requiring these additional disclosures while limiting the final rules' burdens on registrants.[24]

As the Commission explained when proposing the climate disclosure rules,[25] while climate-related issues are subject to various other regulatory schemes, our objective is limited to advancing the Commission's mission to protect investors, maintain fair, orderly, and efficient markets, and promote capital formation by providing disclosure to investors of information important to their investment and voting decisions. We are adopting the final rules to advance these investor protection, market efficiency and capital formation objectives, consistent with our statutory authority, and not to address climate-related issues more generally. The final rules should be read in that context. Thus, for example, in those instances where the rules reference materiality—consistent with our existing disclosure rules and market practices—materiality refers to the importance of information to investment and voting decisions about a particular company, not to the importance of the information to climate-related issues outside of those decisions. The Commission has been and remains agnostic about whether or how registrants consider or manage climate-related risks. Investors have expressed a need for this information on risks in valuing the securities they currently hold or are considering purchasing. While we recognize that the rules will impose burdens on registrants, we note that the degree of that burden will vary depending upon the circumstances facing individual registrants, as not every registrant will be required to provide all disclosures specified under the final rules. Moreover, as discussed further throughout the release, we believe that those burdens are justified by the informational benefits of the disclosures to investors.

A. Need for Enhanced and Standardized Climate-Related Disclosures

The importance of climate-related disclosures for investors has grown as investors,[26] companies, and the markets

[20] *See* U.S. Securities and Exchange Commission Investor Advisory Committee Recommendation Related to Climate-Related Disclosure Rule Proposals (Sept. 21, 2022), available at *https://www.sec.gov/spotlight/investor-advisory-committee-2012/20220921-climate-related-disclosure-recommendation.pdf* ''IAC Recommendation''). Specifically, the Investor Advisory Committee recommended the following changes to the proposed rules, as discussed in more detail in section II below: (1) adding a requirement for ''Management Discussion of Climate-Related Risks & Opportunities''; (2) requiring disclosure of material facility locations; and (3) eliminating the proposed requirement around board expertise. In addition to the IAC Recommendation, in June 2022, the Investor Advisory Committee held a meeting that included a panel discussion regarding climate disclosures. See the minutes for that meeting, including the panelists that participated in the discussion, at *https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac060922-minutes.pdf*. The Investor Advisory Committee was established in Apr. 2012 pursuant to section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [Pub. L. 111–203, sec. 911, 124 Stat. 1376, 1822 (2010)] (''Dodd-Frank Act'') to advise and make recommendations to the Commission on regulatory priorities, the regulation of securities products, trading strategies, fee structures, the effectiveness of disclosure, and initiatives to protect investor interests and to promote investor confidence and the integrity of the securities marketplace.

[21] An EGC is a registrant that had total annual gross revenues of less than $1.235 billion during its most recently completed fiscal year and has not met the specified conditions for no longer being considered an EGC. *See* 17 CFR 230.405; 17 CFR 240.12b–2; 15 U.S.C. 77b(a)(19); 15 U.S.C. 78c(a)(80); and *Inflation Adjustments under Titles I and III of the JOBS Act,* Release No. 33–11098 (Sep. 9, 2022) [87 FR 57394 (Sep. 20, 2022)].

[22] An SRC is an issuer that is not an investment company, an asset-backed issuer (as defined in 17 CFR 229.1101), or a majority-owned subsidiary of a parent that is not an SRC and that: (1) had a public float of less than $250 million; or (2) had annual revenues of less than $100 million and either: (i) no public float; or (ii) a public float of less than $700 million. 17 CFR 229.10 (defining SRC and also providing how and when an issuer determines whether it qualifies as an SRC); 17 CFR 230.405 (same); 17 CFR 240.12–2 (same).

[23] *See* U.S. Securities and Exchange Commission Small Business Capital Formation Advisory Committee Recommendation Regarding the Enhancement and Standardization of Climate-Related Disclosures for Investors (July 13, 2022), available at *https://www.sec.gov/spotlight/sbcfac/sbcfac-climate-related-disclosures-recommendation-050622.pdf* (''SBCFAC Recommendation''). In addition, the Small Business Capital Formation Advisory Committee highlights generally in its parting perspectives letter that ''exemptions, scaling, and phase-ins for new requirements where appropriate, allows smaller companies to build their businesses and balance the needs of companies and investors while promoting strong and effective U.S. public markets.'' *See* Parting Perspectives Letter, U.S. Securities and Exchange Commission Small Business Capital Formation Advisory Committee (Feb. 28, 2023), available at *https://www.sec.gov/files/committee-perspectives-letter-022823.pdf*. Finally, we note that participants in the Commission-hosted Small Business Forum in 2023 recommended that the Commission revise the proposed rules to exempt SRCs, non-accelerated filers, EGCs, and other midsized companies and to consider scaling and delayed compliance (''Small Business Forum Recommendation (2023)''); participants in 2022 and 2021 Small Business Forums similarly recommended the Commission provide exemptions or scaled requirements for small and medium-sized companies in connection with any new ESG disclosure requirements adopted by the Commission. *See* Report on the 42nd Annual Small Business Forum (April 2023), available at *https://www.sec.gov/files/2023_oasb_annual_forum_report_508.pdf*; Report on the 41st Annual Small Business Forum (April 2022), available at *https://www.sec.gov/files/2022-oasb-annual-forum-report.pdf*; and Report on the 40th Annual Small Business Forum (May 2021), available at *https://www.sec.gov/files/2021_OASB_Annual_Forum_Report_FINAL_508.pdf*. *See also* U.S. Securities and Exchange Commission Office of the Advocate for Small Business Capital Formation, Annual Report Fiscal Year 2023 (''2023 OASB Annual Report''), available at *https://www.sec.gov/files/2023-oasb-annual-report.pdf*, at 84–85 (recommending generally that in engaging in rulemaking that affects small businesses, the Commission tailor the disclosure and reporting framework to the complexity and size of operations of companies, either by scaling obligations or delaying compliance for the smallest of the public companies). The Small Business Capital Formation Advisory Committee was established in Dec. 2016 pursuant to the Small Business Advocate Act of 2016 [Public Law 114–284 (2016)] to advise the Commission on rules, regulations, and policies with regard to the Commission's mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as such rules, regulations, and policies relate to: capital raising by emerging, privately held small businesses (''emerging companies'') and publicly traded companies with less than $250,000,000 in public market capitalization (''smaller public companies'') through securities offerings, including private and limited offerings and initial and other public offerings; trading in the securities of emerging companies and smaller public companies; and public reporting and corporate governance requirements of emerging companies and smaller public companies.

[24] *See infra* section I.B for a summary of changes from the proposed rules, including the addition of materiality qualifiers in certain rule provisions and revisions to make the final rules less prescriptive.

[25] *See* Proposing Release, section I.

[26] Throughout this release, we refer to investors to include retail investors, institutional investors, and other market participants (such as financial analysts, investment advisers, and portfolio

Continued

have recognized that climate-related risks [27] can affect a company's business and its current and longer-term financial performance and position in numerous ways.[28] Climate-related natural disasters can damage issuers' assets, disrupt their operations, and increase their costs.[29] Any widespread market-based transition to lower carbon products, practices, and services—triggered, for example, by recent or future changes in consumer preferences [30] or the availability of financing, technology, and other market forces [31]—can lead to material changes in a company's business model or strategy and may have a material impact on a registrant's financial condition or operations.[32]

In addition to these market forces, changes in law, regulation, or policy may prompt companies to transition to lower carbon products, practices, and services. For example, governments including the United States and others throughout the world have made public commitments to transition to a lower carbon economy.[33] Efforts towards meeting GHG reduction goals [34] could have financial effects that materially impact registrants.[35] Recently both the Federal Government and several State governments have adopted or proposed laws and regulations that incentivize companies to reduce their GHG emissions and transition to a lower carbon economy in a variety of ways.[36] How a registrant assesses and plans in response to such legislative and regulatory efforts and going forward complies with such laws and regulations, may have a significant impact on its financial performance and investors' return on their investment in the company.

Further, as reflected in comments received in response to the proposed rules and as discussed throughout this release, investors seek to assess the climate-related risks that registrants face and evaluate how registrants are measuring and responding to those risks.[37] Effective disclosures regarding climate-related risks can help investors better assess how registrants are measuring and responding to those

managers) that use disclosures in Commission filings as part of their analysis and to help investors.

[27] The Commission has a long history of requiring disclosures to investors of information about risks facing registrants. See *infra* notes 184–191 and accompany text for a discussion of that history. In that time, the Commission has described those risks using differently terminology, but has largely focused on the same concepts. *See, e.g.,* 17 CFR 229.105(a) (Where appropriate, provide under the caption ''Risk Factors'' a discussion of the material factors that make an investment in the registrant or offering speculative or risky.); *Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments and Disclosure of Quantitative and Qualitative Information About Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments, and Derivative Commodity Instruments,* Release No. 33–7386 (Jan. 31, 1997) [62 FR 6044 at n.12 (Feb. 10, 1997)] (Requiring disclosure of qualitative and quantitative information about market risk for derivatives and other financial instruments; Market risk is the risk of loss arising from adverse changes in market rates and prices, such as interest rates, foreign currency exchange rates, commodity prices, and other relevant market rate or price changes (*e.g.,* equity prices).); *Guides for Preparation and Filing of Registration Statements,* Release No. 33–4666 (Feb. 7, 1964) [29 FR 2490, 2492 (Feb. 15, 1964)] (In many instances the securities to be offered are of a highly speculative nature. The speculative nature may be due to such factors as an absence of operating history of the registrant, an absence of profitable operations in recent periods, the financial position of the registrant or the nature of the business in which the registrant is engaged or proposes to engage. . . In such instances, and particularly where a lengthy prospectus cannot be avoided, there should be set forth immediately following the cover page of the prospectus a carefully organized series of short, concise paragraphs summarizing the principal factors which make the offering speculative with references to other parts of the prospectus where complete information with respect to such factors is set forth.).

[28] For example, FSOC's Report on Climate-Related Financial Risk 2021 found that investors and businesses may experience direct financial effects from climate-related risks and observed that the costs would likely be broadly felt as they are passed through supply chains and to customers and as they reduce firms' ability to service debt or produce returns for investors. *See* 2021 FSOC Report, Chapter 1: *From Climate-Related Physical Risks to Financial Risks; From Climate-related Transition Risks to Financial Risks.* In 2023 FSOC repeated its concern that climate-related risks are an emerging and increasing threat to U.S. financial stability and stated that climate-related financial risk can manifest as and amplify traditional risks, such as credit, market, liquidity, operational, compliance, reputational, and legal risks. *See* FSOC, Annual Report 2023; *see also* letters from AGs of Cal. *et al.;* Ceres; PIMCO; and Wellington Mgmt; *infra* note 99 and accompanying text.

[29] *See, e.g.,* Greg Ritchie, Bloomberg, *90% of World's Biggest Firms Will Have at Least One Asset Exposed to Climate Risk, Fresh Data Show* (Sept. 15, 2022) (stating that over 90% of the world's largest companies will have at least one asset financially exposed to climate risks such as wildfires or floods by the 2050s, and more than a third of those companies will see at least one asset lose 20% or more of its value as a result of climate-related events).

[30] *See, e.g.,* McKinsey & Company, *How electric vehicles will shape the future* (Apr. 23, 2022), available at *https://www.mckinsey.com/featured-insights/themes/how-electric-vehicles-will-shape-the-future* (predicting that by 2035, the major automotive markets will be fully electric).

[31] *See, e.g.,* Amrith Ramkumar, Wall Street Journal, *JPMorgan Makes One of the Biggest Bets Ever on Carbon Removal* (May 23, 2023), available at *https://www.wsj.com/articles/jpmorgan-makes-one-of-the-biggest-bets-ever-on-carbon-removal-c7d5fe63* (noting that ''JPMorgan Chase has agreed to invest more than $200 million to purchase credits from several companies in the nascent [carbon removal] industry'').

[32] *See, e.g.,* BlackRock, *Managing the net-zero transition* (Feb. 2022), available at *https://www.blackrock.com/corporate/literature/whitepaper/bii-managing-the-net-zero-transition-february-2022.pdf* (''On top of physical climate risks, companies and asset owners must now grapple with the transition [to a net-zero economy]. Economies will be reshaped as carbon emissions are cut. The transition will involve a massive reallocation of resources. Supply and demand will shift, with mismatches along the way. Value will be created and destroyed across companies.'').

[33] *See* United Nations, *Net Zero,* available at *https://www.un.org/en/climatechange/net-zero-coalition* (''More than 140 countries, including the biggest polluters—China, the United States, India and the European Union—have set a net-zero target. . . .'').

[34] *See, e.g.,* Press Statement, Antony J. Blinken, Secretary of State, The United States Officially Rejoins the Paris Agreement (Feb. 19, 2021), available at *https://www.state.gov/the-united-states-officially-rejoins-the-paris-agreement/.* Over 190 countries have signed the Paris Climate Agreement, which aims to limit global temperature rise. Moreover, at the UN Climate Change Conference (COP 26), the United States committed to become net zero by 2050, China by 2060, and India by 2070. Further, over 100 countries including the U.S. formed a coalition to reduce methane emissions by 30% by 2030. *See David Worford,* COP26 Net Zero Commitments will Speed Energy Transition, Increase Pressure on Industries, According to Moody's Report, Environment+Energy Leader (Nov. 17, 2021), available at *https://www.environmentenergyleader.com/2021/11/cop26-net-zero-commitments-will-speed-energy-transition-increase-pressure-on-industries-according-to-moodys-report/*. At COP27, participating countries (which included the U.S.) reaffirmed their commitment to limit global temperature rise and agreed to provide ''loss and damage'' funding for vulnerable countries hit hard by climate disasters. *See* United Nations Climate Change, *COP27 Reaches Breakthrough Agreement on New ''Loss and Damage'' Fund for Vulnerable Countries* (Nov. 20, 2022), available at *https://unfccc.int/news/cop27-reaches-breakthrough-agreement-on-new-loss-and-damage-fund-for-vulnerable-countries.* More recently, at COP 28, participating countries (which included the U.S.) signed an agreement that includes commitments for ''deep emissions cuts and scaled-up finance.'' *See* United Nations Climate Change, *COP28 Agreement Signals ''Beginning of the End'' of the Fossil Fuel Era* (Dec. 13, 2023), available at *https://unfccc.int/news/cop28-agreement-signals-beginning-of-the-end-of-the-fossil-fuel-era.*

[35] *See, e.g.,* letter from Eni SpA (''[C]ompanies should discuss the reference scenario in which they are acting, providing information about any emerging trends, demands, uncertainties, commitments or events that are reasonably likely to have material impacts on the company's future profitability and growth prospects in dependence of likely or possible evolution of the regulatory or competitive environment in response to the global need to achieve the goals of the Paris Agreement.''); *see also infra* note 108 and accompanying text (citing comment letters that stated that, as governments and registrants have increasingly made pledges and enacted laws regarding a transition to a lower carbon economy, more consistent and reliable climate-related disclosure has become particularly important to help investors assess the reasonably likely financial impacts to a registrant's business, results of operations, and financial condition in connection with such governmental pledges or laws and the related financial and operational impacts of a registrant's progress in achieving its publicly announced, climate-related targets and goals).

[36] *See infra* section II.C for examples of Federal law and State regulation that may be sources of climate-related risk, particularly transition risk, for registrants.

[37] *See, e.g., infra* notes 99–106 and accompanying text.

risks. Those assessments can, in turn, inform investment and voting decisions.

We agree with the many commenters that stated that the current state of climate-related disclosure has resulted in inconsistent, difficult to compare, and frequently boilerplate disclosures, and has therefore proven inadequate to meet the growing needs of investors for more detailed, consistent, reliable, and comparable information about climate-related effects on a registrant's business and financial condition to use in making their investment and voting decisions.[38] Since the Commission issued the 2010 Guidance, awareness of climate-related risks to registrants has grown.[39] Retail and institutional investors[40] and investor-led initiatives[41] have increasingly expressed the need for more reliable information about the effects of climate-related risks, as well as information about how registrants have considered and addressed climate-related risks and opportunities when conducting operations and developing business strategy and financial plans.[42] At the same time, many companies have made climate-related commitments to reduce GHG emissions or become ''net zero'' by a particular date.[43] In response, investors have expressed the need for more detailed information to aid their investment and voting decisions, including insight into the potential impacts on registrants associated with fulfilling such commitments.[44]

B. Summary of the Final Rules

Having considered the comments received on the proposal, we are adopting the final amendments described in this release with modifications in response to those comments.[45]

Like the proposed rules, the final rules' reporting framework has structural elements, definitions, concepts, and, in some cases, substantive requirements that are similar to those in the Task Force on Climate-related Financial Disclosure (''TCFD''), an industry-led task force charged with promoting better-informed investment, credit, and insurance underwriting decisions.[46] The TCFD reporting framework was designed to elicit information to help investors better understand a registrant's climate-related risks to make more informed investment decisions.[47] We therefore find that it is an appropriate reference point for the final rules. Indeed, the core categories of the framework, which focus on governance, risk management, strategy, and metrics,[48] align with the type of information called for by existing disclosure requirements within Regulation S–K.[49] Accordingly, where consistent with our objectives, the authority Congress granted, and the comments received, certain provisions in the final rules are similar to the TCFD recommendations.[50] Similarly, we have used concepts developed by the GHG Protocol for aspects of the final rules, as it has become a leading reporting standard for GHG emissions.[51] Because

[38] *See, e.g.,* letters from AllianceBernstein; BlackRock, Inc. (June 17, 2022) (''BlackRock''); CalPERS; CalSTRS; Calvert Research and Management (June 17, 2022) (''Calvert''); Decatur Capital Management (May 29, 2022); Domini Impact; Harvard Management Company (June 6, 2022) (''Harvard Mgmt.''); Impax Asset Management (May 12, 2022) (''Impax Asset Mgmt.''); Trillium; and Wellington Mgmt. *But see, e.g.,* letters from the U.S. Chamber of Commerce (June 16, 2022) (''Chamber'') (June 16, 2022); National Association of Manufacturers (June 6, 2022) (''NAM'') (June 6, 2022); and Society for Corporate Governance (June 17, 2022) (''Soc. Corp. Gov.'').

[39] *See, e.g., supra* notes 28–32.

[40] Although some commenters stated that only institutional investors have demanded that the Commission adopt climate-related disclosure requirements, *see, e.g.,* letters from Chamber and Soc. Corp. Gov., most individual retail investors and firms advising such investors who submitted comments supported the proposed rules. *See, e.g.,* letters from Barry Gillespie (June 8, 2022); Betterment (June 17, 2022); Helene Marsh (June 7, 2022); and Rodney Smith (June 13, 2022); *see also* letter from Investment Company Institute (June 17, 2022) (''ICI'') (supporting ''key components of the proposal'' and noting that its ''members, US regulated funds . . . serv[e] more than 100 million investors'' and ''clearly have a significant interest in how the nature and availability of climate-related risk information provided by public companies evolves'' and ''analyze this, and other, information in formulating their investment decisions on behalf of those millions of long-term individual investors'').

[41] See Proposing Release, section I.C.1 for a discussion of some of these investor-led initiatives. Among other initiatives discussed in the Proposing Release, in 2019, more than 630 investors collectively managing more than $37 trillion signed the Global Investor Statement to Governments on Climate Change urging governments to require climate-related financial reporting. *See* United Nations Climate Change, *631 Institutional Investors Managing More than USD 37 Trillion in Assets Urge Governments to Step up Climate Ambition* (Dec. 9, 2019), available at *https://unfccc.int/news/631-institutional-investors-managing-more-than-usd-37-trillion-in-assets-urge-governments-to-step-up.* This investor initiative continued as the Investor Agenda's 2021 Global Investor Statement to Governments on the Climate Crisis, which was signed by 733 global institutional investors, including some of the largest investors, with more than $52 trillion in assets under management in the aggregate. This statement called for governments to implement a number of measures, including mandating climate risk disclosure. *See* The Investor Agenda, 2021 Global Investor Statement to Governments on the Climate Crisis (Oct. 27, 2021), available at *https://theinvestoragenda.org/wp-content/uploads/2021/09/2021-Global-Investor-Statementto-Governments-on-the-Climate-Crisis.pdf. But see* letter from Lawrence Cunningham for Twenty Professors of Law and Finance, George Washington University (Feb. 29, 2024) (noting that some large institutional asset managers or investors have recently withdrawn membership from certain of the investor-led initiatives described in the Proposing Release).

[42] *See, e.g.,* letters from AllianceBernstein; CalPERS; CalSTRS; Domini Impact; Harvard Mgmt; Impax Asset Mgmt; Trillium; and Wellington Mgmt.

[43] *See* Proposing Release, section I.C.1. *See also* Dieter Holger and Pierre Bertrand, *U.N. Group Recommends Stricter Rules Over Net-Zero Pledges,* The Wall Street Journal (Nov. 8, 2022) (stating that roughly 800 of the world's 2,000 largest public companies by revenue have committed to get to net zero emissions by 2050 or sooner); and United Nations, *Recognizing growing urgency, global leaders call for concrete commitments for clean, affordable energy for all by 2030 and net-zero emissions by 2050* (May 26, 2021).

[44] *See, e.g.,* letters from Calvert; Ceres; Investment Adviser Association (June 17, 2022) (''IAA''); and PIMCO. *See also* Climate Action 100+, As The 2023 Proxy Season Continues, Investors Are Calling On Climate Action 100+ Focus Companies For More Robust Climate Action (May 9, 2023) (stating that in addition to more robust corporate governance on climate, investors are calling for disclosure on key issues including greenhouse gas emissions targets, transition plans (including policies to ensure a just transition for workers and communities), and reporting on methane measurements); Climate Action 100+, Climate Action 100+ Net Zero Company Benchmark Shows Continued Progress On Ambition Contrasted By A Lack Of Detailed Plans Of Action (Oct. 18, 2023); and Dieter Holger, Corporate Climate Plans Fall Well Short of Targets, With a Few Bright Spots, The Wall Street Journal (Feb. 13, 2023).

[45] As stated above, the Commission received a large number of comments on the proposal, and we considered all of those comments. Nevertheless, considering the overlapping content and themes in the comments, and for the sake of clarity, we have not cited each individual comment letter in support of or against a particular position in the discussion below.

[46] *See* TCFD, Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017), available at *https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf.* In Apr. 2015, the Group of 20 Finance Ministers directed the Financial Stability Board (''FSB'') to evaluate ways in which the financial sector could address climate-related concerns. The FSB concluded that better information was needed to facilitate informed investment decisions and to help investors and other market participants to better understand and take into account climate-related risks. The FSB established the TCFD. Since then, the framework for climate-related disclosures developed by the TCFD has been refined and garnered global support as a reliable framework for climate-related financial reporting. For background on the TCFD and development of its recommendations, *see* Proposing Release, section I.D.1.

[47] *See* TCFD, *supra* note 46, at ii–iii.

[48] *See* TCFD, *supra* note 4646 (listing governance, strategy, risk management, and metrics and targets as core elements of the TCFD framework).

[49] *See, e.g.,* 17 CFR 229.105 (Risk factors), 17 CFR 229.303 (Management's discussion and analysis of financial condition and results of operation), 17 CFR 229.401 (Directors, executive officers, promoters and control persons), and 17 CFR 229.407 (Corporate governance).

[50] As discussed below, a number of commenters recommended that the Commission incorporate the TCFD recommendations into the final rules. *See infra* notes 115–118 and accompanying text.

[51] *See* World Business Council for Sustainable Development and World Resources Institute, *The Greenhouse Gas Protocol, A Corporate Accounting and Reporting Standard* REVISED EDITION, available at *https://ghgprotocol.org/corporate-standard.* The GHG Protocol was created through a partnership between the World Resources Institute

Continued

many registrants have elected to follow the TCFD recommendations when voluntarily providing climate-related disclosures,[52] and/or have relied on the GHG Protocol when reporting their GHG emissions,[53] building off these reporting frameworks will mitigate those registrants' compliance burdens and help limit costs.[54] Building off the TCFD framework and the GHG Protocol will also benefit those investors seeking to make comparisons between Commission registrants and foreign companies not registered under the Federal securities laws that make disclosures under the TCFD framework and GHG Protocol, mitigating the challenges they experience when making investment and voting decisions.[55] Nevertheless, while the final rules use concepts from both TCFD and the GHG Protocol where appropriate, the rules diverge from both of those frameworks in certain respects where necessary for our markets and registrants and to achieve our specific investor protection and capital formation goals.

1. Content of the Climate-Related Disclosures

The final rules will create a new subpart 1500 of Regulation S–K and Article 14 of Regulation S–X. In particular, the final rules will require a registrant to disclose information about the following items:

- Any climate-related risks identified by the registrant that have had or are reasonably likely to have a material impact on the registrant, including on its strategy, results of operations, or financial condition in the short-term (*i.e.,* the next 12 months) and in the long-term (*i.e.,* beyond the next 12 months);[56]
- The actual and potential material impacts of any identified climate-related risks on the registrant's strategy, business model, and outlook, including, as applicable, any material impacts on a non-exclusive list of items;[57]
- If, as part of its strategy, a registrant has undertaken activities to mitigate or adapt to a material climate-related risk, a quantitative and qualitative description of material expenditures incurred and material impacts on financial estimates and assumptions that, in management's assessment, directly result from such mitigation or adaptation activities;[58]
- If a registrant has adopted a transition plan to manage a material transition risk, a description of the transition plan, and updated disclosures in the subsequent years describing the actions taken during the year under the plan, including how the actions have impacted the registrant's business, results of operations, or financial condition, and quantitative and qualitative disclosure of material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the disclosed actions;[59]
- If a registrant uses scenario analysis and, in doing so, determines that a climate-related risk is reasonably likely to have a material impact on its business, results of operations, or financial condition, certain disclosures regarding such use of scenario analysis;[60]
- If a registrant's use of an internal carbon price is material to how it evaluates and manages a material climate-related risk, certain disclosures about the internal carbon price;[61]
- Any oversight by the board of directors of climate-related risks and any role by management in assessing and managing the registrant's material climate-related risks;[62]
- Any processes the registrant has for identifying, assessing, and managing material climate-related risks and, if the registrant is managing those risks, whether and how any such processes are integrated into the registrant's overall risk management system or processes;[63]
- If a registrant has set a climate-related target or goal that has materially affected or is reasonably likely to materially affect the registrant's business, results of operations, or financial condition, certain disclosures about such target or goal, including material expenditures and material impacts on financial estimates and assumptions as a direct result of the target or goal or actions taken to make progress toward meeting such target or goal;[64]
- If a registrant is a large accelerated filer (''LAF''),[65] or an accelerated filer (''AF'')[66] that is not otherwise exempted, and its Scope 1 emissions and/or its Scope 2 emissions metrics are material, certain disclosure about those emissions;[67]

and the World Business Council for Sustainable Development, which agreed in 1997 to collaborate with businesses and NGOs to create a standardized GHG accounting methodology. *See* Greenhouse Gas Protocol, *About Us,* available at *https://ghgprotocol.org/about-us.* The GHG Protocol, which is subject to updates periodically, has been broadly incorporated into various sustainability reporting frameworks, including the TCFD.

[52] *See, e.g., infra* note 2690 and accompanying text (describing a report finding that 50 percent of sustainability reports from Russell 1000 companies aligned with the TCFD recommendations). In addition, many registrants submit climate disclosures to the CDP, formerly known as the ''Carbon Disclosure Project,'' which is aligned with the TCFD framework. *See* CDP Worldwide (''CDP''), *How CDP is aligned to the TCFD,* available at *https://www.cdp.net/en/guidance/how-cdp-is-aligned-to-the-tcfd* (last visited Feb. 21, 2024); CDP, *How companies can take action*, available at *https://www.cdp.net/en/companies* (noting that ''23,000+ companies representing two thirds of global market capitalization disclosed through CDP in 2023''); *see also* CDP, *About us*, available at *https://www.cdp.net/en/info/about-us* (''CDP is a not-for-profit charity that runs the global disclosure system for investors, companies, cities, states and regions to manage their environmental impacts. . . . CDP was established as the 'Carbon Disclosure Project' in 2000, asking companies to disclose their climate impact.''). In addition, several international climate disclosure initiatives are based on the TCFD recommendations. *See infra* section II.A.3.

[53] *See infra* section II.A; and Proposing Release, section I.D.2; *see also infra* note 2621 (noting that, in the U.S. and other jurisdictions, GHG emissions quantification and reporting are generally based on the GHG Protocol).

[54] *See infra* note 2760 and accompanying text.

[55] *Cf. infra* notes 2568–2570 and accompanying text.

[56] *See infra* section II.D.1.

[57] *See infra* sections II.D.1. That non-exclusive list is comprised of the registrant's: (1) business operations, including the types and locations of its operations, (2) products and services, (3) suppliers, purchasers, or counterparties to material contracts, to the extent known or reasonably available, (4) activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes, and (5) expenditure for research and development.

[58] *See infra* sections II.D.1.

[59] *See infra* section II.D.2.

[60] *See infra* section II.D.3.

[61] *See infra* section II.D.4.

[62] *See infra* section II.E.

[63] *See infra* section II.F.

[64] *See infra* section II.G.

[65] An LAF is an issuer after it first meets the following conditions as of the end of its fiscal year: (i) the issuer had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of $700 million or more, as of the last business day of the issuer's most recently completed second fiscal quarter; (ii) the issuer has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months; (iii) the issuer has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and (iv) the issuer is not eligible to use the requirements for SRCs under the revenue test in paragraph (2) or (3)(iii)(B) of the SRC definition in Rule 12b–2. 17 CFR 240.12b–2 (defining LAF and providing how and when an issuer determines whether it qualifies as an LAF).

[66] An AF is an issuer after it first meets the following conditions as of the end of its fiscal year: (i) the issuer had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of $75 million or more, but less than $700 million, as of the last business day of the issuer's most recently completed second fiscal quarter; (ii) the issuer has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months; and (iii) the issuer has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and (iv) the issuer is not eligible to use the requirements for SRCs under the revenue test in paragraph (2) or (3)(iii)(B) of the SRC definition in Rule 12b–2. 17 CFR 240.12b–2 (defining AF and providing how and when an issuer determines whether it qualifies as an AF).

[67] *See infra* section II.H. The final rules define the terms ''Scope 1 emissions'' (direct GHG emissions from operations that are owned or controlled by a

• The capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise, subject to applicable one percent and de minimis disclosure thresholds;[68]

• The capitalized costs, expenditures expensed, and losses related to carbon offsets and renewable energy credits or certificates (''RECs'') if used as a material component of a registrant's plans to achieve its disclosed climate-related targets or goals; and[69]

• If the estimates and assumptions a registrant uses to produce the financial statements were materially impacted by risks and uncertainties associated with severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise, or any disclosed climate-related targets or transition plans, a qualitative description of how the development of such estimates and assumptions was impacted.[70]

In addition, under the final rules, a registrant that is required to disclose Scopes 1 and/or 2 emissions and is an LAF or AF must file an attestation report in respect of those emissions subject to phased in compliance dates. An AF must file an attestation report at the limited assurance level beginning the third fiscal year after the compliance date for disclosure of GHG emissions. An LAF must file an attestation report at the limited assurance level beginning the third fiscal year after the compliance date for disclosure of GHG emissions, and then file an attestation report at the reasonable assurance level beginning the seventh fiscal year after the compliance date for disclosure of GHG emissions. The final rules also require a registrant that is not required to disclose its GHG emissions or to include a GHG emissions attestation report pursuant to the final rules to disclose certain information if the registrant voluntarily discloses its GHG emissions in a Commission filing and voluntarily subjects those disclosures to third-party assurance.

The final rules reflect a number of modifications to the proposed rules based on the comments we received. As discussed in more detail below, we have revised the proposed rules in several respects, including by:

• Adopting a less prescriptive approach to certain of the final rules, including, for example, the climate-related risk disclosure, board oversight disclosure, and risk management disclosure requirements;[71]

• Qualifying the requirements to provide certain climate-related disclosures based on materiality, including, for example, disclosures regarding impacts of climate-related risks, use of scenario analysis, and maintained internal carbon price;

• Eliminating the proposed requirement to describe board members' climate expertise;

• Eliminating the proposed requirement for all registrants to disclose Scope 1 and Scope 2 emissions and instead requiring such disclosure only for LAFs and AFs, on a phased in basis, and only when those emissions are material and with the option to provide the disclosure on a delayed basis;

• Exempting SRCs and EGCs from the Scope 1 and Scope 2 emissions disclosure requirement;

• Modifying the proposed assurance requirement covering Scope 1 and Scope 2 emissions for AFs and LAFs by extending the reasonable assurance phase in period for LAFs and requiring only limited assurance for AFs;

• Eliminating the proposed requirement to provide Scope 3 emissions disclosure (which the proposal would have required in certain circumstances);

• Removing the requirement to disclose the impact of severe weather events and other natural conditions and transition activities on each line item of a registrant's consolidated financial statements;

• Focusing the required disclosure of financial statement effects on capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions in the notes to the financial statements;

• Requiring disclosure of material expenditures directly related to climate-related activities as part of a registrant's strategy, transition plan and/or targets and goals disclosure requirements under subpart 1500 of Regulation S–K rather than under Article 14 of Regulation S–X;

• Extending a safe harbor from private liability for certain disclosures, other than historic facts, pertaining to a registrant's transition plan, scenario analysis, internal carbon pricing, and targets and goals;[72]

• Eliminating the proposal to require a private company that is a party to a business combination transaction, as defined by Securities Act Rule 165(f), registered on Form S–4 or F–4 to provide the subpart 1500 and Article 14 disclosures;

• Eliminating the proposed requirement to disclose any material change to the climate-related disclosures provided in a registration statement or annual report in a Form 10–Q (or, in certain circumstances, Form 6–K for a registrant that is a foreign private issuer that does not report on domestic forms); and

• Extending certain phase in periods.

2. Presentation and Submission of the Climate-Related Disclosures

The final rules provide that a registrant (both domestic and foreign private issuer[73]) must:

• File the climate-related disclosure in its registration statements and Exchange Act annual reports;[74]

• Include the climate-related disclosures required under Regulation S–K, except for any Scopes 1 and/or 2 emissions disclosures, in a separate, appropriately captioned section of its filing or in another appropriate section of the filing, such as Risk Factors, Description of Business, or Management's Discussion and Analysis of Financial Condition and Results of Operations (''MD&A''), or, alternatively, by incorporating such disclosure by reference from another Commission filing as long as the disclosure meets the

registrant) and ''Scope 2 emissions'' (indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant).

[68] *See infra* section II.K.

[69] *See infra* section II.K.

[70] *See infra* section II.K.

[71] See *infra* sections II.C.1.c, II.E.1.c, and II.F.3 for discussions of how we made these disclosure requirements less prescriptive as compared to the proposed rules.

[72] In addition, the existing safe harbors for forward-looking statements under the Securities Act and Exchange Act will be available for other aspects of the climate-related disclosures. *See* Securities Act section 27A [15 U.S.C. 77z–2], Exchange Act section 21E [15 U.S.C. 78u–5], 17 CFR 230.175 (''Securities Act Rule 175'') and 17 CFR 240.3b–6 (''Exchange Act Rule 3b–6'').

[73] As defined by Commission rules, a foreign private issuer is any foreign issuer other than a foreign government except an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter: more than 50% of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and either the majority of its executive officers or directors are United States citizens or residents, more than 50% of the assets of the issuer are located in the United States, or the business of the issuer is administered principally in the United States. *See* 17 CFR 230.405 and 17 CFR 240.3b–4. See *infra* section II.L.3 for a discussion of certain types of registrants (both domestic and foreign private issuer) that are not subject to the final rules.

[74] *See infra* section II.N.3.

electronic tagging requirements of the final rules;[75]

- If required to disclose its Scopes 1 and 2 emissions,[76] provide such disclosure:
  - ○ If a registrant filing on domestic forms, in its annual report on Form 10–K, in its quarterly report on Form 10–Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions metrics disclosure relates incorporated by reference into its Form 10–K,or in an amendment to its Form 10–K filed no later than the due date for the Form 10–Q for its second fiscal quarter;[77]
  - ○ If a foreign private issuer not filing on domestic forms, in its annual report on Form 20–F, or in an amendment to its annual report on Form 20–F, which shall be due no later than 225 days after the end of the fiscal year to which the GHG emissions metrics disclosure relates;[78] and
  - ○ If filing a Securities Act or Exchange Act registration statement, as of the most recently completed fiscal year that is at least 225 days prior to the date of effectiveness of the registration statement;
- If required to disclose Scopes 1 and 2 emissions, provide such disclosure for the registrant's most recently completed fiscal year and, to the extent previously disclosed, for the historical fiscal year(s) included in the filing;[79]
- If required to provide an attestation report over Scope 1 and Scope 2 emissions, provide such attestation report and any related disclosures in the filing that contains the GHG emissions disclosures to which the attestation report relates;[80]
- Provide the financial statement disclosures required under Regulation S–X for the registrant's most recently completed fiscal year, and to the extent previously disclosed or required to be disclosed, for the historical fiscal year(s) included in the filing, in a note to the registrant's audited financial statements;[81] and
- Electronically tag both narrative and quantitative climate-related disclosures in Inline XBRL.[82]

3. Safe Harbor for Certain Climate-Related Disclosures

The final rules provide a safe harbor for climate-related disclosures pertaining to transition plans, scenario analysis, the use of an internal carbon price, and targets and goals, provided pursuant to Regulation S–K sections 229.1502(e), 229.1502(f), 229.1502(g), and 229.1504. The safe harbor provides that all information required by the specified sections, except for historical facts, is considered a *forward-looking statement* for purposes of the Private Securities Litigation Reform Act (''PSLRA'')[83] safe harbors for forward-looking statements provided in section 27A of the Securities Act[84] and section 21E of the Exchange Act[85] (''PSLRA safe harbors'').[86]

4. Phase in Periods

As discussed in more detail below,[87] the final rules will be phased in for all registrants, with the compliance date dependent upon the status of the registrant as an LAF, an AF, a non-accelerated filer (''NAF''),[88] SRC, or EGC, and the content of the disclosure.

II. Discussion

A. Overview and Purpose of the Climate-Related Disclosure Rules

1. Proposed Rules

a. Consistent, Comparable, and Reliable Disclosures for Investors

The Commission proposed the climate-related disclosure rules in order to elicit more consistent, comparable, and reliable information for investors to enable them to make informed assessments of the impact of climate-related risks on current and potential investments.[89] Accordingly, the Commission proposed to amend Regulation S–K to add a new subpart 1500 that would require a registrant to disclose: any material climate-related impacts on its strategy, business model, and outlook; its governance of climate-related risks; its climate-related risk management; GHG emissions metrics; and climate-related targets and goals, if any.[90]

The Commission also proposed to amend Regulation S–X to add a new article (Article 14), which would have required a registrant to disclose in a note to its financial statements certain disaggregated climate-related financial statement metrics.[91] The proposed rules would have required disclosure falling under the following three categories of information: financial impact metrics; expenditure metrics; and financial estimates and assumptions. The Commission proposed the financial statement metrics requirement to increase transparency about how climate-related risks impact a registrant's financial statements.[92] Under the proposed amendments to both Regulation S–K and Regulation S–X, disclosure of climate-related opportunities would be optional.

As noted above, the proposed rules were modeled on the TCFD disclosure framework.[93] The TCFD framework consists of four core themes that provide a structure for the assessment, management, and disclosure of climate-related financial risks: governance, strategy, risk management, and metrics and targets.[94] The Commission proposed to model its climate-related disclosure rules on the TCFD framework given that many registrants and their investors are already familiar with the framework and are making disclosures voluntarily consistent with the framework. The Commission indicated that this should help to mitigate both the compliance burden for registrants and any burdens faced by investors in analyzing the new disclosures and would facilitate comparability across registrants.[95]

b. Proposed Location of the Disclosure

In proposing to include the climate-related disclosure rules in Regulation S–K and Regulation S–X, the Commission stated its belief that the proposed disclosure would be fundamental to investors' understanding of the nature of a registrant's business and its operating prospects and financial performance and, therefore, should be presented together with other disclosure about the registrant's business and financial condition.[96] The Commission proposed to require a registrant to include the climate-related disclosure in Securities

[75] *See infra* section II.A.3.

[76] *See, e.g., infra* section II.H.3.c (noting that unlike the proposed rules, which would have exempted SRCs from the requirement to disclose Scope 3 emissions, the final rules will exempt SRCs and EGCs from any requirement to disclose its GHG emissions, including its Scopes 1 and 2 emissions).

[77] *See infra* section II.H.3.d.

[78] *See infra* section II.H.3.d.

[79] *See infra* section II.H.3.d.

[80] *See infra* section II.I.

[81] *See infra* section II.K.

[82] *See infra* section II.M.3.

[83] Public Law 104–67, 109 Stat. 737.

[84] 15 U.S.C. 77z–2.

[85] 15 U.S.C. 78u–5.

[86] *See infra* sections II.D and II.J.3.

[87] *See infra* section II.O.

[88] Although Rule 12b–2 defines the terms ''accelerated filer'' and ''large accelerated filer,'' *see supra* notes 65–66, it does not define the term ''non-accelerated filer.'' If an issuer does not meet the definition of AF or LAF, it is considered a NAF. *See Accelerated Filer and Large Accelerated Filer Definitions,* Release No. 34–88365 (Mar. 12, 2020) [85 FR 17178, 17179 n.5 (Mar. 26, 2020)].

[89] *See* Proposing Release, section I.B.

[90] *See id.*

[91] *See id.*

[92] *See* Proposing Release, section II.A.1.

[93] *See supra* section I.B.

[94] *See* TCFD, *supra* note 4646, at iv.

[95] *See* Proposing Release, section II.A.1.

[96] *See* Proposing Release, section II.A.2.

Act or Exchange Act registration statements and Exchange Act annual reports in a separately captioned ''Climate-Related Disclosure'' section and in the financial statements. The Commission stated that the proposed presentation would facilitate review of the climate-related disclosure by investors alongside other relevant company financial and non-financial information and further the comparability of the disclosure across registrants.[97]

The Commission also proposed to permit a registrant to incorporate by reference disclosure from other parts of the registration statement or annual report (*e.g.,* Risk Factors, MD&A, Description of Business, or the financial statements) or from other filed or submitted reports into the Climate-Related Disclosure section if it would be responsive to the topics specified in the proposed Regulation S–K items and if the registrant satisfied the incorporation by reference requirements under the Commission's rules and forms. As the Commission explained, allowing incorporation by reference for the Regulation S–K climate-related disclosure would be consistent with the treatment of other types of business disclosure under our rules and would provide some flexibility for registrants while reducing redundancy in disclosure.[98]

2. Comments

Many commenters, including both investors and registrants, stated that climate-related risks can have material impacts on companies' financial position or performance.[99] Commenters indicated that when it is available, information about climate-related risks is currently used to assess the future financial performance of public companies and inform investment decision-making.[100] Some commenters provided specific examples of how that type of information helps investors make investment decisions today.[101] However, many commenters stated that the Commission's current reporting requirements do not yield adequate or sufficient information regarding climate-related risks.[102] Many commenters also expressed the view that the current, largely voluntary reporting of climate-related information under various third-party frameworks, which differ in certain respects, has allowed registrants to selectively choose which climate-related disclosures to provide and has failed to produce complete, consistent, reliable, and comparable information with the level of detail needed by investors to assess the financial impact of climate-related risks on registrants.[103] Commenters stated that, despite the Commission's issuance of the 2010 Guidance, registrants often provided climate-related disclosure that is boilerplate, with some being or bordering on ''greenwashing.'' [104] Commenters further indicated that investors, both institutional and retail,[105] were in need of more consistent and comparable climate-related disclosure to enable them to make fully informed decisions and ensure securities are priced to better reflect climate-related risk.[106] Commenters indicated that adoption of mandatory, climate-related disclosure rules would improve the timeliness, quality, and reliability of climate-related information, which would facilitate investors' comparison of climate-related risks and lead to more accurate securities valuations.[107] Commenters also stated that, as governments and registrants have increasingly made pledges and enacted laws regarding a transition to a lower carbon economy, more consistent and reliable climate-related disclosure has become particularly important to help investors assess the reasonably likely financial impacts to a registrant's business, results of operations, and financial condition in connection with such governmental pledges or laws and the related financial and operational impacts of a registrant's progress in achieving its publicly announced, climate-related targets and goals.[108]

[97] *See id.*

[98] *See id.*

[99] *See, e.g.,* letters from AllianceBernstein; Alphabet *et al.;* Amazon (June 17, 2022); Americans for Financial Reform Education Fund, Public Citizen, Sierra Club, Ocean Conservancy, and the Sunrise Project (June 16, 2022) (''Amer. for Fin. Reform, Sunrise Project *et al.*''); Bloomberg L.P. (June 22, 2022) (''Bloomberg''); CalPERS (June 15, 2022); CalSTRS (June 17, 2022); Calvert; Ceres; Harvard Mgmt.; IAA; Miller/Howard; Morningstar, Inc. (June 16, 2022) (''Morningstar''); Soros Fund; and Wellington Mgmt.

[100] *See, e.g.,* letters from AllianceBernstein; Amer. for Fin. Reform, Sunrise Project *et al.;* CalPERS; CalSTRS; Calvert; Ceres; Miller/Howard; Soros Fund; and Wellington Mgmt.

[101] *See, e.g.,* letters from CalSTRS; Calvert; and Wellington Mgmt.

[102] *See, e.g.,* letters from AllianceBernstein; Amer. for Fin. Reform, Sunrise Project *et al.;* As You Sow (June 21, 2022); BlackRock; Bloomberg; Boston Common Asset Mgmt.; CalPERS; CalSTRS; Calvert; Ceres; Consumer Federation of America (June 17, 2022) (''CFA''); Franklin Templeton Investments (June 17, 2022) (''Franklin Templeton''); Harvard Mgmt.; IAA; Miller/Howard; Morningstar; New York State Comptroller (June 3, 2022) (''NY St. Comptroller''); Principles for Responsible Investment (Consultation Response) (June 17, 2022) (''PRI''); Soros Fund; Union of Concerned Scientists (June 17, 2022) (''UCS''); US SIF (June 17, 2022); and Wellington Mgmt.

[103] *See, e.g.,* letters from BlackRock; Bloomberg; Calvert; Ceres; Franklin Templeton; Miller/Howard; PRI; and US SIF.

[104] *See, e.g.,* letters from Ceres; Interfaith Center on Corporate Responsibility (June 17, 2022) (''ICCR''); and Maple-Brown Abbott (May 31, 2022) (''Maple-Brown''). As the Commission stated when proposing the climate disclosure rules, there does not appear to be a universally accepted definition of ''greenwashing.'' *See* Proposing Release, section IV.C.1. The Commission did not define greenwashing in the Proposing Release and is not defining it now. As a general matter, others have defined greenwashing to mean the set of activities conducted by firms or funds to falsely convey to investors that their investment products or practices are aligned with environmental or other ESG principles. *See* Proposing Release, section IV.C.1. *See also* OICU–IOSCO Supervisory Practices to Address Greenwashing, (Dec 2023), available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD750.pdf.*

[105] *See, e.g.,* letters from Americans for Financial Reform Education Fund and Public Citizen (June 16, 2022) (''Amer. for Fin. Reform and Public Citizen'') (noting that the commenters commissioned a survey of retail investors and describing the results of that survey as ''show[ing] that investors care about climate-related risks and opportunities of public companies, support the SEC requiring climate-related disclosures with third-party audit, and would factor the information disclosed into their investment practices''); Ceres (Dec. 2, 2022); and PRI; *see also supra* note 40 (noting that most individual retail investors and firms advising such investors who submitted comments supported the proposed rules and citing comment letters from some retail investors and investment advisers in support of that proposition); *infra* note 139 (citing several comment letters in support of the proposition that retail investors have stated that they found much of the voluntary climate-related reporting to be lacking in quality and completeness and difficult to compare and as a result have incurred costs and inefficiencies when attempting to assess climate-related risks and their effect on the valuation of a registrant's securities). *But see, e.g.,* letter from Soc. Corp. Gov. (asserting that the retail investor survey in the letter from Amer. for Fin. Reform and Public Citizen ''do[es] not support the position that retail investors demand more climate-related information in companies' SEC filings, and certainly not the detailed disclosures that would be required under the Proposed Rule'' based on its criticisms of the questions in the survey and calculation methodologies that the letter Amer. for Fin. Reform and Public Citizen used to report findings from the survey).

[106] *See, e.g.,* letters from Bloomberg; Ceres; and Miller/Howard.

[107] *See, e.g.,* letters from CalSTRS (stating that ''[u]sing the TCFD framework as the basis for guiding issuers to more comparable disclosures would help [investors] more easily compare companies' approach to climate risk management in a timelier fashion''); Ceres (stating that ''the proposed rule would promote both allocative and informational efficiency'' and that ''[t]imely, comparable information about each company's climate related risks and opportunities would improve informational efficiency, leading to more accurate valuation''); and PwC (stating that ''[m]andatory disclosure in annual filings—including the notes to the financial statements—would enhance comparability while ensuring that the timeliness, quality, and reliability of climate information is commensurate with that of the financial data'').

[108] *See, e.g.,* letters from Amer. for Fin. Reform (Dec. 1, 2022) (stating that, with passage of the Inflation Reduction Act, investors will need the Commission's proposed climate-related disclosures to determine which companies and sectors are best

Continued

Other commenters, however, opposed adoption of the proposed rules and requested either that the Commission rescind the proposal or make significant revisions in the final rules.[109] Some of these commenters, while opposing specific aspects of the proposed rules, agreed with the overall intent of the proposal or otherwise stated that rules requiring climate-related information were appropriate and would be helpful to investors.[110] As discussed in more detail below, other commenters asserted that the Commission lacks statutory authority to adopt the proposed climate-related disclosure rules.[111] Other commenters asserted that current voluntary reporting practices are sufficient to serve the needs of investors and markets, and so the proposed rules are unnecessary.[112] Similarly, some opposing commenters stated that, because in their view the Commission's current disclosure regime already requires a registrant to disclose climate-related risks if material, adoption of the proposed rules would impose a significant burden on registrants while resulting in little additional benefit for investors.[113] Opposing commenters further stated that, because the proposed rules were overly prescriptive and not bound in every instance by materiality, their adoption would result in the disclosure of a large volume of immaterial information that would be confusing for investors.[114]

Many commenters supported basing the Commission's climate disclosure rules on the TCFD framework.[115] Commenters stated that because the TCFD framework has been widely accepted globally by both issuers and investors, its use as a model for the Commission's rules would help elicit climate-related disclosures that are consistent, comparable, and reliable.[116] Commenters also stated that basing the Commission's climate disclosure rules on the TCFD framework would benefit investors because of their familiarity with the framework and its usefulness in understanding the connection between climate-related risk and financial impact.[117] Commenters also stated that basing the Commission's climate-related disclosure rules on the TCFD framework, with which many registrants are familiar and already using, should help mitigate the compliance burden.[118]

One commenter expressed support for basing the rule proposal on the TCFD framework while also stating that the Commission should consider requiring the use of the International Sustainability Standards Board's (''ISSB'') climate reporting standard.[119] This commenter noted that, like the rule proposal, the ISSB climate reporting standard is based on the TCFD framework. This commenter, among others, stated that requiring the use of, or basing the Commission's climate disclosure rules on, the ISSB climate reporting standard would contribute substantially to the establishment of a global climate disclosure baseline, which would reduce the reporting burden on companies listed in multiple jurisdictions.[120] Some commenters, however, opposed basing the Commission's climate disclosure rules on the TCFD framework. One commenter stated that the Commission should not base its rules on a disclosure framework, such as the TCFD framework, that has not been developed by a U.S. regulatory agency because there is no process in place for domestic companies, such as oil and gas companies, to provide their input into potential changes to the framework.[121] Another commenter stated that the Commission should not base its climate disclosure rules on the TCFD because, in its view, there is currently no third-party framework, including the TCFD, capable of providing reliable and consistent metrics for climate-related risks.[122] A different commenter disputed that U.S. companies have widely adopted the TCFD framework and recommended instead that the Commission base its climate disclosure rules on the EPA's Greenhouse Gas Reporting Program, with which many U.S. registrants are familiar.[123]

Commenters expressed mixed views regarding the proposed location of the climate-related disclosure rules. Many commenters supported the proposed placement of climate-related disclosure rules in a new subpart of Regulation S–K and the placement of the proposed financial metrics in a new article of

positioned and ready to capitalize on the IRA's GHG reduction incentives over the coming decade, and to analyze the progress towards and profitability of companies' transition strategies in this new investment context); CalPERS; and Ceres.

[109] *See, e.g.,* letters from American Bar Association, Business Law Section (June 24, 2022) (''ABA''); Chamber; David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation (June 17, 2022) (''D. Burton, Heritage Fdn.''); NAM; and Soc. Corp. Gov. *See also* Form Letter AG.

[110] *See* letters from Bank of America (June 17,2022) (''BOA'') (''Various stakeholders, including asset owners and asset managers, will benefit from consistent, standardized disclosures addressing climate-related risks and opportunities to help them make decisions on where best to deploy capital in alignment with investor goals.''); Bank Policy Institute (June 16, 2022) (''BPI''); Dominion Energy, Inc. (June 17, 2022) (''Dominion Energy'') (''We believe climate-related disclosures are important to our investors and support the Commission's efforts to design rules and guidance to provide investors with the disclosures that they need in order to make informed decisions.''); Long-Term Stock Exchange (June 17, 2022) (''LTSE'') (stating that climate ''represents an investment risk, and investors deserve to understand what public companies are doing to address this issue. . . [w]e believe the proposal represents a significant step toward standardizing, clarifying and verifying disclosures so as to enable investors to make more informed investment decisions. . .''); United Air. (June 17, 2022); and Walmart Inc. (June 17, 2022) (''Walmart'') (''The Company supports the adoption of rules that can facilitate the disclosure of consistent, comparable, and reliable material climate-related information.'').

[111] *See infra* section II.B. Some of these commenters stated that the Commission exceeded its statutory authority when issuing the proposed rules because those rules would require disclosure of information that is not financially material and is only of general or environmental interest. *See, e.g.,* letters from Boyden Gray (June 17, 2022); D. Burton, Heritage Fdn.; and National Ocean Industries Association (June 17, 2022) (''NOIA'').

[112] *See, e.g.,* letters from Chamber; NAM; and Soc. Corp. Gov.

[113] *See, e.g.,* letters from Attorneys General of the States of Texas, Alaska, Arkansas, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, South Carolina, and Utah (June 17, 2022) (''AGs of TX *et al.*''); Cato Institute (June 17, 2022) (''Cato Inst.''); and Society for Mining, Metallurgy, & Exploration (June 17, 2022) (''SMME'').

[114] *See, e.g.,* letters from American Petroleum Institute (June 17, 2022) (''API''); Business Roundtable (June 17, 2022); Chamber; ConocoPhillips (June 17, 2022); Fenwick & West (June 17, 2022) (''Fenwick West''); Soc. Corp. Gov.; and Williams Companies (June 17, 2022) (''Williams Cos.'').

[115] *See, e.g.,* letters from AllianceBernstein; Alphabet *et al.;* As You Sow; Alan Beller, Daryl Brewster, Robert G. Eccles, Camen X. W. Lu, David A. Katz, and Leo E. Strine, Jr. (June 16, 2022) (''Beller *et al.*''); BHP (June 13, 2022); Bloomberg; BNP Paribas (June 16, 2022); BP Americas (June 17, 2022) (''BP''); CalPERS; CalSTRS; Chevron (June 17, 2022); CEMEX (June 17, 2022); Dell Technologies (May 19, 2022) (''Dell''); Eni SpA; Etsy, Inc. (June 16, 2022) (''Etsy''); Fidelity Investments (June 17, 2022) (''Fidelity''); Harvard Mgmt.; Impax Asset Mgmt.; IAC Recommendation; Maple-Brown; Miller/Howard; Natural Resources Defense Council (June 17, 2022) (''NRDC''); New York City Office of Comptroller (June 17, 2022) (''NY City Comptroller''); PIMCO; PRI; PwC; Unilever PLC (June 17, 2022) (''Unilever''); and The Vanguard Group, Inc. (June 17, 2022) (''Vanguard'').

[116] *See, e.g.,* letters from Beller *et al.;* BNP Paribas; CalPERS; CEMEX; Chevron; Eni SpA; Harvard Mgmt.; NRDC; NY City Comptroller; PIMCO; PRI; Unilever; and Vanguard.

[117] *See, e.g.,* letters from CalSTRS; NRDC; and PRI.

[118] *See, e.g.,* letters from Alphabet *et al.;* Eni SpA; Harvard Mgmt.; PRI; and Unilever.

[119] *See* letter from CalSTRS.

[120] *See id.; see also* letters from Douglas Hileman Consulting LLC (May 2, 2022) (''D. Hileman Consulting''); T Rowe Price (June 16, 2022); and Vodafone Group Plc (June 17, 2022) (''Vodafone'') (stating that the Commission should allow the use of the ISSB climate reporting standard as an alternative reporting regime to the Commission's climate disclosure rules).

[121] *See* letter from Petroleum Alliance of Oklahoma (June 16, 2022) (''Petrol. OK'').

[122] *See* letter from Reason Foundation (June 17, 2022) (''Reason Fnd.'').

[123] *See* letter from Western Midstream Partners, LP (June 15, 2022) (''Western Midstream'').

Regulation S–X.[124] Commenters stated that amending Regulation S–K and Regulation S–X to include climate-related disclosure requirements would facilitate the presentation of climate-related business and financial information as part of a registrant's regular business reporting[125] and appropriately reflect the fact that information about climate-related risks is essential to investors' decision-making and fundamental to understanding the nature of a company's operating prospects and financial performance.[126] Commenters further stated that requiring climate-related disclosures in annual filings, including the notes to the financial statements, would enhance the accessibility, comparability, and reliability of such disclosures for investors.[127]

Many other commenters, however, opposed adoption of the proposed financial metrics under Regulation S–X because of various concerns relating to implementation and interpretation of the proposed financial metrics.[128] A number of these commenters recommended instead requiring disclosure of the financial impact of climate-related events as part of a registrant's MD&A pursuant to 17 CFR 229.303 (''Item 303 of Regulation S–K'').[129]

Commenters also had mixed views on the proposed placement of the climate-related disclosures in a separately captioned section of a registration statement or annual report. Several commenters supported the proposed placement because it would facilitate access to and comparability of the climate-related disclosures for investors.[130] Commenters also supported the proposed alternative to permit registrants to incorporate by reference climate-related disclosures from other sections of a filing or from other filings because it would avoid duplication in the filing, would add flexibility regarding the presentation of the disclosures, and would be consistent with the Commission's incorporation by reference rules regarding other types of disclosure.[131] Some of the commenters specifically recommended allowing registrants to include climate-related governance disclosure in their proxy statements, which could then be incorporated by reference into their annual reports.[132]

Some commenters opposed placing climate-related disclosures in a separate section of a filing, asserting that existing sections, such as MD&A and Risk Factors, are more appropriate places to provide the climate-related disclosures and stating that it should be up to each registrant to determine the most suitable place for such disclosure.[133] Some commenters recommended that the Commission require some or all of the climate-related disclosures to be included in a new, separate report to be furnished to the Commission following the filing of the annual report because of concerns about the timing and liability for disclosures related to GHG emissions, financial metrics, and certain other aspects of the climate-related disclosures.[134]

3. Final Rules

As discussed in greater detail below, we are adopting climate-related disclosure rules because, as many commenters have indicated, despite an increase in climate-related information being provided by some companies since the Commission issued its 2010 Guidance, there is a need to improve the consistency, comparability, and reliability of climate-related disclosures for investors.[135] As climate-related risks have become more prevalent,[136] investors have increasingly sought information from registrants about the actual and potential impacts of climate-related risks on their financial performance or position.[137] Both

[124] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* Attorneys General from California and 19 other states (June 17, 2022) (''AGs of Cal. *et al.*''); Bloomberg; CalSTRS; Eni SpA; Miller/Howard; Morningstar; New York State Insurance Fund (June 17, 2022) (''NY SIF''); PRI; PwC; and SKY Harbor Capital Management (June 16, 2022) (''SKY Harbor'').

[125] *See, e.g.,* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[126] *See, e.g.,* letters from AGs of Cal. *et al.;* CalSTRS; and PRI.

[127] *See, e.g.,* letters from Bloomberg; and PwC.

[128] *See, e.g.,* letters from ABA; AllianceBernstein; Alphabet *et al.;* BOA; BlackRock; Business Roundtable; Cleary Gottlieb Steen & Hamilton LLP (June 16, 2022) (''Cleary Gottlieb''); FedEx Corporation (June 17, 2022) (''FedEx''); General Motors Company (June 17, 2022) (''GM''); Grant Thornton LLP (June 17, 2022) (''Grant Thornton''); National Association of Manufacturers (June 6, 2022) (''NAM''); Securities Industry and Financial Markets Association (June 17, 2022) (''SIFMA''); Soc. Corp. Gov.; Sullivan & Cromwell (June 17, 2022) (''Sullivan Cromwell''); Trillium; Unilever; and Walmart. *See infra* section II.K for further discussion of these comments.

[129] *See, e.g.,* letters from AllianceBernstein; Alphabet *et al.;* Cleary Gottlieb; IAC Recommendation; GM; Grant Thornton; SIFMA; Soc. Corp. Gov.; Unilever (recommending placement of the financial disclosure in either a registrant's MD&A or its Operating and Financial Review (''OFR'')); and Walmart.

[130] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* (supporting placement of the climate-related disclosure in a separate section as well as in other existing sections of the annual report or registration statement, as applicable); Breckinridge Capital Advisors (June 17, 2022); CEMEX; CFA; Eni SpA; Clifford Howard (June 17, 2022) (''C. Howard''); Institute for Agriculture and Trade Policy (June 17, 2022) (''IATP''); PRI; PwC; and SKY Harbor.

[131] *See, e.g.,* letters from CalSTRS; CEMEX; Eni SpA; IAA; and PwC.

[132] *See, e.g.,* ABA; BlackRock; Business Roundtable; CalSTRS; GM; C. Howard; ICCR; Microsoft; Morningstar; PwC; SIFMA; Shearman & Sterling (June 20, 2022) (''Shearman Sterling''); and Sullivan Cromwell.

[133] *See, e.g.,* letters from AGs of TX *et al.;* Brendan Herron (Nov. 1, 2022) (''B. Herron''); FedEx; Reason Fnd.; Soc. Corp, Gov.; and Unilever.

[134] *See, e.g.,* letters from BlackRock; Chevron; ConocoPhillips; FedEx; D. Hileman Consulting; HP Inc. (June 17, 2022) (''HP''); PIMCO; and Sullivan Cromwell.

[135] *See supra* notes 102 and 103 and accompanying text. The Commission also stated in the Proposing Release that, as part of its filing review process, Commission staff had assessed the extent to which registrants currently disclose climate-related risks in their filings. Proposing Release at 21339. The staff noted that, since 2010, disclosures climate-related disclosures have generally increased, but there is considerable variation in the content, detail, and location (*i.e.,* in reports filed with the Commission, in sustainability reports posted on registrant websites, or elsewhere) of climate-related disclosures. *Id.* The staff also observed significant inconsistency in the depth and specificity of disclosures by registrants across industries and within the same industry. *Id.* The staff found significantly more extensive information in registrants' sustainability reports and other locations such as their websites as compared with their reports filed with the Commission. *Id.* In addition, the disclosures in registrants' Forms 10–K frequently contained general, boilerplate discussions that provide limited information as to the registrants' assessment of their climate-related risks or their impact on the companies' business. *Id.*

[136] *See, e.g.,* US Global Change Research Program, *The Fifth National Climate Assessment* (2023) (stating that extreme weather events cause direct economic losses through infrastructure damage, disruptions in labor and public services, and losses in property values, and that the United States currently experiences an extreme weather event causing a billion dollars or more in costs and losses every three weeks compared to one such event every four months in the 1980s).

[137] *See, e.g.,* letters from BlackRock; Bloomberg; Boston Common Asset Mgmt; Breckinridge Capital Advisors; Calvert; Ceres; CFA; East Bay Municipal Utility District Employee Retirement System (June 6, 2022) (''East Bay Mun.'') (''[B]ecause climate-related impacts or risks can materially affect a company's financial position and operations, we support the inclusion of some climate-related information in the financial statements; this also promotes consistency in information across a company's reporting.''); Harvard Mgmt.; Impax Asset Mgmt; Parnassus Investments (June 14, 2022) (''Parnassus'') (''We commend the Commission for understanding the urgency and materiality of the disclosure categories addressed in the Proposed Rule. This demonstrates a recognition that the decisions companies and investors make today regarding emissions and climate-related matters can have financial impacts in the short-, medium-, and long-term.''); Rockefeller Asset Management (June 1, 2022); Rebecca Palacios (June 6, 2022) (''R. Palacios'') (''[I]t is vital for you to require climate-related disclosures in order to meet the SECs mandate to protect investors ensure fair, orderly, and efficient markets and facilitate capital formation.''); (''Rockefeller Asset Mgmt.'') (''Our fundamental research and company engagements have revealed that climate related risks and opportunities are increasingly relevant to company valuations.''); PIMCO; PRI; SKY Harbor; Trillium; Allyson Tucker, Chief Executive Officer, Washington State Investment Board (June 17, 2022)

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institutional[138] and retail investors[139] have stated that they found much of the voluntary climate-related reporting to be lacking in quality and completeness and difficult to compare and as a result have incurred costs and inefficiencies when attempting to assess climate-related risks and their effect on the valuation of a registrant's securities. Moreover, although the 2010 Guidance reflects that climate-related information may be called for by current Commission disclosure requirements, climate-related information has often been provided outside of Commission filings, such as in sustainability reports or other documents posted on registrants' websites, which are not subject to standardized disclosure rules, and, as noted by some commenters, are not necessarily prepared with the informational needs of investors in mind.[140] Such information also may not be prepared with the same level of rigor that results from the disclosure controls and procedures (''DCP'') required for disclosure in Commission filings,[141] and as a result may not be as reliable.[142]

Consistent with and as authorized by our enabling statutes, we are adopting the climate-related disclosure requirements discussed herein, so that investors will have the information they need to make informed investment and voting decisions by evaluating a registrant's exposure to material climate-related risks. We modeled the proposed disclosure requirements in large part on the TCFD framework. As discussed in the Proposing Release and as many commenters noted, that framework has been widely accepted by issuers and investors.[143] The TCFD framework focuses on matters that are material to an investment or voting decision and is grounded in concepts that tie climate-related risk disclosure considerations to matters that may affect the results of operations, financial condition, or business strategy of a registrant. Because the TCFD framework is intended to elicit disclosure of climate-related risks that have materially affected or are reasonably likely to materially affect the business, results of operations, or financial condition of a company, it served as an appropriate model for the Commission's proposed climate-related disclosure rules. We therefore disagree with commenters that stated that the Commission's proposed rules would require disclosure of information that is primarily of general or environmental interest and not of financial interest.[144] The final rules continue to reflect many of the TCFD's recommendations, modified based on the input of commenters, which will enhance the usefulness and comparability of the required climate-related disclosures for investors and better serve their informational needs when making investment and voting decisions.[145]

At the same time, in consideration of some commenters' concerns,[146] we have revised the proposed climate-related disclosure requirements in certain respects to reduce the likelihood that the final rules result in disclosures that could be less useful for investors and costly for registrants to produce and to provide added flexibility for registrants regarding the content and presentation of the disclosure. Modeling the climate-related disclosure requirements on the TCFD framework while also adopting these revisions will help mitigate the compliance burden of the final rules, particularly for registrants that are already providing climate-related disclosures based on the TCFD framework or soon will be doing so pursuant to other laws or regulations.[147]

In this regard, we note certain ongoing developments related to climate-risk reporting:

- The formation of the ISSB by the IFRS Foundation[148] in November 2021, which consolidated several sustainability disclosure organizations into a single organization.[149] In June

(''We also support the SEC's inclusion of a greenhouse gas (GHG) emissions reporting requirement in line with the Greenhouse Gas Protocol because this information is critical to our understanding of the quality of a company's earnings in the face of climate change and the energy transition.''); and Vanguard. *See also* Form Letter AM.

[138] *See, e.g.,* letters from AllianceBernstein; Franklin Templeton; Harvard Mgmt.; Miller/Howard; Trillium; and Wellington Mgmt.

[139] *See, e.g.,* letters from Americans for Financial Reform Education Fund, Public Citizen, Ocean Conservancy, Sierra Club, Evergreen Action and 72 additional undersigned organizations (June 17, 2022) (''Amer. for Fin. Reform, Evergreen Action *et al.*''); Amer. for Fin. Reform and Public Citizen; Americans for Financial Reform, on behalf of 64,357 advocates (June 16, 2022) (''Enclosed are 64,357 petition signatures supporting the [Commission's] proposed rule on climate-related financial disclosures that would provide investors with the long-awaited and necessary information they and their investment advisors need to make informed investment decisions.''); *see also* letter from Betterment (June 17, 2022) (noting that, based on responses of 3,000 retail investors to a survey the commenter conducted, ''a reasonable interpretation . . . would be that 95% of respondents would potentially consider GHG emissions reporting . . . as material to whether they would purchase a security'' and asserting that ''[a] retail investor's exposure to equities via index funds makes the uniform availability of *standardized* climate-related disclosure at the company level that much more critical, and the Proposed Rule would drastically improve the efficiency and robustness of the underlying process that produces such low fee, diversified investing products'' (emphasis in original)). In addition, the Commission received many unique letters from individual investors expressing their support for the proposed rules, with several stating that there was a need for more consistent and comparable disclosure about climate-related risk from registrants. *See, e.g.,* letters from Kim Leslie Shafer (June 16, 2022) (''[A]s an investor and a citizen, I support the SEC prescribing consistent, comparable, reliable and mandatory disclosure of climate-related information.''); Neetin Gulati (June 17, 2022); Sandy Spears (June 16, 2022); R. Palacios.

[140] *See* letter from PwC (expressing concern about permitting registrants to incorporate by reference from their sustainability reports or corporate responsibility reports because such reports ''may be prepared using a basis of presentation designed for a stakeholder group with different information needs than investors and other providers of capital'').

[141] *See* Rule 13a–15 and Rule 15d–15 [17 CFR 240.13a–15 and 17 CFR 240.15d–15]. Pursuant to Exchange Act Rules 13a–15 and 15d–15, a company's principal executive officer and principal financial officer must make certifications regarding the maintenance and effectiveness of disclosure controls and procedures. These rules define ''disclosure controls and procedures'' as those controls and procedures designed to ensure that information required to be disclosed by the company in the reports that it files or submits under the Exchange Act is (1) ''recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms,'' and (2) ''accumulated and communicated to the company's management . . . as appropriate to allow timely decisions regarding required disclosure.''

[142] *See, e.g.,* letter from Ceres; *see also* letter from Calvert (stating that ''we believe the disclosures mandated by the SEC in the proposed rule should be filed in annual reports, as well as quarterly reports where appropriate'' because ''it is supported by disclosure controls, CEO/CFO certification, audit requirements and a level of scrutiny by management appropriate for climate risks'').

[143] *See supra* notes 115 and 116 and accompanying text.

[144] *See supra* note 111 and accompanying text.

[145] *See supra* note 107 and accompanying text.

[146] *See, e.g., supra* note 109 and accompanying text.

[147] *See supra* sections I.B. In this regard, we note that some commenters recommended that the Commission require or allow the use of the ISSB's climate-related disclosure standards as an alternative to the Commission's climate disclosure rules. *See supra* note 120 and accompanying text. While we acknowledge that there are similarities between the ISSB's climate-related disclosure standards and the final rules, and that registrants may operate or be listed in jurisdictions that will adopt or apply the ISSB standards in whole or in part, those jurisdictions have not yet integrated the ISSB standards into their climate-related disclosure rules. Accordingly, at this time we decline to recognize the use of the ISSB standards as an alternative reporting regime.

[148] The *IFRS* Foundation refers to the International Financial Reporting Standards Foundation, whose mission is to develop high-quality IFRS Standards that bring transparency, accountability, and efficiency to financial markets around the world. *See* IFRS—Who we are, available at *https://www.ifrs.org/about-us/who-we-are/.*

[149] *See* IFRS Foundation, IFRS Foundation announces International Sustainability Standards Board, consolidation with CDSB and VRF, and publication of prototype disclosure requirements (Nov. 3, 2021), available at *https://www.ifrs.org/news-and-events/news/2021/11/ifrs-foundation-announces-issb-consolidation-with-cdsb-vrf-publication-of-prototypes/. See also* Proposing Release, section I.C.2.

2023, the ISSB issued General Requirements for Disclosure of Sustainability-related Financial Information (''IFRS S1'') and Climate-related Disclosures (''IFRS S2'').[150] Notably, IFRS S1 and S2 integrate the recommendations of the TCFD.[151]

• Several jurisdictions have announced plans to adopt, apply, or otherwise be informed by the ISSB standards, including Australia, Brazil, Canada, Hong Kong, Japan, Malaysia, Nigeria, Singapore, and the United Kingdom (''UK''), although it is not yet clear how specifically the ISSB standards may be incorporated into certain foreign legal frameworks.[152]

• Other jurisdictions were already well advanced in the process of adopting climate disclosure rules when the ISSB standards were announced. For example, in 2022, the European Union (''EU'') adopted the Corporate Sustainability Reporting Directive (''CSRD''),[153] which requires certain large and listed companies and other entities, including non-EU entities, to report on sustainability-related issues in line with the European Sustainability Reporting Standards (''ESRS'').[154]

• California recently adopted the Climate-Related Financial Risk Act (Senate Bill 261), which will require certain public and private U.S. companies that do business in California and have over $500 million in annual revenues to disclose their climate-related financial risks and measures based on the TCFD recommendations or a comparable disclosure regime in a report published biennially on the company's website commencing no later than January 2026.[155]

• In addition, California recently adopted the Climate Corporate Data Accountability Act (Senate Bill 253), which will require certain public and private U.S. companies that do business in California and have over $1 billion in annual revenues to disclose their GHG emissions (Scopes 1 and 2 emissions by 2026 and Scope 3 emissions by 2027).[156]

These laws may reduce the compliance burden of the final rules to the extent they impose similar requirements for registrants that are subject to them. However, the disclosure required by these laws will appear in documents outside of Commission filings and therefore will not be subject to the same liability, DCPs, and other investor protections as the climate-related disclosures required under the final rules. In addition, these laws may serve different purposes than the final rules or apply different materiality or other standards. For example, the California laws were adopted to protect the health and safety of California residents,[157] among other reasons, whereas we are adopting the final rules to enhance disclosures of emergent risks companies face so that investors can have the information they need to make informed investment and voting decisions. Regardless of the extent of overlap with other jurisdictions' reporting requirements and consistent with the Commission's mission, the final rules are tailored to the particular needs of investors and the specific situations of Commission registrants, as documented in the comment file, and are designed to work within the existing framework of U.S. securities laws that call for disclosure about the material risks that companies face. Integrating the required disclosures into the existing framework of U.S. securities laws will provide investors with more complete information about a company, the risks it faces, and its business, finances, and results of operations while affording investors the protections of the securities laws for this information.

We acknowledge the concerns expressed by some commenters about relying on a third-party framework, such as the TCFD, that may not afford affected parties the ability to provide input on potential future changes.[158] While we considered the TCFD framework in both proposing and now adopting the Commission's own climate-related disclosure rules, the final rules do not incorporate the TCFD recommendations or its procedures. Any future updates to the TCFD framework or any successor framework will have no bearing or impact on the

[150] *IFRS S1 sets out the general requirements for a company to disclose information about its sustainability related risks and opportunities.* IFRS S2 sets out the requirements for companies to disclose information about their climate-related risks and opportunities, building on the requirements in IFRS S1. *See* IFRS—Project Summary IFRS Sustainability Disclosure Standards, IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2 Climate-related Disclosures (June 2023), available at *https://www.ifrs.org/content/dam/ifrs/project/general-sustainability-related-disclosures/project-summary.pdf.*

[151] Concurrent with the release of its 2023 status report, the TCFD fulfilled its remit and transferred to the ISSB its responsibility for tracking company activities on climate-related disclosure. Fin. Stability Bd., *FSB Roadmap for Addressing Financial Risks from Climate Change Progress Report* (July 13, 2023), available at *https://www.fsb.org/wp-content/uploads/P130723.pdf.* As discussed *infra*, the TCFD recommendations are incorporated into the ISSB standards. Although the TCFD has disbanded, in this release we continue to refer to ''TCFD recommendations'' as distinct from ISSB standards, both for clarity and because not all jurisdictions that implemented TCFD-aligned disclosure requirements have implemented the broader and more recent ISSB standards.

[152] For example, the UK has announced that its Sustainability Disclosure Standards (''SDS'') will be based on the ISSB Standards. *See* Dep't of Bus. & Trade, UK Sustainability Disclosure Standards, Gov.UK (Aug. 2, 2023), available at *https://www.gov.uk/guidance/uk-sustainability-disclosure-standards.* Australia recently published draft legislation mandating comprehensive climate-related reporting and assurance for large and medium-sized companies that is aligned with the ISSB Standards. *See* Australian Government-the Treasury, *Climate-related financial disclosure: exposure draft legislation* (Jan. 12, 2024), available at *https://treasury.gov.au/consultation/c2024-466491.*

[153] *See* Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance), available at *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.322.01.0015.01.ENG.* In adopting the CSRD, the EU explained that there exists a widening gap between the sustainability information, including climate-related data, companies report and the needs of the intended users of that information, which may mean that investors are unable to take sufficient account of climate-related risks in their investment decisions.

[154] *See id.* The CSRD requires large companies and listed companies to publish regular reports on the social and environmental risks they face, and how their activities impact people and the environment. In July 2023, the European Commission (''EC'') adopted the delegated act containing the first set of ESRS under the CSRD and the ESRS became effective on Jan. 1, 2024, for companies within scope of the first phase of reporting under the CSRD. *See* EC, *Corporate sustainability reporting,* available at *https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en (last visited Feb. 6, 2024). See also* EC Press Release, The Commission Adopts the European Sustainability Reporting Standards (July 31, 2023), available at *https://finance.ec.europa.eu/news/commission-adopts-european-sustainability-reporting-standards-2023–07–31_en.* Separate reporting standards will be developed for SMEs and certain non-EU companies operating in the EU. *See* EC, *Questions and Answers on the Adoption of European Sustainability Reporting Standards* (July 31, 2023), *https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_4043.*

[155] *See* SB–261, *Greenhouse gases: climate-related financial risk* (Oct. 7, 2023), available at *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB261.*

[156] *See* SB–253, *Climate Corporate Data Accountability Act* (Oct. 7, 2023), available at *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB253.* The Act directs the California Air Resources Board (CARB) to adopt regulations to implement the requirements of the Act, with disclosures being required as early as 2026, subject to the CARB's finalization of the rules. The Act further requires the disclosure of Scope 1 and Scope 2 emissions to be subject to assurance, which must be performed at a limited assurance level beginning in 2026 and at a reasonable assurance level beginning in 2030. *See* SB–253, section II.c.1.F.ii. The statute is currently subject to litigation. *See* Compl., Chamber of Commerce v. California Air Resources Board, No. 2:24–cv–00801 (D. C.D. Cal. Jan. 30, 2024).

[157] *See* SB–253, supra note 156, at section 1 (stating that ''Californians are already facing devastating wildfires, sea level rise, drought, and other impacts associated with climate change that threaten the health and safety of Californians. . .'').

[158] *See* letter from Petrol. OK.

final rules without future action by the Commission. Any consideration of such updates by the Commission will be subject to the Commission's own procedures, and any subsequent rulemaking to reflect those updates will be subject to the Administrative Procedure Act's requirements, including notice and comment, as well as requirements under other relevant laws. The final rules also do not follow every TCFD recommendation. For example, unlike the TCFD, which recommends the disclosure of executive compensation that is linked to climate-related risk management considerations, we have elected not to include such a requirement in the final rules, as discussed below.[159]

Like the proposed rules, the final rules amend Regulation S–K by adding a new section (subpart 1500) composed of the climate-related disclosure rules, other than for the financial statement disclosures, and Regulation S–X by adding a new article (Article 14) to govern the financial statement disclosures. We continue to believe that it is appropriate to amend Regulation S–K and Regulation S–X to require climate-related disclosures in Securities Act or Exchange Act registration statements and Exchange Act reports. Information about climate-related risks and their financial impacts is fundamental in many cases to understanding a company's financial condition and operating results and prospects and therefore should be treated like other business and financial information, including information on risks to the company.[160]

The proposed rules would have required a registrant to include its climate-related disclosures, other than its financial statement disclosures, either in a separately captioned ''Climate-Related Disclosure'' section in the registration statement or Exchange Act annual report or in other parts of the Commission filing that would then be incorporated by reference into the separately captioned section. While some commenters supported this proposal because it would facilitate the comparability of the disclosures among registrants,[161] other commenters stated that existing parts of the registration statement or annual report could be more appropriate for placement of the climate-related disclosures, and indicated that it should be up to each registrant to determine the most suitable place for the disclosures according to the context of the disclosures and structure of the filing.[162]

While enhancing the comparability of climate-related disclosures remains an important objective of the rulemaking, we also recognize the benefits of granting each registrant sufficient flexibility to determine the most appropriate location within a filing for the disclosures based on its particular facts and circumstances. Therefore, the final rules leave the placement of the climate-related disclosures, other than the financial statement disclosures, largely up to each registrant. Further, we are adopting as proposed structured data requirements that will enable automated extraction and analysis of the information required by the final rules, further facilitating investors' ability to identify and compare climate-related disclosures, regardless of where they are presented.[163] A registrant may elect to place most of the subpart 1500 disclosures in a separately captioned ''Climate-Related Disclosure'' section. Alternatively, a registrant may elect to include these climate-related disclosures in applicable, currently existing parts of the registration statement or annual report (*e.g.,* Risk Factors, Description of Business, or MD&A). If it chooses the latter alternative, then the registrant should consider whether cross-referencing the other disclosures in the separately captioned section would enhance the presentation of the climate-related disclosures for investors.

A registrant may also incorporate by reference some of the climate-related disclosures from other filed registration statements or Exchange Act reports if the incorporated disclosure is responsive to the topics specified in the Regulation S–K climate-related disclosure items and if the registrant satisfies the incorporation by reference requirements under the Commission's rules and forms.[164] In addition, any climate-related disclosure that is being incorporated by reference must include electronic tags that meet the final rules' structured data requirement.[165] As commenters noted, allowing incorporation by reference of climate-related disclosures will avoid duplication in the filing, add flexibility regarding the presentation of the disclosures, and be consistent with the Commission's incorporation by reference rules regarding other types of disclosure.[166]

Some commenters recommended that we permit a registrant to include disclosure regarding its climate-related corporate governance in its proxy statement, together with its discussion of other corporate governance matters, which would then be incorporated by reference into the registrant's Form 10–K.[167] Form 10–K currently permits the incorporation by reference pursuant to General Instruction G.3 of certain corporate governance matters from a proxy statement involving the election of directors.[168] While disclosure pursuant to Item 401 of Regulation S–K, which pertains to the identification and business experience of directors and executive officers, is permitted to be incorporated by reference from the proxy statement, disclosure pursuant to Item 407(h) of Regulation S–K, which pertains to the board's leadership structure and its role in risk oversight, is not one of the enumerated matters permitted to be incorporated by reference from the proxy statement. As discussed below, the final rules do not include the proposed provisions that would have most likely elicited disclosure drawn from the information required by Item 401 (*i.e.,* the proposed requirements to identify the board members responsible for the oversight of climate-related risks and to disclose whether any board member has expertise in climate-related risks).[169] Additionally, the retained governance provisions of the final rules require disclosure that is relevant to understanding more generally the board's oversight of climate-related risks and management's role in assessing and managing such risks, and do not necessarily pertain to the election of directors. For these reasons, while the final rules do not preclude incorporation by reference from a registrant's proxy statement to the extent allowed by existing rules,[170] we decline to expressly permit the disclosure to be incorporated by reference from a registrant's proxy statement pursuant to General Instruction G.3 of Form 10–K.

Placement of the new disclosures required by the final rules in Commission filings further serves our

[159] *See* TCFD, *Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures* (Oct. 2021), available at *https://assets.bbhub.io/company/sites/60/2021/07/2021–TCFD-Implementing_Guidance.pdf*; *infra* section II.E.2.

[160] *See supra* notes 125 and 126 and accompanying text.

[161] *See supra* note 130 and accompanying text.

[162] *See, e.g.,* letter from Unilever.

[163] See discussion of 17 CFR 229.1508 *infra* section II.M.

[164] *See* 17 CFR 230.411 and 17 CFR 240.12b–23.

[165] *See* 17 CFR 229.1508.

[166] *See supra* note 131 and accompanying text.

[167] *See, e.g.,* letters from Microsoft; and SIFMA.

[168] *See* General Instruction G.3 of Form 10–K, which pertains to information permitted under Part III of Form 10–K, including, among other matters, Item 401 and certain provisions of Item 407.

[169] *See infra* section II.E.1.

[170] *See supra* note 164 and accompanying text.

investor protection goals because it will subject these disclosures to DCPs. These controls and procedures will enhance not only the reliability of the climate-related disclosures themselves, including both qualitative climate-related information and quantitative climate-related data, but also their accuracy and consistency.[171]

B. Commission Authority To Adopt Disclosure Rules

Some commenters [172] asserted that the Commission lacks authority to promulgate the proposed rules. We disagree. The rules we are adopting fall within the statutory authority conferred by Congress through the Securities Act and the Exchange Act.

In section 7(a)(1) of the Securities Act,[173] Congress authorized the Commission to require, in a publicly filed registration statement, that issuers offering and selling securities in the U.S. public capital markets include information—such as the general character of the issuer's business, the remuneration paid to its officers and directors, details of its material contracts, and certain financial information—specified in Schedule A to that Act, as well as ''such other information . . . as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.'' [174] In addition, under sections 12(b) and (g) of the Exchange Act,[175] issuers of securities traded on a national securities exchange or that otherwise have total assets and shareholders of record that exceed certain thresholds must register those securities with the Commission by filing a registration statement. That registration statement must contain ''[s]uch information, in such detail, as to the issuer'' regarding, among other things, ''the organization, financial structure and nature of the [issuer's] business'' as the Commission by rule or regulation determines to be in the public interest or for the protection of investors.[176] These same issuers must also provide, as the Commission may prescribe ''as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security,'' (1) ''such information and documents . . . as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with [a] . . . registration statement,'' and (2) such annual and quarterly reports as the Commission may prescribe.[177]

As the text of each of these provisions demonstrates, Congress not only specified certain enumerated disclosures, but also authorized the Commission to update and build on that framework by requiring additional disclosures of information that the Commission finds ''necessary or appropriate in the public interest or for the protection of investors.'' [178] When read in the context of these enumerated disclosures and the broader context of the Securities Act and Exchange Act, these provisions authorize the Commission to ensure that public company disclosures provide investors with information important to making informed investment and voting decisions.[179] Such disclosure facilitates the securities laws' core objectives of protecting investors, facilitating capital formation, and promoting market efficiency.[180]

Both courts and the Commission have long recognized as much.[181] The Commission has amended its disclosure requirements dozens of times over the last 90 years based on the determination

[171] *See supra* notes 141–142 and accompanying text. As we have stated before, a company's disclosure controls and procedures should not be limited to disclosure specifically required, but should also ensure timely collection and evaluation of ''information potentially subject to [required] disclosure,'' ''information that is relevant to an assessment of the need to disclose developments and risks that pertain to the [company's] businesses,'' and ''information that must be evaluated in the context of the disclosure requirement of Exchange Act Rule 12b–20.'' *Certification of Disclosure in Companies' Quarterly and Annual Reports,* Release No. 33–8124 (Aug. 28, 2002) [67 FR 57275 (Sept. 9, 2002)].

[172] *See, e.g.,* letter from Soc. Corp. Gov. (stating that the ''subject of the Proposed Rule is clearly of great economic and political significance,'' and that ''[a]bsent express authorization by Congress, we believe that the SEC fundamentally lacks the authority to promulgate the Proposed Rule''); *see also* letters from Bernard S. Sharfman (Feb. 6, 2024) (stating that the SEC ''has exceeded its delegated authority in promulgating its proposed rule on climate-related disclosures by not adhering to the ascertainable standards found in the 33 and 34 Acts: 'for the protection of investors,' promoting 'efficiency, competition, and capital formation,' and 'materiality'''); Lawrence A. Cunningham and 21 other signatories (Apr. 25, 2022) (''Cunningham *et al.*'') (stating that the ''EPA's empowerment over this topic probably preempts any statutory authority the SEC might claim,'' that ''the SEC's mission does not include adopting positions intended to promote particular conceptions of acceptable corporate behavior,'' and that ''[c]limate change is a politically-charged issue'' and the ''Proposal would compel corporations and officials to regularly speak on those issues''); Patrick Morrisey, Attorney General of West Virginia, and the Attorneys General of 23 other states (''Morrissey *et al.*'') (June 15, 2022) (stating that the proposed rule ''sidesteps the materiality requirement,'' ''offends the major questions doctrine,'' would ''upend the balance between federal and state powers in the corporate sphere,'' and that ''if the SEC's understanding of its powers were right, then the statutes providing it that authority would offend the non-delegation doctrine''); and Andrew N. Vollmer (May 9, 2022) (stating that adopting the proposal would ''determine significant national environmental policies without direction from Congress, creating a high risk of proving to be a futile gesture because of the likelihood that a court will overturn final rules''); and Andrew N. Vollmer (Apr. 12, 2022) (stating that ''[c]limate-change information is outside the scope of the subjects Congress has allowed the SEC to cover in disclosure rules, and adopting the Proposal would have a subject and objective different from the disclosure provisions in the federal securities laws''); Jones Day; Chamber; Bernard S. Sharfman & James R. Copland (June 16, 2022) (''Sharfman *et al.*'').

[173] 15 U.S.C. 77g(a)(1).

[174] Securities Act section 7(a)(1) and Schedule A; *see also* Securities Act section 10(a) and (c) [15 U.S.C. 77j(a) and (c)] (generally requiring a prospectus to contain much of the same the information contained in a registration statement and granting the Commission the authority to require additional information in a prospectus as ''necessary or appropriate in the public interest or for the protection of investors'').

[175] 15 U.S.C. 78*l*(b) and (g).

[176] Exchange Act sections 12(b) and 12(g).

[177] Exchange Act section 13(a) [15 U.S.C. 78m(a)]. Other issuers that are required to comply with the reporting requirements of section 13(a) include those that voluntarily register a class of equity securities under section 12(g)(1), and issuers that file a registration statement under the Securities Act that becomes effective, pursuant to section 15(d) [15 U.S.C. 78*o*].

[178] Securities Act section 7 [15 U.S.C. 77g]; *see* Exchange Act section 13(a) [15 U.S.C. 78m(a)] (''necessary or appropriate for the proper protection of investors and to insure fair dealing in the security''); *see also* Exchange Act sections 12, 13, and 15 [15 U.S.C. 78*l,* 78m, and 78o].

[179] *See NAACP* v. *Fed. Power Comm'n,* 425 U.S. 662, 669–70 (1976) (''[T]he use of the words 'public interest' in a regulatory statute . . . take meaning from the purposes of the regulatory legislation.'').

[180] *See, e.g.,* Securities Act of 1933, Pub. L. 73–22, 48 Stat. 74, 74 (preamble) (''An Act to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof.''); 15 U.S.C. 78b (''Necessity for regulation''); 15 U.S.C. 77b(b), 78c(f) (protection of investors, efficiency, competition, and capital formation); *Omnicare, Inc.* v. *Laborers Dist. Council Const. Indus. Pension Fund,* 575 U.S. 175, 178 (2015) (''The Securities Act of 1933 . . . protects investors by ensuring that companies issuing securities (known as 'issuers') make a full and fair disclosure of information relevant to a public offering.'' (quotation omitted)); *Basic Inc.* v. *Levinson,* 485 U.S. 224, 230 (1988) (''The [Exchange] Act was designed to protect investors against manipulation of stock prices. Underlying the adoption of extensive disclosure requirements was a legislative philosophy: There cannot be honest markets without honest publicity . . . . This Court repeatedly has described the fundamental purpose of the [Exchange] Act as implementing a philosophy of full disclosure.'' (quotation omitted)); *see also Lorenzo* v. *SEC,* 139 S. Ct. 1094, 1103 (2019) (''The fundamental purpose'' of the securities laws is substituting ''a philosophy of full disclosure for the philosophy of caveat emptor.'').

[181] *See supra* note 180; *see also Nat'l Res. Def. Council, Inc.* v. *SEC,* 606 F.2d 1031, 1050 (D.C. Cir. 1979) (''The SEC . . . was necessarily given very broad discretion to promulgate rules governing corporate disclosure. The degree of discretion accorded the Commission is evident from the language in the various statutory grants of rulemaking authority.''); *id.* at 1045 (''Rather than casting disclosure rules in stone, Congress opted to rely on the discretion and expertise of the SEC for a determination of what types of additional disclosure would be desirable.''); H.R. Rep. No. 73–1383, at 6–7 (1934).

that the required information would be important to investment and voting decisions. And courts have routinely applied and interpreted the Commission's disclosure provisions without suggesting that the Commission lacked the authority to promulgate them.[182] When determining that additional ''information'' is ''necessary or appropriate'' to protect investors, the Commission has responded to marketplace developments, investors' need for information important to their decision-making, and advances in economic, financial, and investment analysis and analytical frameworks, as well of the costs of such disclosures. In addition, the Commission has eliminated existing disclosure requirements, or updated and tailored existing disclosures for similar reasons.[183]

For example, the Commission's predecessor agency,[184] immediately upon enactment of the Securities Act, relied upon Section 7 of that Act as authority to adopt Form A–1, the precursor to today's Form S–1 registration statement, to require disclosure of information important to investor decision-making but not specifically enumerated in Schedule A of the Securities Act. This information included a list of states where the issuer owned property and was qualified to do business, the length of time the registrant had been engaged in its business,[185] and a statement of all litigation that may materially affect the value of the security to be offered.[186]

The Commission has further exercised its statutory authority to require disclosures that provide investors with information on risks facing registrants. These specific disclosure items are consistent with the Commission's longstanding view that understanding the material risks faced by a registrant and how the registrant manages those risks can be just as important to assessing its business operations and financial condition as knowledge about its physical assets or material contracts. These disclosures also reflect investors' increased demand for, and growing ability to use, information regarding the risks faced by registrants through the application of increasingly sophisticated and specialized measurement and analysis frameworks to make investment and voting decisions.[187]

For instance, the Commission in 1982 adopted a rule requiring registrants to disclose ''Risk Factors,'' *i.e.,* a ''discussion of the material factors that make an investment in the registrant or offering speculative or risky.'' [188] Also, in 1997, the Commission first required registrants to disclose quantitative information about market risk.[189] Those rules included requirements to present ''separate quantitative information . . . to the extent material'' for different categories of market risk, such as ''interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market risks, such as equity price risk.'' [190] Under these market risk disclosure requirements, registrants must also disclose various metrics such as ''value at risk'' and ''sensitivity analysis disclosures.'' In addition, registrants must provide certain qualitative disclosures about market risk, to the extent material.[191]

Commission rules have also required disclosures regarding specific elements of the risks facing registrants, such as a registrant's material legal proceedings,[192] as part of its description of business, the material effects that compliance with government regulations, including environmental regulations, may have upon a registrant's capital expenditures, earnings, and competitive position,[193] compensation discussion and analysis,[194] and the extent of the board's role in the risk oversight of the registrant.[195] In addition, the Commission has adopted comprehensive disclosure regimes related to particular industries,[196] offering structures,[197] and types of transactions, when it has determined

[182] *See SEC* v. *Life Partners Holdings, Inc.,* 854 F.3d 765 (5th Cir. 2017) (applying regulations regarding disclosure of risks and revenue recognition); *SEC* v. *Das,* 723 F.3d 943 (8th Cir. 2013) (applying Regulation S–K provisions regarding related-party transactions and executive compensation); *Panther Partners Inc* v. *Ikanos Communs., Inc.,* 681 F.3d 114 (2d Cir. 2012) (applying Item 303 of Regulation S–K, which requires disclosure of management's discussion and analysis of financial condition); *SEC* v. *Goldfield Deep Mines Co.,* 758 F.2d 459 (9th Cir. 1985) (applying disclosure requirement for certain legal proceedings).

[183] *See, e.g., FAST Act Modernization and Simplification of Regulation S–K,* Release No. 33–10618 (Mar. 20, 2019) [84 FR 12674, 12676 (Apr. 2, 2019)] (stating that the amendments ''are intended to improve the quality and accessibility of disclosure in filings by simplifying and modernizing our requirements'' and ''also clarify ambiguous disclosure requirements, remove redundancies, and further leverage the use of technology'' which, the Commission expected, ''will increase investor access to information without reducing the availability of material information''); *Disclosure Update and Simplification,* Release No. 33–10532 (Aug. 17, 2018) [83 FR 50148, 50176–79 (Oct. 4, 2018)] (discussing amendments to, among other things, eliminate certain disclosure requirements that ''have become obsolete as the regulatory, business, or technological environments have changed over time'').

[184] Prior to enactment of the Exchange Act, the Federal Trade Commission was empowered with administration of the Securities Act.

[185] Items 3 through 5 of Form A–1; *see* Release No. 33–5 (July 6, 1933) [not published in the **Federal Register**]. The Commission's disclosure requirements no longer explicitly call for this information.

[186] This early requirement called for certain information related to those legal proceedings, including a description of the origin, nature, and names of parties to the litigation. Item 17 of Form A–1. The Commission has retained a disclosure requirement related to legal proceedings in both Securities Act registration statements and in Exchange Act registration statements and periodic reports. *See* 17 CFR 229.103.

[187] *See infra* notes 200, 206–207 and accompanying text.

[188] 17 CFR 229.105(a); *see also Adoption of Integrated Disclosure System,* Release No. 33–6383 [47 FR 11380 (Mar. 16, 1982)] (''1982 Release''). Prior to 1982, the Commission stated in guidance that, if the securities to be offered are of a highly speculative nature, the registrant should provide ''a carefully organized series of short, concise paragraphs summarizing the principal factors that make the offering speculative.'' *See Guides for Preparation and Filing of Registration Statements,* Release No. 33–4666 (Feb. 7, 1964) [29 FR 2490 (Feb. 15, 1964)]. A guideline to disclose a summary of risk factors relating to an offering was first set forth by the Commission in 1968 and included consideration of five factors that may make an offering speculative or risky, including with respect to risks involving ''a registrant's business or proposed business.'' *See* Guide 6, in *Guides for the Preparation and Filing of Registration Statements,* Release No. 33–4936 (Dec. 9, 1968) [33 FR 18617 (Dec. 17, 1968)].

[189] See 17 CFR 229.305; and Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments and Disclosure of Quantitative and Qualitative Information About Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments, and Derivative Commodity Instruments, Release No. 33–7386 (Jan. 31, 1997) [62 FR 6044 (Feb. 10, 1997)].

[190] 17 CFR 229.305(a)(1).

[191] *See* 17 CFR 229.305(b).

[192] *See* 17 CFR 229.103; *Modernization of Regulation S–K Items 101, 103, and 105,* Release No. 33–10825 (Aug. 26, 2020) [85 FR 63726, 63740 (Oct. 8, 2020)] (''The Commission first adopted a requirement to disclose all pending litigation that may materially affect the value of the security to be offered, describing the origin, nature and name of parties to the litigation, as part of Form A–1 in 1933.'').

[193] *See* 17 CFR 229.101(c)(2)(i); *Adoption of Disclosure Regulation and Amendments of Disclosure Forms and Rules,* Release No. 33–5893 (Dec. 23, 1977) [42 FR 65554, 65562 (Dec. 30, 1977)] (''Appropriate disclosure shall also be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries.'').

[194] *See* 17 CFR 229.402; *Executive Compensation and Related Person Disclosure,* Release No. 33–8732 (Aug. 11, 2006 [71 FR 53158 (Sept. 8, 2006)].

[195] *See* 17 CFR 229.407(h); *Proxy Disclosure Enhancements,* Release No. 33–9089 (Dec. 16, 2009) [74 FR 68334 (Dec. 23, 2009)].

[196] *See* 17 CFR Subpart 1200 (Oil and Gas); 17 CFR Subpart 1300 (Mining); and 17 CFR Subpart 1400 (Banks and Savings and Loan).

[197] *See* 17 CFR Subpart 1100 (Asset-Backed Securities).

that disclosure in those particular areas was justified.[198]

Relatedly, the Commission has exercised its statutory authority to require registrants to include in registration statements and annual reports a narrative explanation of a number of aspects of the issuer's business, most prominently in the MD&A.[199] These requirements are ''intended to give the investor an opportunity to look at the company through the eyes of management by providing both a short and long-term analysis of the business of the company,'' and they reflected increased investor need for this type of information as an important tool to make investment and voting decisions.[200]

Finally, the Commission for the last fifty years has also required disclosure about various environmental matters.[201] In adopting those requirements, the Commission recognized the number of ways that environmental issues can impact a company's business and its financial performance and determined that these requirements would provide information important to investment and voting decisions. Throughout the 1970s and early 1980s, the need for specific rules mandating disclosure of information relating to litigation and other business costs arising out of compliance with Federal, State, and local laws relating to environmental protection were the subject of several rulemaking efforts, extensive litigation, and public hearings.[202] As a result of this process, in 1982, the Commission adopted rules that address disclosure of certain environmental issues.[203]

More recently, the Commission published the 2010 Guidance, explaining how the Commission's existing disclosure rules may require disclosure of the impacts of climate change on a registrant's business or financial condition.[204] And in 2020, the Commission amended its disclosure rules to require, to the extent material to an understanding of the business taken as a whole, disclosure of the material effects that compliance with government regulations, including environmental regulations, may have upon the capital expenditures, earnings, and competitive position of the registrant and its subsidiaries.[205]

Similarly, the Commission is adopting the final rules based on its determination that the required disclosures will elicit information that investors have indicated is important to their investment and voting decisions.[206] As explained throughout this release, climate-related risks can affect a company's business and its financial performance and position in a number of ways. A growing number of investors across a broad swath of the market consider information about climate-related risks to be important to their decision-making. These investors have expressed the need for more reliable information about the effects of climate-related and other severe weather events or other natural conditions on issuers' businesses, as well as information about how registrants have considered and addressed climate-related risks when conducting operations and developing business strategy and financial plans. These rules respond to this need by providing investors more reliable and decision-useful disclosure of strategies and risks that a registrant has determined will likely materially impact its business, results of operations, or financial condition. The disclosure of such information—whether climate-related or otherwise—falls within the authority conferred by Congress in the Securities Act and the Exchange Act.[207]

The Regulation S–X provisions of the final rules are also within the Commission's authority. In addition to the statutory provisions discussed above, the Federal securities laws provide the Commission with extensive and specific authority to prescribe financial statement disclosures, set accounting standards, and establish accounting principles for entities that file financial statements with the Commission.

As noted above, Section 7(a)(1) of the Securities Act specifies that a registration statement shall contain, among other things, the information specified in Schedule A. Schedule A in turn requires disclosure of balance sheet and profit and loss statement (*i.e.,* comprehensive income statement) information ''in such detail and in such form as the Commission shall prescribe.'' [208] In addition, Section 12(b)

[198] *See* 17 CFR Subpart 900 (Roll-Up Transactions); and 17 CFR Subpart 1000 (Mergers and Acquisitions).

[199] *See Amendments to Annual Report Form, Related Forms, Rules, Regulations and Guides; Integration of Securities Acts Disclosure Systems,* Release No. 33–6231 (Sept. 2, 1980) [45 FR 63630 (Sept. 25, 1980)]. Item 303 of Regulation S–K requires a registrant to discuss its financial condition, changes in its financial condition, and results of operations, 17 CFR 229.303(a), other disclosure items, see, *e.g.,* 17 CFR 229.303(b)(1)(i), (1)(ii)(B), and (2)(ii), and requires registrants to ''provide such other information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition, and results of operation.'' 17 CFR 229.303(b).

[200] *Concept Release on Management's Discussion and Analysis of Financial Condition and Operations,* Release No. 33–6711 (Apr. 17, 1987) [52 FR 13715 (Apr. 24, 1987)]. The Commission also has stated that it is important that investors understand the extent to which accounting changes and changes in business activity have affected the comparability of year-to-year data and they should be in a position to assess the source and probability of recurrence of net income (or loss). *Id.* (quoting *Guidelines for Registration and Reporting,* Release No. 33–5520 (Aug. 14, 1974) [39 FR 31894 (Sept. 3, 1974)]).

[201] In addition to Commission rules requiring disclosures regarding specific elements of the risks facing registrants that are discussed *supra* notes 192–198 and accompanying text, the Commission has adopted disclosure requirements that are similarly subject to substantive regulation under other statutes and by other agencies, as discussed *infra* note 207.

[202] *See Environmental Disclosure,* Interpretive Release No. 33–6130 (Sept. 27, 1979) [44 FR 56924 (Oct. 3, 1979)] (discussing this history); *Proposed Amendments to Item 5 of Regulation S -K Regarding Disclosure of Certain Environmental Proceedings,* Release No. 33–6315 (May 4, 1981) [46 FR 25638]; *NRDC* v. *SEC,* 606 F.2d 1031, 1036–42 (D.C. Cir. 1979) (same).

[203] *See* 1982 Release (adopting 17 CFR 229.103, which requires a registrant to describe its material pending legal proceedings, other than ordinary routine litigation incidental to the business, and indicating that administrative or judicial proceedings arising under Federal, state, or local law regulating the discharge of materials into the environment or primarily for the purpose of protecting the environment, shall not be deemed ''ordinary routine litigation incidental to the business'' and must be described if meeting certain conditions). The 1982 Release also moved the requirement to disclose information regarding the material effects of compliance with Federal, State and local provisions regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, on the registrant's capital expenditures, earnings and competitive position, as well as the disclosure of its material estimated capital expenditures for environmental control facilities, to 17 CFR 229.101(c)(1)(xii).

[204] *See* 2010 Guidance. As the Commission discussed in the guidance, the agency reviewed its full disclosure program relating to environmental disclosures in SEC filings in connection with a Government Accountability Office review. Among other things, the 2010 Guidance emphasized that climate change disclosure might, depending on the circumstances, be required in a company's Description of Business, Risk Factors, Legal Proceedings, and MD&A; identified certain climate-related issues that companies may need to consider in making their disclosures; and stated that registrants should consider any financial statement implications of climate change issues in accordance with applicable accounting standards.

[205] *See Modernization of Regulation S–K Items 101, 103, and 105,* Release No. 33–10825 (Aug. 26, 2020) [85 FR 63726 (Oct. 8, 2020)].

[206] *See supra* section I.A.

[207] The final rules are also consistent with other disclosure items that are similarly subject to substantive regulation under other statutes and by other agencies. For example, banks, bank holding companies, savings and loan associations, and savings and loan holding companies are subject to subpart 1400 of Regulation S–K despite the substantive jurisdiction and regulation of other state and Federal prudential regulators. Similarly, here, the importance of climate-related risks to investor decision-making makes them appropriate for disclosure regardless of other regimes that substantively regulate those issues.

[208] *See* Schedule A, paras. 25 and 26. The ''form'' required by the Commission includes both financial statements and notes to those statements. *See* 17

Continued

of the Exchange Act provides the Commission with specific authority to require not only balance sheet and income statement disclosure, but also ''any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.'' [209]

Section 19(a) of the Securities Act also grants the Commission extensive authority to ''make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of,'' the Securities Act, which includes ''defining accounting, technical, and trade terms used in'' the Securities Act. ''Among other things,'' this section grants the Commission the authority to ''prescribe . . . the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.'' [210] Sections 13 and 23 of the Exchange Act grant the Commission similar authority with respect to reports filed under that Act.[211]

Relying on these provisions, the Commission has prescribed the form and content of the financial statements to ensure that investors have access to information necessary for investment and voting decisions. The Commission adopted Regulation S–X in 1940, which governs the form and content of the financial statements, pursuant to its authority under, among other provisions, Sections 7 and 19(a) of the Securities Act and Sections 12 and 23(a) of the Exchange Act.[212] Over time, the Commission has amended Regulation S–X to add, modify, and eliminate requirements, as appropriate, with respect to the form and content of the financial statements, taking into consideration the development of accounting practices in the marketplace, investors' need for information important to their decision-making, as well of the costs of such disclosures.

For example, the Commission has on numerous occasions amended Regulation S–X to require the disclosure of particular items of information in the balance sheet or in the income statement.[213] The Commission has similarly amended Regulation S–X to require additional information in the financial statements with respect to particular issuers or types of transactions, when it has determined that action in those specific areas was responsive to the information needs of investors.[214]

Similarly, the Commission is adopting the final rules based on its determination that the required financial statement disclosures will provide investors with information that is important to their investment and voting decisions. Specifically, the Commission is exercising its authority to prescribe the content and form of the financial statements to require registrants to disclose certain information about costs and expenditures related to: (1) severe weather events and other natural conditions; and (2) in connection with the purchase and use of carbon offsets and RECs, as well as certain information about financial estimates and assumptions, in the notes to the financial statements. As explained in greater detail below, investors have expressed a need for this information,[215] and we believe the final rules will allow investors to make better informed investment or voting decisions by eliciting more complete disclosure of financial statement effects and by improving the consistency, comparability, and reliability of the disclosures.

For similar reasons, we disagree with objections by commenters based on the non-delegation and major-questions doctrines.[216] The non-delegation objection is misplaced because the long-standing statutory authority that we rely on provides intelligible principles to which the Commission must conform in its rulemaking.[217] Indeed, the Supreme Court early in the Commission's history rejected a non-delegation challenge to one of the securities laws that the Commission administered, and the well-tested delegation of rulemaking authority that we exercise here likewise falls comfortably within the Court's holding that a delegation poses no constitutional difficulty when it provides standards that derive ''meaningful content from the purpose of the Act, its factual background and the statutory context in which they appear.'' [218] Also, the major-questions objection is misplaced because the Commission is not claiming to ''discover in a long-extant statute an unheralded power representing a

CFR 210.1–01(b) (specifying the term ''financial statements'' includes all notes to the statements and related schedules).

[209] 15 U.S.C. 78l(b)(1)(J) through (L).

[210] 15 U.S.C. 77s(a).

[211] 15 U.S.C. 78m(b)(1); *see* 15 U.S.C. 78w(a)(1) (''The Commission . . . shall . . . have the power to make such rules and regulations as may be necessary or appropriate to implement the provisions of [the Exchange Act] for which [it is] responsible or for the execution of the functions vested in [it] by [the Exchange Act], and may for such purposes classify persons, securities, transactions, statements, applications, reports, and other matters within their respective jurisdictions, and prescribe greater, lesser, or different requirements for different classes thereof.''); *see also* 15 U.S.C. 7218(c) (''Nothing in the [Sarbanes-Oxley Act of 2002] . . . shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.''); *Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter,* Release No. 33–8221 (Apr. 25, 2003) [68 FR 23333, 23334 (May 1, 2003)] (''While the Commission consistently has looked to the private sector in the past to set accounting standards, the securities laws, including the Sarbanes-Oxley Act, clearly provide the Commission with authority to set accounting standards for public companies and other entities that file financial statements with the Commission.'').

[212] *See Adoption of Regulation S–X,* 5 FR 949, 954 (Mar. 6, 1940).

[213] *See Improved Disclosures of Leases,* Release No. 33–5401 (June 6, 1973) [38 FR 16085, 16085 (June 20, 1973)] (proposing amendments to Rule 3–16 of Regulation S–X to require disclosure of, among other things, total rental expenses and minimum rental commitments, explaining that for many years corporate disclosure of leased assets ''has not been sufficient to enable investors to determine the nature and magnitude of such assets, the size of financial commitments undertaken and the impact upon net income of this kind of financing''); *Improved Disclosures of Leases,* Release No. 33–5428 (Oct. 23, 1973) [38 FR 29215 (Oct. 23, 1973)] (adopting amendments to Rule 3–16); *General Revision of Regulation S–X,* Release No. 6233 (Sept. 25, 1980) [45 FR 63660, 63664 (Sept. 25, 1980)] (requiring separate disclosure of domestic and foreign pre-tax income, in part because the Commission had ''seen substantial voluntary inclusion by registrants of this tax information in their annual reports to shareholders'').

[214] *See Amendments to Financial Disclosures About Acquired and Disposed Businesses,* Release No. 33–10786 (May 20, 2020) [85 FR 54002 (Aug. 31, 2020)] (amending Regulation S–X as part of ''an ongoing, comprehensive evaluation of our disclosure requirements'' to improve for investors the financial information about acquired and disposed businesses); *Financial Statements and Periodic Reports for Related Issuers and Guarantors,* Release No. 33–7878 (Aug. 4, 2000) [65 FR 51692 (Aug. 24, 2000)] (amending Regulation S–X to require additional disclosures relating to guaranteed securities, and explaining that the amendments codified Commission staff practices over the years and would eliminate uncertainty regarding financial statement requirements and ongoing reporting).

[215] *See infra* notes 1741 and 2133. *See also infra* note 1961 (commenters generally supportive of the proposed expenditure disclosures).

[216] *See, e.g.,* letter from Morrisey *et al.* (June 15, 2022); *see also* note 172.

[217] *See Gundy* v. *United States,* 139 S. Ct. 2116, 2123 (plurality op.); *see also* note 182and accompanying text.

[218] *Am. Power & Light Co.* v. *SEC,* 329 U.S. 90, 104 (1946).

transformative expansion in [its] regulatory authority.'' [219] Nor is it seeking to determine national environmental policy or dictate corporate policy, as commenters suggest.[220] Rather, it is adopting the final rules based on its long standing authority to require disclosures that provide investors with information that is important to their investment and voting decisions, as discussed above. Consistent with this authority and its traditional role, the Commission is agnostic as to whether and how issuers manage climate-related risks so long as they appropriately inform investors of material risks.

Finally, we disagree with commenters who raised objections to the proposed rules on First Amendment grounds.[221] The required disclosures are factual information about certain risks companies face to their businesses, finances, and operations–the type of information that companies routinely disclose when seeking investments from the public. And as discussed throughout this release, these required disclosures also advance crucial interests: the final rules respond to the growing investor need for more reliable information regarding climate-related risks by providing investors with information that is important to their investment and voting decisions. Further, the final rules have been appropriately tailored to serve those interests, including with a number of significant changes having been made from the proposal to take account of the burdens imposed by requiring such disclosures.

C. Disclosure of Climate-Related Risks

1. Definitions of Climate-Related Risks and Climate-Related Opportunities (Items 1500 and 1502(a))

a. Proposed Rule

The Commission proposed to require a registrant to disclose any climate-related risks reasonably likely to have a material impact on the registrant's business or consolidated financial statements.[222] As proposed, a registrant could also optionally disclose the actual and potential impacts of any climate-related opportunities it is pursuing.[223] The Commission proposed definitions of ''climate-related risks'' and ''climate-related opportunities'' that were substantially similar to the TCFD's corresponding definitions of those terms [224] to provide a common terminology that would allow registrants to disclose climate-related risks and opportunities in a consistent and comparable way. In the Proposing Release, the Commission expressed its belief that grounding the definitions in a framework that is already widely accepted could help limit the burden on registrants to identify and describe climate-related risks while improving the comparability and usefulness of the disclosures for investors.[225]

The Commission proposed to define ''climate-related risks'' to mean the actual or potential negative impacts of climate-related conditions and events on a registrant's consolidated financial statements, business operations, or value chains, as a whole.[226] The Commission proposed to define ''value chain'' to mean the upstream and downstream activities related to a registrant's operations.[227] Under the proposed definition, upstream activities would include activities by a party other than the registrant that relate to the initial stages of a registrant's production of a good or service (*e.g.,* materials sourcing, materials processing, and supplier activities). Downstream activities would include activities by a party other than the registrant that relate to processing materials into a finished product and delivering it or providing a service to the end user (*e.g.,* transportation and distribution, processing of sold products, use of sold products, end of life treatment of sold products, and investments).[228] The Commission proposed including a registrant's value chain within the definition of climate-related risks to capture the full extent of a registrant's potential exposure to climate-related risks.[229]

Climate-related conditions and events can present risks related to the physical impacts of the climate (''physical risks'') and risks related to a potential transition to a lower carbon economy (''transition risks''). The Commission proposed to define ''physical risks'' to include both acute and chronic risks to a registrant's business operations or the operations of those with whom it does business.[230] The Commission proposed to define ''acute risks'' to mean event-driven risks related to shorter-term extreme weather events, such as hurricanes, floods, and tornadoes.[231] Under the proposed rule, ''chronic risks'' would be defined to mean those risks that a business may face as a result of longer term weather patterns and related effects, such as sustained higher temperatures, sea level rise, drought, and increased wildfires, as well as related effects such as decreased arability of farmland, decreased habitability of land, and decreased availability of fresh water.[232] The Commission proposed to define transition risks to mean the actual or potential negative impacts on a registrant's consolidated financial statements, business operations, or value chains attributable to regulatory, technological, and market changes to address the mitigation of, or adaptation to, climate-related risks.[233] Transition risks would include, but not be limited to, increased costs attributable to climate-related changes in law or policy, reduced market demand for carbon-intensive products leading to decreased sales, prices, or profits for such products, the devaluation or abandonment of assets, risk of legal liability and litigation defense costs, competitive pressures associated with the adoption of new technologies, reputational impacts (including those stemming from a registrant's customers or business counterparties) that might trigger changes to market behavior, changes in consumer preferences or behavior, or changes in a registrant's behavior.[234]

The Commission proposed to require a registrant to specify whether an identified climate-related risk is a physical or transition risk so that investors can better understand the nature of the risk.[235] If a physical risk, the rule proposal would require a registrant to describe the nature of the risk, including whether it may be categorized as an acute or chronic risk.[236] A registrant would also be required to describe the location and nature of the properties, processes, or operations subject to the physical

[219] *West Virginia* v. *EPA,* 597 U.S. 697, 724 (2022) (quotations omitted).

[220] *See, e.g.,* letters from Andrew N. Vollmer (May 9, 2022); Andrew N. Vollmer (Apr. 12, 2022); Morrisey *et al.* (June 15, 2022); Cunningham *et al.* (Apr. 25, 2022); Sharfman *et al.* For similar reasons, we disagree with commenters who suggested the disclosures required by the final rules impermissibly interfere with state corporate law. *See, e.g.,* letters from Morrisey *et al.* (June 15, 2022); Cunningham *et al.* (Apr. 25, 2022) Sharfman *et al.*

[221] *See, e.g.,* letters from Cunningham *et al.* (Apr. 25, 2022); Morrisey *et al.* (June 15, 2022); Sean J. Griffith (June 1, 2022); Jones Day; Chamber; Sharfman *et al.*

[222] *See* Proposing Release, section II.B.1.

[223] *See id.*

[224] *See* TCFD, *Recommendations of the Task Force on Climate-related Financial Disclosures,* Appendix 5 available at *https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf.*

[225] *See* Proposing Release, section II.B.1.

[226] *See id.*

[227] *See id.*

[228] *See id.*

[229] *See id.*

[230] *See id.*

[231] *See id.*

[232] *See id.*

[233] *See id.*

[234] *See id.*

[235] *See id.*

[236] *See id.*

risk.[237] The rule proposal defined ''location'' to mean a ZIP code or, in a jurisdiction that does not use ZIP codes, a similar subnational postal zone or geographic location.

The Commission proposed to require additional disclosure from a registrant that has identified a climate-related risk related to flooding or high water stress. As proposed, if a risk concerns the flooding of buildings, plants, or properties located in flood hazard areas, the registrant would be required to disclose the percentage of those assets that are located in flood hazard areas in addition to their location.[238] If a risk concerns the location of assets in regions of high or extremely high water stress, as proposed, the registrant would be required to disclose the amount of assets (*e.g.,* book value and as a percentage of total assets) located in those regions in addition to their location. The registrant would also be required to disclose the percentage of the registrant's total water usage from water withdrawn in those regions.[239]

The Commission proposed to require a registrant to describe the nature of an identified transition risk, including whether it relates to regulatory, technological, market (including changing consumer, business counterparty, and investor preferences), liability, reputational, or other transition-related factors, and how those factors impact the registrant.[240] In this regard, the proposed rule stated that a registrant that has significant operations in a jurisdiction that has made a GHG emissions reduction commitment may be exposed to transition risks related to the implementation of the commitment.[241]

As the Commission noted in the Proposing Release, climate-related conditions and any transition to a lower carbon economy may also present opportunities for registrants and investors.[242] The rule proposal defined ''climate-related opportunities'' to mean the actual or potential positive impacts of climate-related conditions and events on a registrant's consolidated financial statements, business operations, or value chains, as a whole.[243]

b. Comments

Many commenters supported the proposal to require a registrant to disclose any climate-related risks that are reasonably likely to have a material impact on its business or consolidated financial statements.[244] These commenters provided various reasons for supporting the proposal. For example, one commenter noted that it views material climate-related risks and opportunities as fundamental financial factors that impact company cash flows and the valuation investors attribute to those cash flows and stated that the proposed rules will lead to ''more consistent, comparable, and reliable disclosures that will enable investors to make better decisions on how and where to allocate capital.'' [245] Another commenter stated that the proposed requirements would provide a thorough foundation for disclosure of climate risks, including future risks.[246] A different commenter stated that the proposed disclosure requirement would ensure that investors receive specific, comparable details about registrants' climate-related risks, which are currently lacking from many registrants.[247] One other commenter stated that, based on its own research, most registrants are exposed to climate-related risks, and without sufficient information regarding transition risks and physical risks facing a registrant, investors may be unable to correctly value a registrant's securities, thus potentially paying too high or too low a price.[248] One commenter stated that, because long-term climate-related risks can quickly become financially impactful, the proposed requirement would elicit disclosure that, at a minimum, would indicate the quality of a company's governance and risk management.[249]

Many commenters supported the proposed definition of climate-related risk, including that the definition encompass both physical and transition risks, and further supported the proposed requirement to specify whether an identified climate-related risk is a physical or transition risk.[250] One commenter stated that the proposed definition of climate-related risk is comprehensive and would help ensure that registrants consider a broad spectrum of climate-related risks.[251] Another commenter expressed approval of the proposed definition of climate-related risk because it is substantially similar to the TCFD's definition of climate-related risk, which is familiar terminology for investors and companies alike and therefore should promote consistent and comparable disclosure across companies.[252] A different commenter stated that the definition of climate-related risk should include only the actual negative impacts of climate-related conditions and events, and not potential negative impacts, as proposed, but agreed that the definition should include both physical and transition risks because that would be consistent with the TCFD framework.[253] One other commenter stated that the proposed definition of climate-related risk is generally ''correct'' because it is similar to the TCFD definition and would facilitate comparability of climate-related disclosure, but recommended that the Commission address in the definition the intersection of climate-related risks and adverse consequences to local communities.[254]

A number of commenters supported including in the proposed definition of physical risk both acute and chronic risks, and further supported specifying whether an identified physical risk is acute or chronic.[255] One commenter stated that it supported the proposed disclosure of a physical risk, including whether the physical risk is acute or chronic, in addition to any transition risk, and noted that all these risk categories can have ''financial materiality.'' [256] This commenter did not, however, support requiring the disclosure of whether or how an acute risk and chronic risk may affect each other because of the complex interaction between the two types of risks.[257]

[237] *See id.*

[238] *See id.*

[239] *See id.*

[240] *See id.*

[241] *See id.*

[242] *See id.*

[243] *See id.*

[244] *See, e.g.,* letters from Acadian Asset Management (June 14, 2022) (''Acadian Asset Mgmt.''); AGs of Cal. *et al.;* AllianceBernstein; Amer. for Fin. Reform, Evergreen Action *et al.;* As You Sow; CalPERS; CalSTRS; Center for American Progress (June 17, 2022) (''Center Amer. Progress''); CFA; Domini Impact; D. Hileman Consulting; Eni SpA; IAA; ICI; Impax Asset Mgmt.; KPMG (June 16, 2022); Moody's Corporation (June 17, 2022) (''Moody's''); Morningstar; NY SIF; NY St. Comptroller; PRI; SKY Harbor; TotalEnergies SE (June 17, 2022) (''TotalEnergies''); Unilever; and Wellington Mgmt.

[245] *See* letter from AllianceBernstein.

[246] *See* letter from Center Amer. Progress.

[247] *See* letter from AGs of Cal. *et al.*

[248] *See* letter from Wellington Mgmt; *see also* letter from Farm Girl Capital (June 17, 2022) (''FGC'') (stating that ''disclosure of material and systemic risks of climate change will help companies and investors to understand, price, and manage climate risks and opportunities'').

[249] *See* letter from SKY Harbor.

[250] *See, e.g.,* letters from Beller *et al.;* BHP; CalSTRS; D. Hileman Consulting; Eni SpA; IAA; ICI; Impax Asset Mgmt.; KPMG; Moody's; Morningstar; TotalEnergies; Unilever; and Wellington Mgmt.

[251] *See* letter from D. Hileman Consulting.

[252] *See* letter from ICI; *see also* letters from KPMG; and Morningstar.

[253] *See* letter from CEMEX.

[254] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[255] *See, e.g.,* letters from Beller *et al.;* CalSTRS; Eni SpA; IAA; Impax Asset Mgmt.; Moody's; and Unilever.

[256] *See* letter from Moody's.

[257] *See id.; see also* letter from Eni SpA.

Another commenter similarly stated that, while it supported the disclosure of acute and chronic risks, because such risks are complex and may overlap, the Commission should clarify that companies can decide how to categorize acute and chronic risks and, where there may be overlap (*e.g.,* wildfires can be both an acute and chronic risk to a company), the risk only needs to be identified once.[258] A different commenter stated that it supported the proposed definition of climate-related risk, which includes acute and chronic risks within physical risk, because it aligned with the TCFD framework, and such alignment would be of significant benefit because it will help elicit comparable disclosures and help reduce the reporting burden.[259] One other commenter, while acknowledging that the proposed definition of physical risk aligned with the TCFD framework, recommended that the Commission include, in the definition of chronic risk, systemic threats to public health and safety.[260]

Several commenters supported the proposed requirement to describe the location and nature of the properties, processes, or operations subject to the physical risk.[261] Commenters stated that the proposed location disclosure would enable investors to more fully assess a registrant's exposure to physical risks, such as extreme storm events, flooding, water shortages, and drought, which may be geographically specific, and whether the registrant is adequately taking steps (*e.g.,* through adopting a transition plan) to mitigate or adapt to the physical risks.[262] One commenter stated that ''[i]nvestors and investment analysts are often tasked with understanding the risk that climate change poses to physical assets that are critical to the company's overall business model,'' including both facilities owned by the company and those owned by key suppliers, and recommended that the Commission ''require the disclosure of the locations of all material facilities *i.e.,* geographical concentrations that pose material risks of loss.'' [263] Some of these commenters also supported defining location by the ZIP code or other subnational postal zone if the ZIP code is not available.[264] One commenter recommended using geographic coordinates to describe the location of assets subject to a material physical risk because they would better fit climate models.[265] Another commenter recommended requiring the disclosure of specific addresses, and not just ZIP codes, to identify the location of assets subject to a material physical risk to enable investors to fully assess the registrant's exposure to the physical risk.[266] This commenter also urged the Commission to require the proposed disclosure with respect to all of a registrant's locations that are material to its businesses rather than only the locations subject to a physical climate risk, stating that physical climate risk potentially impacts a registrant at all of its locations.[267]

Several commenters supported the proposed requirement to disclose the percentage of assets that are located in flood hazard areas if a registrant has determined that flooding is a material physical risk.[268] Several commenters also supported the proposed requirement to disclose the amount of assets (*e.g.,* book value and as a percentage of total assets) located in regions of high or extremely high water stress, and the percentage of the registrant's total water usage from water withdrawn in those regions, if a registrant has determined that high or extremely high water stress is a material physical risk.[269] Commenters stated that the proposed disclosure requirements would help investors understand the extent of the water-related risk to which a registrant is exposed.[270] Some commenters generally stressed the importance to investors of obtaining quantitative data from registrants about the physical risks to which they are subject and recommended that the Commission require registrants to similarly provide the percentage of assets or other quantitative data relevant to assessing a registrant's exposure to other material physical risks, such as heatwaves, droughts, and wildfires.[271]

With regard to flooding risk disclosure, some commenters recommended that the Commission require the use of Federal Emergency Management Agency's (''FEMA's'') flood hazard terminology and maps to help further the comparability of the disclosure.[272] One commenter recommended the use of a different flood model that it believed was more up-to-date and more comprehensive than FEMA's flood mapping.[273] Another commenter supported an approach that would allow for different definitions of ''flood hazard area'' or ''water-stressed area'' to be used as long as the registrant disclosed the source of the definitions together with the methodologies and assumptions used in disclosing the water-based physical risk.[274]

Several commenters supported the proposed provision requiring a registrant to describe the nature of an identified transition risk, including whether it relates to regulatory, technological, market (including changing consumer, business counterparty, and investor preferences), liability, reputational, or other transition-related factors, and how those factors impact the registrant.[275] Some commenters also supported the proposed definition of transition risk.[276] Several commenters stated that the Commission should include additional examples within the definition of transition risk, including the risk of impacts on local and indigenous communities and workers caused by a transition to a lower carbon economy.[277]

Several commenters supported including the negative impacts on a registrant's value chain in the definition of climate-related risk, as proposed.[278]

[258] *See* letter from IAA.

[259] *See* letter from Unilever.

[260] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[261] *See, e.g.,* letters from Amer. for Fin. Reform, Evergreen Action *et al.;* Bloomberg; BMO Global Asset Management (June 17, 2022) (''BMO Global Asset Mgmt.''); CalSTRS; Domini Impact; IAC Recommendation; IATP; Longfellow Investment Management (June 17, 2022) (''Longfellow Invest. Mgmt.''); Moody's; Morningstar; NY St. Comptroller; PRI; TotalEnergies; UCS; and Wellington Mgmt.

[262] *See, e.g.,* letters from BMO Global Asset Mgmt.; CalSTRS; IATP; and Morningstar.

[263] *See* IAC Recommendation.

[264] *See, e.g.,* letters from Amer. for Fin. Reform, Evergreen Action *et al.;* IATP; and TotalEnergies.

[265] *See* letter from CalSTRS.

[266] *See* letter from Wellington Mgmt.

[267] *See id.*

[268] *See, e.g.,* letters from Anthesis Group (June 16, 2022) (''Anthesis''); CalPERS; Domini Impact; Eni SpA; ERM CVS (June 17, 2022); IAA; Moody's; Morningstar; NRDC; PRI; TotalEnergies; and Wellington Mgmt.

[269] *See, e.g.,* letters from Anthesis; CalSTRS; Domini Impact; ERM CVS; IAA; Moody's; Morningstar; Paradice Investment Management (June 17, 2022) (''Paradice Invest. Mgmt.''); TotalEnergies; and Wellington Mgmt.

[270] *See, e.g.,* letters from ERM CVS; IAA; Moody's; and Morningstar.

[271] *See, e.g.,* letters from Anthesis; CalPERS; IAA; and Morningstar.

[272] *See, e.g.,* letters from Anthesis; NRDC; and PRI.

[273] *See* letter from CalPERS (recommending use of the First Street Foundation Flood Model).

[274] *See* letter from Moody's; *see also* letter from Wellington Mgmt. (stating that, if address-specific locations are not required, the Commission should require the disclosure of methodologies and data sources used for flooding disclosure).

[275] *See, e.g.,* letters from Eni SpA; Moody's; Morningstar; SKY Harbor; TotalEnergies; and Wellington Mgmt.

[276] *See, e.g.,* letters from Eni SpA; Morningstar; SKY Harbor; and TotalEnergies.

[277] *See, e.g.,* letters from Boston Common Asset Mgmt.; CalPERS; Domini Impact; IAA; and ICCR.

[278] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* Anthesis; Domini Impact; D. Hileman Consulting; Eni SpA; Morningstar; NY SIF; PRI; PwC; TotalEnergies; US Technical Advisory

Continued

One commenter stated that because information concerning climate-related risks involving a registrant's value chain may be more important to investors than such risks involving a registrant's own operations, disclosure of climate-related risks in the value chain should be an integrated part of the broader disclosures about the material climate-related risks management is assessing, managing, and reporting to the board, despite the difficulty of providing such value chain information.[279] Another commenter stated that it supported including value chain impacts in the definition of climate-related risk as long as such impacts relate to direct impacts on a registrant's operations.[280] Some commenters also supported the proposed definition of value chain to mean the upstream and downstream activities related to a registrant's operations.[281] One commenter stated that the definition of value chain should be consistent with the definition provided by the GHG Protocol.[282]

Many other commenters opposed the proposed climate-related risk disclosure requirement.[283] Some of these commenters contended that the Commission's rules already require a registrant to disclose material climate risks, and that therefore there is no need for the proposed climate-related risk disclosure requirement.[284] Several other commenters stated that the proposed climate-related risk disclosure requirement would inundate investors with an extensive amount of granular information that is largely immaterial.[285] Commenters provided as an example of such immaterial disclosure the proposed requirement to disclose the ZIP codes of assets located in flood hazard areas or other regions in which a registrant's assets are subject to a material climate-related risk.[286] Some commenters stated that the highly detailed disclosure required by the proposed climate risk disclosure rule would confuse investors by causing them to believe that a climate-related risk is more important than other disclosed risks that are presented in less detail.[287] Some commenters also stated that the overly granular disclosure elicited by the proposed rule would potentially require registrants to disclose competitively sensitive information.[288] Other commenters stated that, due to uncertainties in climate science, and uncertainties regarding some of the underlying concepts upon which the proposed climate risk disclosure requirement is based, the disclosure of material climate-related risks would be unduly burdensome for many registrants.[289] Another commenter stated that a registrant should only be required to disclose a climate-related risk that management is assessing, managing, and reporting to the board, rather than disclosing information regarding any climate risk.[290]

Several commenters also opposed the proposed disclosure requirements concerning the percentage of assets located in flood zones and similar quantitative data for assets located in high water-stressed areas.[291] One commenter stated that flood risks and high water-stress risks are not comparable within a firm, across sectors, and across regions of the country, so investors are unlikely to make investment decisions based on this information.[292] This commenter further stated that the Commission has not justified singling out risks relating to flooding and high water stress for detailed prescriptive disclosures, which dilutes the importance of other material information.[293] One other commenter stated that the proposed flood risk requirement is not necessary because the majority of companies are not subject to such physical risk.[294] Other commenters stated that such granular disclosure for water-related physical risks would impose a heavy reporting burden for registrants and could raise competitive and security risk concerns.[295]

Several commenters also opposed the proposed transition risk disclosure requirement, including the proposed definition of transition risk.[296] Some commenters stated that the proposed requirement would result in overly granular disclosure that would not be decision-useful for investors and would be burdensome for registrants to produce.[297] One commenter stated that the proposed definition was overly broad and would require a registrant to make the difficult determination of whether a particular activity was undertaken to address a transition risk or was part of a registrant's normal business strategy.[298] Another commenter stated that it would be challenging for companies doing business in multiple markets to provide comparable, consistent, and reliable

Group to TC207 (June 17, 2022) (''US TAG TC207''); and Wellington Mgmt.

[279] *See* letter from PwC. This commenter provided the following examples of when climate-related risks involving a registrant's value chain may be more important to investors than such risks involving the registrant's own operations: the manufacturer of ''a product reliant on a rare mineral for which mining may be limited due to emissions created in extraction, precursor manufacturing, and transport, or, alternatively, a lender whose primary business is financing emissions-intensive operations.''

[280] *See* letter from Eni SpA.

[281] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* Anthesis; and Morningstar.

[282] *See* letter from Morningstar; *see also* letter from D. Hileman Consulting (stating that if the Commission defines value chain, it should adopt a definition that is already well-established, such as the GHG Protocol's definition of value chain).

[283] *See, e.g.,* letters from ABA; American Chemistry Council (June 17, 2022) (''Amer. Chem.''); American Fuel and Petrochemical Manufacturers (June 17, 2022) (''AFPM''); Biotechnology Innovation Organization (June 17, 2022) (''BIO''); Business Roundtable; Chamber; Davis Polk (June 9, 2022); Fenwick West; GPA Midstream Association (June 17, 2022) (''GPA Midstream''); Insurance Coalition (June 17, 2022) (''IC''); Nareit (June 17, 2022) (''Nareit''); National Mining Association (June 17, 2022) (''NMA''); Retail Industry Leaders Association (June 17, 2022) (''RILA''); and Soc. Corp. Gov.

[284] *See, e.g.,* letters from AFPM; BIO; and GPA Midstream.

[285] *See, e.g.,* letters from ABA; Amer. Chem.; AFPM; Business Roundtable; Chamber; Davis Polk; Fenwick West; Nareit; NMA; RILA; SIFMA; and Soc. Corp. Gov.

[286] *See, e.g.,* letters from ABA; Allstate Corporation (June 17, 2022) (''Allstate'') (''Requiring information at a granular level such as ZIP code would create an operational burden and would produce an excessive amount of information that we expect would not be decision-useful for most investors.''); Amer. Chem.; AFPM; BOA; Business Roundtable; Chamber; Davis Polk; NAM; Nareit; PGIM (June 17, 2022); RILA; SIFMA; and Soc. Corp. Gov.

[287] *See, e.g.,* letters from ABA; Fenwick West; GPA Midstream; and Nareit.

[288] *See, e.g.,* letters from IC; NAM; National Grid; RILA; and Soc. Corp. Gov.

[289] *See, e.g.,* letters from NMA; and RILA; *see also* letter from IC (stating that the proposed climate risk disclosure requirement raises concerns for insurers because there is no consensus scientific method for insurers to distinguish between weather-related risks and climate-related risks).

[290] *See* letter from PwC.

[291] *See, e.g.,* letters from ABA; AFPM; BOA; and D. Hileman Consulting.

[292] *See* letter from AFPM; *see also* letter from BOA (stating that investors would not be able meaningfully to compare water-stress risks across different companies without standard definitions for ''high water-stress'' and ''extreme high water-stress.'').

[293] *See* letter from AFPM; *see also* letter from ABA (stating that by proposing highly prescriptive disclosure requirements, such as those based on flood hazard areas or assets of ''high or extremely high water stress,'' the Commission may potentially narrow disclosures related to the full range of environmental or climate issues that are materially relevant to a registrant's business and strategy); and D. Hileman Consulting (stating that it is not necessary for the Commission to enumerate specific climate-related risks, such as flooding or water stress, as there is the risk that registrants could downplay other types of risk).

[294] *See* letter from BIO.

[295] *See, e.g.,* letters from CEMEX; and NAM.

[296] *See, e.g.,* letters from Airlines for America (June 17, 2022); Allstate; Alphabet *et al.;* American Council for Capital Formation (June 17, 2022) (''ACCF''); Chamber; Enbridge Inc. (June 16, 2022) (''Enbridge''); Interstate Natural Gas Association of America (June 17, 2022) (''INGAA''); PwC; and United States Council for International Business (June 17, 2022) (''USCIB'').

[297] *See, e.g.,* letters from ACCF; and Allstate.

[298] *See* letter from Alphabet *et al.*

disclosure about transition risks given complex, dynamic, and varied global factors.[299] Other commenters stated that because the proposed definition of transition risk would require a registrant to consider impacts on its value chain, the resulting disclosures are likely to be overly detailed and could obscure more important information.[300] One other commenter stated that the proposed transition risk disclosure requirement would be difficult to comply with because of the speculative nature of certain transition risks.[301] A different commenter stated that because of the broad definition of transition risk, the Commission should provide additional guidance regarding the scope of the transition risk disclosure requirement.[302]

Many commenters opposed including the negative impacts on a registrant's value chain in the definition of, and related disclosure requirement concerning, its climate-related risks.[303] Commenters stated that the proposed definition would impose impractical burdens on registrants by forcing them to obtain and assess climate risk information about their third-party suppliers and customers over which they have little to no control.[304] Commenters in the agricultural sector were particularly opposed to the proposed definition because it would impose costs and burdens on farmer and rancher suppliers, many of whom are private entities, to produce the information needed by registrants to comply with the proposed climate-related risk requirement.[305] Other commenters stated that, due to the inability to obtain such third-party information, the proposed disclosure requirement is likely to elicit boilerplate disclosure about the climate-related risks of a registrant's value chain.[306] Because of these concerns, several commenters requested that the Commission remove the concept of value chain from the scope of the climate risk disclosure requirement.[307] More generally, several commenters stated that any Commission climate risk disclosure requirement should be more principles-based and grounded on traditional notions of materiality.[308]

Many commenters supported the proposed definition of climate-related opportunities because it is consistent with the TCFD definition.[309] Many commenters also supported keeping the disclosure of climate-related opportunities optional, as proposed.[310] Some of these commenters expressed the view that, while disclosure of climate-related opportunities can provide insight into a registrant's management of climate-related risks and its related strategy, mandatory disclosure of climate-related opportunities could lead to greenwashing.[311] Some commenters, however, stated that disclosure of climate-related opportunities should be mandatory because such opportunities are frequently related to the reduction of climate-related risks and would provide investors with a more balanced perspective of the overall impacts of climate on a company's business and operating performance.[312]

c. Final Rules

We are adopting final rules (Item 1502(a)) to require the disclosure of any climate-related risks that have materially impacted or are reasonably likely to have a material impact on the registrant, including on its business strategy, results of operations, or financial condition, with several modifications in response to commenter concerns.[313] We disagree with those commenters who stated that a climate-related risk disclosure provision was not necessary because the Commission's general risk factors disclosure rule already requires such disclosure.[314] In our view, a separate disclosure provision specifically focused on climate-related risks will help investors better understand a registrant's assessment of whether its business is, or is reasonably likely to be, exposed to a material climate-related risk, and thereby enhance investor protection. Many commenters indicated that the Commission's current disclosure rules, including the general risk factor provision, has not provided investors with disclosure of climate-related risks and their financial impacts at the level of detail sought by investors that would make the disclosure useful for their investment or voting decisions.[315] The final rules, by contrast, are responsive to investors' need for decision-useful information regarding registrants' material climate-related risks and will help ensure investors receive more consistent, comparable, and reliable disclosures about such risks.[316]

Furthermore, adopting a climate-related risk disclosure rule that uses similar definitions (set forth in Item 1500) and is based on the climate-related disclosure framework of the TCFD, with which many registrants and investors are already familiar, will assist in standardizing climate-related risk disclosure and help elicit more consistent, comparable, and useful information for investors and limit the reporting burden for those registrants that are already providing some climate-related disclosure based on the TCFD framework.

At the same time, we recognize that many commenters expressed significant concerns about the scope of the proposed rules, indicating that they may elicit too much detail, may be costly or burdensome, could result in competitive harm, or may obscure other material information.[317] We have sought to address these concerns by modifying the definition of climate-related risks, by making the climate-related risk disclosure requirements less prescriptive, and by specifying the time frames during which a registrant should describe whether any such material

[299] *See* letter from USCIB.

[300] *See* letters from Airlines for America; and Chamber.

[301] *See* letter from INGAA.

[302] *See* letter from PwC.

[303] *See, e.g.,* letters from Airlines for America; Arizona Farm Bureau Federation (June 17, 2022) (''AZ Farm''); California Farm Bureau (June 17, 2022) (''CA Farm''); Chamber; CEMEX;D. Burton, Heritage Fdn.; Energy Transfer LP (June 17, 2022) (''Energy Transfer''); Georgia Farm Bureau (''June 17, 2022) (''GA Farm''); GPA Midstream; HP; Indiana Farm Bureau (June 17, 2022) (''IN Farm''); National Agricultural Association (June 17, 2022) (''NAA''); Pennsylvania Farm Bureau (June 17, 2022) (''PA Farm); Soc. Corp. Gov.; United Airlines Holdings, Inc. (June 17, 2022) (''United Air''); Western Midstream; and Williams Cos.

[304] *See, e.g.,* letters from CEMEX; GPA Midstream; HP; Soc. Corp. Gov.; United Air; Western Midstream; and Williams Cos.

[305] *See, e.g.,* letters from AZ Farm; CA Farm; GA Farm; IN Farm; NAA; and PA Farm.

[306] *See, e.g.,* letters from Energy Transfer; HP; and Western Midstream.

[307] *See, e.g.,* letters from CEMEX; GPA Midstream; HP; NAA; United Air; Western Midstream; and Williams Cos.; *see also* letter from Soc. Corp. Gov. (stating that ''the required disclosure should be limited to climate-related risks, including value chain-related risks, reasonably likely to materially impact the registrant's financial statements and operations'').

[308] *See, e.g.,* letters from ABA; API; Chamber; NAM; SIFMA; and Soc. Corp. Gov.

[309] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* Anthesis; CEMEX; NY City Comptroller; and TotalEnergies.

[310] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* Anthesis; Bloomberg; CEMEX; Eni SpA; Hannon Armstrong (June 17, 2022); IATP; NY City Comptroller; and TotalEnergies.

[311] *See, e.g.,* letters from Anthesis; Bloomberg; CEMEX; and Eni SpA; *see also* letter from Cleveland-Cliffs, Inc. (June 16, 2022) (''Cleveland-Cliffs'') (opposing required disclosure of climate-related opportunities because such disclosures ''are likely to be optimistic, overestimated projections at best'').

[312] *See, e.g.,* letters from Morningstar; PwC; and World Business Council for Sustainable Development (Jun. 16, 2022) (''WBCSD'').

[313] *See* 17 CFR 229.1502(a).

[314] *See supra* note 284 and accompanying text.

[315] *See, e.g., supra* note 102 and accompanying text; *infra* notes 395–397 and accompanying text.

[316] *See supra* notes 244–249 and accompanying text.

[317] *See supra* notes 283 and 285.

risks are reasonably likely to manifest, as discussed below.[318]

The proposed rule would have required a registrant to describe any climate-related risks reasonably likely to have a material impact on the registrant, including on its business or consolidated financial statements. We have substituted ''results of operations'' and ''financial condition'' for ''consolidated financial statements'' here and in several of the final rule provisions to be more consistent with other Commission rules relevant to risk assessment, such as Item 303 of Regulation S–K regarding MD&A. We have used the term ''business strategy'' in the final rules to more closely align the final rules with the TCFD recommendation regarding the disclosure of the impacts of climate-related risks on strategy. These revisions do not create any substantive differences compared to the proposed rules but should facilitate compliance because many registrants should be familiar with the terminology used.

Similar to the rule proposal, the final rules define *climate-related risks* to mean the actual or potential negative impacts of climate-related conditions and events on a registrant's business, results of operations, or financial condition.[319] To make a registrant's determination of whether it is exposed to a material climate-related risk less burdensome, in response to commenters' concerns,[320] we have eliminated the reference to negative climate-related impacts on a registrant's value chain from the definition of climate-related risks. This change means that a climate-related risk involving a registrant's value chain would generally not need to be disclosed except where such risk has materially impacted or is reasonably likely to materially impact the registrant's business, results of operations, or financial condition. In addition, because a registrant may be able to assess the material risks posed by its value chain without having to request input from third parties in its value chain, this change will also limit the burdens of climate risk assessment on parties in a registrant's value chain that might have occurred under the rule proposal.[321]

Similar to the rule proposal, the definition of climate-related risks includes both physical risks and transition risks. Also similar to the proposed definition, the final rules define ''physical risks'' to include both acute and chronic risks to a registrant's business operations.[322] However, we are not including in the definition acute or chronic risks to the operations of those with whom a registrant does business, as proposed. This change addresses the concerns of commenters regarding burdens associated with obtaining climate risk information about their counterparties over which they lack control.[323]

Similar to the rule proposal, ''acute risks'' is defined as event-driven risks and may relate to shorter-term severe weather events, such as hurricanes, floods, tornadoes, and wildfires.[324] ''Chronic risks'' is defined as those risks that the business may face as a result of longer term weather patterns, such as sustained higher temperatures, sea level rise, and drought, as well as related effects such as decreased arability of farmland, decreased habitability of land, and decreased availability of fresh water.[325] These enumerated risks are provided as examples of the types of physical risks to be disclosed and many represent physical risks that have already impacted and may continue to impact registrants across a wide range of economic sectors.[326]

The final rules define ''transition risks'' largely as proposed to mean the actual or potential negative impacts on a registrant's business, results of operations, or financial condition attributable to regulatory, technological, and market changes to address the mitigation of, or adaptation to, climate-related risks.[327] For reasons discussed above in relation to the definition of ''climate-related risks,'' we are no longer including value chain impacts in the definition of ''transition risks.''[328] The final rules' definition of ''transition risks'' includes the same non-exclusive list of examples of transition risks as the rule proposal. Transition risks include, but are not limited to, increased costs attributable to climate-related changes in law or policy, reduced market demand for carbon-intensive products leading to decreased sales, prices, or profits for such products, the devaluation or abandonment of assets, risk of legal liability and litigation defense costs, competitive pressures associated with the adoption of new technologies, reputational impacts (including those stemming from a registrant's customers or business counterparties) that might trigger changes to market behavior, changes in consumer preferences or behavior, or changes in a registrant's behavior.[329]

Although some commenters asked the Commission to provide additional examples of transition risks in the definition,[330] we decline to do so. The final rules' examples are non-exclusive[331] and, consistent with the TCFD framework, a registrant's description of its material transition risks should include any type of transition risk that is applicable based on its particular facts and circumstances.[332] The particular type of material transition risk disclosed may be one that is not included or only partially included in the definition. Not every manifestation of transition risk, however, may apply or be material to every registrant and transition risks are dynamic and may change over time.

The proposed rules would have required a registrant to disclose certain items of information about any material climate-related risk that a registrant has identified.[333] In order to help address commenters' concerns that the rule proposal was too burdensome and could result in the disclosure of immaterial information, we have revised Item 1502, as adopted, to be less prescriptive. In doing so, we have sought to strike an

[318] *See infra* section II.C.2.

[319] *See* 17 CFR 229.1500.

[320] *See supra* notes 303 and 304 and accompanying text.

[321] *See supra* notes 292303 and 293304 and accompanying text.

[322] *See* 17 CFR 229.1500

[323] *See, e.g.,* letter from Chamber.

[324] *See* 17 CFR 229.1500. *See infra* section II.K.3.c.v for a discussion of the phrase ''severe weather events'' as used in subpart 1500 of Regulation S–K and Article 14 of Regulation S–X.

[325] *See id.*

[326] As discussed in more detail in section II.K.3.c.v, although Article 14 of Regulation S–X requires a registrant to disclose certain financial effects of severe weather events and other natural conditions, which may include weather events that are not climate-related, subpart 1500 of Regulation S–K does not require the disclosure of material impacts from non-climate-related weather events.

[327] *See* 17 CFR 229.1500.

[328] As noted above, a registrant would only need to disclose the transition risk of a party in its value chain when such transition risk has materially impacted or is reasonably likely to materially impact the registrant itself.

[329] *See* 17 CFR 229.1500. For example, one source of transition risk may be the IRA, Public Law 117–169, which was signed into Federal law on Aug. 16, 2022, and includes various initiatives meant to encourage companies, states, and consumers to invest in and adopt renewable energy and other ''clean energy'' technologies. *See* The White House, *Building A Clean Energy Economy: A Guidebook To The Inflation Reduction Act's Investments In Clean Energy And Climate Action* (Dec. 2022) (''Inflation Reduction Act Guidebook''). If, as a result of the IRA, consumers, small businesses, and other entities switch to more energy efficient products and services, a registrant that produces or uses less energy efficient products could face material impacts to its business, results of operations, or financial condition.

[330] *See supra* note 277 and accompanying text.

[331] *See* 17 CFR 229.1500 (definition of transition risk).

[332] *See, e.g.,* TCFD, *Guidance on Metrics, Targets, and Transition Plans* section E (Oct. 2021), available at *https://assets.bbhub.io/company/sites/60/2021/07/2021-Metrics_Targets_Guidance-1.pdf.*

[333] *See* Proposing Release, section II.B.1.

appropriate balance between providing investors with more consistent and decision-useful information about material climate-related risks while being conscious of the costs to registrants and investors of requiring specified disclosures that may not be relevant in every circumstance. The final rules provide that a registrant that has identified a climate-related risk pursuant to Item 1502 must disclose whether the risk is a physical or transition risk, providing information necessary to an understanding of the nature of the risk presented and the extent of the registrant's exposure to the risk.[334] The final rules then provide a non-exclusive list of disclosures that a registrant must disclose as applicable:

- If a physical risk, whether it may be categorized as an acute or chronic risk, and the geographic location and nature of the properties, processes, or operations subject to the physical risk; [335] and
- If a transition risk, whether it relates to regulatory, technological, market (including changing consumer, business counterparty, and investor preferences), or other transition-related factors, and how those factors impact the registrant.[336]

When proposing the climate-related disclosure rules, the Commission stated that in some instances, chronic risks might give rise to acute risks. For example, a drought (a chronic risk) might contribute to wildfires (an acute risk), or increased temperatures (a chronic risk) might contribute to severe storms (an acute risk). In such instances, the Commission indicated that a registrant should provide a clear and consistent description of the nature of the risk and how it may affect a related risk, as well as how those risks have evolved or are expected to evolve over time.[337]

The final rules require a registrant to provide information necessary to an understanding of the nature of the risk presented and the extent of the registrant's exposure to the risk. We agree, however, with commenters that indicated that requiring a discussion about the interaction of two related physical risks may, due to its complexity, increase the burden on the registrant without yielding a corresponding benefit for investors.[338] While a registrant may opt to provide such discussion, it is not a mandatory disclosure item under the final rules. We also agree with commenters that stated that, for complex and overlapping physical risks, registrants can determine how best to categorize the physical risk as either acute or chronic.[339] What is important is that a registrant describe the climate-related physical risks it faces clearly and consistently, including regarding the particular categories of physical risk. As a disclosed risk develops over time, for example where the category of physical risk has changed and/or the nature of the impact to the registrant has evolved, depending on the facts and circumstances, the registrant may need to describe the changed risk in order for an investor to understand the impact or reasonably likely impact of the risk on the registrant, including on its business strategy, results of operations, or financial condition.

Some commenters opposed proposed Item 1502 because in their view it would be difficult for a registrant to distinguish between a climate-related physical risk and an ordinary weather risk,[340] or between a business activity in response to a transition risk and one that is part of a routine business strategy.[341] While we recognize that application of some of the Commission's climate disclosure rules may initially be difficult for certain registrants, we expect that compliance will become easier as registrants grow more familiar with disclosing how climate-related factors may impact their business strategies.[342] In this regard, we note that many registrants are already providing some of the TCFD-recommended disclosures, although in a piecemeal fashion and largely outside of the registrant's Commission filings. In addition, we have modified the proposed rules in several places to require disclosure only if a registrant is already undertaking a particular analysis or practice or has already made a judgment that a particular risk is climate-related.[343] Further, the lengthy phase in periods for the final rules will provide registrants additional time to develop, modify, and implement any processes and controls necessary to the assessment and reporting of any material climate-related risk.[344]

The final rules include several changes from the proposal that mitigate some of the burdens of Item 1502(a), as it was proposed. For example, the rule proposal would have required a registrant to disclose the location and nature of the properties, processes, or operations subject to the physical risk, and to provide the ZIP code or other subnational postal zone.[345] The final rules we are adopting no longer require such disclosure and instead include, as one of the physical risk items that a registrant must disclose, as applicable, the geographic location and nature of the properties, processes, or operations subject to the identified physical risk.[346] This revision is intended to address the concern of many commenters that the proposed ZIP code disclosure requirement would be burdensome to produce and would likely not provide useful information for many investors.[347] This revision will give registrants the flexibility to determine the granularity of any location disclosures based on their particular facts and circumstances as long as they provide information necessary to understand the extent of the registrant's exposure to the material risk.

The proposal would have called for specific information about physical risks, such as disclosures relating to flooding and the location of assets in regions of high or extremely high water stress. In particular, the rule proposal would have required a registrant that faces a material physical risk due to flooding or water stress to disclose the percentage of buildings, plants, or properties that are located in flood hazard areas or the amount and percentage of assets located in water-stressed areas. In a change from the rule proposal, we have eliminated this proposed requirement in order to make the final rules less burdensome and permit the registrant to determine the particular metrics that it should disclose, if any, based on its particular facts and circumstances. Instead, the physical risk disclosure provision we are adopting is less prescriptive and subject to the general condition applicable to both physical and transition risk disclosure that, when describing a material climate-related risk, a registrant must provide information necessary to an

[334] *See* 17 CFR 229.1502(a).

[335] *See* 17 CFR 229.1502(a)(1)(i).

[336] *See* 17 CFR 229.1502(a)(1)(ii).

[337] *See* Proposing Release, section II.B.1.

[338] *See, e.g.,* letters from CEMEX; Eni SpA; and ERM CVS.

[339] *See* letter from IAA.

[340] In this regard, according to the National Oceanic and Atmospheric Administration (''NOAA''), weather refers to short-term changes in the atmosphere whereas climate describes what the weather is like over a long period of time in a specific area. *See* NOAA, *What's the Difference Between Weather and Climate?,* available at *https://www.ncei.noaa.gov/news/weather-vs-climate.*

[341] *See supra* notes 289 and 298.

[342] We also expect that compliance with the final rules will become easier as registrants commence disclosing climate-related information pursuant to other jurisdictions' climate disclosure requirements, to the extent those requirements are similar to the final rules.

[343] *See, e.g., infra* section II.D.

[344] *See infra* section II.O.

[345] *See* Proposing Release, section II.B.1.

[346] *See* 17 CFR 229.1502(a)(1).

[347] *See supra* note 286 and accompanying text.

understanding of the nature of the risk presented and the extent of the registrant's exposure to the risk.[348]

These revisions help address the concern of some commenters that the proposed disclosure requirements were too prescriptive and could result in overly granular and immaterial disclosure.[349] The less prescriptive approach of the final rules also addresses the concern of some commenters that the resulting disclosure could cause investor confusion by obscuring other disclosed risks that are presented in less detail.[350] We expect that the final rules will elicit disclosures more reflective of a registrant's particular business practices.

With respect to those commenters who stated that the required metrics disclosure should cover more than just water-related physical risks, the less prescriptive approach in the final rules eliminates any potential overemphasis on water-related physical risks and gives registrants flexibility to describe any physical risks they may be facing.[351] Finally, the revised approach in the final rules will allow a registrant's disclosures to adapt to changing circumstances over time, while still providing sufficient information for investors to understand and assess any such changes.

Similar to the physical risk rule provision, the final rule requires registrants to disclose the nature of any transition risk presented and the extent of the registrant's exposure to the risk. It also includes a non-exclusive list of disclosures the registrant must provide, as applicable, including whether the transition risk relates to regulatory, technological, market, or other transition-related factors, and how those factors impact the registrant.[352] Describing the nature of an identified transition risk in this manner will help investors understand the realized or potential material impacts of the identified transition risk and whether and how a registrant intends to mitigate or adapt to such risk.

Consistent with the rule proposal, the final rule provision states that a registrant that has significant operations in a jurisdiction that has made a GHG emissions reduction commitment should consider whether it may be exposed to a material transition risk related to the implementation of the commitment.[353] Including this guidance within the rule text will serve to remind registrants operating in such a jurisdiction that they may need to provide disclosure to investors about this specific type of transition risk.

The proposed rule provisions pertaining to governance, strategy, and risk management would have permitted a registrant, at its option, to describe any climate-related opportunities it was pursuing when responding to those provisions.[354] In this regard, the Commission proposed a definition of ''climate-related opportunities'' that was similar to the corresponding definition provided by the TCFD.[355] While we are retaining the optional approach to disclosure related to climate-related opportunities, unlike the proposed rules, the final rules do not refer to climate-related opportunities and therefore do not include a corresponding definition. We are treating the disclosure of climate-related opportunities the same as other voluntary disclosure. Accordingly, despite the absence of a corresponding provision, a registrant may elect to also include disclosure regarding any material climate-related opportunities it is pursuing or is reasonably likely to pursue in addition to disclosure regarding material climate-related risks.[356]

2. Time Horizons and the Materiality Determination (Item 1502(a))

a. Proposed Rule

The rule proposal would have required a registrant to describe any climate-related risks reasonably likely to have a material impact, which may manifest over the short, medium, and long term. The rule proposal also would have required the registrant to describe how it defines short-, medium-, and long-term time horizons, including how it takes into account or reassesses the expected useful life of the registrant's assets and the time horizons for its climate-related planning processes and goals.[357]

b. Comments

Many commenters supported the proposed requirement to describe any material climate-related risk that may manifest over the short, medium, and long term.[358] Commenters stated that the proposed time horizons are consistent with the time horizons recommended by the TCFD.[359] Commenters also stated that it is important to assess climate-related risks over multiple time periods because of the changing frequency and severity of climate-related events.[360]

Some commenters supported leaving the time periods undefined while requiring a registrant to specify how it defines short-, medium-, and long-term

[348] *See* 17 CFR 229.1502(a).

[349] *See, e.g.,* letters from ABA; CEMEX; NAM; and SIFMA.

[350] *See supra* note 287 and accompanying text. As described below, the addition of materiality qualifiers to certain of the final rule's climate risk disclosure requirements will also help address this concern by eliciting detailed disclosure only when it is material. *See infra* section II.D.

[351] *See, e.g.,* letters from CalPERS (recommending that the Commission should also require information on areas subject to droughts, heatwaves, and wildfires); IAA (recommending that the Commission require registrants to provide quantitative details of the volume or revenue (percentage) contribution for facilities located in areas subject to water scarcity, flood risk, wildfires, and other climate-related natural disasters); and Morningstar (recommending that the Commission go further in mandating quantitative disclosures related to a registrant's assets exposed to physical climate risk, as such data is important across economic sectors).

[352] *See* 17 CFR 229.1502(a) and 1502(a)(2). In a change from the proposal, the final rules omit a specific reference to liability and reputational factors from the transition risk disclosure required pursuant to Item 1502(a)(2). This change was made in order to conform more closely to the definition of ''transition risks'' in Item 1500, which refers to ''regulatory, technological, and market changes.'' Although this definition refers to impacts to a registrant's liability or reputation as non-exclusive examples of negative impacts resulting from such changes, the definition of transition risks also refers to other examples of negative impacts that are not specifically mentioned in Item 1502(a)(2). To streamline the Item 1502(a)(2) disclosure requirement, and to avoid giving undue emphasis to impacts to a registrant's liability or reputation over other transition risk-related impacts, we have removed the specific reference to liability and reputational factors and have retained the more general reference to ''other transition-related factors.'' A registrant that, due to regulatory, technological, or market changes, has incurred or is reasonably likely to incur a material negative impact to its reputation or liability will be required to include a description of such impact, together with any other material transition-related impact, in its disclosure pursuant to Item 1502(a)(2).

[353] *See* 17 CFR 229.1502(a)(2).

[354] *See* Proposing Release, sections II.B through II.E.

[355] *Compare* Proposing Release, section II.B (proposing to define ''climate-related opportunities to mean the actual or potential positive impacts of climate-related conditions and events on a registrant's consolidated financial statements, business operations, or value chains, as a whole) *with* TCFD, *Recommendations of the Task Force on Climate-related Financial Disclosures,* Appendix 5 (defining ''climate-related opportunity'' to mean ''the potential positive impacts related to climate change on an organization'').

[356] Registrants have a fundamental obligation not to make materially misleading statements or omissions in their disclosures and may need to provide such additional information as is necessary to keep their disclosures from being misleading. *See* 17 CFR 230.408 and 17 CFR 240.12b–20.

[357] *See* Proposing Release, section II.B.

[358] *See, e.g.,* letters from Anthesis; Bloomberg; BNP Paribas; CalPERS; CalSTRS; CEMEX; CFA; Center for Climate and Energy Solutions (June 17, 2022) (''C2ES''); Dell; D. Hileman Consulting; Eni SpA; ERM CVS; Harvard Mgmt.; IAA; ICGN; ICI; Moody's; Morningstar; PRI; PwC; SKY Harbor; TotalEnergies; US TAG TC207; and Wellington Mgmt.

[359] *See, e.g.,* letters from Anthesis; and PRI.

[360] *See, e.g.,* letters from PRI; and Wellington Mgmt.

horizons, as proposed.[361] Commenters stated that the proposed approach aligns with the TCFD framework and would provide flexibility for registrants by allowing them to choose time periods that best fit their particular facts and circumstances.[362] Other commenters stated that the Commission should define short-, medium-, and long-term horizons to enhance the comparability of climate risk disclosure.[363] Commenters recommended various definitions for such time periods. For example, one commenter stated that the Commission should define short-term as 5 years, medium-term as 6 to 15 years, and long-term as 16 to 30 years.[364] Other commenters recommended defining short-term as one year, medium-term as 5 years, and long-term as 10 years.[365] Another commenter recommended defining short-term as 1 to 5 years, medium-term as 5 to 20 years, and long-term as 20 to 30 years.[366] One other commenter recommended defining medium-term as 5 to 10 years and long-term as 10 to 30 years.[367]

Many other commenters opposed the proposed requirement to disclose material climate-related risks as manifested over the short, medium, and long term.[368] Commenters stated that the proposed requirement ran counter to the traditional materiality standard by which a registrant determines if a risk is material to itself as a general matter rather than applying that standard over multiple different timeframes, and indicated that such an approach could require the registrant to engage in multiple different materiality analyses.[369] Commenters also stated that the proposed requirement, which could compel a registrant to consider circumstances many years into the future, would elicit risk disclosure that is highly speculative.[370] Some commenters stated that, instead of the proposed disclosure requirement, the Commission should impose the same temporal standard that registrants use in practice when preparing a registrant's MD&A (*i.e.,* when assessing the risks that are reasonably likely to have a material impact on future operations ''over whatever time period is relevant to a registrant's particular facts and circumstances'').[371] Some commenters recommended bifurcating the climate risk disclosures into short-term and long-term timeframes, without a medium-term timeframe, similar to certain MD&A disclosures.[372] One of those commenters stated that imposing a different temporal standard for climate risk disclosure would pose meaningful challenges to management as they seek to adapt their strategies and could result in misalignment of climate-related disclosures with ''other, potentially more critical, strategically relevant disclosure issues, including the financial statements and MD&A.''[373]

c. Final Rule

In a change from the rule proposal, the final rule (Item 1502(a)) provides that in describing any climate-related risks that have materially impacted or are reasonably likely to have a material impact, a registrant should describe whether such risks are reasonably likely to manifest in the short-term (*i.e.,* the next 12 months) and separately in the long-term (*i.e.,* beyond the next 12 months).[374] This temporal standard is generally consistent with an existing standard in MD&A, which was recommended by some commenters.[375] That MD&A standard specifically requires a registrant to analyze its ability to generate and obtain adequate amounts of cash to meet its requirements and plans for cash in the short-term (*i.e.,* the next 12 months from the most recent fiscal period end required to be presented) and separately in the long-term (*i.e.,* beyond the next 12 months).[376] The existing MD&A standard also generally requires that a registrant ''provide insight into material opportunities, challenges and risks, such as those presented by known material trends and uncertainties, on which the company's executives are most focused for both the short and long term, as well as the actions they are taking to address these opportunities, challenges and risks.''[377] We are adopting this temporal standard to address the concern of commenters that imposition of a different temporal standard (and, in particular, one that includes a ''medium term'' period) for climate risk disclosure would pose challenges and potentially conflict with a registrant's assessment of other risks and events that are reasonably likely to have a material impact on its future operations.[378] We note, however, that a registrant is not precluded from breaking down its description of risks reasonably likely to manifest beyond the next 12 months into components that may include more medium- and longer-term risks, if that is consistent with the registrant's assessment and management of the climate-related risk.

We are modeling the temporal standard in Item 1502(a) on this MD&A standard as recommended by commenters because the materiality determination that a registrant will be required to make regarding climate-related risks under the final rules is the same as what is generally required when preparing the MD&A section in a registration statement or annual report. MD&A requires a registrant to disclose material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition.[379] MD&A further requires the inclusion of descriptions and amounts of matters that have had a material impact on reported operations as well as matters that are reasonably likely to have a material impact on future operations.[380]

When evaluating whether any climate-related risks have materially impacted or are reasonably likely to have a material impact on the registrant, including on its business strategy,

[361] *See, e.g.,* letters from Bloomberg; C2ES; IAA; PRI; SKY Harbor; and TotalEnergies.

[362] *See, e.g.,* letters from Bloomberg; IAA; J. McClellan (June 17, 2022); and PRI.

[363] *See, e.g.,* letters from CalSTRS; Calvert; CEMEX; Dell; D. Hileman Consulting; ERM CVS; ICI; Morningstar; and Wellington Mgmt.

[364] *See* letter from CalSTRS.

[365] *See* letters from Calvert; and ICI.

[366] *See* letter from CEMEX.

[367] *See* letter from US TAG TC207.

[368] *See, e.g.,* letters from ABA; Alphabet *et al.;* AFPM; American Investment Council (June 17, 2022) (''AIC''); Associated General Contractors of America (June 17, 2022) (''AGCA''); BOA; ''BPI; Cato Inst.; Chamber; Davis Polk; Enbridge; NAM; RILA; SIFMA; Soc. Corp. Gov.; and J. Weinstein.

[369] *See, e.g.,* letters from Alphabet *et al.;* AIC; BOA; and BPI.

[370] *See, e.g.,* letters from AFPM; Cato Inst.; Chamber; Davis Polk; RILA; Soc. Corp. Gov.; and J. Weinstein.

[371] *See, e.g.,* letters from ABA; and SIFMA; *see also* letter from NAM (stating that the relevant time periods should be short-term (18 to 24 months) and long-term (anything over 24 months), according to the registrant's particular facts and circumstances).

[372] *See* letter from ABA.

[373] *See id.*

[374] *See* 17 CFR 229.1502(a).

[375] *See, e.g.,* letter from ABA.

[376] *See* 17 CFR 229.303(b)(1).

[377] See Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operation, Release No. 33–8350 (Dec. 19, 2003) [68 FR 75056 (Dec. 29, 2003)]. See also Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, Release No. 33–6835 (May 18, 1989) [54 FR 22427 (May 24, 1989)] (stating that MD&A is ''an opportunity to look at the company through the eyes of management by providing both a short and long-term analysis of the business of the company'').

[378] *See supra* notes 368–371 and accompanying text.

[379] *See* 17 CFR 229.303(a).

[380] See *Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information,* Release No. 33–10890 (Nov. 19, 2020), [86 FR 2080, 2089 (Jan. 11, 2021)] (''2020 MD&A Adopting Release'').

results of operations, or financial condition, registrants should rely on traditional notions of materiality. As defined by the Commission and consistent with Supreme Court precedent, a matter is material if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote or such a reasonable investor would view omission of the disclosure as having significantly altered the total mix of information made available.[381] The materiality determination is fact specific and one that requires both quantitative and qualitative considerations.[382]

The ''reasonably likely'' component of the rules we are adopting, as with the same standard in MD&A regarding known trends, events, and uncertainties, is grounded in whether disclosure of the climate-related risk would be material to investors and requires that management evaluate the consequences of the risk as it would any known trend, demand, commitment, event, or uncertainty. Accordingly, management should make an objective evaluation, based on materiality, including where the fruition of future events is unknown.[383]

D. Disclosure Regarding Impacts of Climate-Related Risks on Strategy, Business Model, and Outlook

1. Disclosure of Material Impacts (Item 1502(b), (c), and (d))

a. Proposed Rules

The Commission proposed to require a registrant to describe the actual and potential impacts on its strategy, business model, and outlook of those climate-related risks that it must disclose pursuant to proposed Item 1502(a).[384] The Commission further proposed to require a registrant to include in such description any impacts on its:

- Business operations, including the types and locations of its operations;
- Products or services;
- Suppliers and other parties in its value chain;
- Activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes;
- Expenditure for research and development; and
- Any other significant changes or impacts.

The proposed rules would have required a registrant to disclose the time horizon for each described impact (*i.e.,* as manifested in the short, medium, or long term, as defined by the registrant when determining its material climate-related risks).[385]

When proposing these disclosure requirements, the Commission stated that information about how climate-related risks have impacted or are likely to impact a registrant's strategy, business model, and outlook can be important for purposes of making an investment or voting decision about the registrant.[386] The Commission further noted that, in response to a request for public input,[387] several commenters had stated that many registrants included largely boilerplate discussions about climate-related risks and failed to provide a meaningful analysis of the impacts of those risks on their businesses.[388] The Commission proposed the disclosure requirements about climate-related impacts to elicit more robust and company-specific disclosure on this topic.[389]

The proposed rules also would have required a registrant to discuss whether and how it has considered the identified impacts as part of its business strategy, financial planning, and capital allocation.[390] In this regard, the proposed rules would have required a registrant to provide both current and forward-looking disclosures that facilitate an understanding of whether the implications of the identified climate-related risks have been integrated into the registrant's business model or strategy, including how resources are being used to mitigate climate-related risks. The proposed rules would have required the discussion to include how any of the climate-related financial metrics referenced in proposed Article 14 of Regulation S–X, the metrics referenced in the GHG emissions section of proposed subpart 1500 of Regulation S–K, or any of the targets referenced in the targets and goals section of proposed subpart 1500, relate to the registrant's business model or business strategy.[391]

In addition, the proposed rules would have required a registrant to provide a narrative discussion of whether and how any of its identified climate-related risks have affected or are reasonably likely to affect the registrant's consolidated financial statements.[392] The proposed rules would have required this discussion to include any of the climate-related financial metrics referenced in proposed Article 14 of Regulation S–X that demonstrate that the identified climate-related risks have had a material impact on the registrant's reported financial condition or operations.[393] This proposed provision was intended to provide climate-related disclosure that is similar to MD&A, and, as noted in the discussion above, the proposed rules would allow a registrant to provide such disclosure as part of its MD&A.

b. Comments

Many commenters supported the Commission's proposal to require a

[381] *See* 17 CFR 230.405 (definition of ''material''); 17 CFR 240.12b-2 (definition of ''material''). *See also Basic Inc.* v. *Levinson,* 485 U.S. 224, 231, 232, and 240 (1988) (holding that information is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision; and quoting *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U. S. 438, 449 (1977) to further explain that an omitted fact is material if there is ''a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.'').

[382] *See Litwin* v. *Blackstone Group, L.P.,* 634 F.3d 706, 720 (2d Cir. 2011) (''[A] court must consider 'both quantitative and qualitative factors in assessing an item's materiality,' and that consideration should be undertaken in an integrative manner.''). *See also Business and Financial Disclosure Required by Regulation S–K,* Release No. 33–10064 (Apr. 13, 2016) [81 FR 23915 (Apr. 22, 2016)] (''Concept Release'') (discussing materiality in the context of, among other matters, restating financial statements). *See also* Staff Accounting Bulletin No. 99 (Aug. 12, 1999), available at *https://www.sec.gov/interps/account/sab99.htm* (emphasizing that a registrant or an auditor may not substitute a percentage threshold for a materiality determination that is required by applicable accounting principles). Staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws. Staff accounting bulletins and any other staff statements discussed in this release have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.

[383] *See, e.g.,* 2020 MD&A Adopting Release. As noted above, the materiality determination that a registrant will be required to make regarding climate-related risks under the final rules is the same as what is generally required when preparing the MD&A section of a registration statement or annual report. Accordingly, registrants can look to the guidance in the 2020 MD&A Adopting Release regarding application of the ''reasonably likely'' standard when considering their disclosure obligations under the various components of Item 1502. According to this guidance, the reasonably likely standard ''is not intended to, nor does it require, registrants to affirm the non-existence or non-occurrence of a material future event.'' Rather, ''it requires management to make a thoughtful and objective evaluation, based on materiality, including where the fruition of future events is unknown.'' 2020 MD&A Adopting Release, 86 FR at 2093.

[384] *See* Proposing Release, section II.C.1.

[385] *See id.*

[386] *See id.*

[387] *See* Proposing Release, section I.B.

[388] *See* Proposing Release, section II.C.1.

[389] *See id.*

[390] *See id.*

[391] *See id.*

[392] *See id.*

[393] *See id.*

registrant to describe the actual and potential impacts on its strategy, business model, and outlook of those climate-related risks that it has determined are reasonably likely to have a material impact on its business or consolidated financial statements.[394] Commenters indicated that detailed information about the actual and potential impacts of a registrant's identified climate-related risks is central to helping investors do the following: understand the extent to which a registrant's business strategy or business model may need to change to address those impacts; evaluate management's response to the impacts and the resiliency of the registrant's strategy to climate-related factors; and assess whether a registrant's securities have been correctly valued.[395] One commenter indicated that investors need more detailed information about the effects of climate-related risks because such risks can affect a company's operations and financials in a wide range of ways, including impacts on revenues, the useful life of assets, loan qualification, and insurance costs.[396] Other commenters stated that, despite the importance for investors of information about climate-related financial impacts, such information is currently underreported.[397]

Several commenters also supported the proposed requirement to include in the impacts description any impacts on, or any significant changes made to, a registrant's business operations, products or services, suppliers and other parties in its value chain, activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes and expenditure for research and development, and any other significant changes or impacts.[398] Commenters stated that the proposed enumerated disclosure items, including impacts related to a registrant's supply or value chain, are necessary to provide a comprehensive description of a registrant's identified climate-related risks, and are consistent with the types of impacts that a registrant may face and that are recommended for disclosure by the TCFD.[399] Commenters further stated that the proposed disclosure items would help investors understand the extent to which a registrant has taken actions to mitigate or adapt to a material climate-related risk.[400] One commenter, however, recommended that the final rules should clarify that the list of impacts are examples of impacts, to be disclosed if applicable, and not required items of disclosure.[401]

A number of commenters also supported the proposed requirement to disclose whether and how a registrant has considered any identified impacts as part of its business strategy, financial planning, and capital allocation because it would help investors assess a registrant's likely resiliency to climate-related impacts and because, due to its consistency with the TCFD's recommendations, the proposed disclosure requirement would lead to more consistent, comparable, and reliable climate-related disclosure.[402] Several commenters further supported the proposed provision requiring a registrant to provide a narrative discussion of whether and how any of its identified climate-related risks have affected or are reasonably likely to affect its consolidated financial statements.[403] Some of those commenters recommended that this narrative discussion should be part of a registrant's MD&A.[404] One commenter stated that the proposed provision would help investors understand how management views the realized or likely impacts of identified climate-related risks on a company's consolidated financial statements, which would then assist investors in their assessment of a registrant's climate risk management.[405] One commenter recommended adopting a climate disclosure framework, similar to MD&A, that focuses on providing investors with material climate-related information that management uses to make strategic decisions while allowing registrants to tailor the disclosure to fit their particular circumstances.[406] This commenter stated that requiring a discussion of climate-related impacts from management's perspective and encompassing impacts to the registrant, its suppliers, and other parties in its value chain would provide investors with what has primarily been missing from current Commission filings.[407] The Commission's Investor Advisory Committee similarly recommended requiring a separate ''Management Discussion of Climate-Related Risks and Opportunities'' in Form 10–K, similar to the disclosure required by Item 303 of Regulation S–K (MD&A), which would enhance investor understanding of management's views of climate-related risks and opportunities.[408]

Several commenters stated that, instead of requiring the disclosure of financial metrics concerning climate-related impacts in the financial statements, as proposed, the Commission should require registrants to consider material climate-related impacts when discussing the results of operations, capital resources, and liquidity under MD&A.[409] One commenter, responding to the Commission's proposed amendments to Regulation S–X, recommended requiring the disclosure of a registrant's actual discrete and separable climate-related expenditures, both expensed and capitalized, made during each fiscal year, which would be linked to and aligned with the risks, goals, and strategies companies would disclose under proposed Item 1502 of Regulation S–K.[410] The commenter's recommended expenditures disclosure would be included in the financial statements but would take the place of the proposed ''financial impacts'' disclosure under Regulation S–X and would be presented in tabular format and cover three distinct categories: climate-related events; transition activities for publicly disclosed climate-related targets and goals, such as those included in a company's sustainability report; and all other transition activities.[411] Another

[394] *See, e.g.,* letters from AGs of Cal. *et al.;* Amazon; Amer. for Fin. Reform, Sunrise Project *et al.;* Anthesis; Bloomberg; BNP Paribas; Breckinridge Capital Advisors; CalSTRS; Center Amer. Progress; Ceres; Eni SpA; D. Hileman Consulting; IAC Recommendation; NY St. Comptroller; PIMCO; PRI; PwC; SKY Harbor; Unilever; and Wellington Mgmt.

[395] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* CalSTRS; Ceres; Eni SpA; and Wellington Mgmt.

[396] *See* letter from Center Amer. Progress.

[397] *See, e.g.,* letters from Ceres; PIMCO; PwC; and Wellington Mgmt.

[398] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* CalSTRS; Eni SpA; PRI; TotalEnergies; and Wellington Mgmt.

[399] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* and PRI.

[400] *See, e.g.,* letters from CalSTRS; and Eni SpA.

[401] *See* letter from PwC.

[402] *See, e.g.,* letters from Anthesis; CalPERS; D. Hileman Consulting; PRI; and TotalEnergies.

[403] *See, e.g.,* letters from AllianceBernstein; Beller *et al.;* BNP Paribas; CalPERS; CEMEX; Eni SpA; ICI; Morningstar; PwC; TotalEnergies; and Unilever.

[404] *See, e.g.,* letters from AllianceBernstein; Beller *et al.;* and BNP Paribas.

[405] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[406] *See* letter from PwC.

[407] *See id.*

[408] *See* IAC Recommendation.

[409] *See, e.g.,* letter from Randi Morrison, Soc. Corp. Gov (Sept. 9, 2022); *see also* letters from ABA; Airlines for America; Alphabet *et al.;* Amer. Bankers; BDO USA LLP; BPI; California Resources Corporation (June 17, 2022) (''Cal. Resources''); Can. Bankers; CAQ; FEI's Committee on Corporate Reporting (June 17, 2022) (''CCR''); Climate Risk Consortia; Connor Grp.; Diageo; Dominion Energy; Eni SpA; Grant Thornton; LLP; IIB; IIF; Financial Reporting Committee of the Institute of Management Accountants (June 21, 2022) (''IMA''); IPA; JLL (June 17, 2022) (''JLL''); Linklaters LLP (June 17, 2022) (''Linklaters''); Mtg. Bankers; NG; Royal Gold (June 17, 2022); Shearman Sterling; SIFMA AMG; T. Rowe Price; Unilever; Walmart; and Wells Fargo.

[410] *See* letter from Amazon.

[411] *See id.*

commenter stated that if a registrant's financial estimates and assumptions are impacted by exposures to uncertainties associated with transition risks, the registrant should be required to provide qualitative disclosure about such impacts to its financial estimates and assumptions in its climate-related disclosure or in its MD&A instead of in the financial statements.[412]

Many other commenters, however, broadly opposed the proposed disclosure requirement regarding impacts from climate-related risks.[413] Some commenters stated that the proposed disclosure requirement was unnecessary because the Commission's existing rules already require a registrant to disclose material impacts from climate-related risks.[414] Some commenters expressed concern that the proposed disclosure requirement would result in disclosure of a large volume of information that is immaterial to investors and burdensome for registrants to produce.[415] Some commenters stated that the proposed requirement to disclose impacts on participants in a registrant's value chain was particularly onerous for registrants because of difficulties in collecting relevant and reliable information from third parties.[416] In this regard, some commenters stated that suppliers and other parties in a registrant's value chain may resist pressure to provide the data necessary to assess their climate risk exposure because they are private companies concerned about incurring increased costs or competitive harm.[417] Other commenters stated that the proposed disclosure requirement was too prescriptive and would not allow a registrant to tailor its disclosures according to its particular business or industry.[418] One commenter recommended that we delete the term ''business model'' because it is not otherwise used in Regulation S–K and might be interpreted by some registrants that do not have a business model as implying that they must adopt one.[419]

Some commenters generally supported the proposed impact disclosure provision but recommended that the Commission add a materiality qualifier to elicit disclosure of only the most likely and significant impacts, which they asserted would provide more useful information for investors and reduce a registrant's compliance burden.[420] Similarly, some commenters generally supported some form of climate disclosure while recommending that the Commission make the final rules more principles-based so that registrants could better tailor their disclosures to reflect their own particular facts and circumstances.[421]

c. Final Rules

The final rule provision (Item 1502(b)) will require a registrant to describe the actual and potential material impacts of any climate-related risk identified in response to Item 1502(a) on the registrant's strategy, business model, and outlook.[422] Information about the actual and potential material impacts of climate-related risks on a registrant's strategy, business model, and outlook is central to understanding the extent to which a registrant's business strategy or business model has changed, is changing, or is expected to change to address those impacts. This information is also central to evaluating management's response to the impacts and the resiliency of the registrant's strategy to climate-related factors as it pertains to the registrant's results of operations and financial condition. Numerous commenters on the proposal shared some or all of these views.[423]

The proposed rule did not specifically include a materiality qualifier when requiring a registrant to describe the actual and potential impacts of any identified climate-related risk in response to proposed Item 1502(a). In practice, however, proposed Item 1502(b) would have elicited disclosure focused on material impacts because proposed Item 1502(a) would have required a registrant to describe only those climate-related risks that the registrant had identified as having materially impacted or being reasonably likely to have a material impact on the registrant.[424] Nevertheless, we recognize that, as proposed, Item 1502(b) may have caused some confusion regarding the scope of the proposed disclosure requirement.[425] Some commenters misinterpreted the rule proposal as requiring the disclosure of actual or potential impacts of climate-related risks, regardless of their materiality.[426] We have, therefore, added an explicit materiality qualifier to Item 1502(b) to clarify that a registrant is only required to disclose material impacts of climate-related risks that it has identified in response to Item 1502(a). This clarifying amendment will help address commenters' concerns that the proposed rule could result in the disclosure of large amounts of immaterial information and thus be unduly burdensome for registrants.

Some commenters asserted that the proposed rule provision was not necessary because the Commission's existing rules generally require a registrant to disclose the effects of material risks, including climate-related risks.[427] However, as other commenters have stated, many companies do not discuss any climate-related risks in response to existing disclosure requirements.[428] Accordingly, a rule provision that specifically requires the disclosure of material impacts of climate-related risks, and lists the types of potential material impacts that must be described, if applicable, will provide investors access to this information on a more consistent and comparable basis.[429]

The final rule provision largely lists the same types of potential material impacts of climate-related risks as under the rule proposal. The list, which is intended to be non-exclusive, includes, as applicable, material impacts on the registrant's:

- Business operations, including the types and locations of its operations;
- Products or services;
- Suppliers, purchasers, or counterparties to material contracts, to the extent known or reasonably available;
- Activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes; and

[412] *See* letter from IMA.

[413] *See, e.g.,* letters from American Automotive Leasing Association, America Car Rental Association, Truck Renting and Leasing Association (June 17, 2022) (''AALA''); American Bankers Association (June 17, 2022) (''Amer. Bankers''); Amer. Chem.; AGC; CEMEX; Fenwick West; D. Burton, Heritage Fdn.; J. Brendon Herron (June 17, 2022) (''J. Herron''); NMA; National Retail Federation (June 17, 2022) (''NRF''); RILA; and Walmart.

[414] *See, e.g.,* letters from CEMEX; Fenwick West; D. Burton, Heritage Fdn; and NMA.

[415] *See, e.g.,* letters from AGC; Fenwick West; NMA; NRF; RILA; and Walmart.

[416] *See, e.g.,* letters from AGC; Soc. Corp. Gov.; United Air; and Williams Cos.

[417] *See, e.g.,* letters from AGC; Soc. Corp. Gov.; and United Air.

[418] *See, e.g.,* letters from AALA; J. Herron; NMA; and Walmart.

[419] *See* letter from ABA.

[420] *See, e.g.,* letters from Amazon; Beller *et al.;* and ICI.

[421] *See, e.g.,* letters from ABA; Beller *et al.;* and Walmart.

[422] *See* 17 CFR 229.1502(b). As used in the final rules, the term ''outlook'' means ''the prospect for the future,'' consistent with its general definition. *See* Merriam-Webster Dictionary, available at *https://www.merriam-webster.com/dictionary/outlook*. For the avoidance of doubt, use of the term ''outlook'' is not intended to suggest that a registrant must disclose its earnings guidance or forecasts in response to Item 1502(b).

[423] *See supra* note 395 and accompanying text.

[424] *See supra* section II.C.1.a.

[425] *See, e.g.,* letter from Fenwick West.

[426] *See, e.g.,* letters from Fenwick West; and RILA.

[427] *See supra* note 414 and accompanying text.

[428] *See supra* note 397 and accompanying text.

[429] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* Eni SpA; and PRI.

• Expenditure for research and development.

If none of the listed types of impacts or any other impacts are material, a registrant need not disclose them. Similarly, if a registrant has identified a climate-related risk that has materially impacted or is reasonably likely to impact its business strategy, results of operations, or financial condition, but the actual and potential material impact on its strategy, business model, and outlook is not specifically listed in the final rule, the impact will need to be disclosed. By providing a non-exclusive list of material impacts of climate risks in the rule text, but not mandating that all or only these impacts be disclosed, the final rule will help elicit more meaningful and relevant disclosure without overburdening registrants or investors with the presentation of irrelevant information.

We have revised one of the types of potential material impacts listed in the proposal that referenced ''suppliers and other parties in [a registrant's] value chain,'' by replacing this phrase with ''[s]uppliers, purchasers, or counterparties to material contracts, to the extent known or reasonably available.'' This revision is intended to address the concern of some commenters that requiring a registrant to include material impacts to a registrant's value chain would be overly burdensome to both the registrant and to entities in the registrant's value chain.[430] Thus the final rule limits the scope of this specific topic to include only material impacts to the registrant's suppliers, purchasers, or counterparties to material contracts and further limits the information that should be disclosed about those impacts to information that is known or is reasonably available.[431] The adopted provision is consistent with the Commission's general rules regarding the disclosure of information that is difficult to obtain, which will apply to the final rules if their conditions are met.[432] Accordingly, as modified, this provision will help limit the compliance burden of the final rules by eliminating any potential need for registrants to undertake unreasonable searches or requests for information from their value chains.

Final Item 1502(c) will require a registrant to discuss whether and how the registrant considers any material impacts described in response to Item 1502(b) as part of its strategy, financial planning, and capital allocation.[433] Similar to the rule proposal, but modified to make Item 1502(c) less prescriptive, the final rule provision will require a registrant to include in its disclosure responsive to this provision, as applicable:

• Whether the impacts of the climate-related risks described in response to Item 1502(b) have been integrated into the registrant's business model or strategy, including whether and how resources are being used to mitigate climate-related risks; and

• How any of the targets referenced in Item 1504 [434] or in a described transition plan [435] relate to the registrant's business model or strategy.

As noted by several commenters, this provision will help investors assess a registrant's resiliency to impacts of climate-related risks, by providing information about how management considers the realized or likely impacts of identified material climate-related risks on a company's business model or strategy.[436]

In further response to commenters' concern that the proposed rules were overly prescriptive and could result in a volume of information that could be confusing for investors,[437] we have streamlined the Item 1502(c) disclosure requirement. For example, we have omitted from the final Item 1502(c) provision the proposed requirement to ''[p]rovide both current and forward-looking disclosures,'' [438] which should provide registrants with more flexibility to determine the appropriate disclosures needed in response to the requirement. We also have eliminated the requirement to describe how any of the financial statement metrics or GHG emissions metrics relate to the registrant's business model or business strategy.[439] Although a registrant may choose to include forward-looking information or discuss any climate-related metrics or financial information in response to Item 1502(c), the final rule leaves it up to each registrant to determine, based on its particular facts and circumstances, what disclosure is necessary to help investors understand whether and how management has incorporated the material impacts of its climate-related risks into its business strategy, financial planning, and capital allocation.

In addition, to further streamline the disclosure and reduce some of the redundancy in the rule proposal,[440] we have eliminated from Item 1502(c) the proposed disclosure requirement concerning the role that the use of carbon offsets or RECs has played in a registrant's climate-related strategy. Under the final rules, as part of its targets and goals disclosure,[441] a registrant will be required to provide disclosure concerning its use of carbon offsets or RECs if they constitute a material component of a registrant's plan to achieve its climate-related targets or goals.[442] Given this targets and goals disclosure requirement, explicitly requiring disclosure concerning the use of carbon offsets and RECs in the context of Item 1502(c) is not necessary.

We acknowledge the commenter who recommended that we delete the term ''business model'' in the proposed disclosure item; [443] however, we have retained the use of this term in the final rule because requiring a registrant to disclose a material impact on its business model caused by a climate-related risk will provide important information to investors about the effectiveness of the registrant's climate risk management that would otherwise be lost were we to omit this reference. In addition, registrants generally should be familiar with the term even if not previously used in Regulation S–K.[444] Moreover, the TCFD uses that term in connection with disclosure about the resilience of a company's strategy to climate-related risks, and as such, using the concept in the final rules will provide consistency for those registrants that have been providing climate-related information based on that framework.[445] If a registrant has not yet articulated a business model, or does not believe that its business model is or will be materially impacted by climate-related

[430] *See supra* note 416 and accompanying text.

[431] *See* 17 CFR 229.1502(b)(3). Registrants are required to include material contracts in Commission filings under existing rules. *See, e.g.,* 17 CFR 229.601(b)(10).

[432] *See* 17 CFR 230.409 and 17 CFR 240.12b–21.

[433] *See* 17 CFR 229.1502(c).

[434] *See infra* section II.G.

[435] *See infra* section II.D.2.

[436] *See supra* note 402 and accompanying text.

[437] *See supra* note 415 and accompanying text; *see also* letters from API; Chamber; NAM; SIFMA; and Soc. Corp. Gov.

[438] *See* Proposing Release, section II.C.1.

[439] *See id.*

[440] One commenter stated that the Commission should follow the TCFD's recommendation that ''[d]isclosures should be eliminated if they are immaterial or redundant to avoid obscuring relevant information.'' Letter from Chamber.

[441] *See infra* section II.G.

[442] *See* 17 CFR 229.1504(d).

[443] *See* letter from ABA.

[444] *See, e.g., business model, Oxford English Dictionary* (2023), available at *https://doi.org/10.1093/OED/2631068139*; and *business model, Cambridge Business English Dictionary* (2023), available at *https://dictionary.cambridge.org/dictionary/english/business-model.*

[445] *See* TCFD, *supra note 159, at* Table A2.1; IFRS, *IFRS S2 Climate-related Disclosures* (June 2023); *See also* IFRS, *IFRS S2 Accompanying Guidance on Climate-related Disclosures* (June 2023).

risks, it need not provide the disclosure specified in this rule provision.

Proposed Item 1502(d) would have required a registrant to provide a narrative discussion of whether and how any climate-related risks described in response to proposed Item 1502(a) have affected or are reasonably likely to affect the registrant's consolidated financial statements.[446] When proposing Item 1502(d), the Commission explained that this provision was intended to elicit a discussion of the financial effects of climate-related risks similar to MD&A.[447] In a clarifying change from the proposal, and to address commenters' concern that the proposed rule could result in immaterial disclosure,[448] we have added materiality qualifiers to ''have affected'' and ''are reasonably likely to affect'' to clarify that Item 1502(d) requires a discussion only of material climate-related risks (*i.e.,* climate-related risks that a registrant has identified as having had or being reasonably likely to have a material effect on the registrant).[449] In a further change from the proposal, the final rules refer to the registrant's ''business, results of operations, and financial condition'' rather than ''consolidated financial statements.'' This is to reflect that the type of disclosure that is intended by this provision is more similar to that found in MD&A than that found in the notes to the financial statements.[450]

Proposed Item 1502(d) also would have required a discussion that included the financial statement metrics to be disclosed pursuant to proposed Article 14 of Regulation S–X. In a change from the proposal, Item 1502(d)(2) will require a registrant to describe quantitatively and qualitatively the material expenditures incurred and material impacts on financial estimates and assumptions that, in management's assessment, directly result from activities to mitigate or adapt to climate-related risks disclosed pursuant to Item 1502(b)(4).[451] Focusing the disclosure requirement on material expenditures that, based on management's assessment, were incurred as a direct result of the registrant's mitigation or adaptation activities will provide investors with a financial metric that is important to assessing the registrant's management of the disclosed risk, as well as assessing the financial impact of such activities. At the same time, linking the disclosure of the expenditures with management's assessment that they directly result from mitigation or adaptation activities will more closely align the disclosure requirement with how the registrant actually evaluates a material climate-related risk. This will not only provide investors with important information about a registrant's strategic decision-making concerning a material climate-related risk but should also help the registrant determine whether there are material expenditures that must be disclosed, thereby lowering the compliance burden, as some commenters noted.[452]

This disclosure requirement is intended to capture actual material expenditures, both capitalized and expensed, made during the fiscal year for the purpose of climate-related risk mitigation or adaptation. As one commenter noted, requiring the disclosure of material expenditures that are directly linked to a registrant's climate-related goals as part of a registrant's strategy or targets and goals disclosure under Regulation S–K,[453] instead of requiring the disclosure of climate-related financial impacts on line items under Regulation S–X, as proposed, will help reduce the compliance burden of the final rules while providing material information for investors.[454] Although this commenter recommended that such expenditures disclosure be presented in tabular format, the final rule provision does not specify a particular format. The final rule also does not require disclosure of ''discrete and separable'' expenditures, as the commenter suggested. A registrant may present the material expenditures disclosure in tabular or narrative form according to how it believes such information best fits within its overall climate risk disclosure.[455] Likewise, the final rules provide registrants with more flexibility than that suggested by the commenter to determine which and to what extent expenditures must be disaggregated or otherwise broken out. This disclosure requirement covers material expenditures for the mitigation or adaptation of both physical risks and transition risks. The final Regulation S–X provisions that we are adopting, on the other hand, do not cover financial impacts caused by transition risks.[456] This Regulation S–K provision, therefore, will elicit disclosures about material expenditures related to activities engaged in for the mitigation of and adaptation to climate-related risks in Commission filings while avoiding the difficulties of reporting such information in a note to the financial statements, as proposed.[457]

As discussed in more detail below,[458] we recognize that some commenters on the proposed Regulation S–X amendments expressed concern regarding the attribution of expenses to climate risk mitigation activities. Specifically, these commenters stated that registrants make business decisions, such as incurring an expenditure to purchase a piece of machinery that is more energy efficient, for multiple reasons, and as a result, a registrant's transition activities may be inextricably intertwined with its ordinary business activities.[459] Although similar concerns could arise with respect to Item 1502(d)'s expenditures disclosure requirement, subjecting the disclosure requirement to materiality rather than a bright-line threshold, as was proposed for the Regulation S–X amendments, and limiting the disclosure to material expenditures that, in ''management's assessment,'' are the direct result of

[446] *See* Proposing Release, section II.C.1.

[447] *See id.*

[448] *See supra* note 415 and accompanying text.

[449] *See* 17 CFR 229.1502(d)(1).

[450] As previously noted, several commenters recommended making or linking any climate-related financial disclosure requirements under or with MD&A disclosure requirements. *See supra* note 409 and accompanying text.

[451] *See* 17 CFR 229.1502(d)(2).

[452] *See, e.g.,* letters from Amazon; and PwC.

[453] *See infra* sections II.D.2.c and II.G.3.a for a similar material expenditures disclosure requirement, respectively, as part of a registrant's transition plan disclosure under Item 1502(e) and targets and goals disclosure under Item 1504 of Regulation S–K. To the extent that there is any overlapping disclosure of material expenditures in response to these Items, to avoid redundancy, a registrant should provide disclosure of material expenditures regarding the Item where, in its assessment, such disclosure is most appropriate, and then cross-reference to this disclosure when responding to the other Items.

[454] *See* letter from Amazon. As examples of transition activities expenditures, this commenter presented costs and expenses related to electrifying its delivery fleet, renewable energy purchases, and carbon offset purchases. *See id.,* Appendix A.

[455] The structured data requirements set forth in Item 1508 will facilitate investors' ability to find and analyze material expenditures disclosure regardless of whether provided in tabular or narrative form. *See infra* section II.M.3.

[456] *See infra* section II.K. In addition, in a change from the proposal, the amendments to Regulation S–X do not require the disclosure of expenditures to mitigate the risks of severe weather events and other natural conditions. Therefore, under Item 1502, investors will also receive information about expenditures related to the mitigation of physical risks that they will not otherwise receive in the disclosures required by the amendments to Regulation S–X.

[457] *See supra* notes 409 and 452 and accompanying text. The amendments to Regulation S–X will require the disclosure of expenditures related to carbon offsets and RECs, a type of transition activity, if carbon offsets and RECs have been used as a material component of a registrant's plans to achieve its disclosed climate-related targets or goals in a note to the financial statements. *See infra* section II.K.

[458] *See infra* sections II.K.2.b.iii, 3.b and c.

[459] *See infra* note 1892 and accompanying text.

mitigation or adaptation activities, will help to mitigate the compliance burden and related concerns. In addition, in responding to the final rules, registrants will have the flexibility to explain qualitatively the nature of the expenditure and how management has determined that it is a direct result of the disclosed transition activities, which may help alleviate concerns about potential liability exposure for attribution decisions.[460]

Requiring the disclosure of material impacts on financial estimates and assumptions that, from management's assessment, directly result from mitigation or adaptation activities will also provide investors with important information that will help them understand a registrant's climate risk management and assess any effects on its asset valuation and securities pricing.[461] Registrants will similarly have the flexibility to explain qualitatively the nature of the impact on financial estimates and assumptions and how, in management's assessment, it is a direct result of the disclosed mitigation or adaptation activities.

We recognize that registrants may need to develop new systems and adjust their DCPs to ensure the accurate tracking and reporting of material expenditures and material impacts on financial estimates and assumptions that directly result from climate-related mitigation or adaptation activities.[462] To accommodate such development and adjustment, we are providing an additional phase in for the requirement to disclose this information in the context of Item 1502. Accordingly, a registrant will not be required to comply with the Item 1502(d)(2) requirement until the fiscal year immediately following the fiscal year of its initial compliance date for subpart 1500 disclosures based on its filer status.[463]

2. Transition Plan Disclosure (Items 1500 and 1502(e))

a. Proposed Rule

The Commission proposed to require a registrant that has adopted a transition plan as part of its climate-related risk management strategy to describe the plan, including the relevant metrics and targets used to identify and manage any physical and transition risks.[464] The proposed requirements were intended to help investors understand how a registrant intends to address identified climate-related risks and any transition to a lower carbon economy while managing and assessing its business operations and financial condition. The Commission proposed to define ''transition plan'' to mean a registrant's strategy and implementation plan to reduce climate-related risks, which may include a plan to reduce its GHG emissions in line with its own commitments or commitments of jurisdictions within which it has significant operations. To allow for an understanding of a registrant's progress to meet its plan's targets or goals over time, the proposed rules would have required the registrant to update its disclosure about its transition plan each fiscal year by describing the actions taken during the year to achieve the plan's targets or goals.[465]

The proposed rules would have further required a registrant that has adopted a transition plan to discuss, as applicable:

- How the registrant plans to mitigate or adapt to any identified physical risks, including but not limited to those concerning energy, land, or water use and management; and
- How the registrant plans to mitigate or adapt to any identified transition risks, including the following:
  - Laws, regulations, or policies that:
    - Restrict GHG emissions or products with high GHG footprints, including emissions caps; or
    - Require the protection of high conservation value land or natural assets;
  - Imposition of a carbon price; and
  - Changing demands or preferences of consumers, investors, employees, and business counterparties.

The proposed rules provided that a registrant that has adopted a transition plan may also describe how it plans to achieve any identified climate-related opportunities, such as:

- The production of products that may facilitate the transition to a lower carbon economy, such as low emission modes of transportation and supporting infrastructure;
- The generation or use of renewable power;
- The production or use of low waste, recycled, or other consumer products that require less carbon intensive production methods;
- The setting of conservation goals and targets that would help reduce GHG emissions; and
- The provision of services related to any transition to a lower carbon economy.

b. Comments

Many commenters supported the proposed provision requiring a registrant that has adopted a transition plan to describe the plan, including the relevant metrics and targets used to identify and manage any physical and transition risks.[466] Commenters stated that information about a registrant's transition plan would help investors evaluate the seriousness of stated corporate intentions to identify and manage climate-related risks, including the credibility of climate-related targets and progress made toward those targets.[467] Several commenters stated that information regarding a registrant's transition plan is important to help investors evaluate a registrant's management of its identified climate-related risks and help them assess the resiliency of a registrant's strategy in a potential transition to a lower carbon economy.[468] Some commenters specifically supported requiring disclosure, as applicable, of a registrant's plan to mitigate or adapt to identified physical risks, as proposed, and further stated that there are no transition risks, as identified in the rule proposal, that should be excluded from the transition plan disclosure requirement.[469] Other commenters stated that the proposed requirement would help provide more consistent and comparable disclosure about companies' transition plans, which, despite the

[460] We note also that the ''significant contributing factor'' attribution principle applicable to certain disclosures required by the final rules in the financial statements, as well as any other guidance we provide below regarding the presentation of the disclosures in the financial statements, does not pertain to the expenditure disclosure in Regulation S–K. *See infra* section II.K.3.c.

[461] *See, e.g.,* letter from IMA.

[462] *See, e.g.,* letters from ABA; Cohn Rez; HP; and IMA.

[463] We are providing the same one-year phase in for the material expenditures disclosure requirements being adopted in connection with a transition plan or a target and goal. *See infra* section II.O.3 below.

[464] *See* Proposing Release, section II.E.2. The Commission proposed to require transition plan disclosure in connection with a registrant's risk management discussion. The final rules include transition plan disclosure as part of a registrant's disclosure about climate-related risks and their impact on the registrant's strategy to be consistent with TCFD's recommended transition plan disclosure. *See, e.g.,* TCFD, *Guidance on Metrics, Targets, and Transition Plans* (Oct. 2021), available at *https://assets.bbhub.io/company/sites/60/2021/07/2021-Metrics_Targets_Guidance-1.pdf.*

[465] *See* Proposing Release, section II.E.2.

[466] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* Anthesis; BNP Paribas; CalPERS; CalSTRS; Ceres; Eni SpA; Etsy; International Corporate Governance Network (June 17, 2022) (''ICGN''); Miller/Howard; Morningstar; Norges Bank Investment Management (June 17, 2022) (''Norges Bank''); NY SIF; NY St. Comptroller; Paradice Invest. Mgmt.; PRI; PwC; SKY Harbor; Soros Fund; TotalEnergies; and US SIF.

[467] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* and Calvert.

[468] *See, e.g.,* letters from CalPERS; Calvert; ICGN; Morningstar; PRI; PwC; and Soros Fund.

[469] *See, e.g.,* letters from Anthesis; Calvert; and TotalEnergies.

importance of such information, is currently lacking.[470] As previously noted, one other commenter recommended requiring the disclosure of a registrant's climate-related expenditures, both expensed and capitalized, made during each fiscal year, which would be linked to and aligned with the risks, goals, and strategies that the registrant would disclose under proposed Item 1502 of Regulation S–K.[471]

One commenter stated that the Commission should require a registrant that has a transition plan to disclose how it is aligned with the goals of the Paris Agreement.[472] Another commenter similarly indicated that the proposed transition plan disclosure requirement would help investors evaluate the extent to which a registrant's plan is aligned with global climate-related goals.[473] A few commenters stated that mandatory disclosure of a transition plan would not raise competitive harm concerns.[474] One commenter recommended that we revise the transition plan disclosure requirement so that it aligns more with the TCFD's recommended disclosure of transition plans, which focuses solely on transition risk and does not include the mitigation or adaptation of physical risk.[475] According to this commenter, a transition plan ''is not a tool for addressing physical risks, and disclosures on how an organization would address, manage and reduce the impact of physical risks should be disclosed under the risk management or targets sections.'' [476]

A number of commenters opposed the proposed requirement to describe a transition plan if one has been adopted.[477] Some commenters stated that the proposed disclosure requirement was too prescriptive and would likely create a disincentive for the adoption of transition plans.[478] Some commenters also stated that the proposed requirement would compel the disclosure of confidential business information and raise competitive harm concerns.[479] One commenter asserted that the proposed requirement is not necessary because the Commission's existing rules, which require disclosure of any material change to a previously disclosed business strategy, would arguably elicit disclosure of a registrant's transition plan.[480] Other commenters recommended that the Commission reduce the prescriptive nature of the proposed transition plan disclosure provision by requiring disclosure only of elements of a transition plan or transition activities that are material.[481] One other commenter similarly recommended requiring the disclosure only of a material transition plan that has been approved by the board of directors.[482] Still other commenters stated that transition plan disclosure should be voluntary.[483]

Some commenters supported the proposed provision specifying that a registrant may disclose how it plans to achieve any climate-related opportunities.[484] Commenters stated that information about whether and how a registrant intends to achieve climate-related opportunities, such as by creating products and services to facilitate a transition to a lower carbon economy, would be helpful for investors when comparing registrants' climate-related preparedness for the purpose of making investment decisions.[485] One commenter recommended that the Commission require, rather than permit, the disclosure of how a registrant plans to achieve any climate-related opportunities mentioned in its transition plan in order to discourage deceptive statements.[486]

Some commenters supported the proposed provision requiring a registrant to update its disclosure about its transition plan each fiscal year by describing the actions taken during the year to achieve the plan's targets or goals.[487] Several of these commenters stated that the updating provision was necessary to help investors track a registrant's progress toward meeting a transition plan's goals and to enable investors to make or alter their investment decisions based on current climate-related information.[488] One of these commenters stated that ''[c]ompanies that try to distinguish themselves by releasing a public transition plan often are not required to provide updates as to how they are progressing against those targets, significantly limiting an investor's ability to assess management's success in reaching their goals.'' [489] A few of these commenters further stated that the proposed updating requirement would not act as a disincentive to the adoption of a transition plan because companies that intend to follow through on their transition plan commitments will want to assess their progress in achieving them and report on such progress and any climate-related opportunities they may be pursuing.[490]

Other commenters, however, opposed the proposed updating requirement.[491] One commenter stated that the proposed requirement would be burdensome for registrants and would act as a disincentive to the adoption of a transition plan.[492] Another commenter stated that, due to the long timeline of transition plans, annual progress updates would in many cases not provide meaningful information for investors.[493] This commenter recommended that there should instead be a requirement to annually report any actions taken to achieve transition plans that are material to the registrant, as well as any material positive or negative deviations from the plan or changes to it that are material to the registrant.[494] Another commenter stated that a registrant should have to update its

[470] *See, e.g.,* letters from CalSTRS; and Ceres.

[471] *See* letter from Amazon.

[472] *See* letter from BNP Paribas.

[473] *See* letter from Paradice Invest. Mgmt.

[474] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.* (stating that mandatory transition plan disclosure should not raise competitive harm concerns because the Commission is not requiring the disclosure of any proprietary or commercially sensitive information); and Eni SpA (stating that a discussion of the short-, medium- and long-term objectives of a registrant's transition plan, the levers that will be used to achieve them, and the metrics used to track the registrant's progress towards alignment with the Paris Agreement goals, would not raise any competitive harm concerns); *see also* letter from Morningstar (stating that registrants ''may integrate transition plans into formats akin to medium-term plans or capital markets-day presentations, where they have historically been able to present forward-looking information without raising a competitive harm concern.'').

[475] *See* letter from PRI.

[476] *Id.*

[477] *See, e.g.,* letters from AALA; Amer. Chem.; Beller *et al.;* Business Roundtable; CEMEX; Chamber; Dimensional Fund Advisors (May 13, 2022) (''Dimensional Fund''); D. Hileman Consulting; B. Herron; NAM; RILA; and Western Midstream.

[478] *See, e.g.,* letters from Beller *et al.;* CEMEX; Dimensional Fund; GM; B. Herron; D. Hileman Consulting; NAM; and Western Midstream.

[479] *See, e.g.,* letters from AALA; Business Roundtable; CEMEX; NAM; and RILA.

[480] *See* letter from Chamber; *see also* letter from Sullivan Cromwell.

[481] *See, e.g.,* letters from ABA; Alphabet *et al.;* BlackRock; and Mortgage Bankers Association (June 17, 2022) (''Mtg. Bankers'').

[482] *See* letter from SIFMA.

[483] *See, e.g.,* letters from CEMEX; and J. McClellan.

[484] *See, e.g.,* letters from Anthesis; CalSTRS; Morningstar; and TotalEnergies.

[485] *See, e.g.,* letters from CalSTRS; and Morningstar.

[486] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[487] *See, e.g.,* letters from Anthesis; IAC Recommendation; IATP; Morningstar; and TotalEnergies.

[488] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* IAC Recommendation; and Morningstar.

[489] IAC Recommendation.

[490] *See, e.g.,* letters from Anthesis; and IATP.

[491] *See, e.g.,* letters from CEMEX; and SIFMA.

[492] *See* letter from CEMEX.

[493] *See* letter from SIFMA.

[494] *See id.*

transition plan disclosure only when the registrant believes it is appropriate to do so, and such updating should occur at most on an annual basis.[495]

c. Final Rule

After considering comments received, we are adopting, with modifications from the proposal, a final rule provision (Item 1502(e)) that will require a registrant to describe a transition plan if it has adopted the plan to manage a material transition risk.[496] Like the rule proposal, the final rules define (in Item 1500) a ''transition plan'' to mean a registrant's strategy and implementation plan to reduce climate-related risks, which may include a plan to reduce its GHG emissions in line with its own commitments or commitments of jurisdictions within which it has significant operations.[497] The final rules do not mandate that registrants adopt a transition plan; if a registrant does not have a plan, no disclosure is required.

As noted in the Proposing Release, registrants may adopt transition plans to mitigate or adapt to climate-related risks as an important part of their climate-related risk management strategy, particularly if the registrant has made commitments, or operates in a jurisdiction that has made commitments, to reduce its GHG emissions.[498] We recognize that not every registrant has a transition plan and, as noted above, this rulemaking does not seek to prescribe any particular tools, strategies, or practices with respect to climate-related risks. If, however, a registrant has adopted such a plan, information regarding the plan is important to help investors evaluate a registrant's management of its identified climate-related risks and assess the potential impacts of a registrant's strategy to achieve its short- or long-term climate-related targets or goals on its business, results of operations, and/or its financial condition. Moreover, a registrant's transition plan may have a significant impact on its overall business strategy, for example, where companies operate in jurisdictions with laws or regulations in place designed to move them away from high emissions products and services.[499] Because the steps a registrant plans to take pursuant to its transition plan may have a material impact on its business, results of operations, or financial condition, investors have sought more detailed disclosure about transition plans.[500]

We disagree with commenters that stated that transition plan disclosure should be voluntary[501] and that a transition plan disclosure requirement was not necessary because the Commission's existing business description rules would arguably elicit sufficient disclosure of a registrant's transition plan.[502] As other commenters noted, many registrants are not providing decision-useful information about their transition plans under the Commission's existing disclosure rules.[503] While existing Item 101 of Regulation S–K may result in some disclosure regarding transition plans in response to the general requirements of that rule, mandatory disclosure about transition plans will help ensure that investors receive the information they need to evaluate a registrant's management of material climate-related risks and the impact of those plans on its results of operations and financial condition in a more consistent and predictable manner.

We are cognizant, however, of commenters' concerns that the proposed transition plan disclosure provision was overly prescriptive and could result in immaterial disclosure or discourage registrants from adopting a transition plan to avoid having to describe the plan in detail.[504] To address these concerns, we have significantly streamlined the transition plan disclosure provision and revised the provision so that the description of a transition plan is only required if a registrant has adopted the plan to manage a material transition risk. Unlike the proposed rule, the final rule does not list the types of transition risks and factors related to those risks that must be disclosed, if applicable.[505] Instead, a registrant that is required to provide transition plan disclosure will have the flexibility to provide disclosure that addresses the particular facts and circumstances of its material transition risk.[506] We also note that, as with scenario analysis and use of internal carbon price disclosure, a registrant's transition plan disclosure will be subject to a safe harbor.[507]

Similar to the proposed rule, the final rule requires a registrant to update its annual report disclosure about the transition plan each fiscal year by describing any actions taken during the year under the plan, including how such actions have impacted the registrant's business, results of operations, or financial condition.[508] This updating requirement will help investors understand the registrant's progress under the plan over time, track the impacts of a transition plan on a registrant's business and, as noted by commenters, help inform investment decisions.[509] We disagree with the view of commenters who stated that this updating requirement would result in disclosure of information that is not meaningful for investors.[510] Investors have indicated that they need periodic information regarding the steps a registrant has taken to achieve an announced climate-related target or goal in order to evaluate a registrant's ongoing management of a material transition risk for the purpose of informing their investment or voting decisions.[511] Once a registrant has provided disclosure about a transition plan it has adopted to manage a material climate risk, we do not expect that it would be particularly burdensome for the company to disclose updated information about actions taken under the plan on a going forward basis.[512] Disclosure of the steps a registrant intends to make under a transition plan, and whether it has taken those steps, will help investors assess the financial impacts of the plan on the registrant's business, results of operations, or financial condition.[513] Moreover,

[495] *See* letter from Unilever.

[496] *See* 17 CFR 229.1502(e).

[497] *See* 17 CFR 229.1500 (definition of ''transition plan'').

[498] *See* Proposing Release, section II.E.2.

[499] *See supra* section II.A.

[500] *See, e.g.,* letters from AGs of Cal. *et al.;* BNP Paribas; and Morningstar.

[501] *See supra* note 483 and accompanying text.

[502] *See supra* note 480 and accompanying text.

[503] *See supra* note 470 and accompanying text.

[504] *See supra* notes 478 and 481 and accompanying text.

[505] *See* Proposing Release, section II.E.2.

[506] As discussed above, transition risk is defined as the actual or potential negative impacts on a registrant's business, results of operations, or financial condition attributable to regulatory, technological, and market changes to address the mitigation of, or adaptation to, climate-related risks, such as increased costs attributable to changes in law or policy, reduced market demand for carbon-intensive products leading to decreased prices or profits for such products, the devaluation or abandonment of assets, risk of legal liability and litigation defense costs, competitive pressures associated with the adoption of new technologies, and reputational impacts (including those stemming from a registrant's customers or business counterparties) that might trigger changes to market behavior, consumer preferences or behavior, and registrant behavior. *See* 17 CFR 229.1500.

[507] *See infra* section II.J.3.

[508] *See* 17 CFR 229.1502(e)(1).

[509] *See supra* note 488 and accompanying text.

[510] *See supra* note 490 and accompanying text.

[511] *See, e.g.,* letters from AGs of Cal. *et al.;* Amer. for Fin. Reform, Sunrise Project *et al.;* Anthesis; BNP Paribas; CalPERS; CalSTRS; Ceres; and Morningstar.

[512] We note that such an update would not be required where disclosure of the underlying transition plan would not be currently required (*e.g.,* because the plan is no longer used to manage a material transition risk).

[513] *See, e.g.,* letters from AGs of Cal. *et al.;* BNP Paribas; and Morningstar.

requiring this information on an annual basis will allow investors to take into account current climate-related information in their investment and voting decisions more consistently than they would be able to if registrants were required to update their climate-related information less frequently or only when they deemed it appropriate.[514]

We recognize that some commenters asserted that an updating requirement would act as a disincentive to the adoption of a transition plan. This effect may be attenuated, as some commenters indicated,[515] if registrants that have disclosed a plan wish to inform investors about progress achieved pursuant to the plan. In any event, if a registrant is using a transition plan to manage a material transition risk, we think it is appropriate for registrants to provide ongoing disclosure about the plan so that investors can assess its impact on the registrant's business.[516] As previously noted, however, we are agnostic about whether or how a registrant is managing its climate-related risks, and the final rules are intended neither to incentivize nor disincentivize the use of a transition plan or any other climate risk management tool.

In a modification of the proposed rule, which would have generally required the disclosure of the relevant metrics and targets used to identify and manage transition risk under a transition plan, the final rule will require a registrant, as part of its updating disclosure, to include quantitative and qualitative disclosure of material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the disclosed actions taken under the plan.[517] While this provision is similar to Item 1502(d), Item 1502(e) differs in that it is intended to elicit disclosure about material expenditures and material impacts on financial estimates and assumptions that directly result from actions taken under a transition plan (*e.g.,* material expenditures made for climate-related research and development). Item 1502(e) is not limited to disclosure concerning expenditures and impacts that directly result from mitigation or adaptation activities;[518] however, to the extent that a registrant's disclosure made in response to Item 1502(d) or Item 1502(e) overlap with each other or with disclosure required under any other subpart 1500 provision,[519] the registrant need not repeat the disclosure.

Similar to Item 1502(d), the disclosure requirement under Item 1502(e) is intended to capture material expenditures, both capitalized and expensed, made during the fiscal year under a transition plan, and to more closely align with how the registrant actually makes strategic decisions about taking actions under a transition plan. This provision will provide an important metric to help investors assess a registrant's climate risk management and the financial impact of a transition plan while also helping to limit the compliance burden, as some commenters noted.[520] We have not qualified Item 1502(e) by referring to management's assessment as we have done in Item 1502(d) (*i.e.,* material expenditures and material impacts that, in management's assessment, directly result from the disclosed actions). We believe that if a registrant has adopted a transition plan to manage a material transition risk, it is likely that management will oversee actions taken under the plan and, therefore, any material expenditures or material impacts on financial estimates and assumptions that are disclosed will have been assessed by management as being the direct result of such actions.

As under Item 1502(d), when responding to Item 1502(e), a registrant will have flexibility to explain qualitatively the nature of a material expenditure or material impact on its financial estimates or assumptions and how it directly resulted from the disclosed actions taken under the plan. Additionally, when considering which expenditures related to actions taken under a disclosed plan are material over the relevant period and therefore require disclosure, if individual expenditures do not appear to be material, registrants should consider whether overall expenditures related to actions taken under the plan are material in the aggregate and, if so, provide appropriate disclosure. For example, a series of individually immaterial expenditures could be the result of the same action or related actions under the plan, and those expenditures could be material in the aggregate. With respect to the disclosure of material impacts on financial estimates and assumptions as a direct result of the disclosed actions, to the extent that such information is disclosed in response to Rule 14–02(h) of Regulation S–X, a registrant would be able to cross-reference to such disclosure.[521]

Similar to Item 1502(d)(2), to allow for the development of systems, controls, and procedures to track and report material expenditures and material impacts on financial estimates and assumptions directly resulting from actions taken under a transition plan, we are phasing in compliance with Item 1502(e)(2). A registrant will not be required to comply with either provision until the fiscal year immediately following the fiscal year of its initial compliance date for the subpart 1500 rules based on its filer status.[522]

As recommended by one commenter,[523] we have removed the reference to physical risks that was in the proposed rule.[524] This change will make the transition plan disclosure requirement more consistent with voluntary disclosures that are based on the TCFD's recommendations,[525] which may mitigate the costs and complexity of complying with the final rule for registrants already familiar with the TCFD's framework.[526] A registrant that faces a material physical risk, however, will still be required to disclose how it is managing that risk as part of its risk management disclosure.[527] These revisions will elicit material information for investors about how a registrant

[514] *See supra* note 495 and accompanying text.

[515] *See supra* note 490 and accompanying text.

[516] To the extent that a registrant no longer uses a transition plan to manage a material climate risk, disclosure under this item, including the requirement for updates, would not be required.

[517] *See* 17 CFR 229.1502(e)(2).

[518] *See supra* section II.D.1.c for a discussion of Item 1502(d)(2)'s requirement to disclose material expenditures and material impacts on financial estimates and assumptions directly resulting from mitigation or adaptation activities.

[519] For example, Item 1504(c)(2) requires similar disclosure regarding material impacts that directly result from actions taken by a registrant to achieve a disclosed target or goal. *See infra* section II.G.3. To the extent that there is any overlapping disclosure of material expenditures in response to Items 1502(d)(2), 1502(e), and 1504(c)(2), to avoid redundancy, a registrant should provide disclosure of material expenditures regarding the Item where, in its assessment, such disclosure is most appropriate, and then cross-reference to this disclosure when responding to the other Items.

[520] *See, e.g.,* letters from Amazon; and PWC.

[521] We remind registrants that while they are permitted to cross-reference to information in their financial statements to satisfy their Regulation S–K disclosure obligations, they are not permitted to cross-reference to Regulation S–K disclosures in their financial statements, unless otherwise specifically permitted or required by the Commission's rules or by U.S. Generally Accepted Accounting Principles (''U.S. GAAP'') or International Financial Reporting Standards (''IFRS'') as issued by the International Accounting Standards Board (''IASB''), whichever is applicable. *See* 17 CFR 230.411 and 17 CFR 240.12b–23.

[522] *See infra* section II.O.3.

[523] *See* letter from PRI.

[524] *See* Proposing Release, section II.E.2.

[525] *See* TCFD, *Guidance on Metrics, Targets, and Transition Plans* section E (Oct. 2021), available at *https://assets.bbhub.io/company/sites/60/2021/07/2021-Metrics_Targets_Guidance-1.pdf.*

[526] *See, e.g., infra* note 2690 and accompanying text (describing a report finding that 50 percent of sustainability reports from Russell 1000 companies aligned with the TCFD recommendations).

[527] *See* 17 CFR 229.1503, discussed *infra* section II.F.

intends to reduce its exposure to a material transition risk while limiting the burdens on registrants and providing them more flexibility to determine what aspects of the transition plan should be disclosed in light of their facts and circumstances.

We are cognizant that some commenters expressed concern that the proposed transition plan disclosure requirement would result in the disclosure of confidential or proprietary information that could cause competitive harm to the registrant.[528] Modifying the transition plan disclosure provision to focus on material expenditures and material impacts on financial estimates and assumptions, rather than all relevant metrics and targets, will help to mitigate this concern by providing registrants with more flexibility to determine what is necessary to disclose in order to describe the plan. Similarly, modifying the transition plan disclosure provision to require disclosure only when a plan has been adopted to manage a material transition risk will further help to mitigate this concern. This added flexibility regarding transition plan disclosure will also help address concerns that the final rule could act as a disincentive to adoption of transition plans.[529] While the final rules seek neither to incentivize nor disincentivize the adoption of transition plans, we recognize that the compliance burdens of disclosure may influence some registrants' decisions with respect to risk management practices and have therefore sought to mitigate such effects.

We decline to follow the recommendation of one commenter to limit the transition plan disclosure requirement to only material transition plans that have been formally approved by a registrant's board of directors.[530] We do not believe that board approval should be the determining factor in whether disclosure is provided. Such a provision would fail to elicit disclosure of a material transition plan adopted by senior management that, due to a registrant's particular corporate governance structure, is not required to be subject to a board vote but nevertheless has significant potential implications for the registrant's financial condition or results of operations. Like the proposal, the final rule does not require a registrant to disclose climate-related opportunities included in its transition plan. Nevertheless, as previously mentioned, a registrant may still elect to describe any opportunities that it intends to achieve as part of its transition plan discussion or when responding to any of the Item 1502 provisions.[531] We decline, however, to follow the recommendation of one commenter to require the disclosure of how a registrant intends to achieve any climate-related opportunities that are a part of its transition plan.[532] Consistent with the rule proposal, we have determined to treat disclosure regarding climate-related opportunities as optional, among other reasons, to allay any anti-competitive concerns that might arise from a requirement to disclose a particular business opportunity.[533] We believe those concerns could be exacerbated by requiring disclosure not only of the existence of opportunities in the transition plan but also how the registrant intends to achieve those opportunities.

3. Disclosure of Scenario Analysis If Used (Items 1500 and 1502(f))

a. Proposed Rule

The Commission proposed to require a registrant to describe the resilience of its business strategy in light of potential future changes in climate-related risks.[534] In connection with this disclosure, the Commission proposed to require a registrant to describe any analytical tools, such as scenario analysis, that the registrant uses to assess the impact of climate-related risks on its business and consolidated financial statements, and to support the resilience of its strategy and business model in light of foreseeable climate-related risks.[535] The Commission proposed to define scenario analysis to mean a process for identifying and assessing a potential range of outcomes of various possible future climate scenarios, and how climate-related risks may impact a registrant's operations, business strategy, and consolidated financial statements over time.[536] The proposed definition included an example of how registrants might use scenario analysis.[537]

The Commission proposed to require a registrant that uses scenario analysis to assess the resilience of its business strategy to climate-related risks to disclose the scenarios considered (*e.g.,* an increase of no greater than 3 deg;C, 2 deg;C, or 1.5 deg;C above pre-industrial levels), including the parameters, assumptions, and analytical choices, and the projected principal financial impacts on the registrant's business strategy under each scenario. The Commission further proposed that such disclosure should include both qualitative and quantitative information.[538]

b. Comments

Several commenters supported the proposed rule requiring a registrant to describe any analytical tools, such as scenario analysis, that the registrant uses to assess the impact of climate-related risks on its business and consolidated financial statements, and to support the resilience of its strategy and business model in light of foreseeable climate-related risks.[539] One commenter stated that scenario analysis has emerged as a key analytical tool for assessing potential climate-related impacts on a company by allowing market participants to understand multiple possible outcomes while still reflecting a realistic level of uncertainty.[540] This commenter further indicated that disclosure of scenario analysis if used would allow investors to review the general models and projections used by the company in its planning and capital allocation strategy, and would greatly assist investors in understanding a firm's resilience and assumptions about the effects of climate change.[541] Another commenter supported the disclosure of scenario analysis if used because of the importance to investors of forward-looking assessments of climate-related

[528] *See supra* note 479 and accompanying text.

[529] *See, e.g.,* letters from CEMEX; and SIFMA.

[530] *See supra* note 482 and accompanying text.

[531] *See supra* section II.C.1.c.

[532] *See supra* note 486 and accompanying text.

[533] *See* Proposing Release, section II.A.1.

[534] *See* Proposing Release, section II.C.4.

[535] *See id.*

[536] *See id.* More generally, scenario analysis is a process for identifying and assessing a potential range of outcomes of future events under conditions of uncertainty. See, for example, the definition of ''scenario analysis'' in TCFD, Recommendations of the Task Force on Climate-related Financial Disclosures, Appendix 5.

[537] *See* Proposing Release, section II.C.4.

[538] *See id.*

[539] *See, e.g.,* letters from American Institute of CPAs (June 15, 2022) (''AICPA''); AllianceBernstein; Amer. for Fin. Reform, Sunrise Project *et al.;* Bloomberg; CalSTRS; Ceres; CFA; Council of Institutional Advisors (May 19, 2022) (''CII''); Eni SpA; IAC Recommendation; ICGN; ICI; J. McClellan; Morningstar; Norges Bank; NRDC; Paradice Invest. Mgmt.; Member of the U.S. House of Representatives Kathy Castor and 130 other House Members (Jun. 17, 2022) (''U.S. Reps. Castor *et al.*''); San Francisco Employees' Retirement System (June 17, 2022) (''SFERS''); Unilever; Vodafone; and Wellington Mgmt.

[540] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[541] *See id.; see also* letters from ICI (stating that ''[i]nformation about scenario analysis can help investors evaluate the resilience of the company's business strategy in the face of various climate scenarios that could impose potentially different climate-related risks''); and Wellington Mgmt. (stating that ''disclosure of a scenario analysis enables investors to assess an issuer's risk management process and whether an issuer is considering different climate risk outcomes in its planning'').

risks in understanding the resilience of a company's climate-related strategy.[542]

Some commenters recommended that the Commission require all registrants to provide scenario analysis disclosure in their climate risk reporting, regardless of whether they otherwise use scenario analysis.[543] One such commenter stated that requiring scenario analysis disclosure is essential if a registrant's disclosure of material climate-related risks is to be decision-useful for investors.[544] According to that commenter, because scenario analysis requires a registrant to make assumptions regarding different global temperature increase pathways and various potential pathways of decarbonization involving regulatory, technological, and behavioral responses, investors need to know the assumptions and parameters considered by the registrant in order to understand the registrant's disclosure of likely climate-related impacts.[545] One other commenter stated that, ''all else being equal,'' registrants that conduct strong scenario analyses should have more intrinsic value in the securities they offer than issuers that do not plan sufficiently for climate risk.[546]

One commenter stated that the proposed scenario analysis disclosure requirement struck an appropriate balance by requiring registrants to share any scenario analysis that they are otherwise conducting for their business operations while avoiding imposing a potentially difficult or burdensome requirement on those registrants that have not yet conducted such analysis.[547] Some commenters similarly stated that, due to cost concerns, they could only support a requirement to disclose scenario analysis if it was limited to situations in which a registrant has actually used such analysis in its assessment of climate-related risks.[548] Other commenters supported the proposed scenario analysis disclosure requirement but only if the use of scenario analysis reflected an expected material impact on the registrant's business strategy, financial planning, and capital raising.[549] Still other commenters recommended that the Commission require a registrant that does not currently use scenario analysis to explain why it does not do so to prevent the disclosure requirement from acting as a disincentive to the adoption of scenario analysis.[550]

Several commenters opposed or expressed concerns about the proposed requirement to disclose scenario analysis, if used.[551] Some commenters stated that the proposed requirement could result in the disclosure of confidential business information.[552] Other commenters stated that a scenario analysis disclosure requirement that is not qualified by materiality would act as a disincentive to the use of scenario analysis as a climate-related tool.[553] Still other commenters opposed the proposed disclosure requirement because it was too prescriptive and would be costly and burdensome to fulfill.[554] Because of the above concerns, some commenters stated that the disclosure of scenario analysis should be voluntary.[555] Other commenters stated that the required scenario analysis disclosure should be limited to high level trends or material drivers and impacts, and should not cover more detailed parameters, assumptions, and analytical choices underlying the scenario analysis, as proposed.[556] One commenter stated that scenario analysis disclosure should only be required when it is broadly used by senior management and the board as part of their strategic planning process and when integrated and material to a publicly announced climate-related strategy or initiative.[557]

Some commenters recommended that the Commission require the use of certain publicly available scenario models, such as those published by the Intergovernmental Panel on Climate Change (''IPCC''), the International Energy Agency (''IEA''), or the Network of Central Banks and Supervisors for Greening the Financial System (''NGFS''), to enhance the comparability of the scenario analysis disclosure.[558] Other commenters stated that it should be up to each registrant to choose those scenarios that best fit its particular business or industry and tailor its disclosure accordingly.[559]

c. Final Rule

We are adopting a final rule (Item 1502(f)) requiring the disclosure of scenario analysis under certain circumstances. The disclosure of a registrant's use of scenario analysis can provide important forward-looking information to help investors evaluate the resilience of the registrant's strategy under various climate-related circumstances.[560] Scenario analysis has increasingly been recognized as an important analytical tool in assessing a company's climate-related risk exposure,[561] and investors have increasingly sought information from registrants about their use of scenario analysis and expressed a need for improved disclosure about such use.[562]

[542] *See* letter from Bloomberg; *see also* letter from Morningstar (stating that scenario analysis is an important analytical tool in which companies may project their performance and results subject to various changes, including, but not limited to, policy interventions, technological advancement, or environmental and physical challenges, and that such analysis would help investors understand circumstances under which the value of a company could be at risk, and how a company's strategy may—or may not—move it forward toward long-term value creation and sustainability).

[543] *See, e.g.,* letters from Anthesis; NY St. Comptroller; PRI; and SFERS.

[544] *See* letter from SFERS.

[545] *See id.*

[546] *See* letter from Wellington Mgmt.

[547] *See* letter from CII.

[548] *See, e.g.,* letters from AICPA; J. McClellan; and Unilever.

[549] *See, e.g.,* letters from ABA; and AllianceBernstein.

[550] *See, e.g.,* letters from BlackRock; ICI; NEI Investments (June 17, 2022) (''NEI''); and NY City Comptroller.

[551] *See, e.g.,* letters from Alphabet *et al.;* Amazon; Amer. Bankers; AFPM; CEMEX; Chamber; Chevron; Citigroup; Hydro One Limited (June 16, 2022) (''Hydro One''); Institute of International Finance (June 17, 2022) (''IIF''); NAM; Northern Trust; RILA; Shearman Sterling; Soc. Corp. Gov.; Sullivan Cromwell; the Travelers Companies (June 17, 2022) (''Travelers''); and Western Midstream.

[552] *See, e.g.,* letters from AFPM; Amazon; Amer. Bankers; Chevron; Citigroup; GPA Midstream; IIF; NAM; RILA; Shearman Sterling; Soc. Corp. Gov.; Sullivan Cromwell; and Travelers.

[553] *See, e.g.,* letters from Chamber; PGIM; Sullivan Cromwell; United Parcel Service, Inc. (Jun. 14, 2022) (''UPS''); and Western Midstream; *see also* letter from Beller *et al.* (opposing a mandatory scenario analysis disclosure requirement because it would stifle innovation).

[554] *See, e.g.,* letters from Amer. Bankers; Dimensional Fund; NAM; and Soc. Corp. Gov.

[555] *See, e.g.,* letters from Alphabet *et al.;* Beller *et al.;* Chamber; Hydro One; and Northern Trust.

[556] *See, e.g.,* letters from ABA; and Chevron.

[557] *See* letter from Amazon.

[558] *See, e.g.,* letters from Anthesis; Bloomberg; CalSTRS; Chevron; and Shell plc (June 17, 2022) (''Shell'').

[559] *See, e.g.,* letters from American Council of Life Insurers (June 17, 2022) (''ACLI''); J. Herron; and TotalEnergies.

[560] *See supra* notes 540–542 and accompanying text.

[561] *See, e.g.,* letter from AllianceBernstein (stating that ''[s]cenario analysis is particularly important for those registrants in emissions-intensive industries where such analysis can demonstrate the quality of impairment testing and increase confidence in asset values''). The Federal Reserve Board's climate scenario analysis pilot program, in which six of the nation's largest banks are voluntarily participating, further demonstrates the increased recognition of scenario analysis as an important tool to assess climate-related financial risks. *See* Board of Governors of the Federal Reserve System, *Federal Reserve Board announces that six of the nation's largest banks will participate in a pilot climate scenario analysis exercise designed to enhance the ability of supervisors and firms to measure and manage climate-related financial risks* (Sept. 29, 2022), available at *https://www.federalreserve.gov/newsevents/pressreleases/other20220929a.htm.*

[562] *See, e.g.,* letters from AllianceBernstein (stating that ''[w]hile many registrants claim to perform scenario analysis, however, there is little disclosure around assumptions used in these models and how registrants use results impact strategy, business and capital allocation decisions,

Although some commenters recommended that we require all registrants to include scenario analysis disclosure in their climate risk reporting,[563] we recognize that not every registrant conducts scenario analysis and, as noted above, this rulemaking does not seek to prescribe any particular tools, strategies, or practices with respect to climate-related risks but rather, when material, to provide investors with the information they need to evaluate the climate-related risks faced by the registrant and their potential impacts on the registrant's business, results of operations, or financial condition. Therefore, similar to the proposed rule, the final rule's scenario analysis disclosure requirement will depend on whether and how a registrant uses such analysis. Importantly, the rule will not require any registrant to conduct scenario analysis.

We are, however, adopting modifications in the final rules. For example, we have added a materiality qualifier regarding the disclosure of scenario analysis to address commenters' concern that the proposed requirement could result in disclosure of immaterial information that would be burdensome and costly to produce.[564] We also note that, as with transition plan and use of internal carbon price disclosure, a registrant's scenario analysis disclosure will be subject to a safe harbor.[565] The final rule provides that, if a registrant uses scenario analysis [566] to assess the impact of climate-related risks on its business, results of operations, or financial condition, and if, based on the results of scenario analysis, a registrant determines that a climate-related risk is reasonably likely to have a *material* impact on its business, results of operations, or financial condition, then the registrant must describe each such scenario,[567] including a brief description of the parameters, assumptions, and analytical choices used, as well as the expected material impacts, including financial impacts, on the registrant under each such scenario.[568] We are adopting this disclosure requirement because, if a registrant has used scenario analysis to assess and manage a material climate-related risk, investors need to understand how it conducted that analysis in order to evaluate the registrant's conclusions regarding material impacts on its business, results of operations, or financial condition.

We also have streamlined the proposed scenario analysis disclosure requirements to reduce redundancy in the final rules. For example, we have eliminated the introductory provision in the rule proposal requiring a registrant to describe the resilience of its business strategy in light of potential future changes in climate-related risks. Because companies use scenario analysis to test the resilience of their business strategies under varying future climate scenarios, and because such use is explained in the definition of scenario analysis (in Item 1500) that we are adopting largely as proposed,[569] if registrants are required to disclose their use of scenario analysis under the final rules, such disclosure likely would include a description of the resilience of their strategies under various climate scenarios.

The rule proposal would have required a registrant to disclose ''any analytical tools, such as scenario analysis'' that it uses to assess the impact of climate-related risks on its business. In a modification of the proposed rule, we have eliminated the reference to ''any analytical tools'' to clarify that the disclosure required by this provision should concern the registrant's use of scenario analysis rather than any other analytical tools. We note that the TCFD's guidance discusses scenario analysis as the primary tool to help companies assess the impacts of climate-related risks on their business strategies, and therefore this change should eliminate any confusion about what other analytical tools might fall under the scope of the requirements.[570]

In another change from the rule proposal, we have added the term ''brief'' to modify the ''description of the parameters, assumptions, and analytical choices used'' prong of the scenario analysis disclosure provision. The adopted provision will continue to elicit disclosure that will enhance investors' assessment of the resiliency of a registrant's strategy while also mitigating the compliance burden for registrants. Requiring a *brief* description of the parameters, assumptions, and analytical choices used, together with a description of the projected *material* financial impacts on the registrant's business strategy under each scenario, should help elicit disclosure that neither burdens investors with immaterial detail nor unduly adds to a registrant's compliance burden. As with disclosure related to transition plans, we reiterate that our focus in adopting these requirements is neither on incentivizing nor disincentivizing any particular risk management practice but rather on providing investors with the information they need with respect to the particular practices of a registrant in order to make informed investment and voting decisions.

These revisions to the proposed rule also address commenters' concern that the required scenario analysis disclosure could result in the disclosure of confidential business information.[571] If a registrant has used scenario analysis to determine that an identified climate-related risk is likely to have a material impact on its business, results of operations, or financial condition, it is important for investors to receive disclosure about that material impact. The registrant will not, however, be required to provide a lengthy description of the underlying parameters and assumptions that may be more likely to reveal confidential business information.

Although some commenters recommended that we require the use of one or more climate scenario models,[572] the final rules do not impose any specific risk management model. By requiring disclosure based on whether a registrant has determined to conduct scenario analysis as part of its consideration of material climate-related risks, a registrant will be able to select the climate scenario model or models that it believes best fits its particular industry or business, or its climate risk assessment approach. This approach will provide useful information to investors about the resilience of a registrant's climate-related business

making their results challenging to compare''); and Ceres (citing evidence from the Climate Action 100+ Benchmark that companies' ''scenario analyses leave much room for improvement'').

[563] *See supra* note 543 and accompanying text.

[564] *See supra* note 554 and accompanying text.

[565] *See infra* section II.J.3.

[566] We are largely adopting the definition of scenario analysis, as proposed. *See* 17 CFR 229.1500 (''Scenario analysis means a process for identifying and assessing a potential range of outcomes of various possible future climate scenarios, and how climate-related risks may impact a registrant's business strategy, results of operations, and financial condition over time.'') We have deleted from the definition the example that ''registrants might use scenario analysis to test the resilience of their strategies under certain future climate scenarios, such as those that assume global temperature increases of 3 °C, 2 °C, and 1.5 °C above pre-industrial levels'' because we do not wish to convey the impression that these scenarios are required should a registrant elect to conduct scenario analysis.

[567] *See* 17 CFR 229.1502(f). Conversely, if a registrant conducts scenario analysis and determines from its results that it is not likely to be materially impacted by a climate-related risk, no disclosure about its use of scenario analysis is required under Item 1502(f).

[568] *See id.*

[569] *See* 17 CFR 229.1500.

[570] *See* TCFD, *supra* note 332.

[571] *See supra* note 552 and accompanying text.

[572] *See supra* note 558 and accompanying text.

strategy while also helping to limit the registrant's compliance burden relating to scenario analysis disclosure under the final rules.

The proposed scenario analysis disclosure provision would have included as an example of potential scenarios to be considered ''an increase of no greater than 3 °C, 2 °C, or 1.5 °C above pre-industrial levels.'' [573] Because this was for illustrative purposes only, and because we have removed the same example from the definition of scenario analysis to avoid conveying the impression that these scenarios are required,[574] we have also removed the example from Item 1502(f).

To further streamline the scenario analysis disclosure requirement, we have removed the proposed provision stating that the disclosure should include both qualitative and quantitative information.[575] We recognize that, as noted by some commenters, scenario analysis practices are still evolving,[576] and that, in the early stages of use, a registrant's disclosure regarding its use of scenario analysis may be qualitative. As a registrant's use of scenario analysis becomes more sophisticated, we would expect its disclosure of the results of scenario analysis to become more quantitative, particularly when discussing the expected material financial impacts on the registrant's business strategy, under each considered scenario, which, like the proposed rule, must be addressed should a registrant be required to disclose its use of scenario analysis. Streamlining the proposed scenario analysis disclosure requirement in this way will enable a registrant to determine the mix of qualitative and quantitative disclosure that best fits its particular circumstances when satisfying its obligations under the final rule.

We decline to follow the recommendation of one commenter who stated that disclosure of scenario analysis should only be required when integrated and material to a publicly announced climate-related strategy or initiative.[577] Conditioning the disclosure requirement in this way could deprive investors of needed information solely because the registrant has not yet announced the corresponding strategy or initiative.

[573] *See* Proposing Release, section II.C.4.

[574] *See supra* note 566 and accompanying text.

[575] *See id.*

[576] *See, e.g.,* letters from Bloomberg; and Chamber.

[577] *See* letter from Amazon.

4. Disclosure of a Maintained Internal Carbon Price (Item 1502(g))

a. Proposed Rule

The Commission proposed to define an internal carbon price to mean an estimated cost of carbon emissions used internally within an organization.[578] The Commission also proposed that, if a registrant maintains an internal carbon price, it would have to disclose:

- The price in units of the registrant's reporting currency per metric ton of carbon dioxide equivalent (''CO_2e'');
- The total price, including how the total price is estimated to change over time, if applicable;
- The boundaries for measurement of overall CO_2e on which the total price is based, if different from the GHG emission organizational boundary required pursuant to the proposed GHG emissions disclosure provision; and
- The rationale for selecting the internal carbon price applied.[579]

The proposed rules would have further required a registrant to describe how it uses an internal carbon price to evaluate and manage climate-related risks. In addition, the proposed rules would have required a registrant that uses more than one internal carbon price to provide the proposed disclosures for each internal carbon price and to disclose its reasons for using different prices.[580]

b. Comments

Several commenters supported the rule proposal requiring a registrant to disclose information about a maintained internal carbon price because of the important role played by internal carbon pricing in the management of climate-related risks.[581] One commenter stated that internal carbon pricing has become an important mechanism to help companies manage risks and capitalize on emerging opportunities in the transition to a low-carbon economy.[582] According to this commenter, in the event that governments adopt a carbon tax, registrants that have not begun using internal carbon pricing could find themselves increasingly vulnerable due to their failure to internalize the cost into their business.[583] A different commenter stated that an internal carbon price is a multifaceted tool that enables a registrant to embed a shadow cost for carbon in all carbon mitigation investment decisions, or impose an internal carbon fee by charging business units for their emissions and using the revenue generated to support investment into clean technologies.[584] Other commenters similarly stated that an internal carbon price can assist companies in steering capital expenditures, research and design, and other financing decisions toward projects with reduced emissions.[585] One commenter asserted that nearly half of the world's largest companies factor a cost of carbon into their business plans.[586] Other commenters recommended that the Commission require a registrant that does not use internal carbon pricing to explain its reason for not doing so, as to prevent the proposed disclosure requirement from acting as a disincentive toward the use of this tool.[587]

Most of the above commenters supported requiring a registrant that uses internal carbon pricing to disclose the proposed items, including:

- The price in units of the registrant's reporting currency per metric ton of CO_2e;
- The total price;
- The rationale for selecting the internal carbon price applied; and
- How it uses internal carbon price to evaluate and manage climate-related risks.[588]

Some commenters also supported requiring the disclosure of the methodology used to develop and apply an internal carbon price.[589] In this regard, one commenter stated that while many companies claim to utilize

[578] *See* Proposing Release, section II.C.3.

[579] *See id.*

[580] *See id.*

[581] *See, e.g.,* letters from AGs of Cal. *et al.;* AllianceBernstein; Amer. for Fin. Reform, Sunrise Project *et al.;* Anthesis; Ceres; CFA; Eni SpA; ERM CVS; IAC Recommendation; Microsoft; Morningstar; Norges Bank; NY City Comptroller; Paradice Invest. Mgmt.; PRI; SFERS; and TotalEnergies.

[582] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[583] *See id.*

[584] *See* letter from Eni SpA.

[585] *See* letters from AllianceBernstein (stating that ''[i]nternal carbon pricing can guide capital expenditures, research and design and other fundamental decisions towards projects, products and services that are more resilient to climate change and away from assets that may become economically unviable in the global transition to a lower carbon economy''); and Ceres.

[586] *See* letter from NY City Comptroller.

[587] *See, e.g.,* letters from BlackRock; and Teachers Insurance and Annuity Association of America (June 17, 2022) (''TIAA'').

[588] *See, e.g.,* letters from AllianceBernstein; Amer. for Fin. Reform, Sunrise Project *et al.;* Anthesis; Ceres; ERM CVS; Microsoft; NY City Comptroller; Paradice Invest. Mgmt.; PRI; SFERS; and TotalEnergies. Commenters also supported requiring a registrant that uses more than one internal carbon price to provide the proposed disclosures for each internal carbon price and to explain why it uses different internal carbon prices. *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* Anthesis; ERM CVS; and NY City Comptroller.

[589] *See, e.g.,* letters from AllianceBernstein; Anthesis; ERM CVS; Microsoft; and PRI.

internal carbon pricing, it is challenging for investors to assess ''the validity and strength'' of such pricing without transparency on methodology, price, and application.[590] Other commenters stated that the proposed disclosure details are important for investors to assess the reasonableness, applicability, comparability, and accuracy of internal carbon pricing by registrants.[591] These commenters supported requiring the disclosure of the boundaries for measurement of overall CO_2e on which the total price is based,[592] including when those boundaries are different than the organizational boundaries used to measure a registrant's GHG emissions, in order to increase the transparency underlying the use of internal carbon pricing.[593]

Several other commenters, however, opposed the proposed internal carbon disclosure requirement.[594] Some commenters stated that the proposed requirement could result in competitive harm for registrants,[595] such as through potential disclosure of confidential or proprietary business information.[596] For example, commenters asserted that such disclosures ''would divulge sensitive information to . . . competitors'' [597] and noted that registrants ''us[ing] internal prices of carbon in their operations may often be doing so for pricing or other competitive purposes'' [598] and ''private companies and state-owned enterprises that compete in a registrant's sector would not need to provide the same type and level of information as public companies.'' [599] Other commenters indicated that the proposed disclosure requirement was too prescriptive and, lacking a materiality qualifier, would result in the disclosure of information that is not decision-useful for investors and costly to produce.[600] Because of these concerns, commenters stated that the proposed disclosure requirement would act as a disincentive to the use of internal carbon pricing.[601] Accordingly, some commenters recommended that the Commission provide exceptions to any internal carbon price disclosure requirements (such as exclusions for information that is competitively sensitive),[602] a separate safe harbor or exemption from liability for internal carbon price disclosure,[603] or a phase in period for these requirements.[604] One commenter stated that disclosure of internal carbon pricing should be required only when it is broadly used by senior management and the board as part of their strategic planning process and when integrated and material to a publicly announced climate-change strategy or initiative.[605] Finally, one commenter, who was concerned that the proposed internal carbon pricing requirement would require the disclosure of proprietary information, recommended that the Commission adopt an alternative approach to obtain carbon price-related disclosures, such as an approach similar to the Financial Accounting Standards Board's (''FASB'') standardized measure of oil and gas, or SMOG.[606]

c. Final Rule

The final rule (Item 1502(g)) will require a registrant that uses internal carbon pricing to disclose certain information about the internal carbon price, if such use is material to how it evaluates and manages a climate-related risk that, in response to Item 1502(a), it has identified as having materially impacted or is reasonably likely to have a material impact on the registrant, including on its business strategy, results of operations, or financial condition.[607] As commenters have noted, many registrants use internal carbon pricing as a planning tool, among other purposes: to help identify climate-related risks and opportunities; as an incentive to drive energy efficiencies to reduce costs; to quantify the potential costs the company would incur should a carbon tax be put into effect; and to guide capital investment decisions.[608] Information about a registrant's use of internal carbon pricing will help investors evaluate how a registrant is managing climate-related risks, particularly transition risks, and the effectiveness of its business strategy to mitigate or adapt to such risks.

At the same time, we recognize commenters' concern that, without a materiality qualifier, the proposed rule could have resulted in the disclosure of internal carbon pricing data that would not be decision-useful for investors and would be burdensome for registrants to produce.[609] To address this concern, in a change from the proposed rule, which would have required internal carbon pricing disclosure whenever a registrant maintains an internal carbon price, the final rule will require this disclosure only when the registrant's use of internal carbon pricing is material to how it evaluates and manages a climate-related risk identified in response to Item 1502(a).

If a registrant's use of internal carbon pricing is material, similar to the proposed rule, the final rule will require it to disclose in units of the registrant's reporting currency:

- The price per metric ton of CO_2e; and
- The total price, including how the total price is estimated to change over the time periods referenced in Item 1502(a), as applicable.[610]

Similar to the proposed rule, if a registrant uses more than one internal carbon price to evaluate and manage a material climate-related risk, it must provide the required disclosures for each internal carbon price, and disclose its reasons for using different prices.[611] We also have included a provision, similar to the rule proposal and as

[590] *See. e.g.,* letter from AllianceBernstein; *see also* letter from Paradice Invest. Mgmt. (stating that ''[w]here a company does use an internal carbon price, unless transparency is provided on what the price is and how it is set, investors cannot determine whether this is appropriate and what the financial implications may be'').

[591] *See, e.g.,* letter from AllianceBernstein; ERM CVS; and PRI.

[592] *See* letter from PRI.

[593] *See* letter from ERM CVS.

[594] *See, e.g.,* letters from Amer. Bankers; Amer. Chem.; AFPM; BOA; CEMEX; Chevron; Cleary Gottlieb; Dimensional Fund; J. Herron; NAM; Northern Trust; PGIM; PwC; RILA; Sullivan Cromwell; Unilever; Jeremy Weinstein (June 17, 2022) (''J. Weinstein''); and Western Midstream.

[595] *See, e.g.,* letters from ConocoPhillips, CEMEX, Chevron, Amazon, RILA, SIFMA, NAM, TRC, ESPA, and Center for Climate and Energy Solutions (''CCES'').

[596] *See, e.g.,* letters from Amer. Bankers; Amer. Chem.; AFPM; BOA; CEMEX; Chevron; NAM; Sullivan Cromwell; and J. Weinstein.

[597] *See* letter from ConocoPhillips.

[598] *See* letter from Amer. Bankers.

[599] *See* letter from Enbridge.

[600] *See, e.g.,* letters from Cleary Gottlieb; Dimensional Fund; J. Herron; PGIM; PwC; and RILA.

[601] *See, e.g.,* letters from Cleary Gottlieb; Dimensional Fund; J. Herron; NAM; PGIM; RILA; Sullivan Cromwell; and Western Midstream.

[602] *See, e.g.,* letters from ConocoPhillips; Amazon; and CCES.

[603] *See, e.g.,* letters from Reinsurance Association of America (June 16, 2022) (''Reinsurance AA''); Third Coast; BOA; CEMEX; BHP; RILA; CEBA; WMBC; Zions Bancorporation (June 7, 2022) (''Zions''); Can. Coalition GG; Airlines for America; IATA; Southside Bancshares, Inc. (June 16, 2022) (''Southside Bancshares''); WY Bankers; and CCES.

[604] *See, e.g.,* letters from Managed Funds Association (June 17, 2022) (''MFA''); Moody's; TRC; and Inclusive Capital Partners, L.P. (June 24, 2022) (''Inclusive Cap.'').

[605] *See* letter from Amazon.

[606] *See* letter from Chevron (recommending ''a disclosure requirement similar to FASB Accounting Standards Codification (ASC) 932, which requires a standardized measure of discounted future cash flows relating to proved oil and gas reserves quantities, often referred to as the standardized measure of oil and gas, or SMOG'').

[607] *See* 17 CFR 229.1502(g).

[608] *See supra* notes 581–585 and accompanying text. We also note, based on current voluntary reporting, an increasing trend among public companies to use internal carbon pricing. *See* CDP, *Putting a Price on Carbon* (2021), available at *https://cdn.cdp.net/cdp-production/cms/reports/documents/000/005/651/original/CDP_Global_Carbon_Price_report_2021.pdf.*

[609] *See supra* note 600 and accompanying text.

[610] *See* 17 CFR 229.1502(g)(1).

[611] *See* 17 CFR 229.1502(g)(2).

recommended by some commenters,[612] stating that if the scope of entities and operations involved in the use of a described internal carbon price is materially different than the organizational boundaries used for the purpose of calculating a registrant's GHG emissions pursuant to the final rule, the registrant must briefly describe this difference.[613]

We are requiring disclosure of this information because, as commenters noted, it will help investors understand a registrant's internal carbon pricing practice and how such practice has contributed to the registrant's overall evaluation and planning regarding climate-related risk.[614] Increased transparency about internal carbon pricing by registrants that use an internal carbon price to evaluate and manage a material climate-related risk, in particular a material transition risk, will help investors understand the assumptions and analyses made by registrants when determining and managing the likely financial impacts of such risks on the company. Moreover, including a requirement to disclose any material difference in the boundaries used for internal carbon pricing and GHG emissions measurement will help minimize investor confusion about the scope of entities and operations included in a registrant's application of internal carbon pricing and improve transparency about the methodology underlying the use of internal carbon pricing so that investors may better compare such use across registrants.[615]

To streamline the internal carbon price disclosure requirement and to reduce redundancy, we have eliminated the proposed requirement to describe how a registrant uses an internal carbon price to evaluate and manage climate-related risks.[616] If a registrant is required to provide internal carbon pricing disclosure under the final rules, the registrant is likely to describe how it uses an internal carbon price to evaluate and manage a material climate-related risk when responding to other final rule provisions, such as when describing a related transition plan,[617] even if the description of internal carbon pricing is less detailed because it is part of a broader narrative discussion. To further streamline the internal carbon price disclosure requirement, we have eliminated from the final rule the proposed requirements to disclose the rationale for selecting the internal carbon price applied.[618]

By streamlining the internal carbon price disclosure requirement in this way and adding materiality qualifiers, the final rules will help ensure that investors receive material information about the registrant's use of internal carbon pricing to inform their investment and voting decisions while limiting the compliance burden for registrants. Moreover, eliminating the proposed requirement to provide a separate narrative description of how a registrant uses an internal carbon price and the rationale for selecting the internal carbon price applied will help address commenters' concerns that the proposed disclosure requirement would result in the disclosure of confidential or proprietary information and act as a disincentive to using an internal carbon pricing mechanism.[619] We also note that, as with transition plan and scenario analysis disclosure, disclosure of a registrant's use of an internal carbon price will be subject to a safe harbor.[620] Because of these changes to the proposed rule, we believe that it is unnecessary to adopt an exemption or exception to the internal carbon price disclosure requirement, as some commenters recommended,[621] or a separate phase in for the disclosure requirement, as recommended by other commenters.[622]

E. Governance Disclosure

1. Disclosure of Board Oversight (Item 1501(a))

a. Proposed Rules

The proposed rules would have required a registrant to disclose a number of items related to a board of directors' oversight of climate-related risks, largely based on the TCFD framework. First, the Commission proposed to require the identification of any board members or board committees responsible for the oversight of climate-related risks,[623] whether an existing committee, such as the audit committee or risk committee, or a separate committee established to focus on climate-related risks. Next, the proposed rules required detailed disclosure of whether any member of a registrant's board of directors possessed expertise in climate-related risk.[624] Additionally, the proposal required a description of the processes and frequency by which the board or board committee discusses climate-related risks,[625] including disclosure of how the board is informed about climate-related risks, and how frequently the board considers such risks. These proposed disclosure items were intended to afford investors with transparency into how a registrant's board considers climate-related risks and any relevant qualifications of board members.[626]

The proposed rules would also have required disclosure about whether and how the board or board committee considered climate-related risks as part of its business strategy, risk management, and financial oversight.[627] This disclosure was intended to give investors information regarding how the board or board committee considers climate-related risks when reviewing and guiding business strategy and major plans of action; when setting and monitoring implementation of risk management policies and performance objectives; when reviewing and approving annual budgets; and when overseeing major expenditures, acquisitions, and divestitures. The proposed disclosure requirement sought to provide investors with information to assess the degree to which a board's consideration of climate-related risks has been integrated into a registrant's strategic business and financial planning, and its overall level of preparation to maintain its shareholder value.

The proposed rules also would have required disclosure about whether and how the board sets climate-related targets or goals and how it evaluates progress, including the establishment of any interim targets or goals.[628] This proposed requirement was intended to help investors evaluate whether and how a board is preparing to mitigate or adapt to material transition risks. Finally, the proposed rule provided that, if applicable, a registrant may describe the board of directors' oversight of climate-related opportunities.

While the goal of these governance-related proposals was to elicit decision-useful information about the board's oversight of climate-related risks for investors, the proposal neither required nor encouraged any particular board composition or board practices. Similarly, the proposal was not intended to affect how a registrant

[612] *See supra* notes 592–593 and accompanying text.

[613] *See* 17 CFR 229.1502(g)(3).

[614] *See supra* notes 590–591 and accompanying text.

[615] *See, e.g.,* letters from ERM CVS; and PRI.

[616] *See* Proposing Release, section II.C.3.

[617] *See* 17 CFR 229.1502(e).

[618] *See* Proposing Release, section II.C.3.

[619] *See supra* note 596 and accompanying text.

[620] *See infra* section II.J.3.

[621] *See supra* notes 602–603 and accompanying text.

[622] *See supra* note 604 and accompanying text.

[623] *See* Proposing Release, section II.D.1.

[624] *See id.*

[625] *See id.*

[626] *See id.*

[627] *See id.*

[628] *See id.*

operates, at any level, either through management or the board of directors.

b. Comments

A number of commenters supported the Commission's proposed board oversight disclosures.[629] Some of these commenters stated that investors currently lack easily accessible and comparable information regarding how registrants' governance structures contribute to the evaluation and assessment of material climate-related risks,[630] while others stated the proposed rules would allow investors to understand the governance context in which financial results are achieved.[631] One commenter expressed particular support for those aspects of the proposal that aligned with the TCFD framework.[632] Another commenter suggested that registrants should be required to describe board member training, expertise, or skill-building related to the understanding of climate-related financial risks and opportunities.[633]

Other commenters opposed the proposed board oversight disclosures, stating that the proposals were overly prescriptive,[634] duplicative,[635] and should be integrated into existing disclosure requirements.[636] Commenters that opposed the board oversight provisions expressed concern that the proposed rules narrowly focused on board members' climate expertise and could have a negative overall impact on governance by limiting the flexibility of companies to fill limited numbers of board seats with the individuals best suited to a given company's needs, including individuals' suitability to whole-of-the-board undertakings.[637] These commenters stated that registrants may be better served appointing directors with wide ranging expertise rather than technical skills in one particular area.[638] Other commenters stated that the Commission was placing an undue emphasis on board oversight of climate risk, disproportionate to disclosure requirements in other areas.[639] Some commenters asserted that Regulation S–K already requires the disclosure of information that allows for investors to adequately assess a registrant's board of directors[640] while another commenter stated that the Commission should enhance existing disclosure requirements rather than adopt a new rule.[641] Other commenters noted that the proposed rules went beyond the requirements of the TCFD, in particular as it pertains to board-level expertise.[642]

With respect to the proposed requirement to identify any board members or board committees responsible for the oversight of climate-related risks, some commenters were supportive of the proposal.[643] However, many commenters were opposed or expressed concerns about the proposed requirement.[644] Several commenters stated that the identification of key personnel could lead to poaching and would undermine registrant's efforts to retain individuals with climate expertise.[645]

Other commenters highlighted the difficulty that small or specialized companies could face if the proposed disclosure requirement creates pressure to appoint individuals with climate expertise, as it elevates climate expertise at the expense of other skills that are arguably more important to their business.[646]

Some commenters were supportive of the proposal for detailed disclosure of whether any member of a registrant's board of directors possessed expertise in climate-related risk, with some also recommending that the Commission require additional detailed disclosures.[647] For example, one of these commenters suggested that the rules should require disclosure of whether and how the board brings in additional expertise and conducts training for board members.[648] Other commenters, however, asserted that this proposed disclosure requirement would drive registrants to appoint board members with climate expertise, at the potential expense of more relevant areas, and stated that the Commission's rules should not influence registrants' decisions regarding the composition of their boards.[649] Some suggested that this proposed disclosure requirement would result in the expansion of boards, driving up costs for registrants, even those that do not currently have a need for particularized climate-related expertise.[650] Others asserted that, by designating specific board members as having climate-related expertise, the

[629] *See, e.g.,* letters from CalPERS; British Columbia Investment Management Corporation (June 17, 2022) (''BC IM Corp.''); and Mirova US LLC.

[630] *See, e.g.,* letter from NY City Comptroller.

[631] *See, e.g.,* letter from Bloomberg.

[632] *See, e.g.,* letter from Hydro One.

[633] *See, e.g.,* letter from WSP.

[634] *See, e.g.,* letters from Davis Polk; Amer. Bankers; Business Roundtable; and Sullivan Cromwell.

[635] *See, e.g.,* letter from GPA Midstream.

[636] *See, e.g.,* letters from PwC; and Davis Polk (''We believe proposed new Regulation S–K Item 1501(a), covering the board's role in the management of climate-related risk, is overly prescriptive and unnecessary, because any material information that could be captured by the proposed rule is already addressed by Item 407(h) of Regulation S–K, which obligates companies to disclose the extent of the board's role in the company's risk oversight and how the board administers this oversight function.'').

[637] *See* letters from BlackRock (''We believe that robust board oversight with respect to climate requires a whole-of-the-board approach, and the identification of 'specialist' directors is not conducive to a holistic undertaking by the board.''); INGAA (''More fundamentally, the proposed requirement is problematic because the emphasis on climate expertise will have the practical result of elevating climate issues above other business considerations, thus removing the flexibility that companies need to select the right board members for their unique circumstances.''); Sullivan Cromwell (''We believe some of these requirements could harm the overall effectiveness of governance by reducing the flexibility of registrants' boards and management to exercise their judgment on the most appropriate governance framework for responding to climate-related risks and opportunities, and to evolve their approach based on new risks developments.''); and Deloitte & Touche LLP (May 31, 2022) (''Deloitte & Touche'') (''While specific expertise may be valuable in some cases, in general, especially given the limited size of boards, we do not think it is practical for all boards to recruit dedicated experts in each of its critical oversight areas.''). *See also, e.g.,* letters from ACA Connects (June 17, 2022); Airlines for America; Amer. Bankers; API; AGs of TX *et al.;* BPI; CalSTRS; Capital Research; Davis Polk; Energy Transfer LP; IAC Recommendation; NMA; NRF; National Waste & Recycling Association (June 17, 2022) (''NWRA''); Natural Resource Partners LP (June 16, 2022) (''NRP''); and SIFMA.

[638] *See, e.g.,* letters from BIO; and NRP.

[639] *See, e.g.,* letters from Texas Pipeline Association (June 17, 2022) (''TX Pipeline''); American Forest & Paper Association (June 17, 2022) (''AFPA''); API; INGAA; Amer. Chem.; Alliance Resource Partners, L.P (June 17, 2022) (''Alliance Resource'').

[640] *See, e.g.,* CEMEX; and Soc. Corp. Gov.

[641] *See* letter from U.S. Chamber of Commerce (stating that some of the information referenced in proposed Regulation S–K Item 1501 could be provided pursuant to Regulation S–K Item 407(h), which requires disclosure regarding the board's role in the risk oversight of the registrant, including how the board administers its oversight function).

[642] *See, e.g.,* letters from Federated Hermes, Inc (June 17, 2022) (''Fed. Hermes''); MBA; and MFA.

[643] *See, e.g.,* letters from CalPERS; RMI (June 17, 2022); PRI; 60 Plus Association (June 17, 2022) (''60 Plus''); Reward Value Foundation (June 17, 2022) (''RVF''); TotalEnergies; NEI; and Norges Bank.

[644] *See, e.g.,* letters from Risk Management Association's Climate Risk Consortia (June 16, 2022) (''Climate Risk Consortia''); Canadian Bankers Association (June 17, 2022) (''Can. Bankers''); Eni SpA; Sullivan Cromwell; Fenwick West; Dominion Energy; BOA; Citigroup; Unilever; CalSTRS; BlackRock; MFA; IIF; ACLI; Business Roundtable; NRF; RILA; NMA,TX Pipeline, American Property Casualty Insurance Association (June 17, 2022) (''APCIA''); National Grid; Diageo plc (June 17, 2022) (''Diageo''); Davis Polk; Airlines for America; IATA; Corteva, Inc. (June 17, 2022) (''Corteva''); PGIM; GPA Midstream; Energy Transfer; and Shearman Sterling.

[645] *See, e.g.,* letter from RILA.

[646] *See, e.g.,* letter from NRP.

[647] *See, e.g.,* letters from Anthesis; Bloomberg; ICCR; and the Greenlining Institute (June 17, 2022) (''Greenlining Institute'').

[648] *See, e.g.,* letter from ICCR.

[649] *See, e.g.,* letters from United Air Holdings, Fidelity, ICI; U.S. Chamber of Commerce; Targa Resources Corp; Vodafone; Business Roundtable; and SIFMA.

[650] *See, e.g.,* letter from SIFMA.

provision would discourage the full engagement of the board on climate-related matters.[651]

Commenters expressed mixed views on the proposal to describe the processes and frequency by which the board or board committee discusses climate-related risks, including disclosure of how the board is informed about climate-related risks, and how frequently the board considers such risks. One commenter stated that this aspect of the Commission's proposal would help ensure that the board was receiving and processing consistent information on climate-related risk.[652] Others went further, asserting that directors have a fiduciary responsibility to conduct increased oversight of climate-related risks, and that the proposal would require registrants to report whether and how its board was fulfilling these responsibilities.[653] Some commenters stated that this proposed disclosure requirement was too detailed, would invite micromanagement of both the board and management, and be potentially misleading to investors.[654] Commenters also stated that disclosure of when and how often boards meet on climate-related matters could lead to changes in how board time and resources are allocated, without necessarily improving the quality of climate-related risk disclosure.[655] Some commenters pointed out that the Commission does not require registrants to report on how frequently other topics are considered by the board of directors and asserted that requiring the disclosure of this information with respect to climate-related risks would be out of step with other governance disclosure rules.[656] According to these commenters, the proposed disclosure requirements were so prescriptive that they singled out climate-related disclosures for presentation in a level of detail that was not consistent with the Commission's overall disclosure regime. Other commenters stated that the information was simply unnecessary and could lead to boilerplate disclosures.[657] Some commenters cautioned that, by requiring this level of detail, the Commission was inadvertently discouraging companies from engaging in internal decision making that would then have to be disclosed under the proposal.[658]

Regarding the proposal for disclosure on whether and how the board considers climate-related risks as part of its business strategy, risk management, and financial oversight, a number of commenters agreed that registrants should disclose this information as it is currently ''unnecessarily difficult'' for investors to assess whether there is ''effective oversight of risks to firm value, including material environmental risks.'' [659] However, a number of commenters expressed concerns with the granularity of the proposal and urged the Commission to take a less-prescriptive approach more consistent with the Commission's overall disclosure regime.[660] Some commenters urged the Commission to adopt a materiality qualifier to avoid eliciting immaterial or overly granular information and bring the requirements more in line with other required disclosures.[661]

Commenters were divided on the proposal related to disclosure of board oversight of targets and goals, particularly how the board sets such targets and monitors progress. Commenters supportive of the proposal stated that investors need more granular governance disclosures to assess whether the board has sufficient experience in managing dynamic climate-related risk.[662] In contrast, other commenters asserted that the proposal would require the expenditure of significant resources by registrants while offering little in the way of benefit to investors.[663] Other commenters expressed the view that the proposal should focus on management's role in setting targets and goals, given that the board's role is more appropriately focused on monitoring the targets and goals that management sets.[664]

c. Final Rule

We are adopting the proposed requirements to disclose board oversight of climate-related risks (Item 1501(a)), with some modifications to address the concerns of commenters. These disclosures will enhance investors' ability to evaluate a registrant's overall management of climate-related risks by improving their understanding of the board's role in overseeing those risks.[665] The final rule will require a description of a board of directors' oversight of climate-related risks, as proposed.[666] The final rule will also require the identification, if applicable, of any board committee or subcommittee responsible for the oversight of climate-related risks and a description of the processes by which the board or such committee or subcommittee is informed about such risks. Further, if there is a target or goal disclosed pursuant to § 229.1504 or transition plan disclosed pursuant to § 229.1502(e)(1), the final rule will require disclosure of whether and how the board oversees progress against the target or goal or transition plan.[667] These disclosures are not required for registrants that do not exercise board oversight of climate-related risks.

Despite the concerns expressed by several commenters, the proposed rules were not intended to shift governance behaviors, including board composition or board practices. Similarly, the final rules neither seek to influence registrants' decisions about how to manage climate-related risks nor does their design incorporate, reflect, or favor any governance structure or process. Rather, consistent with our statutory authority, the final rules focus on disclosure of registrants' existing or developing climate-related risk governance practices. We recognize that registrants have varied reasons for pursuing different oversight arrangements, and some registrants may reasonably determine that climate-related risks are not among the most pressing issue facing the company. The final rules will provide investors with the information they need to understand and evaluate those oversight arrangements and make informed

[651] *See, e.g.,* letter from Vodafone.

[652] *See, e.g.,* letter from NEI.

[653] *See, e.g.,* letter from Center for International Environmental Law (June 17, 2022) (''CIEL'').

[654] *See, e.g.,* letter from Business Roundtable.

[655] *See, e.g.,* letters from Fidelity; and PGIM.

[656] *See, e.g.,* letter from SIFMA.

[657] *See, e.g.,* letter from Morningstar.

[658] *See, e.g.,* letter from Energy Transfer.

[659] *See* letter from NY City Comptroller. *See also, e.g.,* letters from AFL–CIO; IATP; PRI; 60 Plus; NEI; Vodafone; CalSTRS; CalPERS; BlackRock; Soros Fund; Morningstar; State Street Corporation (June 17, 2022) (''State St.''); and Canadian Investor Relations Institute (June 17, 2022).

[660] *See, e.g.,* letters from Corteva; Energy Transfer; and Soc. Corp. Gov.

[661] *See, e.g.,* letter from Bipartisan Policy Center (June 13, 2022) (''Bipartisan Policy'').

[662] *See, e.g.,* letters from The Ocean Foundation (June 10, 2022) (''Ocean Fnd.''); ICCR; For the Long Term (June 17, 2022); and PRI.

[663] *See, e.g.,* letters from American Securities Association (June 13, 2022) (''ASA''); Morningstar; and PGIM (stating that only registrants with material climate-related exposure should be required to provide detailed disclosure of board management of climate-related risk).

[664] *See, e.g.,* letter from National Association of Corporate Directors (June 13, 2022).

[665] *See, e.g.,* letters from Ceres; PRI; and RMI.

[666] We are also adding Instruction 1 to Item 1501 to clarify that in the case of a foreign private issuer with a two-tier board of directors, the term ''board of directors'' means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of 17 CFR 240.10A–3(c)(3), the term board of directors' means the issuer's board of auditors (or similar body) or statutory auditors, as applicable.

[667] The proposed governance provision stated that a registrant may also describe the board of directors' oversight of climate-related opportunities. As previously mentioned, although the final rules do not contain a similar provision, a registrant may elect to provide such disclosure as part of its governance disclosure.

investment decisions in light of their overall investment objectives and risk tolerance. Furthermore, as stated above, these disclosure requirements apply to those registrants the boards of which exercise oversight of climate-related risks; no disclosure is required for registrants that do not have information responsive to the disclosure requirements.

We are not adopting some of the more prescriptive elements of the proposal in response to commenter concerns. Specifically, we are eliminating the proposed requirements to disclose:

- The identity of specific board members responsible for climate-risk oversight;
- Whether any board member has expertise in climate-related risks and the nature of the expertise;
- How frequently the board is informed of such risks; and
- Information regarding whether and how the board sets climate-related targets or goals, including interim targets or goals.

While the proposal would have required this disclosure only to the extent applicable, we appreciate the concerns of some commenters who stated that these elements of the proposal could have unintended effects on the registrant's governance structure and processes by focusing on one area of risk at the expense of others. In addition, some commenters raised concerns that the level of detail required by the proposal would cause registrants to divulge sensitive internal board processes. It may be that a registrant, in describing ''the board of directors' oversight of climate-related risks,'' will find it necessary to disclose, or otherwise choose to disclose, some or all of the information called for by the proposal. But, by adopting a more streamlined rule, we intend to eliminate any misperception that this information is required for all registrants, particularly those without existing processes or information to disclose.

We are, however, adopting the proposed requirement to identify any board committee or subcommittee responsible for the oversight of climate-related risks, if a registrant has such a committee or subcommittee. This information is important to an understanding of how the board is managing such risk and will not be burdensome to disclose. Moreover, the provision simply requires the registrant to identify any committee or subcommittee that has been tasked with managing climate-related risks and is not designed to influence decisions about whether and how the board allocates responsibility for oversight of such risk. We are also adopting a requirement, albeit modified from the proposal, to describe whether and how the board of directors oversees progress against disclosed climate-related targets, goals, or transition plans. By tying this disclosure requirement to circumstances in which the registrant has a disclosed climate-related target, goal, or transition plan, the final rule will avoid generating detailed disclosure about matters that are not important to investors. In addition, in light of commenter concerns regarding the proposed disclosure of whether and how the board of directors establishes any final or interim targets or goals,[668] we are omitting this requirement from the final rule. Overall, the less prescriptive approach to disclosure in the final rule will facilitate investors' understanding of how a registrant intends to manage a target or goal that is material to its business while discouraging boilerplate disclosures and avoiding any unintended adverse effects on the board's governance structures.

We are also adopting the proposed requirement to describe the processes by which the board or any board committee or subcommittee is informed about climate-related risks, while eliminating the requirement to describe the frequency of these discussions. While some commenters stated that it would be helpful to investors for registrants to disclose both the processes and frequency of these discussions,[669] other commenters expressed concern that this disclosure will shift governance behavior.[670] The final rules balance investors' need to understand the board's governance of climate-related risks in sufficient detail to inform an investment or voting decision with concerns that the proposal could inadvertently pressure registrants to adopt specific or inflexible climate-risk governance practices or organizational structures or otherwise influence the conduct of the board. By retaining the requirement to disclose the process by which the board is informed, investors will have meaningful information that they can use to assess the conduct of boards in dealing with climate-related risks while avoiding overly detailed or granular disclosures that could unduly influence such processes.

Although some commenters asserted that registrants may feel pressure to appoint certain individuals with climate expertise,[671] we reemphasize that the Commission remains agnostic about whether and/or how registrants govern climate-related risks. Registrants remain free to elect whether and how to establish or retain the procedures and practices that they determine best fit their business. The focus of the final rules remains on investor protection and improving investors' access to comparable and consistent climate-related disclosures. The final rules are focused on disclosure and do not require, and are not formulated to prompt, registrants to change their governance or other business practices.

We are not, as suggested by some commenters, adopting a materiality qualifier for this portion of the final rule. As discussed above, we have revised the final rule from the proposal to make the disclosure requirement less prescriptive. As such, registrants will have additional flexibility to determine how much detail to provide about the board's oversight of climate-related risk. These revisions help mitigate some commenters' concerns that the rule will require disclosure of immaterial information. The specific information called for by the final rule will provide important context for an investor to evaluate the extent to which the board is evaluating climate-related risks. If a board of directors determines to oversee a particular risk, the fact of such oversight being exercised by the board is likely material to investors given other demands on the board's time and attention.[672] Moreover, unlike management, which likely oversees many more routine matters, some of which may not be material to investors, we expect that any risks elevated to the board level will be material to the company and limited in number. Accordingly, we do not believe that a materiality qualifier is necessary for this provision.

2. Disclosure of Management Oversight (Item 1501(b))

a. Proposed Rules

Similar to the proposed disclosures on board oversight, the proposed rules would have required a registrant to disclose a number of items, as applicable, about management's role in the assessment and management of climate-related risks. First, the Commission proposed to require registrants to disclose whether certain management positions or committees are responsible for assessing and managing climate-related risks and, if so, to identify such positions or

[668] *See supra* note 663 and accompanying text.

[669] *See, e.g.,* letters from FTLT; Morningstar; and PRI.

[670] *See supra* note 655.

[671] *See supra* note 646.

[672] See discussion *infra* section II.E.2.c (regarding our reasons for adding a materiality qualifier to Item 1501(b)).

committees and disclose the relevant expertise of the position holders or members in such detail as necessary to fully describe the nature of the expertise.[673] This proposed requirement was intended to better inform investment or voting decisions by providing information on the extent to which management addresses climate-related risks. Additionally, the proposed rules would have required disclosure about the processes by which the responsible managers or management committees are informed about and monitor climate-related risks.[674] Finally, the proposed rule would have also required disclosure about whether the responsible positions or committees report to the board or board committee on climate-related risks and how frequently this occurs.[675] These proposed disclosure items were intended to help investors understand management's processes to identify, assess, and manage climate-related risks. Under the proposal, if applicable, a registrant also could elect to describe management's role in assessing and managing climate-related opportunities.

b. Comments

Many commenters generally supported the proposed requirement to disclose management oversight of climate-related risks,[676] and expressed support for the proposed requirement to describe management's role in assessing and managing climate-related risks.[677] These commenters stated that investors are interested in procuring comprehensive and standardized information that allows for an examination of how management monitors and assesses climate-related risk. Some supportive commenters stated that there is currently a lack of detailed and available information on how registrants manage climate-related risks.[678] Commenters were generally supportive of the proposals that aligned with the TCFD, including the proposal to require a description of management's role in assessing and managing climate-related risks.[679] A few commenters also recommended that the final rule require more detailed disclosure, including organizational diagrams so that reporting lines to the executive management and board of directors are disclosed[680] and information about executive management remuneration linked to climate-based incentives.[681]

By contrast, some commenters expressed concerns that the proposals were overly prescriptive, and would require disclosure of potentially proprietary and sensitive information about management structure and individual employees.[682] These commenters further expressed concerns that disclosure of such information would cause competitive harm.[683] Another commenter stated that the Commission could elicit more helpful information by adopting a principles-based approach that would allow registrants to tailor disclosures to their specific business, thereby avoiding unnecessary reporting burdens and the production of boilerplate language that provides little value to investors.[684]

With respect to the proposed requirement to describe management's role in assessing and managing climate-related risks, some commenters emphasized how critical this information is to investors, explaining that the current lack of transparent and standardized information prevents investors from assessing the operating environments of the companies in which they invest.[685] Another commenter stated that the requirement would be unduly burdensome for many companies, particularly smaller companies that either do not maintain a large management team or have not established formalized internal controls to produce the proposed disclosures on climate-related risks.[686]

Commenters expressed mixed views about the proposal to require disclosure of the management positions or committees responsible for assessing and managing climate-related risks and the identity of such positions or committees. Some commenters were concerned that the disclosure of management positions or committees could reveal proprietary information about the internal structure of registrants.[687] On the other hand, some commenters emphasized the relevance of these proposed disclosures,[688] with many of these commenters explicitly tying this information to the need for transparency about compensation practices.[689] Supportive commenters also emphasized that the proposed disclosure requirements would allow investors to evaluate the capabilities and preparedness of a company's executive management, who are often tasked with incorporating climate-related risk management into business practices and decisions.[690] One commenter indicated that this proposal would provide different information to investors than the proposed information about boards, as it would allow investors to understand the operational expertise and accountability that exists in relation to how a registrant is overseeing such risk.[691] Commenters stated that investors are seeking particularized information about management's role in dealing with climate-related risks given that effective oversight requires business-level understanding of these risks.''[692]

Some commenters supported the proposed requirement to disclose the relevant expertise or identity of management position holders or members responsible for managing climate related risk, stating that such disclosures would provide investors with a general understanding of how management's climate expertise is deployed, as well as whether and how climate-related risk is integrated in the organization.[693] In contrast, many commenters stated that this disclosure would require registrants to publish

[673] *See* Proposing Release, section II.D.2.

[674] *See id.*

[675] *See id.*

[676] *See, e.g.,* letters from RMI; PRI; IAA; CFA; Beller *et al.;* HP; Uber; BHP; Etsy; UAW Retiree Medical Benefits Trust (June 17, 2022) (''UAW Retiree''); ICGN; AIMco, BCI, CDPQ, HOOP, IMCO, OMERS, OTPP, PSP, UPP (June 17, 2022) (''BCI, *et al.*''); US SIF; Seventh Generation Interfaith, Inc. (June 16, 2022) (''Seventh Gen.''); AllianceBernstein.; SKY Harbor; Paradice Invest. Mgmt.; Wellington Mgmt.; Bailard, Inc. (June 14, 2022) (''Bailard''); Harvard Mgmt.; IIF; BNP Paribas; Rick Love (March 30, 2022); NY City Comptroller; GHGSAT; J. Herron; California Farm Bureau (June 17, 2022) (''CFB''); Richard Bentley (May 21, 2022) (''R. Bentley''); D. Higgins; Richard Burke (May 20, 2022) (''R. Burke''); ICI; Anthesis; Canadian Post Corporation Pension Plan (June 17, 2022) (''Can. PCPP''); WSP USA (June 17, 2022) (''WSP''); Arjunal; Ecofin; Fiduciary Trust International (June 17, 2022); and Can. IRI.

[677] *See, e.g.,* letters from Ocean Fnd.; PRI; Harvard Mgmt.; and WSP.

[678] *See, e.g.,* letters from Climate First Bank; and Bailard.

[679] *See, e.g.,* letters from ICI; and Harvard Mgmt.

[680] *See* letter from Morningstar.

[681] *See, e.g.,* letters from RVF; Can. PCPP; IEEFA (May 10, 2022) (stating that ''[t]he linkage of executive compensation to climate-related goals is a significant indicator to investors that the company is serious about climate change,'' and noting that IFRS sustainability disclosure protocols require disclosure of such linkage); AllianceBernstein; BCI, *et al.;* CalSTRS; CalPERS; I. Millenaar; and T. Sanzillo.

[682] *See, e.g.,* letters from Airlines for America; BPI; and MFA.

[683] *See, e.g.,* letter from Amer. Chem.

[684] *See* letter from Sullivan Cromwell (''Requiring registrants to disclose governance and risk management information with more granularity inappropriately places greater emphasis on climate risk oversight compared to the oversight of other business risks that are equally (and in some cases, more) deserving of the attention of a registrant's board and management.'').

[685] *See, e.g.,* letter from CFA.

[686] *See, e.g.,* letter from NRP.

[687] *See, e.g.,* letters from AFPA; BlackRock.

[688] *See, e.g.,* letter from PRI.

[689] *See, e.g.,* letters from CFA; and Nia Impact Capital (June 15, 2022) (''Nia Impact'').

[690] *See, e.g.,* letter from D. Higgins.

[691] *See, e.g.,* letter from RMI.

[692] *See, e.g.,* letters from RMI; and Ocean Fnd.

[693] *See, e.g.,* letters from PRI; and NEI.

detailed descriptions of in-house staff and management's reliance on such staff.[694] Other commenters asserted that the universe of climate-related experts is limited, and that the proposed requirements would increase the competition for executives with climate-related expertise.[695] Some commenters further asserted that the proposed rules would encourage the recruitment of climate experts, who are already scarce, and constrain registrants' ability to produce climate disclosures and institute climate-related strategies.[696] Other commenters were skeptical of the value added by disclosing the relevant expertise or identity of management, stating that these positions turn over frequently and more generalized disclosures of the management process would afford investors with better quality information.[697]

Many commenters were supportive of the proposal to require registrants to describe the processes by which the management positions or committees responsible for climate-related risks are informed about and monitor climate-related risks.[698] These commenters stated that this information was highly relevant to and sought after by investors, and would provide the kind of detailed and standardized information that is currently unavailable in current disclosures.[699] Other commenters expressed concerns regarding the utility of this information.[700] Some commenters stated that, by requiring this kind of disclosure, the Commission was placing an undue priority on climate-related risks above other more pressing business risks.[701] Other commenters stated that a high-level summary of the management of material climate-related risks was sufficient and would avoid the expense of producing excessive and unnecessary information.[702] In addition, commenters representing smaller registrants or registrants in particular industries stated that their management of climate-related risks are appropriately tailored to their size and scale and asserted that the proposed rule unduly pressures such registrants into a one-sized-fits-all approach.[703]

Commenters were divided on the proposal to require disclosure of whether and how frequently such positions or committees report to the board or a committee of the board on climate-related risks. Commenters supportive of the proposal stated that the disclosure would allow investors to analyze how boards integrate climate-related information into the overall risk management structure and how this information affects decision-making.[704] Other commenters suggested that this disclosure would drive unwelcome changes in current business practice and structure, potentially diverting attention and resources away from other material risks or other matters.[705]

Commenters also provided views on the proposal to allow, but not require, registrants to disclose the board's oversight of, and management's role in, assessing and managing climate-related opportunities. While some commenters supported allowing such disclosure to be optional and not mandatory,[706] others indicated that how companies are responding to highly dynamic opportunities is material information and therefore should be required to be disclosed.[707] One commenter stated that climate-related opportunity reporting is likely to be adopted in both the EU and UK, and therefore, to streamline mandatory disclosures for dually-listed companies, the commenter recommended that the Commission require this disclosure, except for opportunities unrelated to a registrant's principal line of business.[708]

c. Final Rule

We are adopting the proposed requirement to disclose management oversight of climate related risks (Item 1501(b)) with some modifications to address the concerns of commenters. The final rules will, like the proposed rules, require that registrants describe management's role in assessing and managing climate-related risks. As commenters stated, investors need information about how management-level staff assess and manage material climate-related risks to make informed investment and voting decisions. However, we are limiting the disclosure required by this final rule provision to material climate-related risks, as suggested by commenters,[709] given the multitude of climate-related matters that may be overseen by management. The final rules also specify that a registrant should address, as applicable, the following non-exclusive list of disclosure items when describing management's role in assessing and managing the registrant's material climate-related risks:

- Whether and which management positions or committees are responsible for assessing and managing climate-related risks, and the relevant expertise of such position holders or committee members in such detail as necessary to fully describe the nature of the expertise;
- The processes by which such positions or committees assess and manage climate-related risks; and
- Whether such positions or committees report information about such risks to the board of directors or a committee or subcommittee of the board of directors.

The non-exclusive list of disclosures in Item 1501(b) should help elicit specific information about management's oversight of climate-related risks and thereby mitigate any tendency towards boilerplate disclosures. At the same time, by focusing the disclosure on management's role in assessing and managing material climate-related risks, the final rules will provide registrants with the flexibility to tailor the disclosures based on their particular governance structure. Given these changes, we believe the final rule appropriately balances investors' needs for information to understand management's involvement in assessing

[694] *See, e.g.,* Can. Bankers.

[695] *See, e.g.,* letters from ABA; Fed. Hermes; ICI; RILA; Sullivan Cromwell; and Wellington Management Company.

[696] *See, e.g.,* letter from Can. Bankers (arguing ''Highlighting reliance on these experts will . . . lead to potential poaching issues that could further inhibit registrants' ability to comply with climate disclosures and to implement climate strategies.'').

[697] *See, e.g.,* letters from RILA; and ICI.

[698] *See, e.g.,* letters from GHGSAT; NY City Comptroller; Anthesis; and J. Brendan Herron.

[699] *See, e.g.,* letters from TotalEnergies; and Greenlining Institute.

[700] *See, e.g.,* letters from Corteva; IC; and AFPA.

[701] *See, e.g.,* letters from Charles Franklin (Nov. 1, 2022); Southside Bancshares; and BIO.

[702] *See, e.g.,* letters from GPA Midstream (''While we agree with the Commission that general information on governance, such as identification of the committee or committees responsible for addressing climate-related risks, may be relevant information for investors, we disagree with the level of detail called for by the Proposed Rules.''); and PwC (''Focusing on information that the registrant's management uses to make strategic decisions—instead of a broad requirement to disclose 'any' climate-related risks—would improve the usefulness of the disclosures and provide additional insight to investors, while simultaneously reducing the burden on registrants.'').

[703] *See, e.g.,* letters from Southside Bancshares; BIO; and NRP.

[704] *See, e.g.,* letters from PRI; NY City Comptroller; CIEL; Greenlining Institute; TotalEnergies; NEI; J. Brendan Herron; ICI; Canadian Coalition for Good Governance (June 16, 2022) (''Can. Coalition GG''); Anthesis; WSP; Fed. Hermes; and Ocean Fnd.

[705] *See, e.g.,* letters from Alliance Resource; NRP; The Sustainability Board Report; Corteva, Inc.; Energy Transfer LP; Center for Climate and Energy Solutions; IIF; AFPA; PGIM; Southside Bancshares; IC; GPA Midstream; AALA; D. Burton, Heritage Fdn.; and Akin Gump Strauss Hauer & Feld LLP.

[706] *See, e.g.,* letter from CEMEX.

[707] *See, e.g.,* letter from CHRE and Institute for Governance & Sustainable Development.

[708] *See, e.g.,* letter from We Mean Business Coalition (June 13, 2022) (''We Mean Business'').

[709] *See, e.g.,* letters from MFA; and RILA.

and managing material climate risks with concerns that a more prescriptive rule could have adverse consequences on registrants' governance practices or organizational structures.

We reiterate, as we did above with respect to our rules requiring disclosure of board oversight of climate-related risks, that the final rule does not seek to influence decisions about how to manage climate-related risks or otherwise change registrant behavior. Rather, the final rule seeks to elicit disclosure about existing oversight practices that will allow investors to make better informed judgments about registrants' oversight processes and mechanisms in light of their overall investment objectives and risk tolerance. Furthermore, the final rule does not require registrants that do not engage in the oversight of material climate-related risk to disclose any information.

We are mindful of the suggestions of some commenters that we adopt additional requirements to disclose information related to management oversight of climate-related risks, including descriptions of internal positions and reporting structures and detailed information about climate-based remuneration. However, consistent with our overall goal to streamline the proposed requirements and to focus on management's oversight of material climate-related risk, we are not including such additional disclosure elements in the final rule.[710]

We are adopting the proposal requiring a description of the relevant expertise of position holders or members responsible for assessing and managing climate-related risk.[711] While we considered the view of commenters that this could cause registrants to feel compelled to find and hire management with such expertise, regardless of whether that is the most sensible use of managerial resources given the registrant's particular facts and circumstances, the added qualification that disclosure is only required where the risk is material mitigates this concern. We agree with commenters that asserted that this information will be helpful to understanding a registrant's ability to manage climate-related risks given the direct role that management will play in overseeing any such risks yet emphasize that registrants are required to make this disclosure only if they have identified a material climate risk.

As noted above, the final rule has been modified to eliminate many of the prescriptive disclosure elements from the proposal, and it instead provides a non-exclusive list of the types of disclosures that a registrant should include, as applicable, when describing management's role in assessing and managing the registrant's material climate-related risk. For example, if applicable, registrants should describe the processes by which certain positions or committees are informed about and monitor climate-related risks. A process-based description of management's governance of material climate-risks can offer investors a meaningful look at how registrants manage material climate-related risks. Registrants should also disclose, if applicable, whether management reports to the board or a subcommittee of the board on climate-related risks. Elimination of the proposed requirement to disclose how frequently the board meets to discuss climate-related matters, as discussed above, addresses commenters' concerns that this disclosure, if provided, could divert limited resources from the consideration of other material risks and encourage changes to business practices. Nonetheless, information on whether management reports to the board can provide needed clarity on the connection between board and management level governance of climate-related risks, and accordingly, we have retained it as an example of the type of disclosure that might be responsive to the rule. We have also added a reference to a subcommittee of the board because some registrants may establish a subcommittee to focus on climate-related issues.

Finally, as noted above,[712] we are not adopting the proposed rule that would have allowed, but did not require, registrants to describe management's role in assessing and managing climate-related opportunities. As with other voluntary disclosure, registrants may elect to include such disclosure. While we recognize that some commenters recommended that such disclosure be mandatory, we have determined to treat the disclosure regarding climate-related opportunities as optional, among other reasons, to allay any anti-competitive concerns that might arise from a requirement to disclose a particular business opportunity.[713]

These changes will also help address the concerns expressed by some commenters, including from smaller reporting companies and registrants in certain industries,[714] that the proposed rules would unduly pressure such registrants into a one-sized-fits-all governance approach given the line of business, size, and structure of their companies.[715] While we disagree with one commenter's suggestion that the proposal would "mandate that every company in the United States be required to expand management structures in order to accommodate concerns that are not material to a company,"[716] shifting to a non-exclusive list of topics that a registrant should address, as applicable, will mitigate the concerns raised by some commenters that the prescriptiveness of the proposed disclosures could lead to such a result. In addition, the flexibility afforded to registrants under the final rule to determine which details about management's oversight of climate-related risks to include in their disclosure will help alleviate concerns that the proposal would elevate climate-related disclosures above other, equally important, disclosures. Furthermore, as stated above, the final rule does not impose any disclosure requirements on registrants that do not exercise management oversight of climate-related risks.

F. Risk Management Disclosure (Item 1503)

1. Proposed Rule

The Commission proposed to require a registrant to describe any processes the registrant has for identifying, assessing, and managing climate-related risks.[717] The Commission stated that

[710] Although we are not adopting specific requirements related to executive management remuneration linked to climate-based incentives, to the extent a climate-related target or goal or other measure is a material element of a registrant's compensation of named executive officers, such information is required to be disclosed under Item 402(b) of Regulation S–K.

[711] Further, we are adding Instruction 2 to Item 1501 to clarify that relevant expertise of management in Item 1501(b)(1) may include, for example: prior work experience in climate-related matters; any relevant degrees or certifications; any knowledge, skills, or other background in climate-related matters.

[712] *See* section II.C.1.c.

[713] *See* Proposing Release, section II.A.1.

[714] *See, e.g.,* letter from BIO.

[715] *See, e.g.,* letter from Chamber ("We believe the Proposed Rule, if adopted, would create a board oversight and risk management structure that not only makes little sense for certain companies but could harm investors in companies that have no need for such extensive oversight of climate risk. The Proposed Rule, if adopted, would present a costly distraction for companies with limited resources (particularly small-cap and many mid-cap companies) to attempt to align their behavior and disclosures with those of other companies that similarly felt pressured by the rule to adapt their behavior to what appears to be the SEC's preferred response to climate-related risks.").

[716] *See* letter from BIO.

[717] *See* Proposing Release, section II.E.1. As previously noted, *see supra* note 464, the Commission proposed to require transition plan disclosure in connection with a registrant's risk management discussion. *See* Proposing Release, section II.E.2. The final rule includes transition

more granular information regarding climate-related risk management could allow investors to better understand how a registrant identifies, evaluates, and addresses climate-related risks that may materially impact its business.[718] Such information could also permit investors to ascertain whether a registrant has integrated the assessment of climate-related risks into its regular risk management processes.[719]

The rule proposal would have required a registrant, when describing the processes for identifying and assessing climate-related risks, to disclose, as applicable, how the registrant:

- Determines the relative significance of climate-related risks compared to other risks;
- Considers existing or likely regulatory requirements of policies, such as GHG emissions limits, when identifying climate-related risks;
- Considers shifts in customer or counterparty preferences, technological changes, or changes in market prices in assessing potential transition risks; and
- Determines the materiality of climate-related risks, including how it assesses the potential size and scope of any identified climate-related risk, such as the risks identified in response to proposed Item 1502.[720]

The rule proposal also required a registrant, when describing any processes for managing climate-related risks, to disclose, as applicable, how the registrant:

(a) Decides whether to mitigate, accept, or adapt to a particular risk;

(b) Prioritizes addressing climate-related risks; and

(c) Determines how to mitigate a high priority risk.[721]

The rule proposal further required a registrant to disclose whether and how climate-related risks are integrated into the registrant's overall risk management system or processes.[722] If a separate board or management committee is responsible for assessing and managing climate-related risks, the rule proposal required a registrant to disclose how that committee interacts with the registrant's board or management committee governing risks.[723] The Commission explained that these proposed disclosures would help investors assess whether the registrant has centralized the processes for managing climate-related risks, which may indicate to investors how the board and management may respond to such risks as they unfold.[724]

2. Comments

Many commenters supported the proposed rule requiring registrants to describe any processes in place for identifying, assessing, and managing climate-related risks.[725] Commenters stated that investors would use the risk management disclosures to evaluate an issuer's readiness for confronting climate-related risks.[726] Commenters also stated that the proposed risk management disclosure requirement would improve the quality of the disclosures that registrants currently provide on a voluntary basis.[727] Commenters further stated that the proposed risk management disclosure requirement is aligned with the TCFD's recommended disclosures regarding risk management, with which many registrants are already familiar.[728]

Other commenters generally opposed the proposed risk management disclosure requirement.[729] Commenters objected to the prescriptiveness of the proposal, which they stated would result in overly granular disclosure that may not be relevant to a registrant's particular business or industry and, therefore, may not be material for investors.[730] Commenters also stated that the prescriptive nature of the rule proposal may result in the disclosure of commercially sensitive and strategic information.[731] These commenters urged the Commission to adopt a more principles-based approach that would allow registrants to avoid the disclosure of commercially sensitive or proprietary information.[732]

Some commenters opposed the proposed risk management disclosure requirement because they believed that the Commission's existing rules already require the disclosure of material risks and how the registrant is managing them.[733] Other commenters stated that the Commission's proposed climate-related risk management disclosure provision deviated from the Commission's disclosure requirements for other risk categories and placed undue emphasis on climate-related matters.[734] Additionally, some commenters expressed general opposition to the proposed disclosure requirements, including risk management disclosures, because of concerns about the resulting compliance burden and costs.[735]

Several of the commenters that supported the risk management disclosure proposal also expressed support for the proposal's discrete disclosure items.[736] For example, one commenter supported requiring the disclosure of how a registrant determines the relative significance of climate-related risks compared to other risks, how it determines the materiality of climate-related risks, and how it considers various factors, such as existing or prospective regulatory requirements or policies, shifts in customer or counterparty preferences, technological changes, and changes in market prices, in assessing potential transition risks, and specifically mentioned that such disclosures are recommended by the TCFD.[737] Another commenter stated that requiring disclosure of how a company determines the importance of climate-related risks would be useful to investors, as this determination provides the foundation for all other climate-related considerations.[738]

plan disclosure as part of a registrant's disclosure about climate-related risks and their impact on the registrant's strategy. We discuss transition plan disclosure requirements above in section II.D.2.

[718] *See* Proposing Release, section II.E.1.

[719] *See id.*

[720] *See id.*

[721] *See id.*

[722] *See id.*

[723] *See id.*

[724] *See id.*

[725] *See, e.g.,* letters from AGs of Cal. *et al.;* Amer. for Fin. Reform, Sunrise Project *et al.;* Anthesis; Bloomberg; BNP Paribas; BOA; CalPERS; Center Amer. Progress; Ceres; CFA; C2ES; Eni SpA; Friends Fiduciary Corporation (June 17, 2022) (''FFC''); Grant Thornton; Morningstar; IAC Recommendation; NY St. Comptroller; PRI; PwC; SKY Harbor; TotalEnergies; and US SIF.

[726] *See, e.g.,* letters from AGs of Cal. *et al.;* CFA; and Morningstar.

[727] *See, e.g.,* letters from Bloomberg; and PRI.

[728] *See, e.g.,* letters from Center Amer. Progress; C2ES; and US SIF. We note that other commenters that approved of the proposed risk management disclosure requirements also supported aligning the Commission's climate disclosure requirements generally with the TCFD recommendations because it would help elicit consistent, comparable, and reliable disclosure for investors. *See, e.g.,* letters from Bloomberg; CalPERS; and PRI.

[729] *See, e.g.,* letters from Airlines for America; BIO; Business Roundtable; CEMEX; Chamber; Davis Polk; Dominion Energy; Fenwick & West; GPA Midstream; J. Herron; RILA; and Soc. Corp. Gov.

[730] *See, e.g.,* letters from BIO; Chamber; Dominion Energy; GPA Midstream; J. Herron; RILA; and Soc. Corp. Gov.

[731] *See, e.g.,* letters from Airlines for America; Business Roundtable; CEMEX; and Dominion Energy.

[732] *See, e.g.,* letters from Airlines for America; BOA; Business Roundtable; and Soc. Corp. Gov.

[733] *See, e.g.,* letters from BIO; CEMEX; and Dominion Energy.

[734] *See, e.g.,* letters from Airlines for America; Davis Polk; Dominion Energy; RILA; and Soc. Corp. Gov.

[735] *See, e.g.,* letters from CEMEX; Davis Polk; GPA Midstream; Fred Reitman (June 16, 2022) (''F. Reitman''); and J. Weinstein.

[736] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* C2ES; ICI; Morningstar; PRI; TotalEnergies; and WSP.

[737] *See* letter from Anthesis. *See also supra* note 728.

[738] *See* letter from PRI (stating that the determination of how a company determines the importance of climate-related risks ''will then go on

Continued

Relatedly, one commenter stated that it needs transparent disclosure regarding how companies are determining the materiality of climate-related risks in order to evaluate issuer risks properly.[739] Another commenter stated that how a registrant determines the materiality of climate-related risks is important for investors to understand because it helps set the necessary context for all of the other climate-related disclosures.[740]

Commenters also supported the proposed requirement to describe how the registrant considers existing or likely regulatory requirements or policies, such as GHG emissions limits, when identifying climate-related risks.[741] One commenter stated that this would provide information about an important transition-related risk.[742] Another commenter stated that this type of information, among others, would help investors evaluate whether a company has implemented adequate processes for identifying, assessing, and managing climate-related risks.[743]

For similar reasons, some commenters supported the proposal requiring a registrant to disclose how it considers shifts in customer or counterparty preferences, technological changes, or changes in market prices in assessing potential transition risks.[744] Certain commenters, while supportive of the proposal, stated that the Commission should go further and also afford registrants the ability to provide additional disclosures, such as regarding how climate-related technological and customer shifts are being managed, minimized, tracked over time, and reported on regularly.[745]

Many commenters supported the proposal to require a registrant to disclose how it decides whether to mitigate, accept, or adapt to a particular climate-related risk.[746] One of these commenters stated that this information would help investors evaluate whether a company has implemented adequate processes for identifying, assessing, and managing climate-related risks.[747] Many commenters similarly supported the Commission's proposal to require disclosure of how registrants prioritize climate-related risks and how they determine to mitigate a high priority risk.[748] Commenters indicated that information concerning how the registrant prioritizes climate-related risks vis-à-vis other risks that the registrant is managing would be particularly useful.[749] One commenter stated that disclosure of a registrant's rationale for pursuing capital expenditures for managing certain climate-related risks would be beneficial for investors to better assess the company's capital allocation.[750] Other commenters emphasized that since investors must depend on issuers' assessment of their own significant or material climate-related risks, the proposed disclosure requirements would allow investors to understand how issuers reach these conclusions.[751]

Many commenters also supported the proposed disclosure requirement concerning whether and how climate-related risk management processes are integrated into a registrant's overall risk management system.[752] One commenter stated that information about how a registrant integrates its climate risk management processes into its overall risk management system is essential to understanding the effectiveness of those climate risk management processes.[753] Another commenter stated that disclosure regarding how a registrant's identified material climate-related risks are ''integrated into its company-wide enterprise risk management framework [would] allow for comparability of climate risks with other financial and non-financial risks.'' [754] Yet another commenter stated that information about whether a registrant has centralized its climate-related risk management into its regular risk management processes is decision-useful for investors because the disintegration of climate-related risks from other risks signals insufficient competence in managing the financial implications of climate-related matters.[755] One commenter expressed support for the proposed risk management disclosure provision but cautioned that registrants should not be required to speculate about future restructurings, write-downs, or impairments related to climate risks or disclose any trade secrets or confidential business information in their climate-related risk management disclosures.[756]

Several commenters opposed the proposed risk management disclosure requirement because of the detailed items that a registrant would be required to address when describing the processes used to identify, assess, and manage climate-related risks and how those processes are integrated into the registrant's overall risk management system.[757] One commenter stated that the proposed disclosure requirement could cause investors to overestimate climate-related risks and improperly contextualize the materiality of those risks.[758] Another commenter stated that the proposed disclosure requirement was redundant because such information already must be included in annual reports.[759] Other commenters expressed concern that the proposed disclosure requirement called for unnecessarily detailed, confidential, and proprietary information.[760] Some commenters also asserted that the proposed itemized risk management disclosure requirements go well beyond the TCFD framework, which one commenter stated would ''not provide a material benefit to investors and in fact may harm the public markets by creating undue costs on issuers to produce such information.'' [761] Other commenters criticized the proposed risk management disclosure provision for not including materiality qualifiers and not being more principles-based, and cautioned that the prescriptiveness of the rule proposal would lead to boilerplate language that would not provide decision-useful information to investors.[762]

3. Final Rule

After considering the comments received, we are adopting a requirement (Item 1503), modified from the proposal

to dictate how management and the board consider climate-related risks as part of governance, [and] whether management sets climate related targets or uses other tools such as scenario analysis'').

[739] *See* letter from Calvert.

[740] *See* letter from WSP.

[741] *See, e.g.,* letters from ICI; PRI; and TotalEnergies.

[742] *See, e.g.,* letter from WSP.

[743] *See, e.g.,* letter from ICI.

[744] *See, e.g.,* letters from C2ES; ICI; PRI; TotalEnergies; and WSP.

[745] *See, e.g.,* letter from C2ES.

[746] *See, e.g.,* letters from CalPERS; C2ES; ICI; PRI; Morningstar; TotalEnergies; and WSP.

[747] *See* letter from ICI.

[748] *See, e.g.,* letters from ICI; Morningstar; TotalEnergies; and WSP.

[749] *See, e.g.,* letters from C2ES; and WSP.

[750] *See* letter from CalPERS.

[751] *See, e.g.,* letters from Earthjustice (June 17, 2022); and RMI.

[752] *See, e.g.,* letters from Anthesis; Eni SpA; ICI; Morningstar; NY St. Comptroller; PRI; Verena Rossolatos (June 8, 2022) (''V. Rossolatos''); SKY Harbor; TotalEnergies; and WSP.

[753] *See* letter from Morningstar; *see also* letter from PRI (stating that understanding the extent to which risk management disclosure on climate-related issues is integrated into a company's overall risk management process is essential for investors).

[754] *See* letter from Anthesis.

[755] *See* letter from V. Rossolatos.

[756] *See* letter from BOA.

[757] *See, e.g.,* letters from Chamber; International Energy Credit Association (June 17, 2022) (''IECA''); MFA; Soc. Corp. Gov; and J. Weinstein.

[758] *See, e.g.,* letter from Alliance Resource.

[759] *See, e.g.,* letter from CEMEX.

[760] *See, e.g.,* letter from Business Roundtable.

[761] *See, e.g.,* letters from MFA; and Soc. Corp. Gov.

[762] *See, e.g.,* letters from Chamber; IECA; and J. Weinstein.

as discussed below, to describe any processes the registrant has for identifying, assessing, and managing material climate-related risks.[763] We agree with those commenters that stated investors need more comprehensive disclosure of registrants' climate-related risk management practices to inform their investment and voting decisions.[764] Because climate-related risks can have material impacts on a registrant's business, it is important for investors to have information available to them so that they can understand how a registrant identifies, assesses, and manages any such risks. At the same time, we are mindful of commenters' suggestions, both for this risk management disclosure in particular and climate-related disclosures more generally, that the Commission promulgate rules that allow registrants to tailor the disclosure of material climate-related risks and related management practices to their own particular facts and circumstances.[765] Accordingly, we are adopting a less prescriptive approach that focuses on a description of processes for identifying, assessing, and managing *material* climate-related risks. In doing so, we have sought to avoid imposing a ''one-size-fits-all'' disclosure model[766] that fails to account for differences in industries and businesses and that could result in disclosure of immaterial information while still eliciting decision-useful information for investors about registrants' risk management practices.

As a number of commenters indicated, consistent information about a registrant's management of climate-related risks is vital to informed investment and voting decisions.[767] Despite the importance of climate-related risk management information to investors, only a minority of registrants currently include such information in their voluntary climate reports or in their Exchange Act filings.[768] We considered comments that the proposed disclosure requirements are redundant because existing rules already require disclosure about material risks in annual reports, but we continue to believe that a specific disclosure item focused on managing material climate-related risks is warranted. While registrants may be required to disclose certain climate-related information in filings made with the Commission pursuant to existing disclosure requirements, as noted above[769] there is a need to improve the consistency, comparability, and reliability of disclosures about climate-related risk management for investors given that, as noted above, most registrants are not currently including the type of information called for by the final rules in voluntary climate reports or Exchange Act filings.[770] We also considered comments that the proposal placed undue emphasis on climate-related risks and, as discussed below, have made a number of changes in response to streamline the requirements and focus on material climate-related risks.

First, in a change from the proposal, we have added a materiality qualifier to the disclosure item.[771] The final rule will require registrants to disclose any existing processes for the identification, assessment, and management of material climate-related risks. Including a materiality qualifier addresses the specific concerns expressed by commenters that the proposal would require registrants to disclose this information in a level of detail that would impose undue costs. If a registrant has not identified a material climate-related risk, no disclosure is required. Given the concerns expressed by commenters that there is a wide range of risks that registrants manage as part of their operations, we are persuaded that it is appropriate to include a materiality qualifier for this aspect of the proposal to help ensure that the final rule elicits decision-useful information for investors without imposing an undue burden on registrants and placing undue emphasis on climate-related risks that are not material.

Similarly, to address the concerns of commenters that the proposed risk management disclosure provision would require registrants to address items that might not be relevant to their particular business or industry,[772] we have removed several prescriptive elements from the final rule. Those proposed provisions that we are not adopting would have required a registrant, when describing any processes for identifying and assessing climate-related risks, to disclose, as applicable, how the registrant:

- Determines the relative significance of climate-related risks compared to other risks;
- Considers existing or likely regulatory requirements or policies, such as GHG emissions limits, when identifying climate-related risks;
- Considers shifts in customer or counterparty preferences, technological changes, or changes in market prices in assessing potential transition risks; and
- Determines the materiality of climate-related risks.

Instead, the final rule will allow a registrant, when describing its processes for identifying, assessing, and managing material climate-related risks, to determine which factors are most significant, and therefore should be addressed, based on its particular facts and circumstances, which may include information on the items listed above.

Commenters that supported the proposal stated that a meaningful description of the processes underlying climate risk management is necessary to enable investors to evaluate registrants' climate risk management practices as part of their investment decisions. The final rule will elicit disclosures that offer a more complete picture of the management of material climate-related risks while also mitigating concerns that the proposed rule could unnecessarily elevate climate-related risk above other important matters and give rise to competitive harm and increased litigation risk for registrants. The final rule will also promote more consistent and comparable disclosure of registrants' climate-related risk management practices than is currently available from voluntary reporting and, as these provisions of the final rules more closely align with the TCFD, they may limit costs for those registrants who are familiar with reporting under this framework.

The final rule provides that a registrant should address, as applicable, how it identifies whether it has incurred or is reasonably likely to incur a material physical or transition risk.[773] This provision is similar to the proposed rule that would have required a registrant to describe its processes for

[763] *See* 17 CFR 229.1503(a). As noted in section II.D.2.c above, we have moved the disclosure requirement concerning a registrant's transition plan to the 17 CFR 229.1502.

[764] *See, e.g.*, letters from Ceres; C2ES; PWHC; SKY Harbor; and WSP.

[765] *See supra* note 730 and accompanying text.

[766] *See, e.g.*, letters from API; Chamber; and SIFMA.

[767] *See supra* note 727 and accompanying text. *See also* Anthesis (stating that the SEC should require the registrant to disclose its process for identifying climate risks with the highest materiality and explain its adaptation/mitigation plan to build resiliency).

[768] *See* TCFD, *2022 Status Report* (Oct. 2022), available at *https://assets.bbhub.io/company/sites/60/2022/10/2022-TCFD-Status-Report.pdf* (indicating that only approximately one-third of over 1,400 public companies surveyed provided disclosure concerning climate risk management processes in their 2021 reports).

[769] *See supra* note 727 and accompanying text.

[770] *See* section IV.A.5.

[771] *See supra* note 730 and accompanying text.

[772] *See supra* note 730 and accompanying text.

[773] *See* 17 CFR 229.1503(a)(1).

identifying a climate-related risk.[774] The final rule substitutes the more specific terms ''physical risk or transition risk'' for ''climate-related risk'' to clarify and simplify the requirement since Item 1500 defines climate-related risk to encompass physical and transition risks. In addition, because the processes and factors that a registrant may use to identify the two types of risks may differ in certain respects, or in some cases a registrant may face one and not the other kind of risk, this change should elicit more relevant information for investors.[775]

Similar to the rule proposal, the final rule also provides that a registrant should address, as applicable, how it:

- Decides whether to mitigate, accept, or adapt to the particular risk;[776] and
- Prioritizes whether to address the climate-related risk.[777]

The final rules will help investors to understand the processes that a registrant has for identifying, assessing, and managing climate-related risks, consistent with the feedback of many commenters.[778] In this regard, commenters further indicated that information concerning how a registrant prioritizes climate-related risks vis-à-vis other risks that the registrant is managing would be particularly useful.[779] We are not, however, retaining the proposed requirement to disclose how a registrant determines how to mitigate any high priority risks. In response to the concerns expressed by several commenters,[780] we have removed this proposed disclosure item to reduce the prescriptiveness of the risk management disclosure requirement and streamline this requirement, as we have done with other areas of the final rules. Furthermore, in response to one commenter who supported the proposal but cautioned against an overly broad application,[781] we confirm that the final rules do not require registrants to speculate in their disclosures about future restructurings, write-downs, or impairments related to climate risk management. The flexibility afforded by the final rules also helps address the point made by the same commenter that the proposed disclosure item should not compel registrants to disclose trade secrets or confidential business information.

Also similar to the rule proposal, the final rule provides that, if a registrant is managing a material climate-related risk, it must disclose whether and how any of the processes it has described for identifying, assessing, and managing the material climate-related risk have been integrated into the registrant's overall risk management system or processes.[782] As some commenters noted, information about how a registrant integrates its climate risk management processes into its overall risk management system is important to help investors understand and assess the effectiveness of those climate risk management processes.[783] Mandating this disclosure, therefore, will allow investors to make better informed decisions about the overall risk profile of their investment in the registrant and provide a measure from which they can evaluate similarly situated companies.[784]

We are not adopting the proposed requirement for a registrant to disclose, if it has a separate board or management committee responsible for assessing and managing climate-related risks, how that committee interacts with the registrant's board or management committee governing risks. Several commenters stated that they do not have dedicated board or management committees for managing climate-related risks,[785] or asserted that including such prescriptive elements in the final rule could lead to boilerplate disclosure.[786] Having considered these comments, and in light of our overall aim to reduce the prescriptiveness of the proposed requirements, we are not including this disclosure item in the final rule. We believe the other disclosure items we are adopting will still provide investors with decision-useful information about how registrants manage their material climate-related risks.

Finally, as noted above,[787] we are not adopting the proposed rule that allowed but did not require registrants to describe any processes for identifying, assessing, and managing climate-related opportunities when responding to any of the provisions in the risk management section.[788] As with other voluntary disclosure, registrants may elect to include such disclosure. While we recognize the recommendation of some commenters that such disclosure be mandatory, consistent with the rule proposal, we have determined to treat disclosure regarding climate-related opportunities as optional, among other reasons, to allay any anti-competitive concerns that might arise from a requirement to disclose a particular business opportunity.[789]

G. Targets and Goals Disclosure (Item 1504)

1. Proposed Rule

The Commission proposed to require a registrant that has set any climate-related targets or goals to disclose certain information about those targets or goals.[790] The proposed rule provided examples of climate-related targets or goals, such as those related to the reduction of GHG emissions or regarding energy usage, water usage, conservation or ecosystem restoration, or revenues from low-carbon products in line with anticipated regulatory requirements, market constraints, or other goals established by a climate-related treaty, law, regulation, policy, or organization.[791]

The proposed rule would have required a registrant that has set climate-related targets or goals to disclose the targets or goals and include, as applicable, a description of:

- The scope of activities and emissions included in the target;
- The unit of measurement, including whether the target is absolute or intensity based;
- The defined time horizon by which the target is intended to be achieved, and whether the time horizon is consistent with one or more goals established by a climate-related treaty, law, regulation, policy, or organization;
- The defined baseline time period and baseline emissions against which progress will be tracked with a consistent base year set for multiple targets;
- Any interim targets set by the registrant; and
- How the registrant intends to meet its climate-related targets or goals.[792]

The proposed rule also would have required a registrant to disclose relevant data to indicate whether it is making progress toward achieving the target or goal and how such progress has been

[774] *See* Proposing Release, section II.E.1.

[775] *See* TCFD, *supra* note 332, at 13–14 (providing different tables (Tables D2 and D3) outlining the identification and assessment approaches for transition risks and physical risks).

[776] *See* 17 CFR 229.1503(a)(2).

[777] *See* 17 CFR 229.1503(a)(3).

[778] *See supra* note 747 and accompanying text.

[779] *See supra* note 749 and accompanying text.

[780] *See supra* note 733 and 734 and accompanying text.

[781] *See e.g.,* letter from BOA.

[782] *See* 17 CFR 229.1503(b).

[783] *See supra* note 753 and accompanying text.

[784] *See, e.g.,* letter from SKY Harbor.

[785] *See, e.g.,* letter from BIO.

[786] *See, e.g.,* letter from Chamber.

[787] *See supra* section II.C.1.c.

[788] *See* 17 CFR 229.1503(c).

[789] *See* Proposing Release, section II.A.1.

[790] *See* Proposing Release, section II.I.

[791] *See id.*

[792] *See id.* The proposed rule further provided, as an example, that for a target or goal regarding net GHG emissions reduction, the discussion could include a strategy to increase energy efficiency, transition to lower carbon products, purchase carbon offsets or RECs, or engage in carbon removal and carbon storage.

achieved. The proposed rule would have required the registrant to update this disclosure each fiscal year by describing the actions taken during the year to achieve its targets or goals.[793]

Finally, the Commission proposed to require a registrant that, as part of any net emissions reduction strategy, uses carbon offsets[794] or RECs[795] to disclose the role that carbon offsets or RECs play in the registrant's climate-related business strategy.[796] If the registrant used carbon offsets or RECs in its plan to achieve climate-related targets or goals,[797] the proposed rule would have required it to disclose the amount of carbon reduction represented by the offsets or the amount of generated renewable energy represented by the RECs, the source of the offsets or RECs, a description and location of the underlying projects, any registries or other authentication of the offsets or RECs, and the cost of the offsets or RECs.[798]

The proposed rule further stated that a registrant could provide the disclosures regarding its targets and goals when discussing climate-related impacts on its strategy, business model, and outlook or when discussing its transition plan.[799]

2. Comments

a. The Overall Proposed Disclosure Requirements

Many commenters supported the rule proposal requiring a registrant that has set climate-related targets or goals, including the reduction of GHG emissions, to disclose certain information about those targets or goals.[800] Commenters stated that information about a registrant's set targets and goals, how a registrant plans to achieve them, and progress made towards them is critical to understanding a registrant's transition risk management and its exposure to the likely financial impacts of identified transition risks.[801] Commenters also stated that the proposed targets and goals disclosure requirement would help investors assess a registrant's transition plan and whether it is aligned with global climate-related goals so that they may better understand the registrant's transition risk exposure.[802] Commenters also indicated that the proposed targets and goals disclosure requirement would provide needed data to help investors determine if a registrant's climate-related public commitments are real and would help discourage greenwashing.[803] Commenters further indicated that, despite the importance of information about a registrant's targets or goals to investors, such information currently is lacking.[804]

Several of the commenters that supported requiring disclosure of a GHG emissions reduction target or goal also supported the disclosure of other climate-related targets or goals, such as those pertaining to energy usage, water usage, conservation or ecosystem restoration, and revenues from low-carbon products.[805] Some commenters also recommended requiring the disclosure of any targets or goals that a registrant has set to mitigate climate-related impacts on local or indigenous communities or that involve human capital management goals related to employee retraining and retention in clean energy jobs.[806] One commenter, however, stated that the targets and goals disclosure requirement should only pertain to GHG emissions reduction.[807] According to this commenter, because standards for other climate-related targets and goals have not been broadly defined or accepted, voluntary reporting regarding such targets or goals is more appropriate.[808]

Several commenters that supported the proposed targets and goals disclosure requirement also supported requiring a registrant that has set a climate-related target or goal to describe, as proposed:

- The scope of activities and emissions included in the target;
- The unit of measurement, including whether the target is absolute or intensity based;
- The defined time horizon by which the target is intended to be achieved, and whether the time horizon is consistent with one or more goals established by a climate-related treaty, law, regulation, policy, or organization;
- The defined baseline time period and baseline emissions against which progress will be tracked with a consistent base year set for multiple targets;
- Any interim targets set by the registrant; and
- How the registrant intends to meet its climate-related targets or goals.[809]

[793] *See id.*

[794] The proposed rules defined carbon offsets as representing an emissions reduction or removal of greenhouse gases in a manner calculated and traced for the purpose of offsetting an entity's GHG emissions. *See* Proposing Release, section II.C.2.

[795] The proposed rules defined an REC, consistent with the EPA's commonly used definition, to mean a credit or certificate representing each purchased megawatt-hour (1 MWh or 1000 kilowatt-hours) of renewable electricity generated and delivered to a registrant's power grid. *See id.*

[796] *See id.* The Commission proposed the requirement to disclose information about the carbon offsets or RECs used by a registrant both in the proposed disclosure requirements for targets and goals and as part of the proposed disclosure requirements regarding the impacts of climate-related risks on a registrant's strategy. *See* Proposing Release, sections II.C.2 and II.I. To streamline and reduce redundancies in the subpart 1500 disclosure requirements, the final rules require disclosure of used carbon offsets or RECs only as part of the targets and goals disclosure requirements. Nevertheless, as discussed below, a registrant may elect to provide its disclosure about targets and goals as part of its strategy discussion, including its transition plan disclosure, as applicable. The final rules also require certain disclosures of offsets and RECs under the Regulation S–X amendments. *See* 17 CFR 210.14–02(e)(1) and *infra* section II.K.3.c.vi.

[797] While both carbon offsets and RECs represent commonly used GHG emissions mitigation options for companies, they are used for somewhat different purposes. A company may purchase carbon offsets to address its GHG emissions (Scopes 1, 2, and 3 emissions) by verifying global emissions reductions at additional, external projects. The reduction in GHG emissions from one place (''offset project'') can be used to ''offset'' the emissions taking place somewhere else (at the company's operations). *See, e.g.,* EPA, *Offsets and RECs: What's the Difference?* (Feb. 2018), available at *https://www.epa.gov/sites/default/files/2018-03/documents/gpp_guide_recs_offsets.pdf.* In contrast, a company may purchase an REC in renewable electricity markets solely to address its indirect GHG emissions associated with purchased electricity (*i.e.,* Scope 2 emissions) by verifying the use of zero- or low-emissions renewable sources of electricity.

[798] *See* Proposing Release, section II.I.

[799] *See id.*

[800] *See, e.g.,* letters from AllianceBernstein; Amazon; Amer. for Fin. Reform, Sunrise Project *et al.;* As You Sow; BHP; Bloomberg; BNP Paribas; Boston Common Asset Mgmt; CalPERS; CalSTRS; Calvert; CEMEX; Center Amer. Progress; Ceres; CFA; Dell; D. Hileman Consulting; Engine No. 1 (June 17, 2022); HP; Impax Asset Mgmt.; IAA; IAC Recommendation; IIF; Maple-Brown; Morningstar; Norges Bank; NRDC; NY City Comptroller; NY St. Comptroller; Paradice Invest. Mgmt.; PGIM; PwC; Salesforce (June 15, 2022); U.S. Sen. Brian Schatz and seven other U.S. Senators (June 17, 2022) (''Sens. B. Schatz *et al.*''); SKY Harbor; TotalEnergies; Unilever; Vodafone; and World Resources Institute (June 17, 2022) (''WRI'').

[801] *See, e.g.,* letters from CalPERS; CalSTRS; Ceres; Engine No. 1; Norges Bank; and NY St. Comptroller.

[802] *See, e.g.,* letters from Morningstar; and Paradice Invest. Mgmt.

[803] *See, e.g.,* letters from Center Amer. Progress; D. Hileman Consulting; and Sens. Schatz *et al.*

[804] *See, e.g.,* letters from Calvert; Engine No. 1; IIF; Maple-Brown; NY St. Comptroller; and Paradice Invest. Mgmt.

[805] *See, e.g.,* letters from Amer. for Fin. Reform, Evergreen Action *et al.;* Ceres; Moody's; TotalEnergies; U.S. Green Building Council (June 17, 2022) (''USGBC''); and WRI.

[806] *See, e.g.,* letters from CIEL; ICCR; and Seventh Gen.

[807] *See* letter from Dell.

[808] *See id.*

[809] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* Bloomberg; Maple-Brown; Moody's; and WRI; *see also* letters from IATP (supporting disclosure of the scope of activities and emissions, how targets have been set, and progress realized); and Unilever (supporting disclosure of the scope, details of the method of calculation and any baseline being used, together with any plans to meet the targets, but stating that it is not necessary to require disclosure of any other climate targets

Continued

Commenters stated that the proposed detailed disclosure requirements would help investors understand the level of a registrant's commitment to achieving its climate-related targets and goals.[810] Some commenters recommended requiring additional disclosure requirements, such as whether the registrant has set science-based greenhouse gas emission reduction targets under the Science Based Targets Initiative,[811] or the extent to which it can achieve its targets or goals using existing technology.[812]

Several commenters supported the proposed rule provision requiring a registrant to disclose relevant data indicating whether it is making progress toward achieving a set target or goal and how such progress has been achieved.[813] One commenter stated that the proposed requirement would enhance management's accountability for its climate-related commitments.[814] This commenter further supported requiring a registrant to provide periodic updates to help investors evaluate its progress in achieving its targets or goals.[815] Another commenter stated that disclosure regarding a registrant's progress toward achieving its targets or goals should include information about the related capital expenditures it has made or intends to make.[816] One other commenter, in response to the proposed Regulation S–X amendments, recommended requiring the disclosure of a registrant's discrete and separable expenditures, both expensed and capitalized, related to transition activities for the registrant's publicly disclosed, climate-related targets and goals.[817]

Some commenters supported a targets and goals disclosure requirement but recommended conditions to such requirement. For example, some commenters stated that, in order to prevent the proposed disclosure requirement from acting as a disincentive to the adoption of climate-related targets or goals, the final rule should provide an opportunity for a registrant that has not set a target or goal to explain why it has not done so.[818] Some commenters indicated that a registrant should only be required to provide data about a publicly announced target or goal.[819] One commenter stated that the disclosure requirement should only be triggered by the board's or CEO's formal adoption of the target or goal to encourage the informal development of the target or goal.[820] One other commenter similarly stated that the Commission should require disclosure of targets or goals only when the board and senior management use the target or goal in their decision-making.[821]

Several commenters opposed the proposed targets and goals disclosure requirement.[822] Commenters expressed concern that the proposed disclosure requirement was overly prescriptive and would require detailed disclosure about a target or goal even if the target or goal was not material.[823] Commenters asserted that the disclosure requirements for targets and goals were overly prescriptive and would impose a costly compliance burden on registrants that, together with liability concerns, would discourage registrants from setting climate-related targets or goals.[824] One commenter stated that the proposed targets and goals disclosure requirement would have a chilling effect on registrants setting even aspirational targets or goals.[825] Another commenter stated that the proposed disclosure requirement would chill even preliminary discussions of climate-related initiatives at the board or management level.[826] A different commenter stated that the proposed targets and goals disclosure requirement would effectively punish early adopters of targets or goals by exclusively requiring them to disclose their targets and goals in extensive detail.[827]

Commenters also expressed concern that the proposed disclosure requirement would compel disclosure of internal, non-public targets that would reveal confidential proprietary information.[828] Because of these concerns, some of these commenters recommended that the Commission only require the disclosure of material targets and goals that have been publicly announced.[829]

b. The Proposed Disclosure Requirement Concerning the Use of Carbon Offsets or RECs

Many commenters supported the proposed rule provision requiring a registrant that uses carbon offsets or RECs in its plan to achieve climate-related targets or goals to disclose information about: the amount of carbon reduction represented by the offsets or the amount of generated renewable energy represented by the RECs; the source of the offsets or RECs; a description and location of the underlying projects; any registries or other authentication of the offsets or RECs; and the cost of the offsets or RECs.[830] Commenters stated that, because many registrants rely on the use of carbon offsets or RECs to achieve their GHG emissions reduction targets or goals, and because there are different types of carbon offsets and RECs with different attendant risks and benefits, investors need detailed information

because, if material, they will be included in the registrant's plans to meet the GHG reduction target).

[810] *See, e.g.,* letters from Maple-Brown; and USGBC.

[811] *See, e.g.,* letter from WRI.

[812] *See, e.g.,* letter from Amer. for Fin. Reform, Sunrise Project *et al.* (''The Commission should require a registrant, when disclosing its targets or goals, to disclose any data that indicate whether the registrant is making progress toward meeting the target and how such progress has been achieved, as proposed. This should include how a registrant's progress toward targets or goals links to the financial statements, because capital expenditures made by registrants in implementing transition plans are a key metric for investors.'').

[813] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.*; CalPERS; CEMEX; D. Hileman Consulting; Morningstar; Paradice Invest. Mgmt.; PwC; Sens. B. Schatz *et al.*; TotalEnergies; USGBC; and WRI.

[814] *See* letter from PwC.

[815] *See id.*

[816] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[817] *See* letter from Amazon.

[818] *See, e.g.,* letters from Impax Asset Mgmt.; Maple-Brown; and TIAA.

[819] *See* letter from PwC (recommending that the Commission clarify that the disclosure of voluntary targets or goals applies only to targets and goals that have been publicly announced by the registrant, its subsidiaries that are separate registrants, or its significant subsidiaries); *see also* letter from Amazon (indicating that some internal targets or goals may never be as fully developed with the level of detail that the proposed rule would require).

[820] *See* letter from SKY Harbor.

[821] *See* letter from Amazon.

[822] *See, e.g.,* letters from Abrasca Ibri (Oct. 13, 2022) (''Abrasca''); ACLI; AFPM; Amer. Chem.; AIC; Business Roundtable; CA Farm; Chamber; Footwear Distributors and Retailers of America (June 15, 2022) (''FDRA''); IN Farm; LTSE; NAA; Nebraska Farm Bureau Federation (June 17, 2022) (''NB Farm''); Oklahoma Farm Bureau (June 17, 2022) (''OK Farm''); Petrol. OK; RILA; Soc. Corp. Gov.; and USCIB.

[823] *See, e.g.,* letters from Abrasca; ACLI; AIC; Business Roundtable; Chamber; FDRA; RILA; and Soc. Corp. Gov.

[824] *See, e.g.,* letters from Abrasca; AIC; AFPM; Business Roundtable; CA Farm; Chamber; FDRA; IN Farm; LTSE; NAA; NB Farm; OK Farm; Petrol. OK; RILA; Soc. Corp. Gov.; and USCIB.

[825] *See* letter from Abrasca.

[826] *See* letter from Chamber.

[827] *See* letter from Business Roundtable.

[828] *See, e.g.,* letters from Abrasca; AIC; Amer. Chem.; Chamber; and Soc. Corp. Gov.

[829] *See, e.g.,* letters from Abrasca; AIC; Chamber; and Soc. Corp. Gov.

[830] *See, e.g.,* letters from AllianceBernstein; Amazon; Amer. for Fin. Reform, Sunrise Project *et al.*; As You Sow; CalPERS; Calvert; Carbon Direct (June 16, 2022); CarbonPlan (June 16, 2022); Ceres; Constellation Energy Corporation (June 7, 2022) (''Constellation Energy''); D. Hileman Consulting; Domini Impact; Enerplus (June 16, 2022); Engine No. 1; Eni SpA; Ethic Inc. (June 17, 2022) (''Ethic''); Harvard Mgmt.; J. Herron;IATP; ICCR; J. McClellan; Morningstar; NRDC; Paradice Invest. Mgmt.; PGIM; SKY Harbor; TotalEnergies; and WRI. *See also* IAC Recommendation (''We support requiring companies to disclose the role that carbon offsets or renewable energy credits play in their climate-related business strategy or if the company used them to meet targets or goals'').

about the carbon offsets or RECs used in order to evaluate the effectiveness of a registrant's transition risk strategy and management of climate-related impacts on its business.[831] Commenters further stated that, despite this need, such information is currently lacking, and that without detailed information about the type, underlying project, authentication, and cost of the offsets, investors cannot adequately assess a registrant's climate-related strategy and its exposure to climate-related risks, particularly transition risks.[832]

For example, some commenters expressed concern that registrants' carbon offset purchases vary considerably in terms of quality and effectiveness in meeting their own net-zero carbon targets or those required by jurisdictions in which they operate.[833] In this regard one commenter stated that investors need to know the type of carbon offset purchased in order to assess a registrant's climate risk management because, if the registrant has a net-zero target or goal, it must use a carbon removal offset rather than a carbon avoidance offset to achieve the net-zero target or goal.[834] Commenters relatedly recommended defining carbon offsets to include those that seek to avoid emissions (in addition to those that seek to reduce or remove them) and to require registrants that have used offsets to disclose the type of offset used (*e.g.,* avoidance, reduction, or removal).[835] Other commenters expressed support for increased disclosure about carbon offsets because of concerns about perceived problems in carbon offset markets regarding the quality and permanence of offsets.[836] Commenters further stated that a registrant's strategy that is heavily dependent on the use of carbon offsets or RECs runs the risk of market volatility, including spikes in the price of such instruments due to low supply and increased demand, and litigation and reputational risks from conducting an ineffective transition risk strategy or from claims of greenwashing.[837]

Some commenters recommended that the Commission require the disclosure of certain information about RECs in addition to the proposed disclosure items.[838] For example, commenters [839] recommended requiring the disclosure of whether a registrant's RECs are bundled or unbundled.[840] Commenters [841] also sought disclosure regarding whether a registrant purchased or obtained its RECs from a compliance market or voluntary market.[842]

Other commenters, however, opposed the proposed requirement to disclose detailed information regarding a registrant's use of carbon offsets or RECs.[843] One commenter stated that the proposed disclosure requirement was overly prescriptive and that, without a materiality qualifier, it was likely to result in disclosure that was not decision-useful for investors.[844] Another commenter similarly stated that the proposed requirement would result in the disclosure of immaterial information and also indicated that the proposed requirement, which the commenter characterized as seeking to regulate offsets and RECs, was outside the area of the Commission's expertise and beyond the Commission's statutory authority.[845] One other commenter stated that it did not believe it was necessary for companies to disclose the amount of energy represented by RECs, their nature, or the location of the underlying projects.[846]

3. Final Rule

a. The Overall Disclosure Requirement (Item 1504(a), (b), and (c))

The final rule (Item 1504(a)) will require a registrant to disclose any climate-related target or goal if such target or goal has materially affected or is reasonably likely to materially affect the registrant's business, results of operations, or financial condition.[847] Investors need detailed information about a registrant's climate-related targets or goals in order to understand and assess the registrant's transition risk strategy and how the registrant is managing the material impacts of its identified climate-related risks. We recognize, however, as some commenters indicated, that an overly broad requirement to disclose any climate-related target or goal, even one that is meant for preliminary, internal planning purposes and that is not yet material, could impose a compliance burden on registrants that may outweigh its benefit to investors.[848] Conditioning the targets and goals disclosure requirement on the targets or goals being material will help to address this concern by focusing the requirement on the information that is most likely to be decision-useful for investors.

If a registrant sets an internal target or goal that materially affects or is reasonably likely to materially affect the registrant's business, results of operations, or financial condition (*e.g.,* due to material expenditures or operational changes that are required to achieve the target or goal), then investors should have access to information about that target or goal to help them understand the financial impacts and assess the registrant's transition risk management. While some commenters recommended that the Commission require the disclosure only of targets or goals that are both material and publicly announced,[849] we decline to follow this suggestion. Such a condition would enable a registrant to keep non-public an internal target or goal that is material, which would fail

[831] *See, e.g.,* letters from AllianceBernstein; Carbon Direct; CarbonPlan; and Ceres.

[832] *See, e.g.,* letter from AllianceBernstein (stating that ''[t]he markets for carbon credits and offsets are nascent, fragmented and opaque, with significant variability in governance, quality, pricing and sourcing'' and that ''[i]ncreasing transparency on offsets is critical to an investor's assessment of how well a registrant is managing the risk of climate change to its business, particularly transition risk.''); *see also* letters from Calvert; CarbonDirect; CarbonPlan; Ceres; Engine No. 1; and Ethic.

[833] *See, e.g.,* letters from CarbonPlan; Ceres; and Morningstar.

[834] *See* letter from CarbonPlan.

[835] *See, e.g.,* letters from Amer. Fin. Reform, Sunrise Project *et al.*; Business Council for Sustainable Energy (June 17, 2022) (''BCSE''); Ceres; and WBCSD.

[836] *See, e.g.,* letter from ICCR.

[837] *See, e.g.,* letters from Amer. Fin. Reform, Sunrise Project *et al.*; CarbonDirect; and CarbonPlan.

[838] *See, e.g.,* letters from American Clean Power Association (June 17, 2022) (''Amer. Clean Power''); BCSE; CalPERS; and International Emissions Trading Association (June 17, 2022) (''IETA'').

[839] *See* letters from Amer. Clean Power; and IETA; *see also* letter from CalPERS (stating its belief that unbundled RECs should not be allowed to be counted, but if the final rule allows for unbundled RECs to be counted, then a registrant should be required to disclose both a total amount with, and a total amount without, the use of unbundled RECs for each scope of emissions).

[840] A bundled REC is one that is sold together with the generated electricity directly to the consumer or reseller whereas an unbundled REC is one that has been separated from and sold without delivery of the generated electricity. *See, e.g.,* U.S. EPA, *Retail RECs,* available at *https://www.epa.gov/green-power-markets/retail-recs* (last updated Nov. 1, 2023); *see also* Sustainable Development Strategy Group (''SDSG''), *Renewable Energy Credits* (Jan. 2020), available at *https://static1.squarespace.com/static/5bb24d3c9b8fe8421e87bbb6/t/5e212aa512182f60deb4849c/1579231912520/RECs+Policy+Primer.pdf.*

[841] *See, e.g.,* letters from Amer. Clean Power; and BCSE.

[842] Utilities may purchase RECs in a compliance market to comply with a state's renewable portfolio standard whereas a non-utility company may purchase RECs in a voluntary market to support the general deployment of renewable energy. RECs purchased in a compliance market must meet certain standards and must be certified by an approved certifying group. RECs purchased in a voluntary market may or may not be subject to certain standards and technically are not required to be certified. *See* SDSG, *supra* note 840.

[843] *See, e.g.,* letters from Beller *et al.*; CEMEX; and J. Weinstein.

[844] *See* letter from Beller *et al.*

[845] *See* letter from J. Weinstein.

[846] *See* letter from CEMEX.

[847] *See* 17 CFR 229.1504(a).

[848] *See supra* notes 823 and 828 and accompanying text.

[849] *See supra* note 829 and accompanying text.

to protect investors by potentially precluding their access to information that is important to make informed investment and voting decisions. We reemphasize, however, that a registrant is not required to disclose an internal target or goal that is not material.

In addition, we decline to follow the recommendation of some commenters that the targets and goals disclosure requirement should only be triggered by the board's or CEO's formal adoption of the target or goal.[850] Such a provision would deprive investors of material information for procedural reasons unrelated to the importance of the information to investors. Furthermore, as previously mentioned, the final rules are intended to elicit material climate-related disclosures for investors and not to influence governance practices regarding climate-related matters. Because registrants may have different processes for setting targets or goals, we believe that materiality is a better threshold for disclosure of targets or goals than basing the disclosure requirement on an internal process that may differ from company to company.

Similarly, although one commenter recommended that the Commission require the disclosure only of targets or goals related to a registrant's GHG emissions,[851] we decline to follow this recommendation. Investors need information about all of a registrant's material climate-related targets and goals in order to assess the impact of such targets and goals on a registrant's overall business, results of operations, financial condition, and prospects. Although the particular non-GHG emissions target or goal to be disclosed will depend on a registrant's particular facts and circumstances, to the extent such targets or goals are material, a registrant must disclose them. To simplify the targets and goals disclosure requirement and avoid implying any topical focus regarding the particular targets or goals that should be discussed, we have eliminated from the final rule the parenthetical ''*e.g.,* the reduction of GHG emissions or regarding energy usage, water usage, or revenues from low-carbon products.''

We also decline to follow the recommendations of some commenters to include provisions that specifically require the disclosure of targets or goals related to mitigation of impacts on local communities or that concern human capital management goals.[852] The final rule is intended to elicit disclosure of any climate-related target or goal that has materially affected or is reasonably likely to materially affect a registrant's business, results of operations, or financial condition. Accordingly, any target or goal meeting the conditions of the final rule (including that it is material) will need to be disclosed regardless of the particular issues it addresses, if that target or goal is considered climate-related in the registrant's particular circumstances and if achieving such target or goal would materially impact its business, results of operations, or financial condition. We note that a registrant may voluntarily disclose additional information that is not required to be disclosed under the final rule (and not part of a target or goal) but that is related to the mitigation of climate-related risks.

Similar to the proposed rule, with some modifications as discussed below, the final rule (Item 1504(b)) will require a registrant that is disclosing its targets and goals pursuant to Item 1504 to provide any additional information or explanation necessary to an understanding of the material impact or reasonably likely material impact of the target or goal, including, as applicable, a description of:

- The scope of activities included in the target;
- The unit of measurement;
- The defined time horizon by which the target is intended to be achieved, and whether the time horizon is based on one or more goals established by a climate-related treaty, law, regulation, policy, or organization;
- If the registrant has established a baseline for the target or goal, the defined baseline time period and the means by which progress will be tracked; and
- A qualitative description of how the registrant intends to meet its climate-related targets or goals.[853]

These disclosures will allow investors to better understand a registrant's targets or goals and how it intends to achieve them, which will help investors better assess a registrant's transition risks and make more informed investment and voting decisions. In order to address the concern of some commenters that the proposed targets and goals disclosure provision was too prescriptive and would impose a costly compliance burden without necessarily resulting in material information,[854] the final rule has been revised so that the listed items are non-exclusive examples of additional information or explanation that a registrant must disclose only if necessary to an understanding of the material impact or reasonably likely material impact of the target or goal.[855]

To further streamline the targets and goals disclosure requirement, the final rules do not include ''emissions'' in the list of information that must be disclosed if necessary to an understanding of the material impact or reasonably likely material impact of a target or goal. If a registrant has set a material target or goal to reduce emissions, it will be required to disclose this when explaining the scope of activities included in the target. We also have eliminated the proposed disclosure item regarding whether a target is absolute or intensity-based because this information will likely be elicited by other required disclosure, such as the unit of measurement pertaining to the target or goal.[856]

Similar to the proposed rule, the final rule requires disclosure, as applicable, of how the registrant intends to meet its climate-related targets or goals.[857] However, in order to help address the concern of some commenters that the proposed rule could result in the disclosure of an excessive amount of detail, the final rule specifies that this discussion of prospective activities need only be qualitative. In addition, we are eliminating the proposed example that, for a target or goal regarding net GHG emissions reduction, the discussion could include a strategy to increase energy efficiency, transition to lower carbon products, purchase carbon offsets or RECs, or engage in carbon removal and carbon storage.[858] This will avoid any misperception that these are required items of disclosure. The final rule leaves it up to the registrant to determine what specific factors to highlight as part of the qualitative description of how it plans to meet its targets or goals.

We are also not adopting the proposed requirement to disclose any interim targets set by the registrant. We agree

[850] *See supra* note 820 and accompanying text.

[851] *See supra* note 807 and accompanying text.

[852] *See supra* note 806 and accompanying text.

[853] *See* 17 CFR 229.1504(b).

[854] *See supra* note 823 and accompanying text.

[855] *See* 17 CFR 229.1504(b).

[856] In addition, as discussed below in section II.H, elimination of this proposed disclosure requirement is consistent with our removal of the proposed requirement to disclose a registrant's GHG emissions metrics in intensity terms in addition to absolute terms.

[857] *See* 17 CFR 229.1504(b)(5).

[858] *See* Proposing Release, section II.I.

with commenters that stated that this disclosure item is not necessary because, if a registrant has set an interim target that is material, it will likely be included in the registrant's discussion of its plan to achieve its targets or goals.[859]

Similar to the proposed rule, the final rule (Item 1504(c)) will require a registrant to disclose any progress toward meeting the target or goal and how such progress has been achieved.[860] Also similar to the proposed rule, the final rule will require the registrant to update this disclosure each fiscal year by describing the actions taken during the year to achieve its targets or goals.[861] We are adopting this updating requirement for substantially the same reasons we are adopting the updating requirement with respect to the transition plan disclosure required under Item 1502(e),[862] including because it will better enable investors to monitor impacts on the registrant as it attempts to meet its targets or goals.

Relatedly, the final rule will require a registrant to include in its targets and goals disclosure a discussion of any material impacts to the registrant's business, results of operations, or financial condition as a direct result of the target or goal or the actions taken to make progress toward meeting the target or goal.[863] This discussion must include quantitative and qualitative disclosure of any material expenditures and material impacts on financial estimates and assumptions as a direct result of the target or goal or the actions taken to make progress toward meeting the target or goal,[864] consistent with the suggestion of some commenters.[865] We have added these latter provisions because, as commenters noted, a company's climate commitments, and progress in relation to its commitments, may materially impact its business, outlook, operating expenditures, capital expenditures, liquidity, and other capital resources, which is why investors seek and need information about such material expenditures and other material financial impacts related to its targets and goals.[866] As discussed in more detail below,[867] a number of commenters who supported the proposed expenditures disclosures in Regulation S–X indicated that such disclosure would help investors understand a registrant's ability to meet its climate-related targets and goals.[868]

We recognize commenters' concerns about registrants' abilities to identify, attribute, and quantify the impact of transition activities in the financial statements.[869] We believe that providing for this disclosure in the context of Item 1504 information on progress towards targets or goals appropriately balances investors' need for this information with commenters' concerns about implementation challenges. As discussed above,[870] with respect to concerns raised in the context of the proposed Regulation S–X amendments about registrants' abilities to disaggregate the portion of an expenditure that is directly related to transition activities, under the final rules, registrants will have flexibility to explain qualitatively the nature of any disclosed expenditure and how it is a direct result of progress under a disclosed target or goal. In addition, subjecting the disclosure requirement to materiality rather than a bright-line threshold, as was proposed for the Regulation S–X amendments, will help reduce the compliance burden of the final rules while providing material information for investors. Additionally, when considering which expenditures related to progress under a disclosed target or goal are material over the relevant period and therefore require disclosure, registrants should consider whether overall expenditures related to progress under a disclosed target or goal are material in the aggregate and, if so, provide appropriate disclosure. Finally, to the extent that disclosure of material impacts on financial estimates and assumptions as a direct result of the target or goal is disclosed in response to Rule 14–02(h) of Regulation S–X, a registrant would be able to cross-reference to such disclosure.[871]

Similar to the rule proposal, the final rule will permit a registrant to provide the required targets and goals disclosure as part of its discussion pursuant to Item 1502 regarding its transition plan or when otherwise discussing material impacts of climate-related risks on its business strategy or business model.[872] A registrant will also be permitted to provide the required targets and goals disclosure in its risk management discussion pursuant to Item 1503.[873] This provision will help to eliminate redundancies in the subpart 1500 disclosure.

Similar to Items 1502(d)(2) and 1502(e)(2), and for similar reasons, we are providing a phase in for compliance with the Item 1504(c)(2) disclosure requirement. A registrant will not be required to comply with the requirements of Item 1504(c)(2) until the fiscal year immediately following the fiscal year of its initial compliance date for the subpart 1500 rules based on its filer status.[874]

We decline to follow the recommendation of some commenters to require the disclosure of whether the registrant has set science-based GHG emission reduction targets under the Science Based Targets Initiative, or the extent to which it can achieve its targets or goals using existing technology.[875] As we similarly noted when declining to follow a recommendation to broaden transition risk disclosure, the targets and goals disclosure requirement we are adopting is consistent with the TCFD framework, which provides flexibility in terms of which tools or methods a registrant chooses to use, and therefore will limit the targets and goals compliance burden for those registrants that are already familiar with the TCFD framework.[876] A registrant may elect to provide disclosure regarding these additional items, but they are not required items of disclosure.

b. The Carbon Offsets and RECs Disclosure Requirement (Item 1504(d))

Similar to the proposed rule, the final rule includes a disclosure requirement about a registrant's use of carbon offsets or RECs (Item 1504(d)). Unlike the proposed rule, however, a registrant will be required to disclose certain

[859] *See* letter from Unilever.

[860] *See* 17 CFR 229.1504(c).

[861] *See id.*

[862] *See supra* notes 508–514 and accompanying text. In addition, as with the required transition plan disclosure, no update about targets and goals would be required to be disclosed if the underlying targets or goals are not required to be disclosed (*e.g.,* because the target or goal is no longer material).

[863] *See* 17 CFR 229.1504(c)(1).

[864] *See* 17 CFR 229.1504(c)(2).

[865] *See supra* notes 816 and 817 and accompanying text.

[866] *See, e.g.,* letters from Amazon; Amer. for Fin. Reform, Sunrise Project *et al.*; and PwC.

[867] *See infra* sections II.K.3.b and c.

[868] *See infra* notes 1967 and accompanying text.

[869] *See infra* notes 1902 and 1907 and accompanying text.

[870] *See supra* sections II.D.1.c. and II.D.2.c for discussion of similar material expenditures disclosure requirement, respectively, as part of a registrant's transition plan disclosure under Item 1502(e) and from activities to mitigate or adapt to climate-related risks disclosed pursuant to Item 1502(b)(4) under Item 1502(d) of Regulation S–K. To the extent that there is any overlapping disclosure of material expenditures in response to these Items, to avoid redundancy, a registrant should provide disclosure of material expenditures regarding the Item where, in its assessment, such disclosure is most appropriate, and then cross-reference to this disclosure when responding to the other Items.

[871] *See supra* note 521.

[872] *See* 17 CFR 229.1504(a).

[873] *See id.*

[874] *See* section II.O.3.

[875] *See supra* notes 811–812 and accompanying text.

[876] *See supra* section II.C.1.c.

information about the carbon offsets or RECs only if they have been used as a material component of a registrant's plan to achieve climate-related targets or goals.[877] We have added a materiality qualifier to the final rule to address the concern of commenters that the proposed disclosure requirement could result in detailed offsets or RECs information that is of little use to investors.[878] Under the final rule, registrants will need to make a determination, based upon their specific facts and circumstances, about the importance of such carbon offsets and credits to their overall transition plan and provide disclosure accordingly.

If carbon offsets or RECs have been used as a material component of a registrant's plan to achieve climate-related targets or goals, then, similar to the proposed rule, the registrant will be required to disclose: the amount of carbon avoidance, reduction or removal represented by the offsets or the amount of generated renewable energy represented by the RECs; the nature and source of the offsets or RECs;[879] a description and location of the underlying projects; any registries or other authentication of the offsets or RECs; and the cost of the offsets or RECs.[880]

Information about the source, value, underlying projects, and authentication of the carbon offsets or RECs will help investors evaluate the role of these instruments in a registrant's climate-related strategy and the impacts on its business. For example, understanding the role that carbon offsets or RECs play in a registrant's climate-related business strategy can help investors assess the potential risks and financial impacts of pursuing that strategy. Relatedly, a registrant that relies on carbon offsets or RECs as a material component of its plan to achieve its targets or goals might need to consider whether fluctuating supply or demand, and corresponding variability of price, related to carbon offsets or RECs, presents an additional material risk that is required to be disclosed when discussing its plan to achieve such target or goal pursuant the requirements of subpart 1500.

At the recommendation of commenters, in addition to carbon reduction, we have added the amount of carbon avoidance and carbon removal[881] represented by carbon offsets as disclosure items to clarify that disclosure is required about offsets representing carbon removal and those representing carbon avoidance or reduction if the registrant has used these types of offsets as a material part of its climate-related strategy.[882] This addition will help investors assess the risks associated with the different types of offsets used and how they may affect a registrant's transition risk management and the related impacts on the registrant's business and financial condition.

Also, at the recommendation of commenters, we have added the nature of the carbon offsets or RECs as a disclosure item in addition to the source of the offsets or RECs.[883] This addition will help investors understand whether a purchased offset represents carbon avoidance, reduction, or removal, and whether an REC is bundled or unbundled. Requiring the disclosure of the source of the offset or REC will help investors determine whether the offset has met certain criteria of an established standard-setting body,[884] and whether the REC originated from and met the standards of a compliance market or is instead derived from a more loosely regulated voluntary market.[885] These factors can affect the value and cost of the offsets and RECs and their attendant risks. For example, as one commenter noted, a market that develops increased demand for carbon removal offsets, either because of new regulation or stricter voluntary standards for net-zero targets, could result in a significant increase in offset prices, potential supply bottlenecks, and increased transition risk for registrants that assumed the continued availability and abundance of cheaper offsets.[886]

One commenter who objected to the proposed offsets and RECs disclosure requirement asserted that the Commission lacks statutory authority to regulate offsets and RECs.[887] We disagree with that commenter's characterization of the rule. In requiring the disclosure of certain information about a registrant's use of offsets or RECs when such use is a material component of the registrant's plan to achieve a target or goal that is required to be disclosed, we are not advocating for or against the use of offsets or RECs generally, or for or against the use of certain types of offsets or RECs. Nor are we substantively regulating their use. As previously mentioned, the final rules, including those pertaining to the use of offsets or RECs, are neutral regarding any strategy that a registrant may choose to manage a material climate-related risk. Instead, like the other climate-related disclosure rules we are adopting, the final rule regarding the disclosure of offsets or RECs is intended to provide investors with the decision-useful information they need to understand a registrant's strategy to mitigate or adapt to the realized or reasonably likely financial impacts of a material climate-related risk.

H. GHG Emissions Disclosure (Item 1505)

1. Proposed Rule

The proposed rules would have required a registrant to disclose its GHG emissions[888] for its most recently completed fiscal year and for the historical fiscal years included in its consolidated financial statements, to the extent such historical GHG emissions data is reasonably available.[889] The Commission based the proposed GHG emissions disclosure requirement on the

[877] *See* 17 CFR 229.1504(d).

[878] *See, e.g.,* letters from Beller *et al.*; and J. Weinstein.

[879] The nature of an offset refers to whether it represents carbon avoidance, reduction, or removal. The nature of an REC refers primarily to whether it is bundled or unbundled. The source of an offset or REC refers to the party that has issued the offset or REC. Commenters stated that investors need such detailed information about offsets or RECs in order to evaluate the effectiveness of a registrant's transition risk strategy and management of climate-related impacts on its business. *See supra* notes 831–834 and accompanying text.

[880] *See* 17 CFR 229.1504(d). At the recommendation of commenters, *see supra* note 835, to clarify that an offset can represent carbon avoidance, in addition to carbon reduction or removal, we have added ''avoidance'' to the definition of carbon offset. *See* 17 CFR 229.1500.

[881] A carbon avoidance occurs, *e.g.,* when a company protects a forest from deforestation. A carbon reduction occurs when emissions are reduced, *e.g.,* when a company switches from the use of fossil-fuel based energy to the use of wind or solar power. A carbon removal occurs when CO_2 is drawn out of the atmosphere and sequestered, *e.g.,* by carbon capture and storage technology. *See, e.g.,* letter from Ceres; and Ceres, *Evaluating the Use of Carbon Credits* (Mar. 1, 2022), available at *https://www.ceres.org/resources/reports/evaluating-use-carbon-credits.*

[882] *See, e.g.,* letters from Amer. Fin. Reform, Sunrise Project *et al.*; BCSE; and Ceres.

[883] *See, e.g.,* letters from Amer. Clean Power; and IETA.

[884] *See, e.g.,* letter of IETA (referencing the Carbon Offset Reduction Scheme for International Aviation (''CORSIA'') market established by the UN International Civil Aviation Organization (''ICAO'') and adopted by the U.S. Federal Aviation Authority).

[885] *See, e.g.,* letter from Amer. Clean Power.

[886] *See* letter from CarbonPlan.

[887] *See* letter from J. Weinstein.

[888] We proposed to define ''greenhouse gases'' as carbon dioxide (''CO_2''); methane (''CH_4''); nitrous oxide (''N_2O''); nitrogen trifluoride (''NF_3''); hydrofluorocarbons (''HFCs''); perfluorocarbons (''PFCs''); and sulfur hexafluoride (''SF_6''). The greenhouse gases included in the proposed definition reflect the gases that are currently commonly referenced by international, scientific, and regulatory authorities as having significant climate impacts. This list of constituent greenhouse gases is consistent with the gases identified by widely used frameworks, such as the Kyoto Protocol, the UN Framework Convention on Climate Change, the U.S. Energy Information Administration, the EPA, and the GHG Protocol. *See* Proposing Release, section II.G.1.a.

[889] *See id.*

concept of scopes, which are themselves based on the concepts of direct and indirect emissions, developed by the GHG Protocol.[890] The Commission proposed to require a registrant to disclose its Scope 1 emissions, which, similar to the GHG Protocol, were defined to mean the direct GHG emissions from operations that are owned or controlled by a registrant.[891] The Commission also proposed to require a registrant to disclose its Scope 2 emissions, which, similar to the GHG Protocol, were defined to mean the indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant.[892] By sharing certain basic concepts and a common vocabulary with the GHG Protocol, the Commission intended to both elicit consistent, comparable, and reliable climate-related information for investors, and mitigate the compliance burden of the proposed rules for those registrants that are already disclosing or estimating their GHG emissions pursuant to the GHG Protocol.[893]

The Commission further proposed to require a registrant, other than an SRC, to disclose its Scope 3 emissions, which, similar to the GHG Protocol, were defined to mean all indirect GHG emissions not otherwise included in a registrant's Scope 2 emissions that occur in the upstream and downstream activities of a registrant's value chain.[894] Unlike the proposed disclosure requirement for Scopes 1 and 2 emissions, however, the Commission proposed to require the disclosure of a registrant's Scope 3 emissions only if those emissions are material, or if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions.[895] The Commission proposed these limitations regarding Scope 3 disclosure in recognition of the fact that, unlike Scopes 1 and 2 emissions, Scope 3 emissions typically result from the activities of third parties in a registrant's value chain and, thus, collecting the appropriate data and calculating these emissions would potentially be more difficult than for Scopes 1 and 2 emissions. Although the Commission recognized that the disclosure of Scope 3 emissions may be important to provide investors with a complete picture of the climate-related risks that a registrant faces—particularly transition risks—it also believed it was necessary to balance the importance of Scope 3 emissions with the potential relative difficulty in data collection and measurement.[896]

For each of its Scopes 1, 2, and 3 emissions, the proposed rules would have required a registrant to disclose the emissions both disaggregated by each constituent greenhouse gas and in the aggregate, expressed in terms of CO_2e. The Commission proposed this requirement so that investors could gain decision-useful information regarding the relative risks to the registrant posed by each constituent GHG in addition to the risks posed by its total GHG emissions by scope.[897] The proposed rules would also have required a registrant to disclose the GHG emissions data in gross terms, excluding any use of purchased or generated offsets,[898] and in terms of GHG intensity.[899]

The proposed rules would have required a registrant to describe the methodology, significant inputs, and significant assumptions used to calculate its GHG emissions metrics.[900] While the proposed GHG emissions disclosure rules shared many features with the GHG Protocol, they differed regarding the approach required to set a registrant's organizational boundaries. Those boundaries determine the business operations owned or controlled by a registrant to be included in the calculation of its GHG emissions. The proposed approach would have required a registrant to set the organizational boundaries for its GHG emissions disclosure using the same scope of entities, operations, assets, and other holdings within its business organization as those included in, and based upon the same set of accounting principles applicable to, its consolidated financial statements.[901] The Commission proposed this approach in order to provide investors a consistent view of the registrant's business across its financial and GHG emissions disclosures. The same organizational boundaries requirement would have applied to each disclosure of a registrant's Scope 1, Scope 2, and Scope 3 emissions.[902]

The rule proposal provided that a registrant may use reasonable estimates when disclosing its GHG emissions as long as it also describes the assumptions underlying, and its reasons for using, the estimates. In proposing this provision, the Commission stated that while it encouraged registrants to provide as accurate a measurement of its GHG emissions as is reasonably possible, it recognized that, in many instances, direct measurement of GHG emissions at the source, which would provide the most accurate measurement, may not be possible.[903]

The Commission proposed to require the disclosure of a registrant's GHG emissions as of the end of its most recently completed fiscal year in its Exchange Act annual report for that year and in a Securities Act or Exchange Act registration statement filed subsequent to the compliance date for the climate-related disclosure rules.[904] The Commission also proposed to permit a registrant to use a reasonable estimate of its GHG emissions for its fourth fiscal quarter if no actual reported data is reasonably available, together with actual, determined GHG emissions data for its first three fiscal quarters when disclosing its GHG emissions for its most recently completed fiscal year, as long as the registrant promptly discloses in a subsequent filing any material difference between the estimate used and the actual, determined GHG emissions data for the fourth fiscal quarter.[905] The Commission proposed this accommodation to address the concern of some commenters that a registrant may find it difficult to complete its GHG emissions calculations for its most recently completed fiscal year in time to meet its disclosure obligations for that year's Exchange Act annual report.[906]

[890] Direct emissions are GHG emissions from sources that are owned or controlled by a registrant, whereas indirect emissions are GHG emissions that result from the activities of the registrant but occur at sources not owned or controlled by the registrant. *See* World Business Council for Sustainable Development and World Resources Institute, GHG Protocol, *Corporate Accounting and Reporting Standard* (2004), available at *https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf.*

[891] *See* Proposing Release, section II.G.1.a.

[892] *See id.*

[893] *See* Proposing Release, section I.D.2.

[894] *See* Proposing Release, section II.G.1.a. Upstream emissions include emissions attributable to goods and services that the registrant acquires, the transportation of goods (for example, to the registrant), and employee business travel and commuting. Downstream emissions include the use of the registrant's products, transportation of products (for example, to the registrant's customers), end of life treatment of sold products, and investments made by the registrant.

[895] *See* Proposing Release, section II.G.1.b.

[896] *See id.*

[897] *See* Proposing Release, section II.G.1.a.

[898] *See id.*

[899] *See* Proposing Release, section II.G.1.c. The proposed rules would have required the disclosure of GHG intensity to be in terms of metric tons of CO_2e per unit of total revenue and per unit of production for the fiscal year.

[900] *See* Proposing Release, section II.G.2.

[901] *See* Proposing Release, section II.G.2.a.

[902] *See id.*

[903] *See* Proposing Release, section II.G.2.d.

[904] *See* Proposing Release, section II.G.1.a.

[905] *See* Proposing Release, section II.G.1.

[906] *See id.*

2. Comments

a. Overall GHG Emissions Disclosure Requirement

Several commenters supported the proposed requirement to disclose Scopes 1 and 2 emissions, as well as Scope 3 emissions if material or if included in a registrant's GHG emissions reduction target or goal.[907] The most common reason asserted for supporting the mandatory disclosure of GHG emissions is that such disclosure would provide investors with specific metrics to assess a registrant's exposure to transition risks.[908] Commenters also relatedly stated that mandatory disclosure of GHG emissions would enable investors to evaluate a registrant's progress towards achieving any publicly announced transition targets and goals,[909] and allow investors to compare registrants across sectors and industries to determine whether their transition strategies are aligned with investors' investment objectives.[910]

Some of these commenters also indicated that Scope 3 emissions disclosure was necessary to provide a complete picture of a registrant's transition risk exposure and therefore recommended that the Commission require the disclosure of Scope 3 emissions for all registrants.[911] Some commenters indicated that they are already using Scope 3 emissions data to make investment decisions.[912] Other commenters stated that, as registrants, they have disclosed Scope 3 emissions from certain activities and indicated their support for a Scope 3 emissions disclosure requirement with certain accommodations.[913] One commenter stated that capital markets are now assigning financial value to Scope 3 emissions metrics and, in supporting a Scope 3 emissions disclosure requirement, recommended that the Commission establish a quantitative threshold for determining the materiality and corresponding disclosure of Scope 3 emissions.[914] In addition, some commenters indicated that the disclosure of Scope 3 emissions may deter registrants from outsourcing to third-parties facilities that would otherwise count as sources of Scopes 1 and 2 emissions, thereby seeming to lower their transition risk exposure and facilitating greenwashing.[915] Some commenters indicated that while many registrants already measure and voluntarily disclose their Scopes 1 and 2 emissions, that is not the case for Scope 3 emissions.[916] Another commenter stated that publishing Scope 3 emissions information has not been cost prohibitive.[917]

While many commenters, including both issuers and investors, stated that they supported requiring Scope 1 and 2 disclosures, a significant number of commenters raised serious concerns about requiring Scope 3 emissions disclosures. Some asserted that the Commission lacks the authority to require disclosures of information that may come largely from non-public companies in registrants' value chain;[918] others questioned the value of Scope 3 emissions disclosures for investors, citing their concerns about the reliability of the metric;[919] others focused on their view of the costs and burdens of gathering, validating, and reporting the information.[920] A number of commenters representing entities not subject to the Commission's disclosure authority raised serious concerns about the costs and burdens they could face as a result of the requirement on registrants.[921] Among those costs, they highlighted not only the cost of collecting and reporting information but also the potential competitive disadvantage for smaller suppliers, if registrants select larger suppliers that may be in a better position to supply information to use in their Scope 3 emissions disclosures.[922] We discuss certain of these comments in more detail.

Some commenters supported the mandatory disclosure of Scopes 1 and 2 emissions but opposed the proposed disclosure of Scope 3 emissions.[923] Commenters stated that, because much of the data underlying Scope 3 emissions is in the control of third parties, registrants could face difficulty collecting such data, resulting in likely data gaps.[924] Commenters also asserted that the methodologies underlying the measurement and reporting of Scope 3 emissions are still too uncertain and expressed concerns about the reliability of Scope 3 emissions disclosure.[925] In light of these concerns, commenters stated that the compliance burden associated with Scope 3 emissions disclosure would be costly to registrants and that such costs were likely to exceed the benefit to investors.[926] Relatedly, one commenter raised concerns that Scope 3 emissions disclosure would not meet the materiality threshold for any registrant because of the challenges in calculating Scope 3 emissions in a reliable and consistent manner.[927]

[907] *See, e.g.,* letters from AGs from Cal. *et al.*; AllianceBernstein; Alphabet *et al.*; Amazon; Amer. for Fin. Reform, Sunrise Project *et al.*; BHP; BP; CalPERS; CalSTRS; Chevron; Etsy; IAC Recommendation; Member of the U.S. House of Representatives Kathy Castor and 130 other House Members; Member of the U.S. House of Representatives Adam B. Schiff and 25 Other House Members from California (Oct. 12, 2023) (''Rep. Adam Schiff *et al.*''); Microsoft; Miller/Howard; NRDC; Sens. B Schatz *et al.*; Trillium; UPS; Wellington Mgmt.; and WRI.

[908] *See, e.g.,* letters from AllianceBernstein; AGs from Cal. *et al.*; CalPERS; Ceres; Rep. Maxine Waters; Sen. Elizabeth Warren, *et al.*; and Wellington Mgmt.

[909] *See, e.g.,* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[910] *See id; see also* letters from AllianceBernstein; and Wellington Mgmt.

[911] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.*; CalPERS; CalSTRS; and Wellington Mgmt.; *see also* letter from Rep. Adam Schiff *et al.*(stating that enactment of California's Climate Corporate Data Accountability Act (SB 253), which will require companies with more than $1 billion in annual revenues to file annual reports publicly disclosing their Scope 1, 2, and 3 GHG emission, ''virtually eliminates the cost of compliance with a federal Scope 3 disclosure requirement for all businesses operating in California with over $1 billion in revenue'').

[912] *See, e.g.,* letters from CalSTRS; Soros Fund; and Wellington Mgmt.

[913] *See, e.g.,* letters from Amazon; and Microsoft.

[914] *See* letter from Sens. B. Schatz *et al.*

[915] *See, e.g.,* letter from AGs from Cal. *et al.* (stating that ''Scope 3 GHG emissions disclosures will help avoid gamesmanship and greenwashing by registrants that artificially limit their Scope 1 and 2 GHG emissions by transferring higher-emission activities and their climate-related risks to third parties''); and Wellington Mgmt.

[916] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.*; C2ES; Ceres (Feb. 1, 2023); and Fidelity.

[917] *See* letter from Amalgamated Financial Corp. (June 17, 2022) (''AFC'') (''We have published three years of our scope 3 financed emissions, starting in 2019. For 2021, this included our listed equities and fixed income assets under management. As a firm we track absolute emissions and emissions intensity across our lending and investment portfolios and understand where risks and opportunities present. We have done this work with modest cost to us, requiring some redirection of resources and modest consultant and data support. This work has not been cost prohibitive and builds on existing systems within the bank for reporting and disclosure.'')

[918] *See, e.g.,* letters from D. Burton, Heritage Fdn.; and Chamber.

[919] *See infra* note 925 and accompanying text.

[920] *See infra* notes 924 and accompanying text.

[921] *See, e.g.,* letters from AZ Farm; CA Farm; GA Farm; IN Farm; NAA; and PA Farm; *see also* letter from National Association of Convenience Stores (June 8, 2022).

[922] *See, e.g.,* letters from AZ Farm; CA Farm; GA Farm; IN Farm; NAA; and PA Farm.

[923] *See, e.g.,* letters from Beller *et al.*; Exxon Mobil Corporation (June 17, 2022) (''Exxon''); Fed. Hermes; Fidelity; Harvard Mgmt.; IAA; ICI; Nareit; Reed Smith LLP (June 17, 2022) (''Reed Smith''); Stanford Management Company (June 17, 2022) (''Stanford Mgmt.''); and State St.

[924] *See, e.g.,* letter from Beller *et al.*; Blackrock; Fed. Hermes; ICI; Reed Smith; Stanford Mgmt.; and State St.

[925] *See, e.g.,* letters from Exxon; Fed. Hermes; Fidelity; Harvard Mgmt.; IAA; Reed Smith; Stanford Mgmt.; and State St.

[926] *See, e.g.,* letter from Harvard Mgmt.

[927] *See* letter from Fidelity. While not directly opposing the proposed Scope 3 emissions disclosure requirement, another commenter recommended that, due to perceived complexities in the calculation of Scope 3 emissions, the Commission reconsider this proposed requirement

One commenter supported the disclosure of Scope 3 emissions but only for activities, such as business travel, over which a registrant has influence or indirect control.[928] This commenter also recommended adopting a safe harbor for Scope 3 emissions modeled on the PSLRA safe harbors and treating Scope 3 emissions disclosure as furnished rather than filed because of the ''inherent uncertainty'' in the estimates and assumptions underlying Scope 3 emissions disclosure.[929]

Many commenters, however, generally opposed the proposed mandatory GHG emissions disclosure requirement, including the disclosure of Scopes 1 and 2 emissions.[930] Commenters stated that because the proposed disclosure of Scopes 1 and 2 emissions would require such disclosure even when a registrant has not determined climate-related risks to be material, the proposed GHG emissions disclosure requirement may not result in decision-useful information for investors.[931] Commenters also stated that because the registrants producing 85 to 90 percent of the emissions in the United States already report their emissions pursuant to the EPA's Greenhouse Gas Reporting Program, the Commission's proposed emissions disclosure requirements are unnecessary and the resulting emissions data potentially confusing for investors.[932]

Further, commenters opposed the GHG emissions disclosure requirement because of the expected high compliance costs, which they believed the Commission had underestimated.[933] One commenter further indicated that, although the Commission had stated that many companies were already disclosing their GHG emissions, according to a number of studies, most registrants have not yet measured and reported their Scopes 1 and 2 emissions, let alone their Scope 3 emissions.[934]

Commenters also expressed concerns, in connection with registrants' disclosure of Scope 3 emissions, regarding compliance costs involving private companies, which comprise a large percentage of many registrants' value chains or joint ventures, and which, through the influence of those registrants, would be compelled to measure and report their GHG emissions for the first time.[935] Some of these commenters asserted that registrants would likely incur costs to renegotiate contracts with these third parties to obtain the GHG emissions data required to comply with the proposed rules.[936] Another commenter stated that third parties that are unwilling or unable to provide their GHG emissions to registrants could eventually be excluded from consideration for contracts to provide goods or services to registrants, which could diminish opportunities for these third-parties, which may often be smaller businesses.[937]

In addition, commenters stated that, even if registrants are already voluntarily disclosing their Scopes 1 and 2 emissions pursuant to the GHG Protocol, those registrants will incur an increased compliance burden if the Commission was to adopt the proposed GHG emissions disclosure requirement, because of differences between the Commission's proposed requirement and the GHG Protocol and the TCFD.[938] These commenters also shared many of the concerns about the proposed Scope 3 emissions disclosure provision discussed above, including the difficulties of collecting emissions data from third parties in its value chain, the unreliability of reported data stemming from third parties' lack of sophisticated data collection technologies and the use of proxy data to fill data gaps, and the absence of a fully developed and uniformly accepted methodology to report Scope 3 emissions. According to commenters, these concerns would increase compliance costs and raise a registrant's liability exposure so that the total cost of the Scope 3 emissions disclosure would likely exceed its benefit.[939] Because of the difficulties and uncertainties involved in Scope 3 emissions disclosure, some commenters recommended that the reporting of Scope 3 emissions should remain voluntary.[940]

One commenter presented an alternative to the proposed GHG emissions requirement.[941] This commenter stated that, rather than adopting the proposed GHG emissions disclosure requirement, the Commission should ''mandate reporting, on a standardized form, of emissions data that registrants are required to disclose publicly pursuant to other federal, state, or foreign regulations.'' This commenter also stated that the alternative set of rules ''would, in effect, integrate the existing EPA reporting regime with the SEC's disclosure system in a manner that would be easier for investors and registrants to access and analyze.'' [942] This commenter further stated that approximately 40 foreign countries already require various forms of emissions disclosures, and that California and other states are considering the adoption of their own mandatory emissions reporting regimes.[943] According to this commenter, the alternative set of rules ''would efficiently integrate, aggregate, and collate those disclosures on a single form available to all investors through

and, if it retains the requirement, then it should provide guidance around determining the materiality of Scope 3 emissions as well as more explicit standards to calculate Scope 3 emissions for key industries. *See* letter from SFERS.

[928] *See* letter from Amazon.

[929] *See id.*

[930] *See, e.g.,* letters from API; Atlas Sand Company, LLC (June 17, 2022) (''Atlas Sand''); Bipartisan Policy; Brigham Exploration (June 17, 2022); Chamber; ConocoPhillips; Dimensional Fund; Independent Petroleum Association of New Mexico (June 17, 2022); Iowa Commissioner of Insurance (June 13, 2022); and Soc. Corp. Gov.

[931] *See, e.g.,* letters from API; Dimensional Fund Advisors; and Soc. Corp. Gov.

[932] *See, e.g.,* letters from API; Chamber; and ConocoPhillips. According to commenters, confusion could result from the fact that the EPA's Greenhouse Gas Reporting Program (''GHGRP'') requires the disclosure of emissions by individual source whereas the Commission's proposed rules would require the disclosure by company; *see also* discussion *infra* notes 2593–2595 and accompanying text. As noted in section IV.A.3, we estimate that approximately 365 registrants had an ownership stake in facilities that reported to the GHGRP in 2022; *see infra* note 2596 and accompanying text.

[933] *See infra* sections IV.C.3.b.ii and iii for more information on specific cost estimates provided by commenters.

[934] *See infra* section IV.A.5c (citing statistics in the 2021 TCFD Status Report and a Moody's Analytics analysis of TCFD reporting of 2020/21 public disclosures showing that only 21% of North American companies and 19% of U.S. companies reported their Scopes 1 and 2 emissions and, if appropriate, their Scope 3 emissions).

[935] *See, e.g.,* letters from API; Atlas Sand; Bipartisan Policy; Brigham Exploration; Chamber; ConocoPhillips; Independent Petroleum Association of New Mexico; and Iowa Commissioner of Insurance.

[936] *See, e.g.,* letter from ConocoPhillips.

[937] *See* letter from Soc. Corp. Gov.

[938] *See id.* Specifically, the commenter noted that the proposed rules would require a registrant's organizational boundaries to be consistent with the scope of entities included in its consolidated financial statements, whereas the GHG Protocol permits a company to choose between an equity share, operational control, or financial control method. The commenter also noted that the Commission's proposed rules would require a company to disclose its GHG emissions both on a disaggregated and aggregated basis whereas the TCFD requires a company to disclose its Scopes 1 and 2 emissions, without specifying whether the disclosure must be on a disaggregated basis. According to the commenter, these differences could result in an increased compliance burden for a registrant. We discuss additional commenter input on these differences below.

[939] *See id; see also* Bipartisan Policy; Brigham Exploration; Chamber; D. Burton, Heritage Fdn.; and the National Association of Convenience Stores (June 8, 2022).

[940] *See, e.g.,* letter from Airlines for America.

[941] *See* letter from Joseph A. Grundfest, William A. Franke Professor of Law and Business, Stanford Law School (June 15, 2022) (''Grundfest''); *see also* letters from Joseph A. Grundfest, Professor of Law and Business (emeritus), Stanford Law School (Oct. 9, 2023); and Devon S. Wilson (Sept. 7, 2023).

[942] Letter from Grundfest.

[943] *See id.* As previously noted, California has since enacted a mandatory emissions reporting regime. *See supra* section II.A.

documents provided to the Commission.'' [944]

Some commenters supported the proposed exemption from Scope 3 emissions reporting for SRCs.[945] Some commenters also supported exempting SRCs from the requirement to disclose Scopes 1 and 2 emissions because, in their experience, SRCs have not historically tracked their GHG emissions and exempting SRCs from a GHG emissions reporting requirement would be consistent with a scaled disclosure regime for such issuers.[946]

Other commenters, however, opposed exempting all SRCs from the proposed Scope 3 emissions disclosure requirement.[947] Commenters stated that investors need climate-related disclosures from SRCs because SRCs are as exposed to climate-related risks as larger issuers, including risks stemming from their value chains.[948] Commenters also stated that because many large companies obtain climate-related data (*e.g.,* Scopes 1 and 2 emissions data) from small companies in their value chains, exempting SRCs from climate-related disclosures could hamper larger registrants from accurately assessing their Scope 3 emissions.[949] Instead of, or in addition to, an exemption from Scope 3 reporting, some commenters recommended providing a longer transition period for SRCs.[950]

Some commenters recommended that the Commission exempt EGCs from the proposed rules, including GHG emissions reporting requirements, or at least provide them with the same accommodations as SRCs.[951] Commenters stated that the large compliance costs of the proposed rules would likely deter many potential EGCs from going public.[952] Other commenters opposed exempting EGCs from the proposed rules because such companies, like SRCs, may be exposed to climate-related risks.[953]

b. Presentation of the GHG Emissions Metrics and Underlying Methodologies and Assumptions

Commenters expressed mixed views on the proposed requirement to disclose GHG emissions on both an aggregated and disaggregated basis. Some commenters supported the proposed requirement because each constituent gas may be subject to differing regulations and presents its own set of risks, which aggregated disclosure, by itself, would conceal.[954] Other commenters supported the proposed requirement because it would standardize the GHG emissions disclosure and help investors compare the GHG emissions data when making their risk assessments regarding a registrant.[955] Still other commenters supported the proposed requirement because it is consistent with the GHG Protocol and would generally enhance the transparency of GHG emissions disclosure, which they viewed as fundamental for investors because it helps investors understand the financial impacts that transition risk may have on a registrant's business and financial condition, including on its liquidity and capital resources.[956]

Other commenters, however, opposed the proposed requirement to disclose GHG emissions on a disaggregated basis because they believe it would impose additional costs without necessarily resulting in material disclosure.[957] Several of these commenters stated that a registrant should only be required to disclose disaggregated data for constituent gases that are material.[958] Other commenters opposed the proposed requirement because it would be difficult to obtain the necessary data for each constituent gas, particularly for Scopes 2 and 3 emissions.[959] One commenter stated that the proposed disaggregated disclosure requirement would not be compatible with certain industry standard life cycle assessment models.[960] Another commenter opposed a disaggregated disclosure requirement for GHG emissions unless a registrant's particular industry required such disclosure.[961]

Many commenters supported the proposed requirement to describe the methodology, significant inputs, and significant assumptions used to calculate a registrant's GHG emissions metrics.[962] Commenters stated that such disclosure is necessary to place the GHG emissions data in context and to help investors properly understand and interpret the reported emissions information and associated risks.[963] One commenter, however, opposed the proposed requirement, asserting that it would require extensive disclosure of information that is unlikely to be material to investors and will require significant additional effort by registrants.[964] Other commenters opposed a requirement to disclose the emission factors used when calculating GHG emissions because, in their view, such disclosure would be burdensome to produce and of limited use by investors.[965]

Many commenters stated that a registrant should be required to calculate its GHG emissions pursuant to the GHG Protocol because the GHG Protocol's methodologies have been widely accepted and requiring their adherence would promote comparability.[966] Several of these commenters further recommended that the Commission allow registrants to follow the GHG Protocol's methodology regarding setting organizational boundaries [967] instead of the proposed requirement to base a registrant's organizational boundaries on the

[944] *See* letter from Grundfest.

[945] *See, e.g.,* letters from D. Burton, Heritage Fdn.; J. Herron; ICI; Morningstar; and TotalEnergies.

[946] *See, e.g.,* letters from BDO USA, LLP (June 17, 2022) (''BDO USA''); D. Burton, Heritage Fdn.; and Volta Inc. (June 15, 2022) (''Volta'').

[947] *See, e.g.,* letters from AGs of Cal. *et al.* (recommending requiring SRCs that have adopted transition plans with Scope 3 emissions reductions to report on those emissions); Amer. for Fin. Reform, Sunrise Project *et al.*; CalSTRS; CEMEX; Center Amer. Progress (stating that at a minimum, the final rule should establish a date in the future, such as fiscal year 2026 (filed in 2027), when small companies would be required to begin reporting Scope 3 emissions); Center for Sustainable Business at the University of Pittsburgh (June 17, 2022) (''CSB'') (recommending requiring universal disclosure of Scope 3 emissions in 3–5 years of effectiveness of the final rule); and PwC (recommending requiring SRCs that have included Scope 3 emissions in their targets and goals to disclose those emissions).

[948] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.*; and Center Amer. Progress.

[949] *See* letters from CalSTRS; Center Amer. Progress; and J. McClellan.

[950] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.*; ICI; and Soros Fund.

[951] *See, e.g.,* letters from BIO; Davis Polk; Grant Thornton; D. Burton, Heritage Fdn.; J. Herron; Nasdaq, Inc. (June 14, 2022) (''Nasdaq''); Shearman Sterling; and SBCFAC Recommendation.

[952] *See, e.g.,* letters from Davis Polk; and Grant Thornton.

[953] *See, e.g.,* letters from ICI; PwC; and Soros.

[954] *See, e.g.,* letters from PwC; and WRI.

[955] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.*; As You Sow; and Wellington Mgmt.

[956] *See, e.g.,* letters from Calvert; Fidelity; C. Howard; Impax Asset Mgmt.; and Morningstar.

[957] *See, e.g.,* letters from ABA; ERM CVS; Sullivan Cromwell; and T Rowe Price.

[958] *See, e.g.,* letters from ABA; Sullivan Cromwell; and T Rowe Price.

[959] *See, e.g.,* letters from Cleary Gottlieb; Deloitte & Touche; and Walmart.

[960] *See* letter from Amazon.

[961] *See* letter from CEMEX.

[962] *See, e.g.,* letters from CalPERS; Calvert; Impax Asset Mgmt.; and WRI.

[963] *See, e.g.,* letters from CalPERS; and WRI.

[964] *See* letter from ABA.

[965] *See, e.g.,* letters from ABA; D. Hileman Consulting; ERM CVS; and Futurepast (June 16, 2022).

[966] *See, e.g.,* letters from Alphabet *et al.*; As You Sow; Beller *et al.*; CalSTRS; CFA; Dell; Deloitte & Touche; Engine No. 1; ERM CVS; KPMG; Morningstar; Soc. Corp. Gov.; and WRI.

[967] *See, e.g.,* letters from Alphabet *et al.*; Beller *et al.*; Deloitte & Touche; and KPMG; *see also* Soc. Corp. Gov (stating that because many registrants use the operational control method, the proposed GHG emissions requirement would not only require unnecessary additional time, effort, and resources and present significant challenges, but it would also generate discrepancies between earlier-reported data and data disclosed pursuant to the proposed rule). *See also* discussion *supra* note 938.

entities included in its consolidated financial statements. One of these commenters stated that because many registrants use the ''operational control'' approach permitted under the GHG Protocol, allowing such registrants to continue to follow the GHG Protocol in this regard would mitigate the compliance burden of GHG emissions disclosure because those registrants would not be required to implement a different approach, in particular, regarding equity method investees.[968] Some commenters, however, stated that a registrant should be permitted to follow other climate-related standards, such as certain International Organization for Standardization (ISO) standards, used by some companies when calculating their GHG emissions.[969]

Several commenters supported the proposed requirement to disclose gross emissions by excluding any purchased or generated carbon offsets.[970] Commenters stated that requiring the disclosure of gross emissions would enable investors to gain a full picture of a registrant's emissions profile and better assess its transition risk exposure.[971] Some commenters also pointed to perceived problems in carbon offset markets regarding the quality and permanence of offsets when supporting a gross emissions disclosure requirement.[972] Other commenters stated that a registrant should be required to disclose both a total amount with, and a total amount without, the use of offsets for each scope of emissions because such disclosure would increase transparency on offset use, which is critical to understanding how a registrant is managing transition risk to its business.[973]

Some commenters, however, opposed the proposed requirement to exclude carbon offsets when disclosing GHG emissions.[974] These commenters stated that the purchase of carbon offsets is a legitimate means for a registrant to reduce its carbon emissions and expressed the view that high-quality carbon offsets should play a significant role in a transition to a lower carbon economy.[975]

A number of commenters supported the proposed requirement to disclose GHG emissions in terms of GHG intensity.[976] These commenters stated that investors would find the disclosure of GHG intensity useful because it would help them assess a registrant's progress in achieving its emissions management and reduction goals, put in context its emissions in relation to its scale, and facilitate comparing the registrant's emissions efficiency with other registrants in the same industry.[977] Some commenters also noted that the TCFD recommends the disclosure of GHG emissions both in absolute terms and terms of intensity because each metric serves a different purpose.[978] For example, one commenter stated that the disclosure of emissions in absolute terms provides necessary baseline emissions data whereas normalizing the data using an intensity metric allows for a focus on emissions efficiency per unit of production relevant to the registrant's industry.[979] While some commenters supported the proposed requirement to disclose GHG intensity in terms of both metric tons of CO_2e per unit of total revenue and per unit of production relevant to the registrant's industry,[980] other commenters recommended making the final rules more flexible by expressly permitting registrants to use other GHG intensity metrics.[981]

Some commenters, however, opposed the proposed GHG intensity disclosure requirement.[982] These commenters stated that the proposed requirement to disclose a registrant's GHG emissions per unit of total revenue was unnecessary because investors can easily calculate this metric from a registrant's gross GHG emissions divided by its total revenues.[983] Some commenters further stated that the proposed requirement to disclose a registrant's GHG emissions per unit of production would be unworkable for many registrants with different product lines, even within the same industry, and would not result in comparable disclosure for investors.[984] Consequently, according to these commenters, GHG intensity disclosure should only be voluntary.[985]

Several commenters supported the proposed provision that would allow a registrant to use reasonable estimates when disclosing its GHG emissions as long as it also describes the assumptions underlying, and its reasons for using, the estimates.[986] One commenter stated that the proposed provision would encourage the disclosure of GHG emissions.[987] Other commenters supported the proposed provision because the reporting of GHG emissions often relies on the use of estimates, such as emission factors and location-based data.[988] Another commenter stated that, while the use of estimates would primarily be needed for the disclosure of Scope 3 emissions, in certain instances registrants may need to estimate their Scope 1 and 2 emissions if they are not able to access the necessary information.[989] One other commenter stated that the use of

[968] *See* letter from Alphabet *et al.*

[969] *See* letters from Futurepast (referencing ISO 14064–1, Specification with guidance at the organization level for quantification and reporting of greenhouse gas statements and ISO 14067, Carbon footprint of products—Requirements and guidelines for quantification); and International Organization for Standardization (ISO) Committee on GHG and Climate Change Management (June 13, 2022) (''ISO Comm. GHG'').

[970] *See, e.g.,* letters from AllianceBernstein; Amer. for Fin. Reform, Sunrise Project *et al.*; As You Sow; CalPERS; Etsy; C. Howard; ICCR; KPMG; and Wellington Mgmt.

[971] *See, e.g.,* letters from Anthesis Group; As You Sow; CEMEX; Domini Impact; ICI; IATP; KPMG; PRI; and Wellington Mgmt.

[972] *See, e.g.,* letters from Amer. For Fin. Reform, Sunrise Project *et al.*; Ceres; and ICCR.

[973] *See, e.g.,* letters from AllianceBernstein; CalPERS; and ERM CVS.

[974] *See, e.g.,* letters from Airlines for America; International Air Transport Association (June 17, 2022) (''IATA''); and SIFMA (each opposed to a requirement to solely disclose GHG emissions in gross terms and supporting GHG emissions disclosure both in gross and net terms); *see also* letter from J. Weinstein (opposed to any requirement to exclude carbon offsets when disclosing GHG emissions).

[975] *See* letters from Airlines for America; and SIFMA.

[976] *See, e.g.,* letters from Amazon; BOA; CalPERS; D. Hileman Consulting; C. Howard; Morningstar; PIMCO; and PRI.

[977] *See, e.g.,* letters from Amazon; BOA; and PIMCO.

[978] *See, e.g.,* letters from BOA; and PRI.

[979] *See* letter from BOA.

[980] *See, e.g.,* letters from Amazon (stating that an intensity metric based on ''gross merchandise sales'' should be an appropriate unit of production); ERM CVS (stating that an intensity metric based on unit of production should be required where possible); and C. Howard.

[981] *See, e.g.,* letters from BOA (stating that registrants should be permitted to use GHG intensity metrics specified under the TCFD framework or incorporated into the Partnership for Carbon Accounting Financials' Global GHG Accounting & Reporting Standard used by banks and other financial institutions); and NAM (supporting increased flexibility that would allow companies to choose and disclose a single GHG intensity metric, or to forgo intensity reporting, depending on the metrics' relevance to their operations and emissions).

[982] *See, e.g.,* letters from ABA; PwC; SIFMA; and Sullivan Cromwell.

[983] *See* letters from ABA; and Sullivan Cromwell.

[984] *See* letters from ABA; PwC; SIFMA; and Sullivan Cromwell.

[985] *See, e.g.,* letters from CEMEX; PwC; and SIFMA.

[986] *See, e.g.,* letters from C2ES; CEMEX; D. Hileman Consulting; ERM CVS; KPMG; PWC; and WSP.

[987] *See* letter from Cemex.

[988] *See* letters from PWC; and KPMG (supporting the use of estimates generally because the measurement of emissions usually includes many estimates, assumptions, and extrapolations of data); *see also* letter from BIO (supporting maximum flexibility in the reporting of GHG emissions because ''the current ecosystem of GHG emission reporting is 'evolving and unique' and in some cases may warrant the use of varying methodologies, differing assumptions, and a substantial amount of estimation'').

[989] *See* letter from C2ES.

estimates should not be permitted when actual data is available.[990]

c. Timeline for Reporting GHG Emissions Metrics

Some commenters supported the proposed requirement to provide GHG emissions disclosure for the registrant's most recently completed fiscal year and for the appropriate, corresponding historical fiscal years included in the registrant's consolidated financial statements in the filing, to the extent such historical GHG emissions data is reasonably available.[991] Other commenters, however, stated that the GHG emissions disclosure requirement should be applied initially only to the most recently completed fiscal year following the date of compliance, with GHG emissions disclosure for historical periods required prospectively only.[992]

Several commenters supported the proposed requirement to disclose a registrant's GHG emissions as of fiscal year-end in its corresponding Exchange Act annual report.[993] Commenters stated that the proposed timeline for reporting a registrant's GHG emissions should be consistent with the timeline for its financial reporting to maximize the use of the GHG emissions data and to enhance the data's comparability.[994] One commenter further stated that the timing of a registrant's emissions data disclosure should be coincident with its financial statement data reporting because the objective of reporting climate-related data for investors is to understand the correlation with financial performance.[995]

Many other commenters [996] opposed the proposed requirement to disclose GHG emissions metrics in a registrant's Exchange Act annual report.[997] Commenters stated that, because of the difficulty required to calculate, verify, and disclose a registrant's GHG emissions, and because much of the necessary data for such disclosure does not become available along the same timeline as its other Exchange Act annual reporting requirements, the Commission should permit a registrant to provide its GHG emissions disclosure sometime after the Exchange Act annual report deadline.[998] Commenters recommended that the Commission permit registrants to include the GHG emissions disclosure either in a separate report that would be due later than the deadline for filing their annual report on Form 10–K or Form 20–F,[999] in a Form 10–Q or Form 6–K filed subsequent to the due date for the Exchange Act annual report,[1000] or in an amendment to the Exchange Act annual report.[1001] Commenters recommended varying deadlines for reporting GHG emissions, such as 120 days [1002] or 180 days following the end of its most recently completed fiscal year,[1003] or the due date for the Form 10–Q for the registrant's first [1004] or second fiscal quarter.[1005] Commenters further stated that providing a later deadline for GHG emissions disclosure would better align with the GHG emissions reporting required by other administrative agencies.[1006] In addition, commenters stated that providing a later deadline for GHG emissions disclosure would be preferable to the proposed use of a fourth quarter estimate, which would likely require an additional submission that would be burdensome for registrants and potentially confusing for investors.[1007]

3. Final Rule

a. Overview of the GHG Emissions Disclosure Requirement

As many commenters have indicated, investors view information about a registrant's GHG emissions, including its Scopes 1 and 2 emissions, as a central measure and indicator of the registrant's exposure to transition risk as well as a useful tool for assessing its management of transition risk and understanding its progress towards a registrant's own climate-related targets or goals.[1008] Because such information can be necessary to inform an investor's understanding of the overall impact of transition risk and related targets and goals on a registrant's business, results of operations, financial condition, and prospects, the final rules include a Scopes 1 and 2 emissions disclosure requirement (Item 1505), although modified from the rule proposal. We recognize commenters' concerns about the potentially high cost of compliance associated with the proposed GHG emissions disclosure requirement, including Scopes 1 and 2 emissions,[1009] as well as concerns about the current availability and reliability of the underlying data for Scope 3 emissions.[1010] To help address these concerns, instead of requiring, as proposed, the disclosure of Scopes 1 and 2 emissions by all registrants regardless of their materiality, the final rules will require the disclosure of Scope 1 emissions and/or Scope 2 emissions metrics [1011] by LAFs and AFs

[990] *See* letter from ERM CVS.

[991] *See, e.g.,* letters from Morningstar; Salesforce; Unilever; and WRI.

[992] *See, e.g.,* letters from Alphabet *et al.;* ABA; BHP; BlackRock; BOA; BP; Chamber; Citigroup; Cleary Gottlieb; Dell; D. Hileman Consulting; NAM; PwC; SIFMA; and T Rowe Price.

[993] *See, e.g.,* letters from Alternative Investment Management Association (June 17, 2022) (''AIMA''); CalPERS; CEMEX; Eni SpA; Morningstar; TotalEnergies; and XBRL US (June 17, 2022).

[994] *See, e.g.,* letters from AIMA; CEMEX; and XBRL US.

[995] *See* letter from XBRL US.

[996] *See, e.g.,* letters from ABA; ACLI; Amer. Bankers; Blackrock; Can. Bankers; Chamber; ConocoPhillips; GM; HP; Hydro One; Microsoft; NAM; Nareit; Nasdaq; NMA; NRF; Prologis (June 17, 2022); Real Estate Board of New York (June 15, 2022) (''Real Estate NY''); SIFMA; Soc. Corp. Gov.; Walmart; and Williams Cos.

[997] Commenters also expressed timing concerns regarding the proposed requirement to include the GHG emissions disclosure in a Securities Act or Exchange Act registration statement. In particular, commenters raised concerns with applying the proposed climate disclosure rules to registrants in initial public offerings or to companies that are the target of a Form S–4 or F–4 transaction. We discuss these comments in section II.L below.

[998] *See, e.g.,* letters from ABA; BlackRock; Chamber; GM; SIFMA; and Soc. Corp. Gov.

[999] *See, e.g.,* letters from Alphabet *et al.* (recommending inclusion in a separate form filed no earlier than 180 days after fiscal year-end); BlackRock (recommending inclusion in a new form due 120 days after fiscal year-end); Chamber (recommending inclusion in a form due no earlier than 180 days after fiscal year-end); D. Hileman Consulting (recommending inclusion in a form due by May 31st in the subsequent fiscal year); NAM (recommending inclusion in a form due no earlier than the end of the second quarter in the subsequent fiscal year); and T Rowe Price (recommending inclusion in a form due 120 days after fiscal year-end).

[1000] *See, e.g.,* letters from ABA (recommending inclusion in the Form 10–Q for the first quarter in the subsequent fiscal year or in a Form 6–K furnished at a comparable time); BOA (recommending inclusion no later than the due date for the Form 10–Q for the second quarter in the subsequent fiscal year); and SIFMA (recommending inclusion in the Form 10–Q for the second quarter in the subsequent fiscal year or in a Form 6–K furnished at a comparable time).

[1001] *See* letter from Cleary Gottlieb.

[1002] *See, e.g.,* letters from Blackrock; and GM (suggesting alignment with GHG emissions reporting deadline of other agencies (90–120 days after fiscal year-end)).

[1003] *See, e.g.,* letters from ACLI; Can. Bankers; Chamber; HP; Nareit; NMA; Soc. Corp. Gov.; Sullivan Cromwell (recommending 180 days after fiscal year-end deadline for all climate disclosures).

[1004] *See, e.g.,* letter from ABA.

[1005] *See, e.g.,* letters from NAM (recommending that GHG emissions be disclosed in separate report that is aligned with due date for 2nd fiscal quarter Form 10–Q); and SIFMA.

[1006] *See, e.g.,* letters from ABA; Chamber; GM; HP; NAM; NMA; and Soc. Corp. Gov.

[1007] *See, e.g.,* letters from ABA; Can. Bankers; Chamber; GM; HP; Microsoft; NAM; Nareit; and Soc. Corp. Gov.

[1008] *See, e.g.,* letters from AGs of Cal. *et al.;* AllianceBernstein; CalPERS; CalSTRS; IAA; Miller/Howard; Morningstar; Trillium; and Wellington Mgmt.

[1009] *See supra* notes 933 to 935 and accompanying text.

[1010] *See supra* notes 924–925 and accompanying text.

[1011] The concept of scopes was developed as part of the GHG Protocol. *See* World Business Council for Sustainable Development and World Resources Institute, GHG Protocol, *Corporate Accounting and Reporting Standard* (2004), available at *https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf.* We understand that some

that are not SRCs or EGCs, on a phased in basis,[1012] if such emissions are material.[1013]

As commenters have noted, some registrants already measure their GHG emissions, typically Scopes 1 and 2 emissions,[1014] and some use the data to manage their transition risk exposure or monitor their progress towards achieving climate-related targets and goals.[1015] Many other registrants, however, have determined that climate is not a material risk to their business, or are not currently measuring their GHG emissions.[1016]

In balancing these considerations, we are not mandating Scopes 1 and/or 2 emissions disclosures from all registrants. Rather, under the final rule, if either or both of those categories of GHG emissions are material, and the registrant is an LAF or an AF other than an SRC or EGC, it must disclose its Scopes 1 and/or 2 emissions metrics.[1017] As we stated when discussing a registrant's determination of material impacts of climate-related risks, we intend that a registrant apply traditional notions of materiality under the Federal securities laws when evaluating whether its Scopes 1 and/or 2 emissions are material.[1018] Thus, materiality is not determined merely by the amount of these emissions. Rather, as with other materiality determinations under the Federal securities laws and Regulation S–K, the guiding principle for this determination is whether a reasonable investor would consider the disclosure of an item of information, in this case the registrant's Scope 1 emissions and/or its Scope 2 emissions, important when making an investment or voting decision or such a reasonable investor would view omission of the disclosure as having significantly altered the total mix of information made available.

A registrant's Scopes 1 and/or 2 emissions may be material because their calculation and disclosure are necessary to allow investors to understand whether those emissions are significant enough to subject the registrant to a transition risk that will or is reasonably likely to materially impact its business, results of operations, or financial condition in the short- or long-term. For example, where a registrant faces a material transition risk that has manifested as a result of a requirement to report its GHG emissions metrics under foreign or state law [1019] because such emissions are currently or are reasonably likely to be subject to additional regulatory burdens through increased taxes or financial penalties, the registrant should consider whether such emissions metrics are material under the final rules. A registrant's GHG emissions may also be material if their calculation and disclosure are necessary to enable investors to understand whether the registrant has made progress toward achieving a target or goal or a transition plan that the registrant is required to disclose under the final rules.

Conversely, the fact that a registrant is exposed to a material transition risk does not necessarily result in its Scope 1 and Scope 2 emissions being de facto material to the registrant. For example, a registrant could reasonably determine that it is exposed to a material transition risk for reasons other than its GHG emissions, such as a new law or regulation that restricts the sale of its products based on the technology it uses, not directly based on its emissions.[1020] Such a risk may trigger disclosure under other provisions of subpart 1500 but may not necessarily trigger disclosure of Scope 1 and Scope 2 emissions information under Item 1505.[1021]

This revised approach to GHG emissions disclosure will provide investors with information they need to make informed investment and voting decisions while addressing concerns regarding the disclosure of GHG emissions data that may be immaterial. This approach will also limit the compliance costs of the final rules, as it will *not* require disclosure of GHG emissions data where such data is immaterial. Basing the GHG emissions disclosure requirement on traditional notions of materiality, which are fundamental to U.S. securities laws and the Commission's securities regulation, is more appropriate than a requirement that relies on GHG emissions disclosure laws or regulations required by other Federal agencies and foreign or state jurisdictions, as one commenter recommended.[1022] Those other laws or regulations may be adopted to serve other purposes and may be presented without the additional disclosures that supplement the ''total mix'' of information investors need for context and to understand why the GHG emissions information is material.

We acknowledge, however, that registrants could incur costs to assess and monitor the materiality of their emissions, even in situations in which they ultimately determine that they do not need to provide disclosure, and that for some registrants these costs could be significant, especially if firms are not already tracking this information for internal purposes.[1023] Mindful of these costs, we are further limiting the GHG emissions disclosure requirement to LAFs and AFs that are not SRCs or EGCs and on a phased in basis. These further limitations will help ensure that any registrants potentially subject to the final rule have sufficient resources and time to prepare for what we

registrants may measure their GHG emissions pursuant to other well-established standards, such as ISO 14064 and related ISO standards, which do not refer to scopes. For the purposes of the final rules, we have defined ''Scope 1 emissions'' and ''Scope 2 emissions,'' respectively, as a registrant's direct emissions and indirect emissions largely from the generation of purchased or acquired electricity consumed by the registrant's operations. We intend these definitions to include substantially similar emissions as those measured pursuant to the ISO standards. Accordingly, registrants have flexibility to leverage standards of their choice in calculating and disclosing GHG emissions metrics required by the final rules, including the GHG Protocol or relevant ISO standards, or other standards that may be established over time.

[1012] As discussed in section II.O below, LAFs will have a one-year transition period before they are required to comply with the final rule's GHG emissions disclosure requirements. AFs that are not SRCs or EGCs will be required to comply with the final rule's GHG emissions disclosure requirements two years following the GHG emissions compliance date for LAFs.

[1013] *See* 17 CFR 229.1505(a)(1). To the extent Scope 1 and/or 2 emissions disclosure are required under the final rules, 17 CFR 230.409 or 17 CFR 240.12b–21, which provide accommodations for information that is unknown and not reasonably available, would be available if its conditions are met.

[1014] *See supra* note 916 and accompanying text.

[1015] *See id.*

[1016] Although the TCFD has reported a significant increase in the number of companies that have publicly disclosed their GHG emissions across the globe in recent years, a minority of North American and U.S. companies have done so. The TCFD recently reported that only 30% of North American companies surveyed reported their Scopes 1, 2, and 3 emissions in 2021. *See* TCFD, *supra* note 768.

[1017] If a registrant is an LAF or an AF other than an SRC or EGC and its Scope 1 emissions are material but its Scope 2 emissions are not material, then, under the final rules, the registrant must disclose its Scope 1 emissions and is not required to disclose its Scope 2 emissions (and vice versa if its Scope 2 emissions are material but its Scope 1 emissions are not). If a registrant's Scope 1 and Scope 2 emissions both are material, then it must disclose both categories of emissions.

[1018] *See, e.g., supra* note 381 and accompanying text.

[1019] *See supra* section II.A.3 (discussing adoption of the ISSB climate disclosure standard and the foreign jurisdictions that intend to implement the standard and California's recently adopted laws requiring certain large corporations to disclose their GHG emissions metrics and their climate-related financial risks).

[1020] *See, e.g.,* Simone Foxman, *The Electric Revolution Is Coming for Your Lawn Mower,* Bloomberg (Nov. 20, 2023), available at *https://www.bloomberg.com/news/articles/2023-11-20/gas-lawn-care-ban-in-california-tests-electric-leaf-blower-appeal.*

[1021] *See id.*

[1022] *See* letter from Grundfest.

[1023] *See infra* section IV.C.2.e.

acknowledge could be a significant additional compliance obligation.[1024]

We recognize that many commenters supported the proposed requirement for disclosure of Scopes 1 and 2 emissions for all registrants. Nevertheless, mindful of the attendant costs, we believe that the final rules present an appropriate means to achieve the primary benefits of GHG emissions disclosure, namely: providing investors with material metrics that will aid in the assessment of transition risk for those registrants that have identified a material climate risk; and facilitating investors' evaluation of a registrant's progress towards achieving a material target or goal and the attendant effects on the registrant's business, results of operations, or financial condition. While the final GHG emissions disclosure provision will not apply to as many registrants or achieve the same level of comparability as may have been achieved under the proposed rules, on balance, we believe that, coupled with the other disclosures required under subpart 1500 and the structured data requirements of the final rules, investors will have sufficient information to assess the operational and financial impact of transition risks and strategies on registrants and compare such impacts across registrants.

b. Presentation of the GHG Emissions Metrics and Disclosure of the Underlying Methodologies and Assumptions

In a change from the rule proposal, which would have required the disclosure of a registrant's GHG emissions both disaggregated by each constituent GHG and in the aggregate, the final rule will require the disclosure of any described scope of emissions to be expressed in the aggregate in terms of CO_2e.[1025] This change is intended to address the concern of some commenters that the proposed approach would impose additional burdens and costs on registrants without necessarily resulting in material information for investors.[1026] In addition, if a registrant is required to disclose its Scope 1 and/or Scope 2 emissions, and any constituent gas of the disclosed emissions is individually material, it must also disclose such constituent gas disaggregated from the other gases.[1027] For example, if a registrant has included a particular constituent gas, such as methane, in a GHG emissions reduction target that is disclosed pursuant to Item 1504(a) because it is reasonably likely to materially affect the registrant's business, such constituent gas may be material and, therefore, required to be disclosed in disaggregated fashion. The required disaggregated disclosure of an individually material gas will help inform investors about the degree to which a registrant is exposed to transition risk as governments and markets may treat the individual GHG components differently.[1028] As explained in the Proposing Release, requiring a standard unit of measurement for GHG emissions with which many registrants are familiar should simplify the disclosure for investors and enhance its comparability across registrants with different types of GHG emissions.[1029]

Consistent with the rule proposal, under the final rule, a registrant that is required to disclose its Scope 1 and/or Scope 2 emissions must disclose those emissions in gross terms by excluding the impact of any purchased or generated offsets.[1030] As noted by some commenters, this requirement will enable investors to gain a more complete understanding of the full magnitude of a registrant's exposure to transition risk and to assess the extent to which a registrant relies upon purchased or generated offsets, if the registrant provides disclosure about the offsets pursuant to Item 1504, and better compare such exposure across registrants.[1031] Information about the degree to which a registrant's strategy relies on offsets is increasingly important for investors not only because their use exposes the registrant to offset market fluctuations but also because such use may indicate heightened transition risk exposure to the extent governments seek to regulate their use.[1032]

Also, similar to the rule proposal,[1033] the final rule will require a registrant to describe the methodology, significant inputs, and significant assumptions used to calculate the registrant's disclosed GHG emissions.[1034] We continue to believe that this information is important to investors because it will help them understand GHG emissions disclosures by providing important contextual information, such as the scope of the entities included in the GHG emissions results that may be subject to transition risk, and inform comparability across registrants while also providing registrants with flexibility to determine the appropriate methodologies and assumptions to use based on their own facts and circumstances. However, we have modified the proposed requirement to provide registrants with greater flexibility to present this information in a manner that best fits with their particular facts and circumstances, as several commenters recommended.[1035] For example, like the rule proposal, the final rule will require a registrant to disclose the organizational boundaries used when calculating its Scope 1 emissions and/or its Scope 2 emissions.[1036] Unlike the rule proposal, however, which would have required a registrant to use the same scope of entities and other assets included in its consolidated financial statements when determining the organizational boundaries for its GHG emissions calculation,[1037] the final rule provides that the registrant must disclose the method used to determine the organizational boundaries, and if the organizational boundaries materially differ from the scope of entities and operations included in the registrant's consolidated financial statements, the registrant must provide a brief

[1024] As discussed below, neither EGCs nor SRCs will be required to disclose their Scopes 1 and 2 emissions under the final rules. *See* 17 CFR 229.1505(a)(3)(i).

[1025] *See* 17 CFR 229.1505(a)(2)(i).

[1026] *See supra* note 957 and accompanying text.

[1027] *See* 17 CFR 229.1505(a)(2)(i).

[1028] For example, the EPA recently adopted a new regulation to curb methane emissions, which could be a source of transition risk for some registrants. *See* EPA, *EPA's Final Rule for Oil and Natural Gas Operations Will Sharply Reduce Methane and Other Harmful Pollution* (Dec. 2, 2023), available at *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-operations/epas-final-rule-oil-and-natural-gas.*

[1029] *See* Proposing Release, section II.G.1.

[1030] *See* 17 CFR 229.1505(a)(2)(ii). While the rule specifies that gross emissions should be calculated without taking into account any purchased or generated offsets, the extent to which a registrant will exclude RECs from its gross emissions will depend on the methodology the registrant chooses to use. As described in the Proposing Release, section II.G.2., there are two common methods for calculating Scope 2 emissions: the market-based method and the location-based method. The market-based method may involve the use of RECs. *See* World Resources Institute, *GHG Protocol Scope 2 Guidance (2015),* Chapter 4, available at *https://ghgprotocol.org/sites/default/files/standards/Scope%202%20Guidance_Final_Sept26.pdf.* A registrant is required to describe its methodology, and in the case of Scope 2 emissions, it should include a description of whether and how RECs factor into its gross emissions calculation.

[1031] *See, e.g.,* letters from ICI; and Wellington Mgmt.

[1032] *See* California Legislative Information, Assembly Bill No. 1305, *Voluntary carbon market disclosures* (Oct. 7, 2023), available at *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1305.*

[1033] *See* Proposing Release, section II.G.2.

[1034] *See* 17 CFR 229.1505(b)(1).

[1035] *See, e.g.,* letters from ABA; Chamber; SIFMA; and Soc. Corp. Gov.

[1036] Like the rule proposal, the final rule defines ''organizational boundaries'' to mean the boundaries that determine the operations owned or controlled by a registrant for the purpose of calculating its GHG emissions. *See* 17 CFR 229.1500.

[1037] *See* Proposing Release, section II.G.2.a.

explanation of this difference in sufficient detail for a reasonable investor to understand. In addition, when describing its organizational boundaries, a registrant must describe the method used to determine those boundaries.[1038] Under this approach, a registrant will have flexibility to use, for example, one of the methods for determining control under the GHG Protocol, including the operational control approach, as recommended by some commenters,[1039] as long as it discloses the method used, and provides investors with information material to understanding the scope of entities and operations included in the GHG emissions calculation as compared to those included in its financial statements. We have made this change to address widely shared concerns about the compliance burden and associated costs of the more prescriptive aspects of the rule proposal.[1040] At the same time, requiring the registrant to provide a brief explanation of any material difference from the scope of entities and operations included in the consolidated financial statements will help avoid any potential confusion on the part of investors about the scope of entities included in the GHG emissions calculation and help them assess the extent of the registrant's transition risk-related financial impacts.

Similarly, we have also streamlined the methodology disclosure provision by, for example, specifying that a *brief* discussion, in sufficient detail for a reasonable investor to understand, is required of the operational boundaries used,[1041] including the approach to categorization of emissions and emissions sources.[1042] This provision is intended to provide investors with a general understanding of how the registrant determined which sources of emissions to include when calculating its direct emissions (Scope 1) and indirect emissions (Scope 2) to facilitate investors' understanding of the GHG emissions results and enhance their comparability across registrants while avoiding extensive disclosure that may be more burdensome for registrants to produce or investors to process.

Whereas the rule proposal would have required the disclosure of the calculation approach, including any emission factors used and the source of the emission factors,[1043] and any calculation tools used to calculate the GHG emissions, the final rule requires a *brief* description of, in sufficient detail for a reasonable investor to understand, the protocol or standard used to report the GHG emissions, including the calculation approach, the type and source of any emission factors used, and any calculation tools used to calculate the GHG emissions.[1044] Rather than potentially requiring a lengthy explanation of the calculation approach used, this provision will require a registrant to disclose whether it calculated its GHG emissions metrics using an approach pursuant to the GHG Protocol's Corporate Accounting and Reporting Standard, an EPA regulation, an applicable ISO standard,[1045] or another standard. Pursuant to this provision, we would expect a registrant to also disclose whether it calculated its Scope 2 emissions using a particular method (which may differ from the method used to calculate Scope 1 emissions, to the extent both Scope 1 and 2 emissions are required to be disclosed under the final rules), such as the location-based method, market-based method, or both.[1046] Similarly, a registrant should disclose the identity of any calculation tools used, such as those provided by the GHG Protocol or pursuant to GHG emissions calculation under the ISO standards. In addition, by modifying the proposed requirement to disclose any emission factors used, we are clarifying that the final rule will not require the disclosure of any quantitative emission factors used. Instead, the final rule will require a registrant to disclose the type and source of any emission factors used, such as the EPA's emission factors for stationary combustion and/or mobile combustion of various fuel types.[1047]

Requiring a brief description of the protocol or standard used to calculate a registrant's GHG emissions, together with the type and source of any emission factors used, will provide investors with information that is important to understanding the reported emissions data and associated risks [1048] without burdening registrants by requiring disclosure of detailed information that may not be material.[1049] Such disclosure should assist investors in understanding the emission disclosures and promote consistency and comparability over time. For example, with the required disclosures, an investor will be able to evaluate the registrant's selected emission factor(s) in the context of its operations and assess whether changes in reported emissions over time reflect changes in actual emissions in accordance with its strategy or simply a change in calculation methodology.

Unlike the rule proposal, which would have required a registrant to disclose its GHG emissions in both absolute terms and terms of intensity,[1050] under the final rule, registrants will not be required to disclose its GHG emissions in terms of intensity. As some commenters noted, the proposed intensity disclosure requirement is not necessary because investors should be able to calculate a registrant's GHG emissions per unit of total revenue by dividing a registrant's gross GHG emissions by its total revenues.[1051] Eliminating the GHG intensity disclosure requirement will also help lower the final rules' compliance burden. Although a registrant may choose to disclose its GHG emissions in terms of intensity, it is not required under the final rule.

Like the rule proposal, the final rule provides that a registrant may use reasonable estimates when disclosing its GHG emissions as long as it also describes the assumptions underlying, and its reasons for using, the estimates.[1052] This explanation will

[1038] *See* 17 CFR 229.1505(b)(1)(i).

[1039] *See supra* note 967 and accompanying text.

[1040] *See supra* notes 956 and 968 and accompanying text.

[1041] Like the rule proposal, the final rule defines ''operational boundaries'' to mean the boundaries that determine the direct and indirect emissions associated with the business operations owned or controlled by a registrant. *See* 17 CFR 229.1500.

[1042] *See* 17 CFR 229.1505(b)(1)(ii).

[1043] Emission factors are ratios that typically relate GHG emissions to a proxy measure of activity at an emissions source. Examples of activity data reflected in emission factors include kilowatt-hours of electricity used, quantity of fuel used, output of a process, hours of operation of equipment, distance travelled, and floor area of a building. The EPA has published a series of commonly used emission factors. *See* EPA, *Emission Factors for Greenhouse Gas Inventories* (Apr. 2021), available at *https://www.epa.gov/sites/default/files/2021-04/documents/emission-factors_apr2021.pdf. See also* 17 CFR 229.1500 (definition of ''emission factors'').

[1044] *See* 17 CFR 229.1505(b)(1)(iii).

[1045] *See supra* note 969.

[1046] The market-based method and the location-based method are two common methods for calculating Scope 2 emissions for purchased electricity. For a description of these methods, *see* World Resources Institute, *GHG Protocol Scope 2 Guidance,* Chapter 7, available at *https://files.wri.org/d8/s3fs-public/ghg-protocol-scope-2-guidance.pdf;* and EPA Center for Corporate Climate Leadership, *Scope 1 and Scope 2 Inventory Guidance,* available at *https://www.epa.gov/climateleadership/scope-1-and-scope-2-inventory-guidance.*

[1047] The EPA has published a set of emission factors based on the particular type of source (*e.g.,* stationary combustion, mobile combustion, refrigerants, and electrical grid, among others) and type of fuel consumed (*e.g.,* natural gas, coal or coke, crude oil, and kerosene, among many others. *See* EPA, Emission Factors for Greenhouse Gas Inventories (Apr. 2021), available at *https://www.epa.gov/sites/default/files/2021-04/documents/emission-factors_apr2021.pdf.*

[1048] *See supra* note 963 and accompanying text.

[1049] *See supra* note 964 and accompanying text.

[1050] *See* Proposing Release, section II.G.1.

[1051] *See supra* note 983 and accompanying text.

[1052] *See* 17 CFR 229.1505(b)(2).

help investors understand and assess the GHG emissions disclosures and facilitate comparability across registrants. We recognize that, in many instances, direct measurement of GHG emissions at the source, which would provide the most accurate measurement, may not be possible. We also recognize that it is common practice under various GHG emissions reporting methodologies to use estimates, such as emission factors, when calculating a company's Scopes 1 and 2 emissions.[1053] A registrant may use reasonable estimates under the final rule as long as it describes the underlying assumptions and explains its reasons for using the estimates. Allowing for the use of reasonable estimates with an explanation will help lower the compliance burden for a registrant that must disclose its GHG emissions without, in our view, unduly undermining comparability and reliability of the GHG emissions metrics disclosure.

c. Exclusions From the GHG Emissions Disclosure Requirement

We are not adopting a provision that would require a registrant to disclose its Scope 3 emissions at this time. We are mindful of the potential burdens such a requirement could impose on registrants and other parties as well as questions about the current reliability and robustness of the data associated with Scope 3 emissions, as noted by commenters.[1054] However, we also recognize that, as some commenters indicated, disclosure of a registrant's Scope 3 emissions, including emissions from its suppliers (*i.e.,* upstream emissions) and its customers or consumers (*i.e.,* downstream emissions), or at least from those parties in its value chain that have significant emissions, may allow investors to develop a fuller picture of the registrant's transition risk exposure and evaluate and compare investment risks across registrants more thoroughly.[1055] Moreover, because many registrants will be required to disclose their Scope 3 emissions under foreign or state law or regulation,[1056] Scope 3 calculation methodologies may continue to evolve, mitigating many of the concerns noted by commenters about the disclosure of Scope 3 emissions. While such developments may encourage more registrants to disclose their Scope 3 emissions in Commission filings, at the present time, because of the potential costs and difficulties related to Scope 3 emissions reporting, the disclosure of Scope 3 emissions in Commission filings will remain voluntary.

Unlike the proposed rule, which would have exempted SRCs from the requirement to disclose Scope 3 emissions,[1057] the final rule will exempt SRCs and EGCs from any requirement to disclose its GHG emissions, including its Scopes 1 and 2 emissions.[1058] Such treatment is consistent with the scaled disclosure approach that is sometimes adopted for SRCs and EGCs.[1059] We understand from commenters that SRCs and EGCs will face the greatest burden and costs in attempting to comply with the GHG emissions disclosure requirement as compared to the other climate-related disclosure requirements.[1060] Accordingly, exempting SRCs and EGCs from this requirement but requiring them to comply with the final rules' other climate-related disclosure requirements should allow investors in SRCs and EGCs to gain a better understanding of the material climate risks such companies may be facing while limiting the overall costs to these registrants by alleviating the significant burdens associated with GHG emissions disclosure.

The final rules provide that a registrant is not required to include GHG emissions from a manure management system when disclosing its overall Scopes 1 and 2 emissions pursuant to 17 CFR 229.1505(a)(1).[1061] This exclusion from the GHG emissions disclosure requirement has been included in light of the 2023 Consolidated Appropriations Act, which provides that none of the funds made available under that Act or any other Act (including to the Commission) may be used to implement ''any provision in a rule, if that provision requires mandatory reporting of greenhouse gas emissions from manure management systems.'' [1062] Accordingly, an agricultural producer or other registrant that operates a manure management system will not be required to include GHG emissions from that system when disclosing its overall Scopes 1 and 2 emissions for so long as implementation of such a provision is subject to restrictions on appropriated funds or otherwise prohibited by Federal law.

d. Timeline for Reporting GHG Emissions Metrics

Under the final rules, if a registrant is required to disclose its Scope 1 and/or Scope 2 emissions, it must disclose those emissions for its most recently completed fiscal year and, to the extent previously disclosed in a Commission filing, for the historical fiscal year(s) included in the consolidated financial statements included in the filing.[1063] By contrast, a registrant that has not previously disclosed its Scopes 1 and 2 emissions in a Commission filing for a particular historical fiscal year will not be required to estimate and report those emissions for such period.[1064] Limiting the historical period disclosure requirement for GHG emissions in this fashion is largely consistent with the recommendation of commenters that any GHG emissions disclosure not be required for historical periods prior to the initial compliance date [1065] and should help mitigate the compliance costs for registrants that have not yet disclosed their Scopes 1 and 2 emissions in a Commission filing. This approach is also consistent with the approach taken for the disclosure of financial effects for historical periods under new Article 14 of Regulation S–X,[1066] as well as with approaches taken

[1053] *See, e.g.,* letter from PWC.

[1054] *See supra* notes 924–925 and accompanying text.

[1055] *See, e.g.,* letters from AllianceBernstein; CalPERS; Miller/Howard; Trillium; and Wellington Mgmt.

[1056] *See supra* section II.A.3.

[1057] *See* Proposing Release, section II.G.3.

[1058] *See* 17 CFR 229.1505(a)(3)(i). A registrant will be exempt from any requirement to disclose its GHG emissions for any fiscal year in which it qualified as an SRC. A registrant that previously qualified as an SRC also will be exempt from the GHG emissions disclosure requirements in the first fiscal year in which it no longer so qualifies because a registrant must reflect the determination of whether it came within the definition of smaller reporting company in its quarterly report on Form 10–Q for the first fiscal quarter of the next year, *see* 17 CFR 240.12b–2, which will be after the date of the annual report on Form 10–K in which the GHG emissions disclosure is required. This remains the case notwithstanding the permissibility under the final rules (as discussed *infra* Section II.H.3.d) of a registrant incorporating by reference its GHG emissions disclosures required in its Form 10–K from its Form 10–Q for the second quarter of that next fiscal year.

[1059] *See supra* notes 946 and accompanying text.

[1060] *See, e.g.,* letter from BIO (When recommending adoption of additional exemptions for small companies from the proposed rules, this commenter stated that ''67% of BIO members surveyed said that they currently do not report on carbon emissions, and a similar majority have significant concerns with the ability to collect and accurately report without significant liability.'').

[1061] *See* 17 CFR 229.1505(a)(3)(ii).

[1062] Public Law 117–328, div. G, tit. IV, § 437, 136 Stat. 4459, 4831 (2022).

[1063] *See* 17 CFR 229.1505(a)(1).

[1064] For example, if a registrant becomes an LAF during the fiscal year, it is required to present these disclosures for the most recently completed fiscal year in which it became an LAF; however, it is not required to provide those disclosures for the prior fiscal years included in its filing when it was not an LAF, to the extent that information was not previously required to be disclosed.

[1065] *See supra* note 992 and accompanying text.

[1066] *See infra* section II.K.

for other recently adopted changes to Regulation S–K.[1067]

We recognize that, as many commenters have stated, a registrant may have difficulty measuring and reporting its GHG emissions as of fiscal year-end by the same deadline for its Exchange Act annual report.[1068] To address this concern, the final rules provide that any GHG emissions metrics required to be disclosed pursuant to Item 1505 in an annual report filed with the Commission on Form 10–K may be incorporated by reference from the registrant's Form 10–Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions metrics disclosure relates.[1069] Many commenters requesting additional time to disclose GHG emissions metrics indicated that most registrants currently report such metrics outside of Commission filings after completion of the second fiscal quarter. Accordingly, this change will help alleviate the challenges with disclosing such data in the annual report and be consistent with current market practices while still providing investors with timely GHG emissions information.

To provide comparable treatment for foreign private issuers, the final rules provide that the GHG emissions metrics required to be disclosed pursuant to Item 1505 may be disclosed in an amendment to their annual report on Form 20–F, which shall be due no later than 225 days after the end of the fiscal year to which the GHG emissions metrics disclosure relates. This corresponds approximately to the second quarter Form 10–Q filing deadline and should provide foreign private issuers with an appropriate and similar amount of time as domestic registrants to provide the required GHG emissions metrics disclosure.[1070] In order to treat the GHG emissions disclosure as filed and maintain the same level of liability as for corresponding disclosure by domestic registrants, a foreign private issuer must provide its GHG emissions disclosure in an amendment to its annual report on Form 20–F instead of on a Form 6–K.

Whether a registrant is a domestic registrant or foreign private issuer, the final rules provide that the registrant must include an express statement in its annual report indicating its intention to incorporate by reference or amend its filing for this information.[1071] This requirement will provide notice to investors regarding where to find the required GHG emissions metrics disclosure and is consistent with the general notice requirements for information that is being incorporated by reference under existing Securities Act and Exchange Act rules.[1072]

To provide similar treatment to GHG emissions metrics required to be disclosed under Item 1505 in a Securities Act or Exchange Act registration statement, the final rules state that the GHG emissions metrics must be provided as of the most recently completed fiscal year that is at least 225 days prior to the date of effectiveness of the registration statement.[1073] For example, if a calendar year-end LAF files a Form S–1 registration statement in 2028, which goes effective on or after Monday, August 7, 2028, its GHG emissions metrics disclosure must be as of 2027 since the Form S–1's date of effectiveness is at least 225 days after the 2027 fiscal year-end. If, however, the Form S–1 registration statement goes effective on Friday, August 4, 2028, which is less than 225 days after its 2027 fiscal year-end, the registrant may provide its GHG emissions metrics disclosure as of its 2026 fiscal year-end.[1074]

I. Attestation Over GHG Emissions Disclosure (Item 1506)

1. Overview

a. Proposed Rules

The Commission proposed to require a registrant, including a foreign private issuer, that is an AF or an LAF to include in the relevant filing an attestation report covering the disclosure of its Scope 1 and Scope 2 emissions and to provide certain related disclosures about the service provider providing the attestation report.[1075] The proposed rules also included requirements related to the service provider and requirements for the engagement and the attestation report.[1076] The proposed rules would have required the attestation engagement to be performed by the service provider at a ''limited assurance'' level[1077] for fiscal years 2 and 3 after the Scopes 1 and 2 emissions disclosure compliance date and at a reasonable assurance level[1078] for fiscal year 4 and beyond.[1079] The Commission explained that during the transition period when limited assurance would be required, an AF or an LAF would be permitted to obtain ''reasonable assurance'' of its Scope 1 and 2 emissions disclosure at its option.[1080]

Also at its option, an AF or an LAF would have been permitted under the proposed rules to obtain any level of assurance over climate-related disclosures that are not subject to the

[1067] See, *e.g.,* Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information, Release No. 33–10890 (Nov. 19, 2020) [86 FR 2080 (Jan. 11, 2021)]; and Pay Versus Performance, Release No. 34–95607 (Aug. 25, 2022) [87 FR 55134 (Sept. 8, 2022)], which provided similar transition periods.

[1068] *See supra* note 998 and accompanying text.

[1069] *See* 17 CFR 229.1505(c)(1). A registrant may also include this in an amended Form 10–K filed no later than the due date for the registrant's second quarter Form 10–Q. This deadline would also apply to transition year registrants, *i.e.,* to registrants that have changed their fiscal year and the difference in reporting periods is so small that they are not required to file a Form 10–KT and can report the difference in a Form 10–Q.

[1070] *See* Form 10–Q, General Instruction A.1, which states that the Form 10–Q must be filed within 40 days after the end of the fiscal quarter if the registrant is an LAF or AF (and, if that 40 day period falls on a Saturday, the filing is not due until the following Monday, which is the 42nd day after the end of the quarter). The end of the second fiscal quarter corresponds to 181 days following the most recently completed fiscal year (and 182 days in a leap year). The 225-day deadline is intended to account for the upper limit combined periods (42 days + 182 days = 224 days).

[1071] *See* 17 CFR 229.1505(c)(1).

[1072] *See* 17 CFR 230.411(e) and 17 CFR 240.12b–23(e).

[1073] *See* 17 CFR 229.1505(c)(2).

[1074] Similarly, for a registration statement on Form S–3, because information is incorporated by reference from a registrant's Exchange Act filings, to address the scenario where a Form S–3 registration statement goes effective after a registrant files its Form 10–K annual report for its most recently completed fiscal year but before it has filed its second quarter Form 10–Q containing its GHG emissions metrics disclosure for its most recently completed fiscal year, we have added a provision to Form S–3 stating that the GHG emissions metrics disclosure must be as of its most recently completed fiscal year that is at least 225 days prior to the date of effectiveness of the Form S–3 registration statement. Accordingly, where a registrant has filed its annual report on Form 10–K for the most recently completed fiscal year but has not yet filed its Form 10–Q for the second fiscal quarter containing the disclosure required by 17 CFR 229.1505(a), it must incorporate its GHG emissions metrics disclosure for the fiscal year that is immediately prior to its most recently completed fiscal year. *See* Item 12(e) to Part I of Form S–3. For example, if a calendar year-end LAF has a Form S–3 registration statement go effective after it files its Form 10–K for 2028 but before it files its second quarter Form 10–Q (due no later than Aug. 9, 2029), it must incorporate its GHG emissions disclosure for the 2027 fiscal year previously filed on a Form 10–Q or a Form 10–K/A. We have added a similar provision to Form F–3. *See* Item 6(g) to Part I of Form F–3. For any registration statement, if the date of effectiveness is less than 225 days after its most recently completed fiscal year-end, a registrant will only be required to disclose its GHG emissions for the fiscal year that is immediately prior to its most recently completed fiscal year if the registrant was required to disclose its Scope 1 and/or Scope 2 emissions pursuant to Item 1505 for that year.

[1075] *See* Proposing Release, section II.H.1.

[1076] *See* Proposing Release, section II.H.2 and 3.

[1077] Limited assurance is equivalent to the level of assurance (commonly referred to as a ''review'') provided over a registrant's interim financial statements included in a Form 10–Q.

[1078] Reasonable assurance is equivalent to the level of assurance provided in an audit of a registrant's consolidated financial statements included in a Form 10–K.

[1079] *See* Proposing Release, section II.H.1.

[1080] *See id.*

proposed assurance requirements.[1081] To avoid potential confusion, however, the proposed rules would have required the voluntary assurance obtained by such registrant to follow the requirements of proposed Items 1505(b) through (d), including using the same attestation standard as the required assurance over Scope 1 and Scope 2 emissions. For filings made by AFs and LAFs after the compliance date for the GHG emissions disclosure requirements but before proposed Item 1505(a) would require limited assurance, the proposed rules only would have required the filer to provide the disclosure called for by proposed Item 1505(e) if it chose to voluntarily obtain attestation.[1082] The Commission stated that a registrant that is not an AF or LAF that obtains voluntary assurance would be required to comply only with proposed Item 1505(e).[1083]

In the Proposing Release, the Commission stated that requiring GHG emissions disclosure in Commission filings should enhance the consistency, comparability, and reliability of such disclosures due to the application of a registrant's DCP and the proposed inclusion of certain prescriptive elements that may help improve standardization of GHG emission calculations.[1084] The Commission also observed that the evolving and unique nature of GHG emissions involves and, in some cases, warrants varying methodologies, differing assumptions, and a substantial amount of estimation.[1085] Certain aspects of GHG emissions disclosure also involve reliance on third-party data. As such, the Commission concluded that requiring a third-party's attestation over these disclosures would provide investors with an additional degree of reliability regarding not only the figures that are disclosed, but also the key assumptions, methodologies, and data sources the registrant used to arrive at those figures.[1086]

In the Proposing Release, the Commission explained that, although many registrants have voluntarily obtained some level of assurance for their climate-related disclosures,[1087] current voluntary climate-related assurance practices have been varied with respect to the levels of assurance provided (*e.g.,* limited versus reasonable), the assurance standards used, the types of service providers, and the scope of disclosures covered by the assurance.[1088] The Commission stated that this fragmentation has diminished the comparability of the assurance provided and may require investors to become familiar with many different assurance standards and the varying benefits of different levels of assurance.[1089] Accordingly, to improve accuracy, comparability, and consistency with respect to the proposed GHG emissions disclosure, the Commission proposed to require a minimum level of assurance services for AFs and LAFs including: (1) limited assurance [1090] for Scopes 1 and 2 emissions disclosure that scales up to reasonable assurance [1091] after a specified transition period; (2) minimum qualifications and independence requirements for the attestation service provider; and (3) minimum requirements for the accompanying attestation report.[1092]

The Commission stated that by specifying minimum standards for the attestation provided with respect to GHG emissions disclosure by AFs and LAFs, the proposed rules should improve accuracy and consistency in the reporting of this information, while also providing investors with an enhanced level of reliability against which to evaluate the disclosure.[1093] In addition to the proposed minimum standards for attestation services, the Commission explained that the proposed additional disclosure requirements for registrants should further assist investors in understanding the qualifications and suitability of the GHG emissions attestation provider selected by the registrant, particularly in light of the broad spectrum of attestation providers that currently provide and that would be permitted under the proposed rules to provide attestation services.[1094]

The Commission explained that the proposed rules did not aim to create or adopt a specific attestation standard for assuring GHG emissions because both the reporting and attestation landscapes are currently evolving and it would be premature to adopt one approach and potentially curtail future innovations in these two areas.[1095] The Commission acknowledged in the Proposing Release that the proposed minimum standards for attestation services and the proposed additional disclosure requirements would not eliminate fragmentation with respect to assurance or obviate the need for investors to assess and compare multiple attestation standards.[1096] Nevertheless, the Commission stated it believed some flexibility in its approach was warranted at this time given the unique and evolving nature of third-party assurance for climate-related disclosures.[1097]

In proposing mandatory assurance of GHG emissions disclosure, the

[1081] *See id.* For example, the Commission stated that an AF or LAF could voluntarily include an attestation report at the limited assurance level for its GHG intensity metrics or its Scope 3 emissions disclosure.

[1082] *See id.*

[1083] *See id.*

[1084] *See id.*

[1085] *See id.*

[1086] *See id.*

[1087] For example, the Commission stated that according to one study, 53% of the S&P 500 companies had some form of assurance or verification over climate-related metrics, along with other metrics. *See* CAQ, *S&P 500 and ESG Reporting* (Aug. 9, 2021), available at *https://www.thecaq.org/sp-500-and-esg-reporting-2019-2020.* Another survey of sustainability reporting trends from 5,200 companies across 52 countries (including the United States) stated that, of the top 100 companies (by revenue), 80% have reporting on ESG (including climate), with up to 61% of those companies obtaining assurance. *See* KPMG, *The KPMG Survey of Sustainability Reporting 2020,* available at *https://home.kpmg/xx/en/home/insights/2020/11/the-time-has-come-survey-of-sustainability-reporting.html.* Proposing Release, section II.H.1.

[1088] *See* Proposing Release, section II.H.1.

[1089] *See id.* The Commission noted in the Proposing Release that the consequences of such fragmentation have also been highlighted by certain international organizations, including IOSCO, which stated that it ''identified a perceived lack of clarity and consistency around the purpose and scope of [voluntary] assurance . . . [which] can potentially lead to market confusion, including misleading investors and exacerbating the expectations gap.'' IOSCO, *Report on Sustainability-related Issuer Disclosures* (June 2021), available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD678.pdf. See also, e.g.,* International Federation of Accountants, *The State of Play in Sustainability Assurance* (June 23, 2021), available at *https://www.ifac.org/knowledge-gateway/contributing-global-economy/publications/state-play-sustainability-assurance. See* Proposing Release, section II.H.1.

[1090] The Commission explained in the Proposing Release that the objective of a limited assurance engagement is for the service provider to express a conclusion about whether it is aware of any material modifications that should be made to the subject matter (*e.g.,* the Scopes 1 and 2 emissions disclosure) in order for it to be fairly stated or in accordance with the relevant criteria (*e.g.,* the methodology and other disclosure requirements specified in proposed Item 1504). *See* Proposing Release, section II.H.1 (citing, for example, AICPA's Statement on Standards for Attestation Engagements (SSAE) No. 22, AT–C section 210). In such engagements the conclusion is expressed in the form of negative assurance regarding whether any material misstatements have been identified. *See id.*

[1091] The Commission explained in the Proposing Release that the objective of a reasonable assurance engagement, which is the same level of assurance provided in an audit of a registrant's consolidated financial statements, is to express an opinion on whether the subject matter is in accordance with the relevant criteria, in all material respects. A reasonable assurance opinion provides positive assurance that the subject matter is free from material misstatement. *See* Proposing Release, section II.H.1 (citing, for example, AICPA SSAE No. 21, AT–C sections 205 and 206).

[1092] *See* Proposing Release, section II.H.1.

[1093] *See id.*

[1094] *See id.*

[1095] *See id.*

[1096] *See id.*

[1097] *See id.*

Commission weighed the challenges such requirements could present with the benefits that assurance would provide to investors and proposed only requiring AFs and LAFs to obtain an attestation report, subject to a phased in compliance period, to help mitigate concerns about cost and burden.[1098] In addition, the Commission stated that the proposed phase in periods would provide AFs and LAFs with significant time to develop processes to support their GHG emissions disclosure requirements and the relevant DCP, as well as to adjust to the incremental costs and efforts associated with escalating levels of assurance.[1099] During the proposed transition period, GHG emissions attestation providers would also have had time to prepare themselves for providing such services in connection with Commission filings.[1100]

In the Proposing Release, the Commission stated that the voluntary attestation obtained by some registrants has been at the reasonable assurance level; however, it acknowledged that a limited assurance engagement is less extensive and currently the level of assurance most commonly provided in the voluntary assurance market for climate-related disclosure.[1101] The Commission explained that, for this reason, prior to the transition to reasonable assurance, the additional compliance efforts required to comply with the proposed assurance requirement should be limited for the many registrants that are already obtaining limited assurance for their climate related disclosures.[1102] Although reasonable assurance provides a significantly higher level of assurance than limited assurance, the Commission expressed its belief that limited assurance would benefit investors during the initial transition period by enhancing the reliability of a registrant's Scopes 1 and 2 emissions disclosure, in light of the benefits that assurance provides.

Finally, the Commission stated in the Proposing Release that it did not propose to require assurance of Scope 3 emissions disclosure because the preparation of such disclosure presents unique challenges.[1103] The Commission explained that depending on the size and complexity of a company and its value chain, the task of calculating Scope 3 emissions could be relatively more burdensome and expensive than calculating Scope 1 and Scope 2 emissions, and in particular, it may be difficult to obtain activity data from suppliers, customers, and other third parties in a registrant's value chain, or to verify the accuracy of that information compared to disclosures of Scope 1 and Scope 2 emissions data, which are more readily available to a registrant.[1104]

b. Comments

Commenters expressed a variety of views on the proposal to require AFs and LAFs to provide an attestation report from a service provider over Scope 1 and Scope 2 emissions. A number of commenters supported the proposal to require some form of attestation.[1105] These commenters generally stated that subjecting Scope 1 and Scope 2 emissions to attestation would help increase the reliability and accuracy of the disclosures.[1106] Several commenters stated that the proposed mandatory assurance requirement would provide confidence to investors.[1107] For example, one commenter explained that ''[g]reenhouse gas emissions are the basic unit of input for all our individual company, industry, and market climate risk assessments'' and that ''[a]ssurance provides investors with greater confidence that this essential data is prepared faithfully and in line with globally accepted standards.'' [1108] Another commenter stated that ''[i]ndependent assurance on the accuracy, completeness and consistency of GHG emissions data would be beneficial to both internal decision-making and for investors and other external stakeholders.'' [1109] One commenter stated it supported the proposed mandatory assurance requirement because ''[r]eliable, standardized and assured data will strengthen our underwriting as it is critical to our understanding of the quality of a company's earnings in the face of climate change and the energy transition.'' [1110] Other commenters stated that the proposed attestation requirements would increase investor protection [1111] or help prevent greenwashing.[1112] One commenter that is a public company registrant explained that ''[w]hile obtaining assurances certainly requires additional resources, we do not feel it is overly burdensome and believe it has significantly improved our risk

[1098] *See id.* The Commission further stated that, for the many LAFs that are already voluntarily obtaining some form of assurance over GHG emissions, any cost increases associated with complying with the proposed rules would be mitigated and larger issuers generally bear proportionately lower compliance costs than smaller issuers due to the fixed cost components of such compliance. *See id.*

[1099] *See id.*

[1100] *See id.*

[1101] *See id.* (citing CAQ, *S&P 500 and ESG Reporting* (Aug. 9, 2021) (providing statistics on limited assurance versus reasonable assurance obtained voluntarily in the current market (*e.g.,* at least 26 of 31 companies that obtained assurance from public company auditors obtained limited assurance; at least 174 of 235 companies that obtained assurance or verification from other service providers (non-public company auditors) obtained limited assurance)) and CAQ, *S&P 100 and ESG Reporting* (Apr. 29, 2021), available at *https://www.thecaq.org/sp-100-and-esg-reporting/*). The Commission stated that based on an analysis by Commission staff on Mar. 3, 2022, a substantial number of the S&P 500 companies (460+) are LAFs. *See* Proposing Release, section II.H.1.

[1102] *See* Proposing Release, section II.H.1.

[1103] *See id.*

[1104] *See id.*

[1105] *See, e.g.,* letters from 3Degrees Group Inc. (June 17, 2022) (''3Degree''); AGs of Cal. *et al.;* ANSI National Accreditations Board (June 17, 2022) (''ANSI NAB''); Anthesis Grp.; A. Payton; BC IM Corp.; Better Markets (June 17, 2022) (stating that the Commission should apply the attestation requirement to all registrants); Bloomberg; BNP Paribas (supporting the proposal to require attestation over Scope 1 and 2 emissions but recommending only requiring limited assurance initially and on a time-limited basis); BOA (supporting the proposal to require attestation over Scope 1 and Scope 2 emissions with a two-year extension to the proposed phase in periods); Boston Common Asset Mgmt; Breckinridge Capital; Bureau Veritas; CalPERS; CalSTRS; Can. Coalition GG; Center for Amer. Progress; Center for Audit Quality (June 17, 2022) (''CAQ''); CEMEX; Ceres; CFA; CFA Institute; Chevron (supporting the proposal to require attestation over Scope 1 and Scope 2 emissions with an extended phase in period); CFB; Climate Advisers; Corteva; DSC Meridian; East Bay Mun.; Educ. Fdn. Amer.; Engine No. 1; E. Kenny; ERM CVS; Ernst & Young LLP (June 17, 2022); Etsy; Futurepast; Florian Berg (Feb. 23, 2024) (''F. Berg''); Galvanize Climate; Grant Thornton; H. Marsh; Humane Society; IAA; IAC Recommendation; ICAEW (June 17, 2022) (''ICAEW''); ICCR; IFAC; Impax Asset Mgmt.; ISS ESG; IWAP; JLL; KPMG; K. Talbot; Mackenzie Invest.; Maple-Brown; Mazars USA LLP (June 17, 2022) (''Mazars''); MFA; Mickey Hadick (''M. Hadick'') (supporting attestation on an accelerated timeline); Mariam Khaldoon (''M. Khaldoon''); Morningstar; Northern Trust; NY City Comptroller; NY SIF; NY St. Comptroller; PAM; Paradice Invest. Mgmt.; PGIM; Prentiss Smith and Company, Inc. (June 6, 2022) (''Prentiss''); PRI; PwC (noting that it would support requiring reasonable assurance beginning in the first year of disclosure required for impacted registrants assuming a delayed effective date); Redington; Rockefeller Asset Mgmt.; SFERS; S. Spears; Sumitomo Mitsui; TotalEnergies; UAW Retiree; USIIA; XBRL US; and Xpansiv.

[1106] *See, e.g.,* letters from Better Markets; Boston Common Asset Mgmt; Ceres; CFA; ICI (stating that limited assurance would enhance the reliability of Scopes 1 and 2 disclosures); Inherent Grp.; KPMG; Mackenzie Invest.; Mazars; MFA; M. Khaldoon; PAM; and Prentiss. *See also* IAC Recommendation (stating that the proposed assurance requirement would improve the quality of data being provided to investors).

[1107] *See, e.g.,* letters from BC IM Corp. (stating that assurance ''will provide investors with enhanced confidence in companies' reported emissions''); CalSTRS; NEI Investments; and Oxfam America.

[1108] *See* letter from CalSTRS.

[1109] *See* letter from Can. Coalition GG.

[1110] *See* letter from DSC Meridian.

[1111] *See, e.g.,* letters from Better Markets; CAQ; IFAC; and SFERS.

[1112] *See, e.g.,* letters from Climate Advisers; BNP Paribas; and UAW Retiree.

management and quality of our reporting.'' [1113] In addition, a number of commenters agreed with the Commission's statement in the Proposing Release that many registrants already obtain some form of assurance over GHG emissions data.[1114]

Conversely, a number of commenters did not support the proposed requirement for AFs and LAFs to provide an attestation report over Scope 1 and Scope 2 emissions.[1115] Many of these commenters stated that the proposed attestation requirements would be costly for registrants,[1116] with some commenters stating that the costs would outweigh any potential benefit to investors.[1117] For example, one commenter stated that obtaining attestation over GHG emissions disclosures would be ''far more costly than with financial data because the [attestation] market for emissions is not at all well developed.'' [1118] Other commenters stated that attestation is unnecessary because of the incentives for accuracy that already exist for information registrants provide to the Commission.[1119] Some commenters stated that there is currently a shortage in the supply of assurance providers to support the proposed rule's attestation requirements,[1120] while other commenters recommended eliminating the proposed requirement for attestation because assurance standards and methodologies are still evolving.[1121] Several commenters raised concerns about registrants' ability to obtain assurance over GHG emissions disclosures in light of the level of judgment, estimation, or uncertainty that would be involved in calculating GHG emissions data.[1122]

In addition, some commenters pointed out that neither the TCFD nor the GHG Protocol require attestation.[1123] Similarly, a number of commenters stated that the Environmental Protection Agency (EPA)'s GHG Reporting Program has its own verification process for greenhouse gas reports submitted to the EPA.[1124] One commenter stated the Commission's proposal to require mandatory attestation ''is inconsistent with the requirements of existing EPA regulation.'' [1125] Other commenters stated that the Commission should adopt the same verification process as the EPA, which does not require third-party assurance.[1126] Another commenter stated that adopting the same verification process as the EPA ''would reduce the costs and concerns with needing to verify emissions data under two separate and very different federal reporting regimes.'' [1127] Some commenters stated that, in their view, there is no reason why climate-related disclosures should be subject to attestation and treated any differently than other required disclosures outside of the financial statements in a Form 10–K.[1128] Relatedly, one commenter agreed with the Commission's statement in the Proposing Release that GHG emissions disclosure is different from existing quantitative disclosure required to be provided outside of the financial statements because such existing disclosure typically is derived, at least in part, from the same books and records that are used to generate a registrant's audited financial statements and that are subject to ICFR.[1129]

[1113] *See* letter from Etsy (stating it has received limited assurance for its reported Scope 1, 2, and 3 emissions since 2016).

[1114] *See, e.g.,* letters from CalPERS (''Many issuers already obtain assurance for such information when the disclosure appears in non-regulatory reports. It is appropriate to maintain verification of the data when such disclosures move to regulatory reports.''); Climate Advisers; KPMG; SIFMA AMG (stating that many large registrants obtain limited assurance in connection with existing voluntary GHG emissions disclosures); and USIIA. Relatedly, some registrants stated that they are currently obtaining assurance over their GHG emissions disclosures. *See, e.g.,* Dow (stating it obtained limited assurance on its GHG emissions metrics beginning in 2021); and Microsoft (stating that it has obtained limited assurance over Scopes 1, 2, and 3 emissions for the past two years).

[1115] *See, e.g.,* letters from AAFA; AALA *et al.;* ABA; ACA Connects; AEPC; AFPM; American Hotel and Lodging Association (June 17, 2022) (''AHLA''); Amer. Chem.; APCIA; BCSE; BIO; Bipartisan Policy; BPI; Business Roundtable; Can. Bankers; Capital Group; Capital Research; C. Franklin; Chamber; Champion X; D. Burton, Heritage Fdn.; Enerplus; Eversource Energy (June 16, 2022) (''Eversource''); ID Ass. Comm.; J. Herron; K. Connor; McCormick; Mid-Size Bank Coalition of America (June 14, 2022) (''Mid-Size Bank''); NAA; Nasdaq; National Ocean Industries Association (June 17, 2022) (''NOIA''); NMA; Petrol. OK; PLASTICS; PPL Corporation (June 17, 2022) (''PPL''); Ranger Oil; RILA; Schneider; SBCFAC Recommendation; Small Business Forum Recommendation (2023); SIA; SIFMA (''[T]he Commission should reevaluate in the future whether the standards and market practice necessary for external assurance has sufficiently developed such that a mandatory assurance requirement is viable and consider adopting an attestation standard at that time.''); SIFMA AMG; SKY Harbor; Soc. Corp. Gov.; Southside Bancshares; SouthState Corporation (June 17, 2022) (''SouthState''); Sullivan Cromwell; Travelers; UPS; and Zions.

[1116] *See, e.g.,* letters from AAFA; AFPM; AHLA; Amer. Chem.; BIO; Bipartisan Policy; Eversource; Business Roundtable; Capital Group; Chamber; Champion X; ConocoPhillips (stating that ''the availability of assurance providers is currently insufficient to meet demand and will likely trigger a surge in costs''); Corteva; McCormick; NOIA; Petrol. OK; PLASTICS; PPL; Ranger Oil (stating that the attestation requirement will substantially increase auditing fees); SBCFAC Recommendation; SIFMA; SIFMA AMG; Soc. Corp. Gov.; Sullivan Cromwell; Travelers; UPS; and Zions.

[1117] *See, e.g.,* letters from ACA Connects (stating that third-party attestation ''would result in substantial costs without a corresponding benefit''); AFPM; Business Roundtable; Capital Research; Chamber; Eversource (''It is our view that the attestation requirement would significantly increase cost without providing corresponding value to investors and stakeholders.''); PPL; SIA; SIFMA; and Travelers.

[1118] *See* letter from Bipartisan Policy.

[1119] *See, e.g.,* letters from Bipartisan Policy; Eversource; PPL; Ranger Oil; Soc. Corp. Gov.; and SKY Harbor. *See also* APCIA (''Additional checks and balances include the SEC's comment letter process, enforcement actions, and an active plaintiffs' bar that avails itself of the private right of action under Exchange Act Rule 10b–5.'').

[1120] *See, e.g.,* letters from AAFA; ABA; Amer. Chem.; BPI; Champion X; Eversource; PLASTICS; PPL; Soc. Corp. Gov.; Soros Fund (''Financial audits are different than climate disclosure audits and auditors do not have specific expertise to ensure the best outcomes.''); SouthState; Sullivan Cromwell (''The number of qualified providers would likely be insufficient to meet the demand for their services prompted by the Proposed Rules, at least in the near term.''); and Zions.

[1121] *See, e.g.,* letters from ABA (''As the reporting and attestation standards develop further, a single standards-setting body emerges as the clear leader, and third parties begin to become qualified under these standards, the Commission can then assess whether an attestation standard is appropriate.''); Mid-Size Bank; Nasdaq (''To encourage disclosures while the attestation industry continues to mature, the Commission should eliminate the attestation requirement for Scope 1 and 2 emissions, and permit all issuers to disclose a voluntary attestation in accordance with proposed Item 1505(e)(1–3) of Regulation S–K.''); RILA; SIFMA; SIFMA AMG; Tata Consultancy Services (June 17, 2022); and Zions.

[1122] *See, e.g.,* letters from AFPM (stating that GHG emissions ''are subject to greater measurement challenges than most financial metrics and are subject to greater uncertainty''); Financial Services Forum (stating that ''Scope 1 and Scope 2 emissions may incorporate third-party data and rely in part on estimates and averages, which may be difficult or impossible for a registrant to verify with current capabilities''); Schneider; UPS; and USCIB.

[1123] *See, e.g.,* letters from AEPC; Corteva (noting that the TCFD does not require attestation over Scope 1 and Scope 2 emissions); Chamber; and Enerplus (noting that the TCFD does not require attestation over Scope 1 and Scope 2 emissions).

[1124] *See, e.g.,* letters from AFPM; API; NAA; SIA; Western Energy Alliance and the U.S. Oil & Gas Association (''WEA/USOGA''); and Williams Cos.

[1125] *See* letter from SIA (recommending that the Commission modify the proposed rules to permit registrants to ''self-certify emissions, consistent with existing EPA regulations'').

[1126] *See, e.g.,* letters from NAA; SIA; WEA/USOGA; and Williams Cos. *See also* EPA, Fact Sheet—Greenhouse Gases reporting Program Implementation (Nov. 2013) (''EPA Fact Sheet''), available at *https://www.epa.gov/sites/default/files/2014-09/documents/ghgfactsheet.pdf* (stating that the EPA verifies the data submitted and does not require third party verification, although prior to EPA verification, reporters are required to self-certify the data they submit to the EPA).

[1127] *See* letter from NAA.

[1128] *See, e.g.,* letters from APCIA; Capital Group; Capital Research (''In addition, no other numerical data in a company's regulatory filing, other than its financial statements, is required to be audited today. We are not persuaded that Scope 1 and Scope 2 GHG emissions data should be treated any differently. . . .''); and Soc. Corp. Gov. *See also* BCSE (''There is nothing particularly unique about the proposed disclosures as compared to numerous existing disclosures on other topics that would justify imposing an attestation requirement.'').

[1129] *See* letter from PwC.

However, other commenters disagreed with that statement.[1130]

Alternatively, some commenters stated that the Commission should wait before determining whether to adopt a mandatory assurance requirement for GHG emissions.[1131] A few commenters stated that instead of requiring mandatory assurance over GHG emissions disclosures, assurance should be voluntary.[1132] One of these commenters stated that permitting registrants to disclose whether they obtained voluntary attestation in accordance with proposed Items 1505(e)(1) through (3) would help investors understand whether the attestation or verification has enhanced the reliability of the GHG emissions disclosures.[1133]

A number of commenters offered their views on the types of registrants that should be subject to any attestation requirement. A few commenters stated that the attestation requirements should apply to AFs and LAFs as proposed.[1134] Several commenters stated that the proposed attestation requirements should apply to all registrants, not just AFs and LAFs.[1135] One of these commenters explained that it supported requiring all registrants to comply with the proposed attestation requirements because ''GHG emissions are a key metric for determining climate-related transition risks, and those risks are likely to impact small companies as well as large companies.'' [1136] Similarly, another commenter stated that extending the attestation requirement to additional registrants ''would be insightful for investors and allow comparability amongst disclosures of these attestation reports between several types of filers.'' [1137] Commenter feedback was mixed regarding whether SRCs should be subject to the proposed mandatory assurance requirements. Several commenters stated that SRCs should be excluded from the attestation requirement.[1138] On the other hand, one commenter stated that the Commission did not adequately justify an exclusion for SRCs and that excluding SRCs ''will undoubtedly undermine one of the key goals of the rule, here the reliability of climate disclosures.'' [1139] Alternatively, one commenter stated that the attestation requirement should be limited to ''seasoned issuers'' and ''those companies with more than [$1 billion] in revenue and more than [$2 billion] in public float.'' [1140]

Some commenters stated that they supported phasing in the assurance requirement from limited assurance to reasonable assurance over time as proposed.[1141] One of these commenters stated that the phased in approach would ''enable registrants to install the necessary DCP'' and ''enable assurance providers to upskill and establish the necessary capacity to provide limited and then reasonable assurance.'' [1142] Another commenter stated that phase in periods would balance investors' ''needs for data with the ability of issuers to provide that data.'' [1143] Some commenters stated that it was important for GHG emissions disclosures to ultimately be subject to reasonable assurance because reasonable assurance is necessary to ensure reliability.[1144] In fact, a number of commenters stated that the Commission should require reasonable assurance from the start without a phase in from limited assurance.[1145] One of these commenters stated that ''[i]nvestors may place disproportionate reliance on disclosures subject only to the review procedures of a limited assurance engagement, creating an expectations gap.'' [1146]

A few commenters stated that the level of assurance for Scope 1 and Scope 2 emissions should only be raised from limited to reasonable assurance after the Commission assesses the implementation of the assurance requirement.[1147] One of these commenters stated that, as a first step, ''limited assurance is all that is required to accomplish the SEC's objective to provide an external independent verification of climate disclosures—and reasonable assurance would be unduly burdensome and unnecessary at this stage, given data gaps.'' [1148] According to this commenter, ''[a]s data gaps are progressively addressed, reasonable assurance could be applied as in an audit of financial statements if it is determined that it is practical and the

[1130] *See* letters from CFA Institute; and Soc. Corp. Gov.

[1131] *See, e.g.,* letters from Allstate (''[W]e believe the Commission should set dates for limited assurance engagements only after attestation standards and interpretive guidance have been published.''); Anonymous; Davis Polk; Sullivan Cromwell (stating that before mandating assurance the Commission should ''work with industry participants and standard setters to develop generally accepted climate disclosure attestation principles''); and TIAA (''Waiting to impose audit and attestation requirements will give registrants and other industry participants more time to become informed about the specifics of the new climate disclosure landscape and weigh in knowledgeably on the implications of auditing climate data.''). *See also* letter from Bipartisan Policy (recommending that the Commission monitor company disclosures and public statements for consistent disclosure and ultimately defer to Congress to address whether attestation of GHG emissions disclosures is needed).

[1132] *See, e.g.,* letters from AEPC (stating that the Commission ''should allow a commensurate market-based approach to third-party assurance for climate-related reporting for registrants that desire to enhance the reliability of information''); AFPA (same); Chamber (''Alternatively, to the extent companies are obtaining assurances, the SEC's alternative that registrants disclose what type of assurance, if any, they are obtaining may be appropriate.''); Nasdaq; and RILA.

[1133] *See* letter from Nasdaq.

[1134] *See* letter from BC IM Corp.; and Morningstar (recommending that filers other than AFs and LAFs obtain attestation on a voluntary basis).

[1135] *See, e.g.,* letters from AGs of Cal. *et al.;* Better Markets; CalSTRS (noting that a phase in schedule could provide more time for non-accelerated filers and smaller companies); CEMEX (supporting a specified transition period for filers other than accelerated filers and large accelerated filers); ERM CVS (recommending that the proposed attestation requirements apply to all registrants with material GHG emissions and suggesting an additional one-year delay for smaller reporting companies); NY St. Comptroller; and OMERS.

[1136] *See* letter from AGs of Cal. *et al.* (''To address burdens on SRCs, we recommend a longer phase in period for SRCs than for large accelerated filers, with the expectation that as independent attestation services become more mainstream, competition will increase and costs will come down.'').

[1137] *See* letter from CEMEX.

[1138] *See, e.g.,* letters from ABA; MFA (''[T]he exclusion of non-accelerated filers and smaller reporting companies from the attestation requirement will aid in relieving the burden on those issuers that may face the greatest challenges.''); and Sullivan Cromwell (''[T]he burden and cost required to comply with the Proposed Rules will be significant and will disproportionately impact smaller registrants.''). *See also* letter from ICBA (The final rule is improperly scaled because it imposes the same requirements on smaller banks (that aren't SRCs) as on larger banks. This includes the costs of assurance.).

[1139] *See* letter from Better Markets.

[1140] *See* letter from BIO.

[1141] *See, e.g.,* letters from Addenda; Boston Common Asset Mgmt; BC IM Corp.; B. Lab Global *et al.;* CalPERS; Can. Coalition GG; CAQ; CEMEX; Ceres; DSC Meridian; ERM CVS; Ernst & Young LLP; Etsy; H. Marsh; Holcim; Impax Asset Mgmt.; Inherent Grp.; ICGN; ICSWG; J. McClellan; Mackenzie Invest.; Morningstar; NEI Investments; Net Zero Owners Alliance; NY City Comptroller (recommending that the Commission consider proposing incentives to encourage companies to obtain reasonable assurance early); OMERS; PGIM (supporting the requirement to scale up to reasonable assurance over time, but recommending registrants be given an additional year to comply); Prentiss; PRI; Redington; SFERS; TotalEnergies; US SIF; and Veris Wealth.

[1142] *See* letter from J. McClellan.

[1143] *See* letter from PRI.

[1144] *See, e.g.,* letters from CAQ; and NY City Comptroller. *See also* letter from CIEL (stating that ''limited assurance has a higher probability of overlooking material misstatements and will do little to ensure the accuracy of disclosures'').

[1145] *See, e.g.,* letters from CFA; FFC; GRI; Maryknoll Sisters; PwC; and PWYP.

[1146] *See* letter from PwC.

[1147] *See, e.g.,* letters from AFEP (''The level of assurance for scope 1 and 2 emissions should only be raised, from a limited to a reasonable level of assurance, 3 years after the first application of the proposed rule and provided that an assessment of the implementation of this requirement has been made.''); BNP Paribas (''[T]he SEC should only require a reasonable assurance if it determines after no less than five years that the limited assurance is inadequate and that the reasonable assurance is practical and feasible.''); C2ES; and JPN Bankers.

[1148] *See* letter from BNP Paribas.

robustness of data warrants the enactment of a reasonable assurance standard.'' [1149] Another commenter recommended that the Commission take into consideration the EU's CSRD and ''contemplate raising the level of assurance within the same timeline subject to an assessment.'' [1150]

On the other hand, a number of commenters recommended that the Commission only require AFs and LAFs to obtain limited assurance over their Scope 1 and Scope 2 disclosures without a requirement to phase in reasonable assurance.[1151] This includes commenters that stated they did not support requiring mandatory attestation but, if the Commission adopts an assurance requirement, then the Commission should only require limited assurance.[1152] Some of these commenters stated that limited assurance should be sufficient to provide investors with comfort that GHG emissions disclosures are accurate.[1153] Other commenters stated that existing voluntary assurance over GHG emissions is most frequently performed at a limited assurance level.[1154] A few commenters stated that registrants had not received requests or feedback from investors asking for reasonable assurance.[1155] One commenter that has obtained limited assurance over its GHG emissions data stated that, based on its experience with limited assurance and discussions with its auditors, it anticipated a ''significant incremental investment in our processes, systems and personnel would be required to achieve reasonable assurance.'' [1156]

More generally, a number of commenters raised concerns about a requirement to obtain reasonable assurance.[1157] Several commenters expressed the view that reasonable assurance would be costly.[1158] For example, one commenter stated that ''moving from limited assurance to reasonable assurance could add far greater costs than anticipated, potentially without a commensurate increase in reliability of the information.'' [1159] One commenter stated that requiring reasonable assurance ''significantly increases regulatory risk'' and could result in penalties for companies.[1160] Another commenter stated that reasonable assurance would be impracticable for companies because ''unlike financial data, Scope 1 and 2 emissions calculations are never completely precise or completely 'knowable.' '' [1161] One commenter stated that reasonable assurance is ''difficult at this stage in the absence of sustainability assurance standards.'' [1162]

As an alternative, one commenter recommended that the Commission require registrants to initially obtain reasonable assurance, followed by two years of limited assurance, provided that the first year's attestation report included no modifications or qualifications.[1163] This commenter explained that this order would enable the attestation provider to understand and examine the design and implementation of controls to detect misstatements far more thoroughly than is possible during a limited assurance engagement.[1164]

Several commenters agreed with the proposed timing for phasing in the attestation requirement from limited to reasonable assurance.[1165] On the other hand, a number of commenters, including those that did not support requiring mandatory assurance, stated that the Commission should allow for a longer phase in period for the attestation requirements.[1166] One commenter stated

[1149] *See id.*

[1150] *See* letter from AFEP. *See also* letter from AFG (''We invite the SEC to consider the implications of a potential difference in scope, timing, and level of assurance between the SEC's proposed rule and the EU Regulation, also in light of preparers and auditors' level of readiness to comply with such requirements.'').

[1151] *See, e.g.,* letters from ACLI; Alphabet et al.; Cleary Gottlieb; Climate Risk Consortia; EMC; Energy Transfer; Hydro One; ICI; IIB; IIF; ITIC (stating that it is premature to require reasonable assurance and the ''SEC should assess registrants' implementation of the extensive new disclosure requirements, monitor evolving industry and auditor practices, and consider whether it would be appropriate to shift to reasonable assurance at a later date''); Mouvement Entreprises FR; Nareit; NAM (''NAM believes that a limited assurance requirement for Scope 1 and Scope 2 emissions could be workable.''); PIMCO; Reinsurance AA; R. Love; Salesforce; T. Rowe Price; and WSP.

[1152] *See, e.g.,* letters from AHLA; Allstate; BPI; Chamber; Financial Services Forum; INGAA; NMA; and SouthState.

[1153] *See, e.g.,* letters from PIMCO; SIFMA; and T. Rowe Price.

[1154] *See, e.g.,* letters from Financial Services Forum; and SIFMA.

[1155] *See, e.g.,* letters from Alphabet et al.; IIB; Nareit (''Our members note that they are unaware of investors who have expressed concerns about their current attestation approach, which often provides limited assurance for the GHG reporting.''); and SIFMA (''As a general matter, we do not believe investors currently are pressing for assurance of GHG emissions data at any level of assurance, and certainly not at a reasonable assurance level.'').

[1156] *See* letter from Salesforce (stating that its costs would include, but would not be limited to, incremental headcount or consulting fees to enhance documentation over processes and controls, incremental investments in systems to track and monitor GHG emission data points, including headcount to implement and maintain such systems, and incremental costs to the third-party reviewer to complete a reasonable assurance review).

[1157] *See, e.g.,* letters from AFPM; Can. Bankers (stating that the proposed requirements would require registrants to gather substantial data from third parties and it is not clear that third parties will have in places processes and procedures to generate data that would meet a reasonable assurance standard); Climate Risk Consortia; EMC; Financial Services Forum; ICI; INGAA; Nareit; NAM; PIMCO; Reinsurance AA; and SIFMA.

[1158] *See, e.g.,* letters from Climate Risk Consortia (''Requiring reasonable assurance would impose immediate costs on registrants by requiring additional build-out of controls but provide little to no benefit for investors.''); Financial Services Forum; ICI; INGAA; NAM; Nareit; PIMCO; Reinsurance AA (stating that there would be significant initial and ongoing costs because reasonable assurance ''is a very high level of assurance'' that ''involves significantly more examination, including the evaluation and testing of ICFR''); and SIFMA.

[1159] *See* letter from Business Roundtable. *See also* letter from AFPM (stating that the Commission ''provided no evidence demonstrating that reasonable assurance would increase the reliability of disclosures above limited assurance, let alone that such benefits would outweigh additional costs, burdens, and risks.'').

[1160] *See* letter from AEM.

[1161] *See* letter from INGAA (stating that one member, for example, reports than more than 80% of its Scope 1 and 2 data are based on emissions factors or other forms of extrapolation, not actual measurements).

[1162] *See* letter from WFE. *See also* letter from Cleary Gottlieb (stating that because reporting and attestation practices are in the preliminary stages of development, it is premature to mandate that registrants obtain reasonable assurance).

[1163] *See* letter from Futurepast.

[1164] *See* letter from Futurepast.

[1165] *See, e.g.,* letters from B. Gillespie; BC IM Corp. (stating that the transition periods proposed are reasonable but ''[a]s investors, we will continue to engage with large emitters on obtaining reasonable assurance for their scope 1 and 2 emissions over an accelerated timeline to what is contemplated in the proposed rule''); Crowe; and Praxis.

[1166] *See, e.g.,* letters from AEM (recommending that registrants not be required to begin obtaining assurance for five years); AFPM; APCIA; API; Beller *et al.* (recommending phasing in attestation for public companies with a market capitalization of over $25 billion first with other smaller companies to follow); BHP (''[T]he Commission could consider extending the period in which the attestation requirement applied for limited assurance beyond two years, before requiring the more demanding requirement to provide reasonable assurance.''); BIO (''Attestation should be phased-in in-line with the spirit of the JOBS Act emerging growth company exemptions.''); BOA (recommending a two-year extension to the proposed phase in periods from limited assurance to reasonable assurance); CFA Institute (suggesting that the Commission consider a longer phase in period for reasonable assurance); Chevron; ConocoPhillips (stating that the Commission should extend the assurance implementation timeline to require assurance no earlier than three years following the initial implementation of the disclosure rules to permit capacity building and align internal record-keeping); Inclusive Cap.; INGAA; ITIC (recommending that the Commission extend the phase in period for assurance by at least a year to allow adequate time to establish the appropriate systems and controls and to ensure attestation providers are properly staffed and prepared); J. Josephs (recommending that the Commission provide a phase in period of five years before limited assurance is required); LTSE; Microsoft (recommending the deferral of the attestation requirements for at least one additional year); Mid-

that delaying the phase in periods would provide time for assurance standard setters to ''develop specialized assurance standards necessary for GHG emissions'' and would provide them time to obtain necessary staff and resources, which could help to reduce costs for registrants.[1167] A few commenters stated that the phase in period should be accelerated.[1168] For example, one of these commenters stated that an accelerated phrase in period was warranted given that various attestation providers are already offering limited, and in some cases, reasonable assurance of GHG emissions reporting.[1169]

Also related to timing, a number of commenters stated that the proposed timeline for attestation, which would require disclosure in annual reports, was impractical because it would not provide adequate time for registrants to prepare disclosures and for third-party providers to complete attestation procedures before the annual report is due.[1170] For example, one commenter stated that ''[c]ompiling, reviewing, and publishing'' GHG emissions data ''as well as obtaining assurance'' is a ''significant undertaking that can extend a number of months beyond a registrant's fiscal year end.'' [1171] Another commenter stated that ''[w]hile third party attestation is common'' it was ''concerned about the feasibility of obtaining assurance on the proposed timelines required to file on the Form 10–K.'' [1172]

One commenter supported requiring any voluntary assurance obtained by AFs and LAFs after limited assurance is required to follow the same attestation requirements of Items 1505(b) through (d) as proposed.[1173] Several commenters stated that the Commission should adopt an attestation requirement for Scope 3 GHG emissions disclosures [1174] with some commenters suggesting limited assurance would be sufficient [1175] while others recommended phasing in reasonable assurance.[1176] On the other hand, a number of commenters stated that they did not support requiring attestation over Scope 3 emissions disclosures, with several pointing to the potential cost.[1177]

In the Proposing Release, the Commission explained that it did not propose definitions for the terms ''limited assurance'' and ''reasonable assurance'' because under prevailing attestation standards these are defined terms that the Commission believed were generally understood in the marketplace, both by those seeking and those engaged to provide such assurance.[1178] The Commission included a request for comment asking if, instead, the Commission should define ''limited assurance'' and ''reasonable assurance,'' and if so, how it should define them.[1179] Several commenters recommended that the Commission include a definition of ''limited assurance'' and ''reasonable assurance'' in the final rules.[1180] One of these commenters explained that providing definitions would ''reduce any confusion in the market'' and ''ensure those familiar with greenhouse gas accounting principles and third-party validation/verification for greenhouse gas inventories can more easily translate to either limited or reasonable assurance.'' [1181] Other commenters recommended that the Commission provide guidance explaining the differences between limited assurance and reasonable assurance.[1182]

Some commenters stated that no definition is needed for these terms.[1183] For example, one commenter stated that it agreed that limited assurance and reasonable assurance are defined terms that are generally understood in the marketplace and therefore no definitions are needed.[1184] A few commenters stated that if the attestation standards are limited to those issued by the AICPA, IAASB, and the Public Company Accounting Oversight Board

Size Bank; NMA; NRA/RLC (stating that the phase in of limited assurance should be extended by three years and the transition to reasonable assurance should be extended by six years); NRF; Nikola (recommending an additional two years of limited assurance for Scopes 1 and 2 emissions); Petrol. OK; and PGIM (supporting the proposal, but recommending registrants be given an additional year to comply).

[1167] *See* letter from BOA.

[1168] *See, e.g.,* letters from Better Markets (''Again, while transition periods for new rules may be appropriate, particularly in the cases of new or novel requirements, such transition periods should not be solely justified by reducing costs or burdens for registrants.''); Center Amer. Progress (stating that five years to phase in reasonable assurance is ''far too long'' since many filers already disclose or at least track Scopes 1 and 2 emissions); and M. Hadick (stating that the timeline should be accelerated to require limited assurance in the first reporting year and reasonable assurance in the second reporting year).

[1169] *See* letter from Amer. for Fin. Reform, Evergreen Action *et al.*

[1170] *See, e.g.,* letters from AEPC; AHLA; Alphabet et al.; APCIA; Barrick Gold; BPI; Business Roundtable; Chamber; Climate Risk Consortia; Dow Inc.; ITIC; NMA; NOIA; SEC Professionals (recommending that the Commission modify or re-purpose the current Commission Form SD which is currently filed no later than May 31st after the end of the issuer's most recent calendar year, which would allow additional time to collect, quantify, validate and obtain assurance over GHG emissions); SIA; Trane; Travelers (stating that ''Scope 1 and Scope 2 GHG emissions data is currently not available until about six months after the calendar year end'' and noting that ''is one of the reasons we provided our sustainability reports mid-year''); T. Rowe Price (recommending that Scope 1 and Scope 2 GHG emissions be disclosed in a furnished form due within 120-days of the fiscal year end, aligning with the timing of proxy statements); and Williams Cos.

[1171] *See* letter from ITIC.

[1172] *See* letter from Business Roundtable.

[1173] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[1174] *See, e.g.,* letters from B. Gillespie; CalSTRS; Center Amer. Progress; CFA; CIEL; E. Kenny; ERM CVS; Evergreen (June 17, 2022); IATP; ICCR; NY City Comptroller; NY SIF; NY St. Comptroller; Oxfam America; PWYP; and Rick Love (Mar. 30, 2022) (''R. Love'').

[1175] *See, e.g.,* letters from ANSI NAB (recommending the Commission allow a limited level of assurance engagement to be provided as per ISO 14064–3); Anthesis Grp. (recommending that limited assurance for material sources of Scope 3 emissions be phased in over the next five to ten years); B. Lab Global *et al.* (recommending the Commission phase in limited assurance for Scope 3 emissions); Morningstar (supporting requiring limited assurance for registrants with material Scope 3 emissions or with Scope 3 targets); and Salesforce.

[1176] *See, e.g.,* A. Payton; Impossible Foods; M. Hadick (supporting reasonable assurance over Scope 3 emissions for large registrants); Praxis; Sens. E. Markey, *et al.* (recommending that the Commission require accelerated and large accelerated filers obtain limited and reasonable assurance over Scope 3 emissions on a phased in timeline); and US SIF.

[1177] *See, e.g.,* letters from BC IM Corp.; Can. Bankers; CEMEX; CFA Institute; Climate Advisers; Ernst & Young (''We support the proposed approach of excluding Scope 3 GHG emissions from assurance requirements for all filers because the cost of compliance for registrants would likely outweigh the benefits to investors.''); Futurepast; JLL; JPN Bankers; J. McClellan; NAM; Nutrien; RSM US LLP; SIFMA; and WEA/USOGA.

[1178] *See* Proposing Release, section II.H.1.

[1179] *See id.*

[1180] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.* (stating that the Commission should provide a definition for limited assurance to ''establish a process more rigorous than currently used for assurance of quarterly SEC filings''); C2ES; ENGIE; ERM CVS; IECA (stating that the Commission should define these terms because it is ''not clear what those terms mean in this context, nor how they relate to the standard GHG terms of 'measured,' 'monitored,' and 'verified.'''); J. Weinstein; NASBA (stating that limited assurance and reasonable assurance should be defined in the proposal and noting that if ''non-CPAs are permitted to perform these attestation services, then regulations must be developed to build the intellectual infrastructure . . . outside of the professional standards governing the public accounting profession''); and SCS Global.

[1181] *See* letter from C2ES.

[1182] *See, e.g.,* letters from Ceres; ICCR (stating it would be helpful for the Commission to describe some minimum procedures that the auditor would be expected to utilize in performing a limited assurance engagement); and Morningstar.

[1183] *See, e.g.,* letters from ABA (stating that definitions are not needed but recommending additional guidance for limited and reasonable assurance engagements); CFA Institute; Eni SpA; and Futurepast (stating that these terms are generally understood).

[1184] *See* letter from CFA Institute (stating that it did not support providing additional or alternative definitions for these terms because it was concerned this would cause confusion regarding other attestation engagements not covered by the proposed rules).

(''PCAOB''), no definitions are needed; however, if the standards are not so limited, then the SEC should define the terms in the final rule.[1185] One commenter stated that it believed assurance terms should be defined by assurance standard setters and not by the Commission.[1186]

In the Proposing Release, the Commission asked if it should require AFs and LAFs to provide a separate management assessment and disclosure of the effectiveness of controls over GHG emissions disclosure (separate from the existing requirements with respect to the assessment and effectiveness of DCP).[1187] Some commenters stated that the Commission should require a registrant to provide a separate assessment and disclosure of the effectiveness of controls over GHG emissions disclosure by management.[1188] One commenter stated that such a requirement would ''further strengthen the validity of the data available.'' [1189] Conversely, some commenters stated that the Commission should not require registrants to provide a separate assessment and disclosure of the effectiveness of controls over GHG emissions disclosures.[1190] One commenter explained that current DCP requirements have proven to be effective and should suffice.[1191] Another commenter stated that the ''cost of such an undertaking may not support the incremental benefit to investors.'' [1192] Similarly, in the Proposing Release, the Commission asked whether, instead of, or in addition to, such management assessment, it should require the registrant to obtain an attestation report from a GHG emissions attestation provider that covers the effectiveness of such GHG emissions controls.[1193] Some commenters stated that the Commission should not require an attestation report from a GHG emissions provider that covers the effectiveness of such GHG emissions controls.[1194] One commenter questioned the value of a separate attestation report on controls at the moment because it does not believe there is a ''specific standard for . . . controls around non-financial data'' that ''takes into account the specific subject matter expertise needed in the internal control process.'' [1195]

c. Final Rules (Item 1506)

After considering comments, we are adopting final rules (Item 1506(a)(1)) that require a registrant, including a foreign private issuer, that is required to provide Scope 1 and/or Scope 2 emissions disclosure pursuant to Item 1505 to include an attestation report covering the disclosure of its Scope 1 and/or Scope 2 emissions in the relevant filing.[1196] However, as discussed in greater detail below, we made a number of modifications to the proposal to address certain concerns raised by commenters.

Under the final rules, the attestation engagement must, at a minimum, be at the following assurance level for the indicated fiscal year for the required GHG emissions disclosure: [1197]

Filer type	Scopes 1 and 2 emissions disclosure compliance date	Limited assurance compliance date	Reasonable assurance compliance date
LAFs	Fiscal year 2026	Fiscal year 2029	Fiscal year 2033.
AFs (other than SRCs and EGCs)	Fiscal year 2028	Fiscal year 2031	N/A.

AFs (excluding SRCs and EGCs) and LAFs are required to obtain an attestation report under the final rules,[1198] consistent with the scope of registrants that are required to comply with the GHG emissions disclosure requirements in Item 1505.[1199] As illustrated in the table above, the final rules (Item 1506(a)(1)(i), (ii)) require both AFs and LAFs to obtain limited assurance beginning the third fiscal year after the compliance date for Item 1505; however, under the final rules (Item 1506(a)(1)(iii)), only LAFs are required to obtain an attestation report at a reasonable assurance level beginning the seventh fiscal year after the compliance date for Item 1505.[1200] The final rules do not require an AF to obtain an attestation report at a reasonable assurance level. Consistent with the proposed rules, and with the lack of a requirement to disclose Scope 3 emissions under the final rules, no registrants will be required to obtain assurance over Scope 3 emissions under the final rules. Furthermore, as explained in greater detail below in section II.L.3, the final rules, including Item 1506, will not apply to a private company that is a party to a business combination transaction, as defined by Securities Act Rule 165(f), involving a securities offering registered on Form S–4 or F–4.

As discussed above, a significant number of commenters supported the Commission's proposal to require certain registrants to obtain mandatory assurance over GHG emissions disclosure.[1201] Many of these commenters agreed with the Commission that mandatory assurance would improve the accuracy, comparability, and consistency of registrants' GHG emissions disclosure.[1202] As the Commission explained in the Proposing Release,

[1185] *See, e.g.,* letters from CAQ (stating that the Commission should define ''limited assurance'' and ''reasonable assurance'' by reference to the standards of the AICPA and IAASB rather than developing alternative definitions); and KPMG.

[1186] *See* letter from Mazars (stating that definitions of ''limited assurance'' and ''reasonable assurance'' currently exist within AICPA and IAASB standards).

[1187] *See* Proposing Release, section II.H.1.

[1188] *See, e.g.,* letters from B. Smith.; ERM CVS; and RSM US LLP.

[1189] *See* letter from B. Smith.

[1190] *See, e.g.,* letters from CEMEX; CFA Institute (stating that the issue could be revisited by the Commission in the future); Grant Thornton; J. Herron; and PwC.

[1191] *See* letter from CEMEX. *See also* letter from PwC (''We believe that the overall certifications regarding DC&P are sufficient and do not recommend modifying such language to specifically refer to GHG or other climate disclosures more broadly.'').

[1192] *See* letter from Grant Thornton.

[1193] *See* Proposing Release, section II.H.1.

[1194] *See, e.g.,* letters from CEMEX; CFA Institute (stating that the issue could be revisited by the Commission in the future); and Grant Thornton.

[1195] *See* letter from ERM CVS.

[1196] *See* 17 CFR 229.1506. Consistent with the Commission's statement in the Proposing Release, in order to attest to Scopes 1 and/or 2 emissions disclosure, a GHG emissions attestation provider will need to include in its evaluation relevant contextual information. *See* Proposing Release, section II.H.1. In particular, under the final rules, the attestation provider will be required to evaluate the registrant's compliance with (i) Item 1505(a), which includes presentation requirements (*e.g.,* disaggregation of any constituent gas if individually material), and (ii) the disclosure requirements in Item 1505(b) regarding methodology, organization boundary, and operational boundary. *See infra* section II.I.3.c for further discussion of the criteria against which the Scopes 1 and 2 emissions disclosure are measured or evaluated.

[1197] *See infra* section II.O.3 for a detailed discussion of compliance dates for the final rules.

[1198] *See* 17 CFR 229.1506(a).

[1199] *See* 17 CFR 229.1505. *See also supra* section II.H.3.

[1200] *See* 17 CFR 229.1506(a)(1).

[1201] *See supra* note 1105 and accompanying text.

[1202] *See supra* note 1106 and accompanying text.

obtaining assurance over GHG emissions disclosure provides investors with an additional degree of reliability regarding not only the figures that are disclosed, but also the key assumptions, methodologies, and data sources the registrant used to arrive at those figures.[1203] The Commission has long recognized the important role played by an independent auditor in contributing to the reliability of financial reporting.[1204] Studies suggest that investors have greater confidence in information that has been assured, particularly when it is assured at the reasonable assurance level,[1205] and that high quality audits reduce the cost of capital,[1206] which may benefit both registrants and investors. Similarly, studies of ESG-related assurance, which is typically provided at a limited assurance level, have found benefits such as credibility enhancement, lower cost of equity capital, and lower analyst forecast errors and dispersion.[1207] The benefits that assurance will provide in terms of investor protection and increased confidence in GHG emissions disclosure warrants requiring attestation.[1208] That said, we recognize commenters' concerns about the potential cost of obtaining assurance, the potential shortage in the current supply of assurance providers, and the continually evolving state of assurance standards and methodologies.[1209] As discussed below, we have made modifications in the final rules to mitigate these concerns.

We considered the view expressed by some commenters that there is no reason to treat GHG emissions disclosures differently than other disclosures located outside of the financial statements, which do not require assurance.[1210] Although we recognize that registrants may provide quantitative disclosure outside of the financial statements that is not subject to any assurance requirement, as explained in the Proposing Release,[1211] and consistent with the feedback provided by commenters,[1212] GHG emissions disclosures are unique in that many companies currently voluntarily seek third-party assurance over their climate-related disclosures, and commenters, including investors, have expressed a particular need for assurance over GHG emissions disclosures. Current voluntary assurance practices have been varied and this fragmentation has diminished the comparability of assurance provided. Prescribing a minimum level of assurance required for AFs and LAFs over their Scope 1 and/or Scope 2 emissions in the final rules, along with minimum requirements for the GHG emissions attestation provider and the engagement, will enhance comparability and consistency with respect to assurance over GHG emissions disclosures.

A few commenters stated that it is unnecessary to mandate assurance because there are existing incentives for accuracy in connection with corporate disclosures, such as the Commission staff's filing review process or the possibility of Commission enforcement actions or private litigation.[1213] While it is true that there are existing incentives for companies to provide accurate information to investors, these incentives do not provide the same benefits that assurance will provide under the final rules. Although the desire to avoid an enforcement action or private litigation has a deterrent effect on registrants, such proceedings generally serve to adjudicate claims after investors have allegedly received inaccurate or misleading disclosures. In contrast, the assurance requirement in the final rules will require an independent third-party to provide a check on the accuracy and completeness of a registrant's GHG emissions disclosure before the information is provided to investors, which as explained above, will likely result in additional benefits such as lower cost of equity capital and lower analyst forecast errors.[1214] Furthermore, although the Commission staff's filing review process serves a valuable compliance function that contributes to investor protection, it is not designed to provide assurance, and certainly not for every filing. We note that, despite the existence and benefits of the filing review process, the Commission requires annual financial statements to be audited and has adopted other rules requiring an expert to review and provide conclusions on other specialized quantitative data that is provided outside of the financial statements to enhance its reliability.[1215]

Several commenters raised concerns about registrants' ability to obtain assurance over GHG emissions disclosure in light of the level of judgment, estimation, or uncertainty that would be involved in calculating GHG emissions data.[1216] While we acknowledge these concerns, we note that a number of registrants have voluntarily obtained either limited or reasonable assurance over their GHG emissions data, which shows that the practice is feasible.[1217] And although there are differences between a financial statement audit and an assurance engagement over GHG emissions, registered public accounting firms regularly must provide assurance over financial statement amounts that are

[1203] *See* Proposing Release, section II.H.1.

[1204] *See Qualifications of Accountants,* Release No. 33–10876 (Oct. 16, 2020) [85 FR 80508, 80508 (Dec. 22, 2020)]. *See also* Statement, Paul Munter, Acting Chief Accountant, The Importance of High Quality Independent Audits and Effective Audit Committee Oversight to High Quality Financial Reporting to Investors (Oct. 26, 2021), available at *https://www.sec.gov/news/statement/munter-audit-2021-10-26.*

[1205] *See, e.g.,* Carol Callaway Dee, et al., *Client Stock Market Reaction to PCAOB Sanctions Against a Big Four Auditor,* 28 Contemp. Acct. Res. 263 (Spring 2011) (''Audits are valued by investors because they assure the reliability of and reduce the uncertainty associated with financial statements.'').

[1206] *See* Warren Robert Knechel, *Audit Quality: Insights from Academic Literature,* Auditing: A Journal of Practice & Theory (Jan. 2013).

[1207] *See, e.g.,* Ryan J. Casey, et al., *Understanding and Contributing to the Enigma of Corporate Social Responsibility (CSR) Assurance in the United States,* 34 Auditing: A Journal of Practice & Theory 97, 122 (Feb. 2015) (finding that corporate social responsibility (''CSR'') assurance results in lower cost-of-capital along with lower analyst forecast errors and dispersion, and that financial analysts find related CSR reports to be more credible when independently assured). *See also* letter from F. Berg.

[1208] *See also* IOSCO, Report on International Work to Develop a Global Assurance Framework for Sustainability-related Corporate Reporting (Mar. 2023), available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD729.pdf* (observing ''growing demand among investors for high-quality assurance over some sustainability-related information to enhance the reliability of corporate reporting'').

[1209] *See supra* notes 1116 and 1121 and accompanying text.

[1210] *See supra* note 1128 and accompanying text.

[1211] *See* Proposing Release, section II.H.1.

[1212] *See supra* notes 1114 and 1106 and accompanying text.

[1213] *See supra* note 1119.

[1214] *See supra* note 1207.

[1215] *See Modernization of Property Disclosures for Mining Registrants,* Release No. 33–10570 (Oct. 31, 2018) [83 FR 66344 (Dec. 26, 2018)]. *See supra* section II.I.2.c for further discussion of the expert requirements in the context of the mining disclosure rules.

[1216] *See supra* note 1122 and accompanying text.

[1217] *See, e.g.,* Salesforce, Inc., FY23 Stakeholder Impact Summary, at 31, available at *https://stakeholderimpactreport.salesforce.com/pdf/FY23-SIR-Summary-ESG-Metrics.pdf* (obtaining limited assurance over its Consolidated Statements of Environmental Metrics, including Scopes 1, 2, and 3 emissions); The PNC Financial Services Group, Inc., Corporate Responsibility Report 2022, at 48, available at *https://www.pnc.com/content/dam/pnc-com/pdf/aboutpnc/CorporateResponsibilityReports/PNC_Corporate_Responsibility_Report_2022.pdf* (obtaining limited assurance over Scopes 1 and 2 and certain categories of Scope 3 emissions); Guess?, Inc. FY 2022–2023, at 82, available at *https://static1.squarespace.com/static/609c10ed49db5202181d673f/t/64b8f15ff1649742c0a1c552/1689842028424/FY2022-2023+ESG+Report.pdf* (obtaining reasonable assurance over climate-related disclosures, including Scopes 1, 2, and 3 GHG emissions); and United Parcel Service, Inc., 2022 GRI, at 61, available at *https://about.ups.com/content/dam/upsstories/images/social-impact/reporting/2022-reporting/2022%20UPS%20GRI%20Report.pdf* (obtaining reasonable assurance over its 2022 Statement of GHG emissions, including Scopes 1, 2, and 3 emissions).

subject to significant judgment, estimates, or assumptions or that rely upon information received from a third party. We acknowledge that auditing standards for financial statement audits are more established after decades of development and required use than attestation standards and practices for GHG emissions. Nevertheless, as noted above, the practice of providing assurance over GHG emissions is far from nascent and is now expected by many market participants.[1218]

Several commenters urged the Commission to adopt the verification process for GHG reporting used by the EPA in lieu of the proposed assurance requirements.[1219] Although we considered the EPA's multi-step verification process, given the differences in the Commission's and EPA's reporting requirements, the different purposes of the Commission's and EPA's respective regulatory regimes, and the benefits of third-party assurance, we determined that independent, third-party assurance is a more appropriate model for the final rules.[1220]

Some commenters urged the Commission to wait before determining whether to adopt a mandatory attestation requirement for GHG emissions or to adopt final rules that permit registrants to disclose whether they voluntarily obtained attestation and related details instead of mandating assurance.[1221] We agree with commenters that requiring registrants to disclose whether they obtained voluntary assurance and related details would help those investors that invest in companies that decide to voluntarily obtain assurance understand whether the attestation obtained has enhanced the reliability of the GHG emissions disclosure, which is why we have included a requirement in the final rules for registrants that are not subject to Item 1505 to provide certain disclosure if they voluntarily obtain assurance over any voluntary GHG emissions disclosure included in Commission filings.[1222] However, requiring AFs and LAFs to obtain assurance over their Scope 1 and/or Scope 2 emissions disclosure in accordance with the final rules will result in more investors receiving the important benefits of assurance, including increased confidence in the reliability of, and an improved ability to make informed investment decisions based on, assured GHG emissions disclosures, which, as discussed above, provide investors with information for assessing a registrant's business, results of operations, and financial condition.[1223] As discussed in greater detail below, the assurance requirements in the final rules are narrowly tailored and limited to a subset of registrants, many of which already obtain assurance services with respect to their GHG emissions disclosures. In addition, we disagree with those commenters that suggested we wait before determining whether to adopt a mandatory attestation requirement for GHG emissions.[1224] The phase in periods included in the final rules should mitigate the concerns of commenters that stated the Commission should wait in order to give registrants and GHG emissions attestation providers more time to prepare for assurance, or to allow more time for attestation standards or guidance to develop.

Consistent with the proposal, the final rules will apply the attestation requirements to AFs and LAFs.[1225] However, in a shift from the proposal, the final rules will exempt SRCs and EGCs from the requirement to obtain an attestation report.[1226] Although some commenters urged the Commission to apply the final rules to all registrants,[1227] not just AFs and LAFs, our decision to exempt SRCs and EGCs from the assurance requirement is driven by our decision to exempt these companies from the requirement to disclose GHG emissions, which is discussed in greater detail above.[1228] Since SRCs and EGCs will not be required to disclose GHG emissions, they also will not be required to obtain assurance.

Under the final rules, AFs and LAFs will be required to obtain limited assurance over their GHG emissions disclosure beginning the third fiscal year after the compliance date for Item 1505 (the GHG emissions disclosure provision).[1229] LAFs will be required to obtain reasonable assurance over their GHG emissions disclosure beginning the seventh fiscal year after the compliance date for Item 1505.[1230] In a change from the proposal, AFs will *not* be required to scale up to reasonable assurance under the final rules. Although we agree with those commenters that stated that reasonable assurance would provide investors with increased confidence that a registrant's GHG emissions disclosure is reliable as compared to limited assurance,[1231] we have determined that it is appropriate to apply the reasonable assurance requirement to a more limited pool of registrants—LAFs—at this time because some LAFs are already collecting and disclosing climate-related information, including GHG emissions data,[1232] and larger issuers generally

[1218] As discussed above, a number of jurisdictions have undertaken efforts to obtain more consistent, comparable, and reliable climate-related information for investors, *see supra* section II.A.3, with certain jurisdictions requiring the disclosure of GHG emissions data along with assurance. *See* Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance), available at *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.322.01.0015.01.ENG* (requiring companies within its jurisdiction to obtain limited assurance over sustainability reporting and stating that the European Commission will perform an assessment to determine if moving from limited to reasonable assurance is feasible for both auditors and companies); SB–253, *Climate Corporate Data Accountability Act* (Oct. 7, 2023), available at *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB253* (requiring the California state board to develop and adopt regulations requiring the disclosure of GHG emissions and accompanying assurance engagements beginning with limited assurance and transitioning to reasonable assurance). In addition, the IAASB issued an exposure draft on Proposed International Standard on Sustainability Assurance 5000. *See* Proposed International Standard on Sustainability Assurance (ISSA) 5000, General Requirements for Sustainability Assurance Engagements (Exposure Draft) (Aug. 2, 2023), available at *https://www.iaasb.org/publications/proposed-international-standard-sustainability-assurance-5000-general-requirements-sustainability*(proposing assurance standards for both reasonable and limited assurance engagements).

[1219] *See supra* note 1126 and accompanying text.

[1220] For a summary of the EPA's multi-step verification process, which includes verification performed by the EPA itself, *see* EPA Fact Sheet *supra* note 1126. *See also* EPA, Greenhouse Gas Reporting Program Report Verification, available at *https://www.epa.gov/sites/default/files/2017-12/documents/ghgrp_verification_factsheet.pdf.*The comment letter submitted by the EPA notes distinctions in reporting requirements between the Commission's proposed rules and the EPA's GHGRP, including that the Commission's proposal covers publicly traded companies (domestic and international) regardless of their emissions level, while the EPA's GHGRP covers facilities and GHG and fuel suppliers (located in the U.S. and its territories) that fall into one or more of forty-one industrial categories and that, in general, emit or supply 25,000 metric tons CO_2 equivalent or more. *See* letter from EPA.

[1221] *See supra* notes 1131 and 1132 and accompanying text.

[1222] *See infra* section II.I.5.

[1223] *See supra* section II.H.3.a.

[1224] *See supra* note 1131 and accompanying text.

[1225] *See* 17 CFR 229.1506(a).

[1226] SRCs and EGCs that qualified as AFs would have been included within the scope of AFs subject to the requirement to obtain an attestation report under the proposed rules.

[1227] *See supra* note 1135 and accompanying text.

[1228] *See supra* section II.H.3.

[1229] *See* 17 CFR 229.1506(a)(1)(i), (ii).

[1230] *See* 17 CFR 229.1506(a)(1)(iii).

[1231] *See, e.g.,* letter from GRI.

[1232] According to one study, 99% of S&P 500 companies reported ESG information in 2021 and 65% of such companies reported obtaining assurance over some ESG information. *See* CAQ, *S&P 500 and ESG Reporting* (updated June 2023), available at *https://www.thecaq.org/sp-500-and-esg-reporting.* In addition, according to the study, over 63% of S&P 500 companies reported obtaining

bear proportionately lower compliance costs than smaller issuers due to the fixed cost components of such compliance. This scaled approach will avoid increasing compliance burdens for AFs that may be smaller or less sophisticated issuers.

We considered whether to require LAFs to obtain an attestation report at a reasonable assurance level from the start as suggested by some commenters.[1233] However, most registrants that are voluntarily obtaining assurance today obtain limited assurance rather than reasonable assurance,[1234] and therefore a transition period is appropriate to give LAFs and GHG emissions attestation providers time to prepare for the higher level of assurance. In contrast to some commenters' suggestion that obtaining reasonable assurance would be impractical,[1235] we note that some registrants have voluntarily obtained reasonable assurance over their GHG emissions disclosure.[1236] In addition, one commenter stated that it agreed with the Commission's statement in the Proposing Release that limited assurance is not possible unless the assurance provider also believes reasonable assurance is possible on the subject matter.[1237]

We recognize that obtaining reasonable assurance over GHG emissions disclosure will be more costly than obtaining limited assurance because the scope of work in a limited assurance engagement is substantially less than the scope of work in a reasonable assurance engagement. The primary difference between the two levels of assurance relates to the nature, timing, and extent of procedures required to obtain sufficient, appropriate evidence to support the limited assurance conclusion or reasonable assurance opinion. For example, in a limited assurance engagement, the procedures performed by attestation providers are generally limited to analytical procedures and inquiries,[1238] but in a reasonable assurance engagement, they are also required to perform risk assessment and detail testing procedures to respond to the assessed risk.[1239] However, the outcome of a reasonable assurance engagement results in positive assurance (*e.g.,* the provider forms an opinion about whether the registrant's GHG emissions disclosures are in accordance with Item 1505 in all material respects) while the outcome of a limited assurance engagement results in negative assurance (*e.g.,* the provider forms a conclusion about whether it is aware of any material modifications that should be made to the disclosures for it to be in accordance with Item 1505). Therefore, we agree with those commenters that stated reasonable assurance will provide greater value to investors because at the reasonable assurance level, investors receive more reliable information about GHG emissions.[1240] Registrants may also benefit from providing disclosures subject to a reasonable assurance level because such assurance enhances investor confidence in the disclosures, and as a result, may lower the cost of capital for registrants.[1241]

As explained above, LAFs are best positioned to bear the increased costs of obtaining reasonable assurance. Such costs are justified for these registrants by the benefits that investors and registrants will receive in the form of positive assurance, which makes it more likely that material errors or omissions are detected and is consistent with the Commission's investor protection mission. In light of the significant phased in compliance period that LAFs will have before reasonable assurance is required, we expect that registrants will incur these costs over several years, which should make the burden easier to bear in any particular year. We also expect that during the significant phased in compliance period new assurance providers will enter the market and any resulting increase in competition will lead to relative reductions in the costs of providing those services over time.[1242]

We considered whether it would be appropriate to wait to make a determination about whether LAFs should be required to scale up to reasonable assurance, but decided against such an approach because the benefits of obtaining reasonable assurance are apparent now [1243] and we do not expect those to change in the future, while our decision to limit the reasonable assurance requirement to a narrower scope of registrants and to provide a significant transition period will help address the concerns raised by commenters. We also considered the suggestion by one commenter that the Commission initially require registrants to obtain reasonable assurance, followed by limited assurance engagements to the extent the first year's attestation report included no qualifications; however, for the reasons stated above, the scaled approach, starting with limited assurance and subsequently moving to reasonable assurance, will allow LAFs time for their processes and controls to mature before being subject to the higher level of assurance. It will also provide attestation service providers that do not currently provide assurance over GHG emissions disclosure with additional time to familiarize themselves with providing assurance over such disclosure, which, as noted above, should facilitate additional competition between assurance

assurance specifically over some portion of their GHG emissions disclosures. *See id.* Based on an analysis by Commission staff on Feb. 29, 2024, a substantial number of the S&P 500 companies (494) are LAFs.

[1233] *See supra* note 1145 and accompanying text.

[1234] *See* CAQ, *S&P 500 and ESG Reporting* (Updated June 2023), available at *https://www.thecaq.org/sp-500-and-esg-reporting* (stating that in 2021 most companies that obtained assurance from public company auditors and other providers opted for limited assurance).

[1235] *See, e.g.,* letter from INGAA.

[1236] *See supra* note 1217.

[1237] *See* letter from ERM CVS. As the Commission explained in the Proposing Release, under commonly used attestation standards, both a reasonable assurance engagement and a limited assurance engagement have the same requirement that the subject matter (*e.g.,* Scope 1 and Scope 2 emissions) of the engagement be appropriate as a precondition for providing assurance. Thus, if the subject matter is appropriate for a limited assurance engagement, it is also appropriate for a reasonable assurance engagement. *See* Proposing Release, section II.H.1 *See also, e.g.,* AICPA SSAE No. 18, Attestation Standards, available at *https://us.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/ssae-no-18.pdf;* and IAASB ISAE 3000 (Revised), Assurance Engagements Other than Audits or Reviews of Historical Financial Information, available at *https://www.ifac.org/_flysystem/azure-private/publications/files/ISAE%203000%20Revised%20-%20for%20IAASB.pdf.*

[1238] *See, e.g.,* AICPA SSAE No. 18, AT–C § 105.A14.

[1239] *See, e.g.,* AICPA SSAE No. 18, AT–C § 205.18.

[1240] *See supra* note 1145 and accompanying text.

[1241] *See* letter from Anthesis Grp. *See also supra* note 1207.

[1242] *See* letter from Futurepast (expressing the view that the existence of a larger pool of potential GHG emissions attestation providers will enhance competition and likely result in lower costs to registrants). In addition, as discussed in greater detail below in Sections II.I.2.c and 3.c., we expect that registrants' ability to hire a non-accounting firm as a GHG emissions attestation provider and our decision to make certain modifications to the proposed requirements applicable to the GHG emissions attestation engagement should help address concerns about the supply of GHG emissions attestation providers.

[1243] *See supra* note 1193; Brandon Gipper, et al., *Carbon Accounting Quality: Measurement and the Role of Assurance* (Nov. 2023), available at *https://ssrn.com/abstract=4627783* (concluding that reasonable assurance improves carbon accounting quality more than limited assurance). *See also* letters from GRI (''Reasonable assurance should be adopted as this would be commensurate with the level of assurance provided through statutory audits of financial statements and will give information users increased confidence that the reported information is prepared in accordance with stated criteria.''); and PWYP (''Given the importance of GHG emissions data to enable investors to fully understand the climate-related risks of issuers, reasonable assurance is necessary to ensure that information is subjected to sufficient examination and verification such that it can be relied on by investors.'').

providers and further help decrease costs of compliance.

A number of commenters recommended that the Commission extend the phase in periods in the final rules because the proposed compliance schedule would have been too challenging for registrants to meet.[1244] We agree with commenters that extending the phase in periods would provide registrants and GHG emissions attestation providers with additional time to prepare for implementation of the rules and would allow assurance standards and practices applicable to GHG emissions to further evolve while balancing investors' need for the information. Therefore, as compared to the proposal, the final rules provide AFs and LAFs with additional time before they are required to comply with the GHG emissions assurance requirements in addition to the phased in GHG emissions compliance dates.[1245] Providing two phased in compliance dates—one before registrants are required to comply with the GHG emissions disclosure requirements and another before registrants are required to comply with the assurance requirements—will allow registrants and assurance providers to gain experience with the new rules before assurance is required.

Commenters expressed a variety of views about whether the Commission should define the terms ''limited assurance'' and ''reasonable assurance'' in the final rules. Some commenters stated that definitions or guidance could be helpful or reduce any potential confusion,[1246] while other commenters stated that no definition is needed.[1247] We have determined not to include definitions of ''limited assurance'' and ''reasonable assurance'' in the final rules because we agree with the commenters that stated that this terminology is generally well understood [1248] and should be defined by assurance standard setters and not by the Commission.[1249] As we explained in the Proposing Release, ''limited assurance'' and ''reasonable assurance'' are currently defined by the prevailing attestation standards.[1250] Furthermore, we expect the description of the work performed as a basis for the assurance provider's conclusion on the GHG emissions attestation engagement to be included in any assurance report issued pursuant to the final rules, which should facilitate investors' understanding of the nature of the limited or reasonable assurance engagement.[1251]

One commenter asked the Commission to clarify how the terms ''limited assurance'' and ''reasonable assurance'' relate to the ''standard GHG terms of 'measured,' 'monitored,' and 'verified.' '' [1252] It is our general understanding that ''measured,'' ''monitored,'' and ''verified'' are terms commonly used in the marketplace to describe the process for calculating and reporting GHG emissions data.[1253] Although such a process could share some similarities with the steps GHG emission attestation providers undertake during the course of an assurance engagement, such a process is distinct from the assurance required by the final rules, which must be performed in accordance with a standard that meets the requirements detailed below. Another commenter urged the Commission to provide a definition of limited assurance that establishes ''a process more rigorous than currently used for assurance of quarterly SEC filings.'' [1254] However, doing so would potentially result in the Commission's definition of limited assurance being different from, or conflicting with, the definitions included in the prevailing attestation standards that we expect many GHG emissions attestation providers will use, which could cause confusion.

As discussed above, the final rules provide that any GHG emissions metrics required to be disclosed pursuant to Item 1505 in an annual report filed with the Commission on Form 10–K may be incorporated by reference from the registrant's Form 10–Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions disclosure relates, or may be included in an amended annual report on Form 10–K no later than the due date for such Form 10–Q.[1255] The extension of the deadline for the filing of GHG emissions metrics also applies to the deadline for the filing of an attestation report, which should accompany the GHG emissions disclosure to which the report applies.[1256] This additional time—an additional two fiscal quarters—should provide registrants subject to Item 1505 and their GHG emissions attestation providers with sufficient time to measure GHG emissions, provide assurance, and prepare the required attestation report. Consistent with the notice requirements included in Item 1505(c), the final rules (Item 1506(f)) provide that a registrant that elects to incorporate by reference its attestation report from its Form 10–Q for the second fiscal quarter or to provide its attestation report in an amended annual report must include an express statement in its annual report indicating its intention to either incorporate by reference the attestation report from a quarterly report on Form 10–Q or amend its annual report to provide the attestation report by the due date specified in Item 1505.[1257]

[1244] *See supra* note 1166 and accompanying text.

[1245] *See* 17 CFR 229.1506(a). *See also infra* section II.O.3 for further discussion of the compliance dates for the final rules.

[1246] *See supra* note 1180 and accompanying text.

[1247] *See supra* note 1183 and accompanying text.

[1248] *See* letter from CFA Institute.

[1249] *See* letter from Mazars.

[1250] *See* Proposing Release, section II.H.1. *See also, e.g.,* AICPA SSAE No. 18, AT–C § 105.10 and IAASB ISAE 3000 (Revised) § 12(a)(i).

[1251] *See, e.g.,* IAASB ISAE 3000 (Revised) § 69(k).

[1252] *See* letter from IECA.

[1253] For example, the draft interagency report entitled, ''Federal Strategy to Advance Greenhouse Gas Measurement and Monitoring for the Agriculture and Forest Sectors (Strategy),'' states that ''Measurement, Monitoring, Reporting, and Verification (MMRV) refers to activities undertaken to quantify GHG emissions and sinks (through direct measurement and/or modeling), monitor emission over time, verify estimates, and synthesize and report on findings.'' *See Federal Strategy to Advance Measurement and Monitoring Greenhouse Gas Measurement and Monitoring for the Agriculture and Forest Sectors,* 88 FR 44251 (July 12, 2023).

[1254] *See supra* note 1180.

[1255] *See* 17 CFR 220.1505(c)(1). If the registrant is a foreign private issuer, the final rules provide that its GHG emissions disclosure may be included in an amendment to its annual report on Form 20–F, which shall be due no later than 225 days after the end of the fiscal year to which the GHG emissions disclosure relates. *See id. See also supra* section II.H.3.

[1256] *See* 17 CFR 229.1506(f).

[1257] *See id.*

The proposed rules would have required the attestation report to be included in the separately captioned ''Climate-Related Disclosure'' section in the relevant filing.[1258] However, as discussed above, the final rules leave the placement of climate-related disclosures, other than the financial statement disclosures, largely up to each registrant.[1259] As such, a registrant will not be required to include the attestation report in a separately captioned ''Climate-Related Disclosure'' section, although it may elect to do so.[1260]

Consistent with the proposed rules, during the phased in compliance period when limited assurance is required for LAFs, the final rules (Item 1506(a)(1)(ii)) permit an LAF, at its option, to obtain reasonable assurance of its Scope 1 and/or 2 emissions disclosure.[1261] Similarly, the final rules (Item 1506(a)(1)(i)) permit an AF, at its option, to obtain reasonable assurance of its Scope 1 and/or 2 emissions disclosure. In addition, at its option, a registrant that is subject to the assurance requirements would be able to obtain any level of assurance over its GHG emissions disclosures that are not required to be assured pursuant to Item 1506(a).[1262] For filings made after the compliance date for the GHG emissions disclosure requirements but before Item 1506(a) requires limited assurance, a registrant would only be required to provide the disclosure called for by Item 1506(e).[1263] For filings made after the compliance date for assurance required by Item 1506(a), to avoid potential confusion, the additional, voluntary assurance obtained by such filer would be required to follow the requirements of Items 1506(b) through (d), including using the same attestation standard as the required assurance over Scope 1 and/or Scope 2 emissions, which was supported by one commenter.[1264] Although in the Proposing Release, the requirements outlined in this paragraph would have applied to any climate-related disclosures not subject to assurance under Item 1506(a),[1265] we have narrowed the scope of the final rule to apply only to GHG emissions disclosures that are not required to be assured under Item 1506(a) because, given the modifications in the final rule, we think it is unlikely that registrants will voluntarily obtain assurance over non-GHG emissions disclosure for which the disclosure required by 1506(e) would be useful to investors.[1266] Therefore, to reduce the complexity of the final rules, we are streamlining it in this way. In addition, as discussed below in section II.I.5, a registrant that is not subject to Item 1505 but that voluntarily discloses GHG emissions information and voluntarily obtains assurance will be required to comply only with Item 1506(e), if applicable.

For ease of reference, we have included a table reflecting the application of these requirements:

	After the compliance date for GHG emissions disclosure but before the compliance date for assurance	After the compliance date for assurance
LAFs and AFs subject to Items 1505 and 1506(a) through (d) (*e.g.,* registrants that are required to disclose GHG emissions and obtain assurance).	Any voluntary assurance over any GHG emissions disclosure must comply with the disclosure requirements in Item 1506(e).	Any voluntary assurance obtained over GHG emissions disclosures that are not required to be assured pursuant to Item 1506(a) (*e.g.,* voluntary Scope 3 disclosures) must follow the requirements of Item 1506(b) through (d), including using the same attestation standard as the registrant's required assurance over Scope 1 and/or Scope 2 disclosure.
Registrants not subject to Items 1505 or 1506(a) through (d) (*e.g.,* registrants that are not required to disclose GHG emissions).	Any voluntary assurance over any GHG emissions disclosure must comply with the disclosure requirements in Item 1506(e).	Any voluntary assurance over any GHG emissions disclosure must comply with the disclosure requirements in Item 1506(e).

2. GHG Emissions Attestation Provider Requirements

a. Proposed Rules

The proposed rules would have required the GHG emissions attestation report required by proposed Item 1505(a) for AFs and LAFs to be prepared and signed by a GHG emissions attestation provider.[1267] The proposed rules would have defined a GHG emissions attestation provider to mean a person or firm that has all the following characteristics:

- Is an expert in GHG emissions by virtue of having significant experience in measuring, analyzing, reporting, or attesting to GHG emissions. Significant experience means having sufficient competence and capabilities necessary to:
  - Perform engagements in accordance with professional standards and applicable legal and regulatory requirements; and
  - Enable the service provider to issue reports that are appropriate under the circumstances.
- Is independent with respect to the registrant, and any of its affiliates,[1268] for whom it is providing the attestation report, during the attestation and professional engagement period.[1269]

The Commission explained that the proposed expertise requirement was

[1258] *See* Proposing Release, section II.H.3.

[1259] *See supra* section II.A.3.

[1260] *See id.* for further discussion of presentation requirements for GHG emissions disclosure under the final rules.

[1261] *See* Proposing Release, section II.H.1.

[1262] Scope 1 and/or Scope 2 emissions disclosures are required to be assured pursuant to Item 1506(a). As noted above, no registrants are required to provide Scope 3 GHG emissions disclosures; however, a registrant may choose to provide such disclosure voluntarily.

[1263] *See* 17 CFR 229.1506(a)(3).

[1264] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.;* 17 CFR 229.1506(a)(3). For example, if an LAF was required to obtain reasonable assurance over its Scope 1 and/or Scope 2 emissions disclosure and the attestation provider chose to follow, for example, the AICPA attestation standards, the LAF could voluntarily obtain limited assurance over any voluntary Scope 3 GHG emissions disclosure, and the attestation provider would be required to follow the AICPA's attestation standard for providing limited assurance.

[1265] *See* Proposing Release, section II.H.1.

[1266] *See* 17 CFR 229.1506(a)(3).

[1267] *See* Proposing Release, section II.H.2.

[1268] *See id.* Proposed Item 1505(b)(2)(iii) stated that the term ''affiliates'' has the meaning provided in 17 CFR 210.2–01, except that references to ''audit'' are deemed to be references to the attestation services provided pursuant to this section.

[1269] *See* Proposing Release, section II.H.2. Proposed Item 1505(b)(2)(iv) stated that the term ''attestation and professional engagement period'' means the period covered by the attestation report and the period of the engagement to attest to the registrant's GHG emissions or to prepare a report filed with the Commission. The professional engagement period begins when the GHG attestation service provider either signs an initial engagement letter (or other agreement to attest a registrant's GHG emissions) or begins attest procedures, whichever is earlier.

intended to help ensure that the service provider preparing the attestation report has sufficient competence and capabilities necessary to execute the attestation requirement.[1270] If the service provider is a firm, the Commission stated it would expect that the firm has policies and procedures designed to provide it with reasonable assurance that the personnel selected to conduct the GHG emissions attestation engagement have sufficient experience with respect to both attestation engagements and GHG disclosure. This would mean that the service provider has the qualifications necessary for fulfillment of the responsibilities that it would be called on to assume, including the appropriate engagement of specialists, if needed.[1271] The Commission explained that the proposed expertise requirement would have applied to the person or the firm signing the GHG emissions attestation report.[1272]

The proposed requirement related to independence was modeled on the Commission's qualifications for accountants under 17 CFR 210.2–01 (''Rule 2–01 of Regulation S–X''), which are designed to ensure that auditors are independent of their audit clients.[1273] The Commission explained that similar to how assurance provided by independent public accountants improves the reliability of the financial statements and disclosures and is a critical component of our capital markets, assurance of GHG emissions disclosure by independent service providers should also improve the reliability of such disclosure.[1274] The Commission stated that academic studies demonstrate that assurance provided by an independent auditor reduces the risk that an entity provides materially inaccurate information to external parties, including investors, by facilitating the dissemination of transparent and reliable financial information.[1275] The Commission explained that it expected that GHG emissions disclosure would similarly benefit if assured by an independent service provider.[1276]

Similar to Rule 2–01 of Regulation S–X,[1277] the proposed rules provided that a GHG emissions attestation provider is not independent if, during the attestation and professional engagement period, such attestation provider is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that such attestation provider is not, capable of exercising objective and impartial judgment on all issues encompassed within the attestation provider's engagement.[1278] The proposed rules further stated that, in determining whether a GHG emissions attestation provider is independent the Commission would consider:

- Whether a relationship or the provision of a service creates a mutual or conflicting interest between the attestation provider and the registrant (or any of its affiliates), places the attestation provider in the position of attesting to such attestation provider's own work, results in the attestation provider acting as management or an employee of the registrant (or any of its affiliates), or places the attestation provider in a position of being an advocate for the registrant (or any of its affiliates); and
- All relevant circumstances, including all financial or other relationships between the attestation provider and the registrant (or any of its affiliates), and not just those relating to reports filed with the Commission.[1279]

These proposed provisions were modeled on the factors used by the Commission in determining whether an accountant is independent.[1280] The Commission explained that similar to Rule 2–01 of Regulation S–X, the proposed provisions should help protect investors by requiring the GHG emissions attestation provider to be independent both in fact and appearance from the registrant, including its affiliates.[1281]

The Commission also explained that because the GHG emissions attestation provider would be a person whose profession gives authority to the statements made in the attestation report and who is named as having provided an attestation report that is part of the registration statement, the registrant would be required to obtain and include the written consent of the GHG emissions attestation provider pursuant to Securities Act section 7,[1282] the corresponding rule requiring the written consents of such experts,[1283] and the Regulation S–K provision requiring the attachment of the written consent of an expert to a Securities Act registration statement or Exchange Act report that incorporates by reference a written expert report attached to a previously filed Securities Act registration statement.[1284] The GHG emissions attestation provider would also be subject to liability under the Federal securities laws for the attestation conclusion or, when applicable, opinion provided.[1285] The Commission explained that such liability should encourage the attestation service provider to exercise due diligence with respect to its obligations under a limited or reasonable assurance engagement.[1286]

b. Comments

A number of commenters supported the proposed rules' requirement for a registrant to obtain a GHG emissions attestation report that is provided by a GHG emissions attestation provider that meets specified requirements.[1287] A number of commenters stated that they agreed with the approach taken in the proposed rules not to limit eligible GHG emissions attestation providers to only accounting firms.[1288] Several commenters stated that non-accounting firms may have expertise that would be relevant to providing assurance over

[1270] *See* Proposing Release, Section II.H.2.

[1271] *See id.*

[1272] *See id.* The Commission noted that it has adopted similar expertise requirements in the past to determine eligibility to prepare a mining technical report, although the mining technical report requirements differ in that such an engagement is not an assurance engagement. *See id.* (citing *Modernization of Property Disclosures for Mining Registrants,* Release No. 33–10570 (Oct. 31, 2018) [83 FR 66344 (Dec. 26, 2018)]).

[1273] *See* Proposing Release, section II.H.2.

[1274] *See id.*

[1275] *See id.*

[1276] *See id.*

[1277] *See* 17 CFR 210.2–01(b).

[1278] *See* Proposing Release, section II.H.2.

[1279] *See id.*

[1280] *See* 17 CFR 210.2–01. For the avoidance of doubt, the Commission noted that if the independent accountant who audits the registrant's consolidated financial statements is also engaged to perform the GHG emissions attestation for the same filing, the fees associated with the GHG emissions attestation engagement would be considered ''Audit-Related Fees'' for purposes of Item 9(e) of 17 CFR 240.14a–101, Item 14 of Form 10–K, Item 16C of Form 20–F, or any similar requirements. *See* Proposing Release, section II.H.2.

[1281] *See id.*

[1282] 15 U.S.C. 77g.

[1283] *See* 17 CFR 230.436.

[1284] *See* Proposing Release, section II.H.2. *See also* 17 CFR 229.601(b)(23).

[1285] As explained above, a limited assurance engagement results in a conclusion that no material modification is needed and a reasonable assurance engagement results in an opinion. *See supra* notes 1090 and 1091.

[1286] *See* Proposing Release, section II.H.2.

[1287] *See, e.g.,* letters from BOA; Bureau Veritas; CII; Crowe; ERM CVS; Ernst & Young LLP; Futurepast; ICAEW (''Third party assurance providers should comply with a professional framework encompassing competence, independence and a system of quality management.''); ICI; LRQA; MFA; Morningstar; and TotalEnergies.

[1288] *See* letter from ABA; Beller *et al.;* Bureau Veritas; Ceres; CFA Institute; Chevron; Climate Risk Consortia; ERM; Futurepast; J. Herron; J. McClellan (''Practically, many accounting firms will seek to hire subject matter experts to build their own internal expertise so it makes sense to expand the universe of assurance providers to include these specialist organizations.''); LRQA; MFA; NAM; SKY Harbor; and TCS.

GHG emissions disclosure.[1289] For example, one commenter stated that ''certain situations may require specialist expertise and that limiting attestation providers only to accounting firms would prevent registrants in such situations from availing themselves of the requisite special knowledge.'' [1290] Another commenter stated that ''[e]xpanding assurance beyond accounting firms has the added benefit of providing a much larger pool of assurance providers, which could potentially lower compliance costs.'' [1291] A few commenters stated that if non-accounting firms are eligible to provide assurance services, then the Commission would need to ensure that there are appropriate protections in place for investors.[1292] A few commenters stated that the proposed rules' references to accounting or audit-style requirements could favor accounting firms or make it difficult for non-accounting firms to meet the qualifications.[1293]

On the other hand, a few commenters stated that the Commission should require that the GHG emissions attestation provider be a public accounting firm registered with the PCAOB.[1294] One of these commenters stated that requiring a GHG emissions attestation provider to be a PCAOB-registered public accounting firm ''will enhance the reliability of the [GHG emissions] disclosures themselves, thus promoting confidence in the disclosures among investors.'' [1295] Another commenter explained that PCAOB-registered public accounting firms ''already have a framework to adhere to professional obligations related to objectivity and due process, and to the independence rules,'' which would negate ''the burden for registrants to research and provide various information related to attestation service providers'' required by the proposed rules.[1296]

Some commenters agreed with the proposal that significant experience means having sufficient competence and capabilities necessary to (a) perform engagements in accordance with professional standards and applicable legal and regulatory requirements and (b) enable the service provider to issue reports that are appropriate under the circumstances.[1297] One commenter recommended that the Commission require a minimum of three years of experience in GHG emissions attestation or assurance for the person or organization signing the assurance statement.[1298] Conversely, some commenters stated that the Commission should not prescribe a number of years of experience that would be required to qualify as a GHG emissions attestation provider.[1299]

Some commenters stated that the proposed rules were not clear about the qualifications required for a GHG emissions attestation provider [1300] or that the Commission should provide additional guidance.[1301] One commenter stated that registrants ''would face significant challenges and risks in connection with making determinations as to the qualification of attestation providers.'' [1302] Several commenters raised concerns about the supply and availability of experienced and qualified GHG emissions attestation providers to meet the deadlines included in the proposed rules.[1303]

In the Proposing Release, the Commission asked if it should specify that a GHG emissions attestation provider meets the expertise requirements if it is a member in good standing of a specified accreditation body that provides oversight to service providers that apply attestation standards, and if so, which accreditation body or bodies it should consider.[1304] A few commenters stated that the Commission should require the use of GHG emissions attestation providers

[1289] *See, e.g.,* letters from ABA (limiting qualified attestation providers to only accounting firms ''would unnecessarily constrict the supply providers and ignore the fact that other types of enterprises, such as engineering and consulting firms, have expertise in the measurement of GHG emissions and could conduct attestation engagements''); Bureau Veritas (''This creates an open, competitive market, and enables engineers, environmental scientists who have subject matter expertise in climate change and understand the specifics of GHG management to an expert level.''); ERM CVS; and J. McClellan.

[1290] *See* letter from J. Herron.

[1291] *See* letter from ANSI NAB. *See also* letter from Ceres (stating that non-accounting firms ''are likely to charge less for their services than major accounting firms, and we support having competition'').

[1292] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.* (''Eligible attestation providers should not be limited to only PCAOB-registered audit firms, but the SEC will need to conduct enhanced monitoring and enforcement of the assurance, as the attesting entities will be neither inspected by the PCAOB nor subject to PCAOB standards and enforcement.''); Center Amer. Progress (stating that non-accounting firms ''should be subject to the internal controls or other guardrails that exist for financial auditors); and NASBA (recommending that the Commission develop regulations ''to build the intellectual infrastructure, including independence requirements, quality management systems, and peer review inspections outside of the professional standards governing the public accounting profession''). *See also* letter from TCS (''The SEC should also permit attestation providers who are not registered public accounting firms to provide assurance of GHG emission disclosure, particularly for non-accelerated and smaller filers, so long as they can meet quality standards through certification or other means.'').

[1293] *See, e.g.,* letters from AFPM (stating that although the proposed rule ''ostensibly allow expert providers that are not auditors to provide assurance, imposing audit style assurance requirements will render the approach taken by many non-auditor consultants inadequate, leaving few firms that are qualified to provide this assurance''); and Airlines for America (''While the SEC appears to have intended to allow the use of, for example, qualified environmental engineering firms that have traditionally provided GHG emissions verification, the repeated references to accounting standards throughout the proposed rules seem to strongly favor accounting firms.'').

[1294] *See, e.g.,* letters from Better Markets (noting that the goals of the proposal would be served by requiring that providers be PCAOB-regulated entities because those firms are subject to oversight and inspection whereas other types of third-party verifiers are not); Mazars; and PRI. *See also* letter from NASBA (''We believe that permitting non-CPAs who are not subject to the standards that result from such due process procedures to provide attestation services is not the public interest.''); and RSM US LLP (''We believe assurance over climate-related reporting when performed by a public company auditor would offer increased investor protection compared with other forms of third-party assurance or verification.'').

[1295] *See* letter from Better Markets.

[1296] *See* letter from Mazars.

[1297] *See, e.g.,* letters from CFA Institute; Crowe; and GGMI (recommending that the Commission further clarify that by ''experience'' it means that ''experts have proper technical knowledge and competencies in STEM fields related to the sources and sinks of GHG emission and removals being quantified.'').

[1298] *See* letter from ERM CVS.

[1299] *See, e.g.,* letters from C2ES (''Prescribing a number of years of experience may limit new businesses who have employees with long term experience, therefore we do not recommend instead requiring a specified number of years of experience.''); CFA Institute; and Futurepast.

[1300] *See, e.g.,* letters from AEPC; APCIA; CEMEX (''We believe that in order to accurately comply with the proposed expertise requirements, additional guidance is needed. As done before with the recently implemented S–K 1300 where it specified the prescriptive requirements to be a 'qualified person' and provide insight to the registrant, something similar would suffice to ensure the experts that provide services to the registrant meet the necessary criteria and thus ensure a comparable and accurate GHG attestation amongst registrants.''); and INGAA.

[1301] *See, e.g.,* letters from Praxis, *et al.* (''In addition, the SEC should provide guidance on standards for third-party verifiers who are not accredited with the Public Company Accounting Oversight Board); S. Sills (same); and Veris Wealth (same).

[1302] *See* letter from Sullivan Cromwell.

[1303] *See, e.g.,* letters from Financial Services Forum; Jones Day (''It is also not clear that there will be a sufficient number of qualified firms to provide these services for companies to comply with the attestation requirements.''); SouthState (''Further, the number of experienced personnel to oversee, execute, or otherwise be considered an 'expert' in climate-related financial risk management is currently (and likely for the foreseeable future) very low.''); and Sullivan Cromwell (''Although an industry of qualified third-party providers likely would develop, the current lack of qualified attestation providers would prove challenging and costly for companies, especially smaller registrants, to adhere to the proposed attestation requirements, particularly given the short proposed implementation period.'').

[1304] *See* Proposing Release, section II.H.2.

that are accredited to ISO 14065 [1305] or require that the GHG emissions attestation provider be able to demonstrate expertise in ISO 14064–3.[1306] One commenter stated the Commission should include all firms that are accredited for independent certification and assurance work by one of the members of the International Accreditation Forum (IAF), as well as accounting firms that are members of the AICPA or other professional accounting organizations, and that either have significant experience in GHG emissions and their attestation or are able to supervise an appropriately qualified Auditor-Engaged Specialist.[1307] Another commenter stated that registrants should be required to ''engage a verifier accredited by a reputable organization, such as ANAB.'' [1308] One commenter recommended that the Commission establish a process for ''staff oversight'' of non-PCAOB-registered accounting firms,[1309] while another commenter suggested that the PCAOB be directed to develop ''a separate registration process for service providers specific to climate disclosures.'' [1310] Finally, one commenter stated that ''since there is no internationally recognized accreditation body to certify the qualifications of third-party attestation providers, issuers may not have sufficient clarity as to which third-party attestation providers have adequate qualifications under the proposed rule.'' [1311]

Some commenters recommended that the Commission specify additional qualifications for GHG emissions attestation providers.[1312] For example, a few commenters recommended that the Commission include a requirement for a GHG emission attestation provider to have prior experience in providing assurance.[1313] Another commenter stated that the Commission should require a GHG emissions attestation provider to ''have familiarity with the specific industry of the registrant for which the attestation report is being provided,'' which the commenter stated ''should enhance the attestation quality and provide greater transparency to investors and investment advisers without unduly burdening assurance providers.'' [1314] One commenter stated that GHG emissions attestation providers should be required to demonstrate that they have policies and procedures in place to carry out the objectives of the proposed rules in an impartial, fair, and expert manner.[1315] Finally, one commenter recommended that the Commission consider whether state licensure laws would preclude parties other than CPAs from performing attest services.[1316]

A number of commenters agreed with the proposed requirement for a GHG emissions attestation provider to be independent with respect to the registrant and any of its affiliates.[1317] One commenter stated that the proposed independence requirement ''should help ensure that the attestation provider can exercise informed, objective, and impartial judgment.'' [1318] Several commenters stated that the proposed independence requirement would enhance the reliability of the attestation report.[1319] Another commenter stated that ''[t]here is already a proliferation of potentially and actually conflicted operators in this space'' and that an independence requirement would ''protect against further conflicts of interest'' and provide investors with ''better assurances of accuracy.'' [1320]

A few commenters stated that Rule 2–01 of Regulation S–X is an appropriate model for determining the independence of GHG emissions attestation providers,[1321] while another commenter stated that it supported all the proposed criteria for determining the independence of the GHG emissions attestation provider.[1322] Alternatively, one commenter stated that the proposed rules do not explicitly require the GHG emissions attestation provider to ''meet the stringent independence standards applicable to the financial statement auditor'' and encouraged the Commission to require GHG emissions attestation providers to ''meet the full complement of SEC independence requirements.'' [1323] Other commenters stated that they supported the proposed definitions of ''affiliates'' and ''attestation and professional engagement period.'' [1324] One commenter stated that the definition of ''attestation and professional engagement period'' should be based on the definition of ''audit and professional engagement period'' in Rule 2–01.[1325] One commenter recommended that the Commission consider the relationship between the GHG emission attestation engagement and the financial audit if

[1305] *See, e.g.,* letters from ANSI NAB; and LRQA.

[1306] *See, e.g.,* letters from Anthesis Grp. (stating that the evaluation of attestation providers could ''conform to ANSI ISO 14064–3'' or an ''accepted equivalent,'' which ''will ensure appropriate rigor and consistency''); and ERM CVS.

[1307] *See* letter from ERM CVS. *See also* letter from ANSI NAB (recommending that the Commission require a GHG emissions attestation provider to be ''accredited to ISO 14065'' or a signatory to the International Accreditation Forum's Multilateral Recognition Arrangement (IAF MLA)).

[1308] *See* letter from First Environment. ANAB is the ANSI National Accreditation Board, which provides accreditation and training services to the certification body, validation and verification body, inspection and laboratory related communities. *See* ANSI National Accreditation Board, About ANAB, available at *https://anab.ansi.org/about-anab/.*

[1309] *See* letter from Ceres. *See also* letter from Center. Amer. Progress (''We strongly recommend that the SEC work toward establishing oversight of these attestation providers in the near future.'').

[1310] *See* letter from J. McClellan.

[1311] *See* letter from RILA.

[1312] *See, e.g.,* letters from CAQ; CFA Institute (stating that the Commission should require a GHG emissions attestation provider to have the financial wherewithal to withstand any litigation that might ensue from their attestation services); Crowe (stating that the Commission should consider whether the audit committee should be tasked with selecting the independent GHG emissions attestation provider); ERM CVS (recommending that a GHG emissions attestation provider be able to demonstrate expertise in IAASB standards and that the final rules include requirements related to the appointment of an ''Auditor-Engaged Specialist''); Ernst & Young LLP; IAA; PwC; and RSM.

[1313] *See, e.g.,* letters from CAQ; and Ernst & Young LLP. *See also* letters from PwC (recommending that the Commission more closely align the expertise requirement with that used by ISAE 3000, which, among other provisions, requires the engagement partner to have ''competence in assurance skills and techniques developed through extensive training and practical application'' and ''sufficient competence in the underlying subject matter and its measurement or evaluation to accept responsibility for the assurance conclusion''); and RSM US LLP (''Understanding the requisite skills to perform attestation services would be important for instilling public trust in sustainability reporting.'').

[1314] *See* letter from IAA.

[1315] *See* letter from Futurepast. *See also* letter from CFA Institute (recommending that an GHG emissions attestation provider ''have established policies and procedures designed to provide it with confidence that the personnel selected to provide the GHG attestation service have the qualifications necessary for fulfillment of the responsibilities that the GHG emissions attestation provider will be called on to assume, including the appropriate engagement of specialists'').

[1316] *See* letter from PwC. *See also* letter from NASBA (''Virtually all of the State Boards do not allow non-CPAs to perform attestation services or issue reports under the professional standards governing the public accounting profession.'').

[1317] *See, e.g.,* letters from AGs of Cal. *et al.;* ANSI NAB; Anthesis Grp.; CFA; CFA Institute; CII; Crowe; ERM CVS; Futurepast; ICAEW; ICCR; ICI (''We view the proposed independence requirements as particularly important so as to ensure that the provider cannot concurrently consult or advise on emissions reduction strategies and provide assurance on the company's emissions.''); LRQA; Morningstar; RSM US LLP; and TotalEnergies.

[1318] *See* letter from CFA.

[1319] *See, e.g.,* letters from CAQ; and RSM US LLP.

[1320] *See* letter from AGs of Cal. *et al.*

[1321] *See* letter from Amer. for Fin. Reform, Sunrise Project et al.; and RSM US LLP (''We believe SEC Regulation S–X Rule 2–01 is an appropriate model for determining the independence of the GHG emissions attestation provider as it addresses financial relationships, employment relationships, business relationships, services in which the provider acts as registrant management, and contingent fees, among other matters.'').

[1322] *See* letter from ERM CVS.

[1323] *See* letter from PwC.

[1324] *See, e.g.,* letters from ERM CVS; and Morningstar.

[1325] *See* letter from RSM.

the same firm undertakes both engagements.[1326]

Conversely, a few commenters stated that they did not support the proposed independence requirement.[1327] A number of commenters raised concerns that the proposed independence requirement would limit the available pool of providers.[1328] For example, some commenters stated that GHG emissions consultants that are already familiar with the processes of a particular registrant may not meet the independence requirement.[1329] Another commenter stated that companies that have been obtaining third-party verification of GHG emissions data have not necessarily been obtaining verification from a provider that would meet the proposed independence requirement.[1330] One commenter stated that the ''shortage of qualified, independent third parties'' would ''further drive up the cost and impair the efficiency and quality of assurance services.'' [1331] Some commenters noted that other Commission rules pertaining to qualified persons did not contain an independence requirement.[1332] One commenter stated that the proposed independence requirement will place additional burdens on registrants given that they will need to perform procedures to assess the independence of attestation providers.[1333]

Some commenters recommended that the Commission consider alternatives to the proposed independence requirement. Instead of the proposed independence requirement, one commenter suggested that the Commission allow a non-independent attestation provider to disclose that the provider is not independent to address any concerns investors or others may have about the relationship.[1334] Another commenter stated that instead of requiring a GHG emissions attestation provider to be independent, the Commission should provide that ''if the firm retained by the company is providing other services to the company (in addition to attestation services) in excess of $1 million (for example) during the last completed fiscal year, then the company must provide disclosure of the aggregate fees for the attestation services and for such additional other services provided to the company for such year.'' [1335] One commenter stated that the proposed independence requirement was ''overbroad'' and recommended that the Commission permit qualified firms to provide services—at least to affiliates of the registrant—in addition to their attestation services.[1336] Another commenter stated that it would support a ''slimmed down'' version of Rule 2–01 for non-accountants and recommended particular criteria.[1337]

In the Proposing Release, the Commission explained that accountants are already required to comply with relevant quality control and management standards when providing audit and attest services under the PCAOB, AICPA, or IAASB standards, and those quality control and management standards would similarly apply to accountants providing GHG emissions attestation services pursuant to these standards.[1338] The Commission included a request for comment asking if it should require a GHG emissions attestation provider that does not (or cannot) use the PCAOB, AICPA, or IAASB attestation standards to comply with additional minimum quality control requirements.[1339] Some commenters recommended that the Commission require the GHG emissions attestation provider to be subject to additional minimum quality control requirements.[1340] One commenter stated that such requirements ''would foster more consistent quality in attestation reports under the proposed rules when the registrant selects a service provider that does not use PCAOB, AICPA, or IAASB attestation standards.'' [1341] One commenter stated that it believed the ISO standards create a sufficient basis for ensuring quality attestation engagements and therefore any attestation provider should be required to perform attestation engagements in accordance with these standards.[1342]

In the Proposing Release the Commission included a request for comment asking if it should amend 17 CFR 230.436 (''Rule 436'') to provide that a report on GHG emissions at the limited assurance level by a GHG emissions attestation provider that has reviewed such information is not considered a part of a registration statement prepared or certified by such person within the meaning of sections 7 and 11 of the Securities Act.[1343] Several commenters generally expressed support for such an amendment so that GHG emissions attestation providers would not be subject to liability under section 11.[1344] A few of these commenters stated that the potential for liability under section 11 would or could deter or reduce the number of

[1326] *See* letter from ERM CVS (''The fees for the [GHG emissions attestation engagement] may be small compared to the financial audit fees and therefore we believe, based on 25 years' experience, that there is sometimes the risk of influence from the financial audit team, especially if material errors have been found in the climate disclosure or GHG emission data, despite the professional codes of conduct and independence requirements.'').

[1327] *See, e.g.,* letters from Barrick Gold; and CEMEX.

[1328] *See, e.g.,* letters from AEPC; Barrick Gold; Chamber; Climate Risk Consortia (''The scarcity of qualified attestation providers, coupled with the fact that any expert providing the attestation needs to be fully independent of the preparation of the disclosures (*i.e.,* a consulting expert cannot also be an attestation provider), may create significant challenges in even finding even a qualified attestation provider, at least in the near term.)'' INGAA; Jones Day; PLASTICS; and Soc. Corp. Gov.

[1329] *See, e.g.,* letters from AEPC (''At this point in time, there are a limited number of providers who would be available, and many of these same firms have been employed by registrants in their efforts to generate recommendations and techniques . . .''); Chamber (''Consultants who are already familiar with the processes of a given company may not meet the independence requirements.''); and SKY Harbor. *But see* letters from C2ES (stating that ''under no circumstance'' should the GHG emissions attestation provider ''be involved in developing the emission inventory''); and WSP (same).

[1330] *See* letter from APCIA.

[1331] *See* letter from Soc. Corp. Gov.

[1332] *See, e.g.,* letters from Barrick Gold (''We note that Qualified Persons under the new mining rules under Regulation S–K 1300 are not required to be independent, and we do not believe that an independence requirement is necessary for this purpose.''); and Soc. Corp. Gov. (noting that ''disclosures regarding mineral resources and oil and gas reserves do not contain similar independence requirements'').

[1333] *See* letter from Soc. Corp. Gov. (''Registrants and public audit firms determine auditor independence based on well-established rules, regulations, and procedures, including those promulgated by the Public Company Accounting Oversight Board. In light of the fact that there is no entity providing oversight of attestation providers for GHG emissions, this burden will fall squarely on issuers.'').

[1334] *See* letter from CEMEX.

[1335] *See* letter from Jones Day (recommending the Commission adopt a requirement similar to Item 407(e)(3)(iii)(A) of Regulation S–K).

[1336] *See* letter from IAA (noting its concern that the independence requirement would prohibit registrants from using firms ''that may be the most qualified to provide such attestations'' because those firms also provide other services to the registrant or their affiliates, such as audit or consulting services).

[1337] *See* letter from ERM CVS (stating that because the requirements in Rule 2–01 of Regulation S–X are specifically designed for financial auditing, they may be excessive for non-accountants).

[1338] *See* Proposing Release, section II.H.2.

[1339] *See id.*

[1340] *See, e.g.,* letters from CFA Institute; Crowe; ERM CVS (stating that all firms that are accredited by one of the members of the International Accreditation Forum (IAF) must have a fully functional quality control and management system and that many GHG emissions attestation engagements are already carried out in accordance with IAASB Standards (ISAE 3000/3410), which require an equivalent system of quality control and management); PwC (recommending that the GHG emissions attestation provider be required to comply with additional minimum quality control requirements if the provider is not registered with the PCAOB or otherwise subject to independent oversight); and RSM.

[1341] *See* letter from Crowe.

[1342] *See* letter from LRQA.

[1343] *See* Proposing Release, section II.H.2.

[1344] *See, e.g.,* letters from Bureau Veritas (June 17, 2022); D. Hileman Consulting; ERM CVS; Ernst & Young; Futurepast; and WSP.

assurance providers available.[1345] On the other hand, a few commenters stated that the Commission should confirm that attestation reports are considered to be expertized material because firms acting as underwriters will be exposed to significant legal liability if Scope 1 and Scope 2 GHG emissions attestations are not considered to be expertized material for purposes of liability under section 11 of the Securities Act.[1346] One of these commenters further stated that ''[f]or any period for which assurance is not required for GHG emissions attestation reports, the SEC should clarify that the reports will still be considered to be expertized material, to avoid inadvertently subjecting underwriters to heightened due diligence requirements during an interim period of disclosure implementation.'' [1347]

c. Final Rules (Item 1506(b))

We are adopting the GHG emissions attestation provider requirements substantially as proposed.[1348] We continue to believe that the expertise requirements (Item 1506(b)(1)) are necessary to help ensure that the service provider preparing the attestation report has sufficient competence and capabilities necessary to execute the attestation engagement.[1349] Several commenters agreed with the proposal's expertise requirements and definition of significant experience.[1350] While some commenters urged the Commission to require a GHG emissions attestation provider to have a certain number of years of experience,[1351] other commenters stated that the Commission should not prescribe a minimum number of years.[1352] We do not think it is necessary to require a provider to have a certain number of years of experience because imposing such a requirement could result in a ''check the box'' mentality, and we believe that investors would be better served by registrants undertaking a more holistic consideration of a provider's qualifications in selecting a provider. Some commenters requested that the Commission provide additional guidance regarding the qualifications for a GHG emissions attestation provider;[1353] however, these commenters generally did not identify any particular aspects of the expertise requirement that required clarification. Adopting a principles-based approach inherently involves some uncertainty, but we believe registrants would be better served by such flexibility than an approach that, for example, identifies a static list of qualified providers. Such an approach will provide a registrant with more leeway to select a GHG emissions attestation provider that has the experience that best fits the registrant's facts and circumstances, which could improve the quality of assurance provided thereby enhancing the reliability of GHG emissions disclosures.

In response to a question included in the Proposing Release, some commenters stated that the Commission should specify that a GHG emissions attestation provider meets the expertise requirements if it is a member in good standing of a specified accreditation body and identified particular bodies or approaches the Commission should consider.[1354] We have decided not to impose such a requirement at this time given the evolving nature of GHG emissions assurance and the possibility that new or different accreditation bodies may exist at the time when registrants subject to Item 1505 and Item 1506 are required to begin obtaining attestation reports. Several commenters recommended that the Commission specify additional qualifications for GHG emissions attestation providers,[1355] and while we considered each of these suggestions, we believe that the requirements we have included in the final rules will help ensure that GHG emissions attestation providers have sufficient competence and capabilities necessary to execute the attestation engagement.

While a number of commenters urged the Commission to require that a GHG emissions attestation provider be a public accounting firm registered with the PCAOB,[1356] we determined to retain the principles-based approach in the final rules because it will provide registrants with the flexibility to hire a non-accounting firm that may have relevant or specialized experience with respect to assuring GHG emissions disclosure while at the same time ensuring that a GHG emissions attestation provider has the requisite expertise to perform the engagement in accordance with professional standards. Although we agree there would be investor protection benefits to be gained by requiring a registrant to use a PCAOB-regulated entity that is subject to oversight and inspections (even though the PCAOB's inspection jurisdiction would not include engagements for the assurance of GHG emissions disclosure within its scope),[1357] we have balanced this against other considerations, such as the availability of GHG emissions providers and compliance costs, which could potentially be lower if a larger pool of assurance providers is available. Nevertheless, we agree with those commenters who stated that if the final rules permit non-PCAOB-registered accounting firms to provide attestation services, the Commission would need to ensure that there are appropriate protections in place for investors.[1358] The expertise, independence, and other requirements applicable to the GHG emissions attestation engagement under the final rules, such as the requirement for a provider to use attestation standards that are established by a body or group that has followed due process procedures, are intended to serve precisely that function.

As with the proposed rules, the final rules apply the expertise requirement to the person or firm signing the GHG emissions attestation report.[1359] If the service provider is a firm, we would expect it to have policies and procedures designed to provide it with reasonable assurance that the personnel selected to conduct the GHG emissions attestation engagement have significant experience with respect to both attestation engagements and GHG emissions. As we explained in the

[1345] *See, e.g.,* letters from Apex; D. Hileman Consulting; ERM CVS; and WSP. *But see, e.g.,* letter from Futurepast (''Futurepast does not believe that the possibility of section 11 liability will deter qualified firms and persons from providing attestation services to registrants.'').

[1346] *See, e.g.,* letters from BPI; and Financial Services Forum.

[1347] *See* letter from BPI.

[1348] *See* 17 CFR 229.1506(b). To enhance clarity, we are making one minor change to the rule text. In the definition of ''significant experience'' in the final rules, we are substituting the proposed rule's reference to ''professional standards'' with a reference to ''attestation standards'' to make it clear that the standards being referenced in Item 1506(b)(1)(i) are the attestation standards that meet the requirements of Item 1506(a). *See* 17 CFR 229.1506(b)(1)(i).

[1349] *See* Proposing Release, section II.H.2.

[1350] *See supra* notes 1287 and 1297 and accompanying text.

[1351] *See supra* note 1298 and accompanying text.

[1352] *See supra* note 1299 and accompanying text.

[1353] *See supra* notes 1300 and 1301 and accompanying text.

[1354] *See supra* notes 1305, 1307, and 1308 and accompanying text.

[1355] *See supra* note 1312 and accompanying text.

[1356] *See supra* note 1294 and accompanying text.

[1357] The PCAOB's inspection jurisdiction is limited to audits of issuers, brokers, and dealers and would not include engagements for the assurance of GHG emissions disclosure within its scope. *See* 15 U.S.C. 7214 (setting forth the PCAOB's inspection jurisdiction). However, as discussed in greater detail below, oversight inspection programs can provide benefits, such as providing a check on a GHG emissions attestation provider's overall activities and driving improvements in the quality of services overall, even when an oversight inspection program does not include a GHG emissions attestation engagement within its scope.

[1358] *See supra* note 1292 and accompanying text.

[1359] *See* 17 CFR 229.1506(b).

Proposing Release, this would mean that the service provider has the qualifications necessary for fulfillment of the responsibilities that it would be called on to assume, including the appropriate engagement of specialists, if needed.[1360] A few commenters supported a requirement for GHG emissions attestation providers to establish policies and procedures along these lines.[1361] Although, as stated above, we expect firms to adopt policies and procedures related to the expertise of its personnel, we have determined not to include such a requirement in the final rules because we do not want to foreclose other possible means by which a firm may ensure that it and its relevant personnel meet the expertise requirements set forth in Item 1506(b).

As noted above, one commenter recommended that the Commission consider whether state licensure laws would preclude parties other than CPAs from performing attestation services.[1362] It is our understanding that states typically require someone who holds itself out as a public accountant or as performing public accounting services to be licensed as a CPA. In addition, non-CPAs are not able to use the AICPA or PCAOB attestation standards.[1363] However, these principles would not prevent a non-CPA from performing attestation services as long as it was neither holding itself out as a CPA nor using an attestation standard that, by its terms, is only available to CPAs. In this regard, we note that the IAASB and ISO standards, two of the four standards we are explicitly permitting assurance providers to use under the final rules (as discussed in more detail below), are not restricted to CPAs, and we are not aware that any state laws are currently impacting the ability of non-CPA service providers to provide assurance over GHG emissions.

With respect to independence, we are adopting each of the independence requirements (Item 1506(b)(2)) as proposed.[1364] These independence requirements are important because they help ensure that the attestation provider will perform the engagement in an objective and impartial manner. A number of commenters agreed with the proposed requirement for a GHG emissions attestation provider to be independent with respect to the registrant and any of its affiliates and agreed that the independence requirement would enhance the reliability of the attestation report.[1365] We continue to believe that, similar to how assurance provided by independent public accountants improves the reliability of financial statements and disclosures and is a critical component of our capital markets, assurance of GHG emissions disclosure by independent service providers should also improve the reliability of such disclosure.[1366] Several commenters agreed with the Commission's proposed approach of modeling the independence requirement and relevant definitions on the Commission's qualifications for accountants under Rule 2–01 of Regulation S–X,[1367] and we continue to believe the approach is appropriate given our experience in administering Rule 2–01 in the context of financial statement audits. One commenter appeared to suggest that, under the proposed rules, GHG emissions attestation providers would not be subject to the same level of independence as financial statement auditors.[1368] Although the final rules do not set forth a non-exclusive specification of circumstances inconsistent with independence like Rule 2–01(c) does for financial statement auditors, the foundational principles underlying the independence requirements in Rule 2–01 and the final rules are the same,[1369] and we view the independence requirements in the two contexts as providing similar, if not equivalent, protections to investors. However, for the avoidance of any doubt, we are clarifying that registrants and GHG emissions attestation providers are only required to comply with the independence requirements included in Item 1506 and are not required to separately comply with the independence requirements included in Rule 2–01 with respect to the GHG emissions attestation engagement.[1370] Along those lines, existing Commission guidance and staff interpretations regarding Rule 2–01 do not apply to the independence requirements in Item 1506; however, to the extent any such guidance or interpretation may apply to an issue that is similarly presented under Item 1506 (which is a possibility since Item 1506 is modeled on Rule 2–01), the guidance or interpretation would be a useful starting point for consideration, although not determinative.[1371]

We considered the concern raised by commenters that requiring a GHG emissions attestation provider to be independent would limit the available pool of providers and potentially increase costs.[1372] However, we think these concerns are mitigated by the modifications in the final rules that provide registrants subject to the requirements with a multi-year transition period before they are required to obtain an attestation report. The phased in compliance period will give registrants adequate time to find a provider that meets the independence requirements. It will also give non-accountant attestation providers time to familiarize themselves with the independence requirements and adapt their business practices accordingly, which may help mitigate any adverse effects that the independence requirements could have on the available pool of providers. For this reason, we do not think it is necessary, as suggested by some commenters, to

[1360] *See* Proposing Release, section II.H.2.

[1361] *See supra* note 1315 and accompanying text.

[1362] *See* letter from PwC. *See also* letter from NASBA (''Virtually all of the State Boards do not allow non-CPAs to perform attestation services or issue reports under the professional standards governing the public accounting profession.'').

[1363] By their terms, AICPA and PCAOB attestation standards are only applicable in the context of engagements performed by certified public accountants. *See, e.g.,* PCAOB AT section 101, Attest Engagements, available at *https://pcaobus.org/oversight/standards/attestation-standards/details/AT101* (stating that ''[t]his section applies to engagements . . . in which *a certified public accountant in the practice of public accounting* . . . is engaged to issue or does issue an examination, a review, or an agreed-upon procedures report on subject matter . . .'') (emphasis added); AICPA SSAE No. 18, AT–C § 105.01 (''This section applies to engagements in which a *CPA in the practice of public accounting* is engaged to issue, or does issue, a practitioner's examination, review, or agreed-upon procedures report on subject matter or an assertion about subject matter (hereinafter referred to as an assertion) that is the responsibility of another party.'') (emphasis added).

[1364] *See* 17 CFR 229.1506(b)(2).

[1365] *See supra* note 1317 and accompanying text.

[1366] *See* Proposing Release, section II.H.2.

[1367] *See supra* notes 1321 and 1324 and accompanying text.

[1368] *See* letter from PwC.

[1369] Namely, the final rules provide that a GHG emissions attestation provider is not independent if such attestation provider is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that such attestation provider is not, capable of exercising objective and impartial judgment on all issues encompassed within the attestation provider's engagement, which is modeled on Rule 2–01(b). *Compare* 17 CFR 229.1506(b)(2)(i) and 17 CFR 210.2–01(b). Also, the final rules model the factors the Commission will consider in determining whether a GHG emissions attestation provider is independent on the introductory text to Rule 2–01. *Compare* 17 CFR 229.1506(b)(2)(ii) and Introductory Text to Rule 2–01.

[1370] The final rules do not alter or amend Rule 2–01 or its current applicability in any way, which means, for example, there is no change to the requirement that registrants and their financial statement auditor comply with Rule 2–01 with respect to the financial statement audit.

[1371] The staff of the Commission's Office of the Chief Accountant is available to consult with registrants or GHG emissions attestation providers regarding the independence requirements in the final rules.

[1372] *See supra* notes 1327, 1328, and 1331 and accompanying text.

adopt an alternative to the independence requirement to simply disclose the fees received.[1373] Although requiring the disclosure of any fees, including non-attestation fees, received by the GHG emissions attestation provider from the registrant would provide investors with important information for evaluating the objectivity of the attestation provider, such an alternative would not prohibit the GHG emissions attestation provider from performing the GHG emissions assurance services in circumstances where the provider was not independent from the registrant (as the final rules will do). A few commenters stated that the proposed rules' references to accounting or audit-style requirements could favor accounting firms,[1374] and we acknowledge that some of the requirements in the final rules, such as the independence requirements, may be more familiar to accounting firms versus non-accounting firms. However, we believe the principles-based approach in the final rules generally should be accessible for both accounting and non-accounting firms. Moreover, the phased in compliance period should give non-accountant attestation providers time to familiarize themselves with the independence requirements and provide existing service providers with time to unwind any existing conflicts to their independence.

Some commenters suggested that the proposed independence requirement was problematic because it would seem to prohibit an expert or other third-party that has assisted a registrant in calculating or preparing its GHG emissions data from serving as the registrant's GHG emissions attestation provider.[1375] We agree that it would be difficult for an expert that has assisted a registrant in calculating or preparing its GHG emissions data to meet the independence requirements because such an engagement would presumably place the attestation provider in the position of attesting to its own work and may create a mutual interest between the attestation provider and the registrant, two of the factors the final rules state the Commission will consider in determining whether the GHG emissions provider is independent.[1376] We think the conflict of interest presented by this circumstance is exactly the type of situation that the independence requirement is intended to prevent, and therefore we are not modifying the independence requirement in response to these commenters' concerns. As a result, this could mean that a registrant that determines it is necessary to hire a third-party service provider to help it calculate or prepare its GHG emissions disclosure may have to pay a fee to both the third-party service provider and to its GHG emissions attestation provider. However, the likelihood of this scenario is reduced by the multiyear phase in compliance period we are adopting, which provides registrants with sufficient time to develop the necessary processes and procedures to calculate their GHG emissions data before they are required to comply with the assurance requirements. In addition, the exemption from the GHG emissions reporting and assurance requirements for SRCs and EGCs provides most newly public companies with time to develop any in-house expertise that may be necessary in case they no longer qualify for SRC or EGC status in the future and become subject to the final rules.

In response to the commenters that pointed out that the Commission did not adopt a requirement to retain an independent third party to prepare, or conduct a reserves audit of, a registrant's reserves estimates in the context of its mining and oil and gas disclosure rules,[1377] we note that the Commission's determination in each of its rulemakings about whether to require a registrant to retain an independent third-party is context specific. For example, with respect to its mining disclosure rules, the Commission stated that it was not adopting a requirement for a qualified person to be independent from the registrant because, among other things, the final rules require a registrant to disclose the qualified person's affiliated status with the registrant or another entity having an ownership or similar interest in the subject property, which is consistent with the Committee for Mineral Reserves International Reporting Standards' mining guidelines, to which the Commission was amending its mining rules to more closely align.[1378] With respect to its oil and gas disclosure rules, the Commission pointed out that most commenters did not support a requirement to obtain an independent third-party assessment of reserves estimates because a company's internal staff is generally in a better position to prepare those estimates and there is a potential lack of qualified third party engineers and professionals available.[1379] However, the Commission did adopt a requirement for a registrant to provide a general discussion of the internal controls it uses to assure objectivity in the reserves estimation process and the disclosure of the qualifications of the technical person primarily responsible for preparing the reserves estimates.[1380] In keeping with this context specific approach, with respect to assurance over GHG emissions disclosure, we believe that the benefits to investors from requiring a GHG emissions attestation provider to be independent in accordance with Item 1506 justify the potential costs for the reasons stated above. Moreover, there is currently a growing practice among some registrants of obtaining third-party assurance over their GHG emissions data.[1381] Although generally the independence requirements in the assurance standards currently being used with respect to GHG emissions data are not as robust as the requirements in the final rules, many of these standards include requirements related to the objectivity and impartiality of the third-party assurance provider.[1382] Therefore, the final rules' independence requirement is not inconsistent with the general practice in this space of retaining an objective and impartial third-party to provide assurance.[1383]

[1373] *See supra* note 1335 and accompanying text.

[1374] *See supra* note 1293 and accompanying text.

[1375] *See supra* note 1329 and accompanying text.

[1376] *See* 17 CFR 229.1506(b)(2)(ii)(A). Conversely, we generally expect that a registrant would be able to use its financial statement auditor as its GHG emissions attestation provider consistent with the independence requirement in the final rules.

[1377] *See supra* note 1332 and accompanying text.

[1378] *See Modernization of Property Disclosures for Mining Registrants,* Release No. 33–10098 (June 16, 2016) [81 FR 41651, 41661 (June 27, 2016)]; *Modernization of Property Disclosures for Mining Registrants,* Release No. 33–10570 (Oct. 31, 2018) [83 FR 66344, 66363 (Dec. 26, 2018)].

[1379] *See Modernization of Oil and Gas Reporting,* Release No. 8995 (Dec. 31, 2008) [74 FR 2157, 2175 (Jan. 14, 2009)].

[1380] *See id.*

[1381] *See supra* note 1232.

[1382] *See, e.g.,* AICPA SSAE No. 18, AT–C § 105.26; IAASB ISAE 3000 (Revised) § 20; and ISO 14064–3: 2019 § 4.2. The independence requirements in the final rules are more rigorous and may differ in scope from the requirements included in these standards. It is possible that the application of the independence requirements in the final rules may result in a GHG emissions attestation provider no longer being able to provide certain non-assurance services to its assurance client that may be permissible to provide outside the context of the final rules.

[1383] The International Ethics Standards Board for Accountants (IESBA), which is an independent global ethics standard-setting board, has recently proposed ethics standards for sustainability assurance providers (*i.e.,* professional accountants and other professionals performing sustainability assurance engagements), including robust independence standards. IESBA stated that it ''holds to the premise that sustainability assurance engagements . . . must be underpinned by the same high standards of ethical behavior and independence that apply to audits of financial information.'' *See* IESBA, Explanatory Memorandum for Proposed International Ethics Standards for Sustainability Assurance (including International Independence Standards) (IESSA) and

In addition, we are adopting the definition of ''affiliate'' as proposed and consistent with the feedback provided by commenters that addressed this issue.[1384] Similarly, we are adopting the broad definition of ''attestation and professional engagement period'' as proposed, which is modeled on the definition of ''audit and professional engagement period'' in Rule 2–01.[1385]

As discussed in greater detail above, in response to a request for comment, some commenters recommended that the Commission require the GHG emissions attestation provider to be subject to additional minimum quality control requirements.[1386] We have determined not to impose such requirements at this time; however, we reiterate the statement the Commission made in the Proposing Release that accountants are already required to comply with relevant quality control and management standards when providing audit and attest services under PCAOB, AICPA, or IAASB standards, and those quality control and management standards would similarly apply to accountants providing GHG emissions attestation services pursuant to these standards.[1387] The IAASB standards impose similar quality control requirements on non-accountants.[1388] In addition, one commenter stated that, for example, all firms that are accredited by one of the members of the IAF must have a quality control and management system.[1389] As such, we believe that many of the more experienced non-accountant GHG emissions attestation providers are required to comply with quality control requirements. More generally, we expect that any attestation standards that meet the requirements of the final rules would likely provide guidance on quality control for assurance providers.[1390]

Although the final rules do not include a requirement that a registrant's audit committee pre-approve the GHG emissions attestation services, nor was such a requirement proposed, it would be permissible under the final rules for a registrant to use the auditor of its financial statements to perform the GHG emissions attestation engagement, assuming the final rules' requirements for assurance providers are met. To the extent that the registrant's auditor is engaged to provide an attestation report in connection with the registrant's GHG emissions, or with respect to any other climate-related disclosures, the auditor would be required to comply with applicable, existing pre-approval requirements.[1391] Even in circumstances where the GHG emissions attestation services are not subject to a pre-approval requirement, however, audit committees should consider what level of involvement would be appropriate for them to take with respect to the selection and retention of attestation providers for climate-related disclosures.

In addition, in response to commenters' feedback,[1392] we are amending Rule 436 to provide that a report by an attestation provider covering Scope 1 and/or Scope 2 emissions at a limited assurance level shall not be considered a part of the registration statement that is prepared or certified by an expert or person whose profession gives authority to the statements made within the meaning of sections 7 and 11 of the Securities Act.[1393] We determined to include this amendment, in part, because we agree with commenters that the potential for section 11 liability could deter or reduce the number of attestation providers willing to accept these engagements.[1394] However, we are limiting the exception to those GHG emissions attestation engagements performed at a limited assurance level to encourage GHG emissions attestation providers to perform such engagements. We think there could be reluctance on the part of a GHG emissions attestation provider to perform attestation engagements at the limited assurance level because of their potential liability under section 11, and that, alternatively, if GHG emissions attestation providers perform significantly expanded procedures, much closer to reasonable assurance, in order to meet potential liability concerns under section 11, substantial increased costs to issuers could result.[1395] The same considerations do not apply to reasonable assurance engagements, and we are therefore not providing a similar exception for those engagements.

The amendment to Rule 436 also states that a report covering Scope 3 emissions at a limited assurance level shall not be considered a part of the registration statement that is prepared or certified by an expert or person whose profession gives authority to the statements made within the meaning of sections 7 and 11 of the Securities Act.[1396] Although no registrants are required to disclose Scope 3 emissions or obtain an attestation report for Scope 3 emissions under the final rules, we have included Scope 3 emissions within the exception contained in Rule 436 in the event that a registrant voluntarily discloses its Scope 3 emissions. We believe it is appropriate to provide these accommodations to encourage registrants to obtain limited assurance over Scope 3 disclosure.

Although not subjecting providers of these reports to liability could affect their incentives, on balance we think that encouraging more providers to enter this market would result in more

Other Revisions to the Code Relating to Sustainability Assurance and Reporting, available at *https://ifacweb.blob.core.windows.net/publicfiles/2024-01/Proposed%20IESSA%20and%20Other%20Revisions%20to%20the%20Code%20Relating%20to%20Sustainability%20Assurance%20and%20Reporting%20-%20Explanatory%20Memorandum.pdf.*

[1384] *See supra* note 1324.

[1385] *See* letter from RSM.

[1386] *See supra* note 1340 and accompanying text.

[1387] *See* Proposing Release, section II.H.2.

[1388] *See* IAASB ISAE 3000.3(b) (Revised) (''The practitioner who is performing the engagement is a member of a firm that is subject to [International Standard on Quality Control (ISQC) 1], or other professional requirements, or requirements in law or regulation, regarding the firm's responsibility for its system of quality control, that are at least as demanding as ISQC 1.'').

[1389] *See* letter from ERM CVS. The International Accreditation Forum is a worldwide association of accreditation bodies and other bodies interested in conformity assessment in the fields of management systems, products, processes, services, personnel, validation and verification and other similar programs of conformity assessment. *See* International Accreditation Forum, About IAF, available at *https://iaf.nu/en/about/*. Its members include ANAB, the ANSI National Accreditation Board, which provides accreditation to greenhouse gas verification and validation providers that demonstrate competence to validate or verify statements in accordance with its accreditation requirements, including ISO 14065.

[1390] The ISO standards, which are used by many non-accountant GHG emissions attestation providers as described in greater detail below, include two standards that can be used as a basis for requirements for attestation providers related to impartiality, competency, and communication, which are areas typically covered by quality control requirements. *See* ISO 14065, General principles and requirements for bodies validating and verifying environmental information (2020); and ISO 14066, Environmental information—Competence requirements for teams validating and verifying environmental information (2023).

[1391] *See* 15 U.S.C. 78j–1(i). *See also supra* note 1280 (explaining that if the independent accountant who audits the registrant's consolidated financial statements is also engaged to perform the GHG emissions attestation for the same filing, the fees associated with the GHG emissions attestation engagement would be considered ''Audit-Related Fees'' for purposes of Item 9(e) of 17 CFR 240.14a–101, Item 14 of Form 10–K, Item 16C of Form 20–F, or any similar requirements).

[1392] *See supra* note 1344 and accompanying text.

[1393] *See* 17 CFR 230.436(i)(1).

[1394] *See supra* note 1345 and accompanying text.

[1395] The Commission relied upon a similar rationale when it amended Rule 436 to provide that a report prepared or certified by an accountant within the meaning of sections 7 and 11 of the Securities Act shall not include a report by an independent accountant on a review of unaudited interim financial statements. *See Accountant Liability for Reports on Unaudited Interim Financial Information Under Securities Act of 1933,* Release No. 33–6173 (Jan. 8, 1980) [45 FR 1601, 1604 (Jan. 8, 1980)].

[1396] *See* 17 CFR 230.436(i)(1).

competition, which would benefit investors.[1397] We acknowledge the potential downsides of not subjecting the providers of these reports to liability; however, as noted above,[1398] these accommodations are consistent with the treatment of an accountant's report on unaudited interim financial statements included in a registration statement, which is also provided at the limited assurance level. Therefore, in these particular circumstances, we believe it is appropriate to provide these accommodations.

One result of the amendments to Rule 436 is that a GHG emissions attestation provider that has performed an attestation engagement over GHG emissions at a limited assurance level is not required to submit a consent in connection with the registration statement under section 7 of the Securities Act.[1399] However, we think it is nonetheless important that a GHG emissions attestation provider have some awareness about whether its attestation report is included in a registration statement under the Securities Act.[1400] Therefore, we are also amending Item 601 of Regulation S–K, which details the exhibits required to be included in Securities Act and Exchange Act filings, to require registrants to file as an exhibit to certain registration statements under the Securities Act or reports on Form 10–K or 10–Q that are incorporated into these registration statements a letter from the attestation provider that acknowledges its awareness of the use in certain registration statements of any of its reports which are not subject to the consent requirement of section 7.[1401] We are amending the Instructions as to Exhibits section of Form 20–F to include the same requirement for Form 20–F filers to the extent the Form 20–F is incorporated into a registration statement under the Securities Act.[1402]

We note that certain commenters urged the Commission to confirm that any attestation reports are expertized material, stating that otherwise underwriters may face heightened due diligence requirements in light of potential section 11 liability over GHG emission disclosures included in a registration statement.[1403] We also note, as discussed above, that certain commenters stated that deeming the information expertized may have the effect of deterring or reducing available assurance providers.[1404] We believe the approach we have taken appropriately addresses these concerns by exempting the GHG emissions attestation providers that perform limited assurance engagements from section 11 liability and the consent requirements associated with expertized reports, and requiring consent with corresponding section 11 liability only when the heightened level of review associated with reasonable assurance makes it appropriate for the report to be expertized. This bifurcated approach to reasonable versus limited assurance engagements is consistent with the current treatment of audited financial statements and unaudited (reviewed) interim financial statements.[1405] While we recognize underwriters and other non-issuer defendants subject to potential liability under section 11 may face additional due diligence costs during the transition period or where limited assurance is required,[1406] we do not believe this is unduly burdensome compared to other climate-related information that will be required in a registration statement pursuant to the final rules that is not otherwise expertized. Moreover, absent a mandatory limited assurance requirement in the final rules, a registrant would nonetheless be required to disclose its GHG emissions and underwriters and other defendants subject to potential liability under section 11 would be faced with the same potential liability and due diligence costs with respect to those disclosures.[1407] Finally, the other defenses to liability included in Securities Act section 11(b) remain available in accordance with the terms of that provision.[1408]

3. GHG Emissions Attestation Engagement and Report Requirements (Item 1506(a)(2) and (c))

a. Proposed Rules

The proposed rules would have required the attestation report required by proposed Item 1505(a) for AFs and LAFs to be included in the separately-captioned ''Climate-Related Disclosure''

[1397] In situations where GHG emissions attestation providers are experts, the amendments to Rule 436 will eliminate the potential for section 11 liability for those providers with respect to attestation reports at the limited assurance level. This could reduce the incentives for GHG emissions attestation providers to perform a thorough analysis and ensure that their attestation report, which is required to be included in a registration statement with GHG emissions disclosures to which the assurance services relate, is true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading. We remind registrants and providers, however, that there are other remedies available to shareholders and/or the Commission, such as section 10(b) of the Exchange Act and Rule 10b–5 thereunder and section 17(a) of the Securities Act, which are not affected by the amendments to Rule 436.

[1398] *See supra* note 1395.

[1399] *See* 15 U.S.C. 77g. The amendments to Rule 436 provide that a report by a GHG emissions attestation provider covering Scope 1, Scope 2, and/or Scope 3 emissions at a limited assurance level shall not be considered part of the registration statement prepared or certified by an expert or person whose profession gives authority to the statements made, and therefore the requirement in section 7 of the Securities Act that written consent is required from ''any person whose profession gives authority to a statement made by him'' that is ''named as having prepared or certified a report . . . for use in connection with the registration statement'' does not apply.

[1400] The Commission relied on this same rationale when it adopted an amendment requiring issuers to file as an exhibit to a registration statement a letter from the independent accountants that acknowledges its awareness of the use in a registration statement of any of its reports which are not subject to the consent requirement of section 7. *See Accountant Liability for Reports on Unaudited Interim Financial Information Under Securities Act of 1933,* Release No. 33–6173 (Jan. 8, 1980) [45 FR 1601, 1604 (Jan. 8, 1980)]; *Amendments Regarding Exhibit Requirements,* Release No. 6230 (Sept. 5, 1980) [45 FR 58822, 58824 (Sept. 5, 1980)].

[1401] *See* 17 CFR 229.601(b)(27). This requirement is modeled on the requirement for an issuer to file as an exhibit to a registration statement a letter from the independent public accountant, which acknowledges their awareness that their report on unaudited interim financial information is being included in a registration statement. *See* 17 CFR 229.601(b)(15); *Accountant Liability for Reports on Unaudited Interim Financial Information Under Securities Act of 1933,* Release No. 33–6173 (Jan. 8, 1980) [45 FR 1601, 1604 (Jan. 8, 1980)]; *Amendments Regarding Exhibit Requirements,* Release No. 6230 (Sept. 5, 1980) [45 FR 58822, 58824 (Sept. 5, 1980)]. Although the Commission did not solicit comment specifically on the requirement to provide an acknowledgement letter, the requirement follows from similar contexts noted above. In addition, the associated burdens on issuers are less than the proposed consent requirement while retaining the benefit of providing notice to the assurance provider. Further, to help facilitate registrants' compliance with the requirement to file the letter from the GHG emissions attestation provider as an exhibit, we have included an instruction to Item 1506 that directs registrants obtaining assurance at a limited assurance level to Item 601(b)(27) (as well as to paragraph 18 of Form 20–F's Instructions as to Exhibits, as discussed *infra* note 1402 and accompanying text).

[1402] *See* Instructions as to Exhibits 18 of Form 20–F. Where Form 20–F is used a registration statement under the Exchange Act, this exhibit would not be required.

[1403] *See supra* note 1346 and accompanying text.

[1404] *See supra* note 1345 and accompanying text.

[1405] *See infra* section II.I.5.c discussing an additional amendment to Rule 436 in the context of a registrant's statements pertaining to voluntary assurance received over GHG emissions disclosure.

[1406] *Compare* 15 U.S.C. 77k(b)(3)(C) (providing underwriters and others with a defense for expertized material) *with* 15 U.S.C. 77k(b)(3)(A) (providing underwriters and others with a defense for non-expertized materials).

[1407] *See* 17 CFR 229.1505.

[1408] *See* 15 U.S.C. 77k(b)(3)(A) (providing that ''no person, other than the issuer, shall be liable as provided therein who shall sustain the burden of proof . . . as regards any part of the registrant statement not purporting to be made on the authority of an expert . . . he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading . . .'').

section in the relevant filing and provided pursuant to standards that are publicly available at no cost and are established by a body or group that has followed due process procedures, including the broad distribution of the framework for public comment.[1409] The Commission explained that the proposed requirement that the standards be established by a body or group that has followed due process procedures would be similar to the requirements for determining a suitable, recognized control framework for use in management's evaluation of an issuer's ICFR because in both cases a specific framework is not prescribed but minimum requirements for what constitutes a suitable framework are provided.[1410] The Commission stated that this approach would help to ensure that the standards upon which the attestation engagement and report are based are the result of a transparent, public and reasoned process.[1411]

In the Proposing Release, the Commission stated that, for example, in its view, the attestation standards of the PCAOB,[1412] AICPA,[1413] and IAASB [1414] would meet the proposed due-process requirement, and all of these standards are publicly available at no cost to investors who desire to review them.[1415] The Commission explained that by highlighting these standards, it did not mean to imply that other standards currently used in voluntary reporting would not be suitable for use under the proposed rules.[1416] The Commission further stated it intended the proposal to set minimum standards while acknowledging the current voluntary practices of registrants.[1417]

The proposed rules would have required a GHG emissions attestation provider to follow the specific requirements regarding form and content of the reports set forth by the attestation standard (or standards) used by such attestation provider.[1418] In addition, the proposed rules would have imposed minimum requirements for the GHG emissions attestation report to provide some standardization and comparability of GHG emissions attestation reports.[1419] The Commission explained that the proposed minimum report requirements would provide investors with consistent and comparable information about the GHG emissions attestation engagement and report obtained by the registrant when the engagement is conducted by a GHG emissions attestation provider using an attestation standard that may be less widely used or that has less robust report requirements than more prevalent standards.[1420]

The proposed minimum attestation engagement and report requirements were primarily derived from the AICPA's attestation standards (*e.g.,* SSAE No. 18), which are commonly used by accountants who currently provided GHG attestation engagement services as well as other non-GHG-related attestation engagement services and are largely similar to the report requirements under PCAOB AT–101 and IAASB ISAE 3410.[1421] The Commission explained that many of the proposed minimum attestation report requirements are also elements of an accountant's report when attesting to internal control over financial reporting, an accountant's report on audited financial statements (which is conducted at a reasonable assurance level), and a review report on interim financial statements (which is conducted at a limited assurance level).[1422]

b. Comments

Several commenters agreed with the proposal to require that the attestation engagement and related attestation report be provided pursuant to standards that are publicly available at no cost to investors and are established by a body or group that has followed due process procedures.[1423] One commenter stated that these proposed requirements would ''help to protect investors who may rely on the attestation report by limiting the standards to those that have been sufficiently developed.'' [1424] Another commenter stated that these proposed requirements would ''provide necessary transparency and opportunity for input from all stakeholders.'' [1425] One commenter stated that public availability of the standards ''would be especially important for smaller investors and registrants.'' [1426]

Conversely, a few commenters disagreed with the proposal to require that the attestation engagement and related attestation report be provided pursuant to standards that are publicly available at no cost to investors and are established by a body or group that has followed due process procedures.[1427] One of these commenters stated it ''strongly disagrees'' with the proposal to require the use of standards that are publicly available at no cost because, in its view, such requirements would preclude the use of ISO 14064–3, a standard widely used for GHG verification, and therefore, would not serve the interests of investors.[1428]

Several commenters stated that they appreciated that the proposed rules were flexible or not overly prescriptive about the required attestation standards.[1429] However, some commenters stated it would be helpful to provide further guidance about which standards would meet the proposed requirements,[1430] or suggested that, absent a list of acceptable attestation standards, the proposed rules could

[1409] *See* Proposing Release, section II.H.3.

[1410] *See id.* (citing 17 CFR240.13a–15(c) and 240.15d–15(c) (stating that the ''framework on which management's evaluation of the issuer's internal control over financial reporting is based must be a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment'')).

[1411] *See* Proposing Release, section II.H.3.

[1412] *See* PCAOB AT section 101.

[1413] *See* AICPA SSAE No. 18; SSAE No. 22, Review Engagements (limited assurance standard, effective for reports dated on or after June 15, 2022), available at *https://us.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/ssae-22.pdf;* and SSAE No. 21, Direct Examination Engagements (reasonable assurance standard, effective for reports dated on or after June 15, 2022 and will amend SSAE No. 18), available at *https://us.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/ssae-21.pdf.*

[1414] *See* IAASB ISAE 3000 (Revised). *See also* IAASB ISAE 3410, Assurance Engagements on Greenhouse Gas Statements, available at *https://ifacweb.blob.core.windows.net/publicfiles/2023-10/IAASB-2022-Handbook-Volume-2.pdf.*

[1415] *See* Proposing Release, section II.H.3.

[1416] *See id.*

[1417] *See id.*

[1418] *See id.*

[1419] *See id.*

[1420] *See id.*

[1421] *See id.*

[1422] *See id.*

[1423] *See, e.g.,* letters from CAQ; CFA Institute; CII; Crowe; D. Hileman Consulting; ERM CVS; IECA; KPMG; Mazars (supporting the proposed requirements related to due process procedures); PwC ; RSM US LLP; and TCS.

[1424] *See* letter from CAQ.

[1425] *See* letter from KPMG.

[1426] *See* letter from RSM US LLP.

[1427] *See* letter from Futurepast; and USTAG TC207. *See also* letter from CalPERS (stating that it is not clear why the proposed rules focus on providing the information at no cost and noting that ''[l]ike in other areas, chances are that a free public option would be made available and then a useable version would be made available at higher cost'').

[1428] *See* letter from Futurepast (stating that the National Technology Transfer Act of 1995 does not require the use of standards that are publicly available at no cost and explaining that the fees ISO charges for standards are designed to support the standards writing activity of the International Organization for Standardization).

[1429] *See, e.g.,* letters from BPI; Chevron (''We support flexibility on acceptable attestation standards . . .''); IIB; and NAM (''We also appreciate that the proposed rule does not prescribe a particular attestation standard, choosing instead to 'recognize[] that more than one suitable attestation standard exists and that others may develop in the future.'''').

[1430] *See, e.g.,* letter from BPI (recommending that the Commission provide a non-exclusive list of acceptable verification standards).

hinder consistency and comparability.[1431]

A few commenters agreed with the Commission's statement in the Proposing Release that the attestation standards of the PCAOB, AICPA, and IAASB would meet the proposed due process requirements.[1432] In fact, some commenters recommended that the Commission consider requiring a GHG emissions attestation provider to use the standards established by the AICPA, IAASB, or PCAOB.[1433] One of these commenters stated that limiting the permissible standards in this way would ''promote the quality and comparability'' of the attestation provided.[1434] Alternatively, one commenter recommended that the Commission require the use of attestation standards promulgated by the PCAOB because in general ''investors would be best served if all verification was performed pursuant to the same standards.'' [1435] Another commenter stated that the PCAOB should ''begin preparing a separate standard based on the proposed rule.'' [1436] One commenter stated that the Commission should consider requiring non-accountant service providers to use the IAASB attestation standards, which in its view would ''potentially result in consistency across service providers, since accountants and non-accountants can both use those standards.'' [1437] Another commenter stated that if the Commission permits the use of attestation standards other than those of the PCAOB, AICPA, or IAASB, the Commission could establish ''a process to consider whether these standards are sufficient'' and ''provide transparency on the differences compared to the widely understood standards,'' which would protect the public interest.[1438]

Several commenters stated that the Commission should require [1439] or permit [1440] attestation over GHG emissions disclosure be performed in accordance with standards promulgated by the ISO.[1441] Several commenters stated that ISO 14064–3 is widely or commonly used by attestation providers.[1442] For example, one commenter stated that the ''International Civil Aviation Organization, a United Nations body, requires verification bodies to meet the requirements of ISO 14065 and perform verifications in accordance with ISO 14064–3'' and also recognizes ''ISO 14066 as the appropriate standard for assessing the competence of greenhouse gas validation teams and verification teams.'' [1443] Another commenter stated that ISO 14064–3 is either a ''required'' or ''acceptable'' method for ''verification by all of the major voluntary and regulatory reporting schemes (CDP, The Climate Registry and regional regulatory programs in California, Washington State, Oregon, and Canadian Provinces).'' [1444]

In addition, another commenter stated that ISO standards ''have been subjected to a rigorous development and approval process and have been accepted internationally as the basis for . . . [the] conduct of attestation engagements for nearly two decades.'' [1445] Relatedly, one commenter stated that it believed ISO 14064–3 would meet the proposed due process and public availability requirements.[1446] Further, another commenter stated that it believes ISO standards 14064–3, 14065, and 14066 ''address required expertise, independence, and quality control at least as well if not better than'' the IAASB's ISAE 3000, ISAE 3410, and ISRS 4400.[1447]

Another commenter that supported the proposed requirement related to the public availability of standards noted that ISO standards ''are not free'' and suggested that ''some agreement needs to be reached regarding access by investors to ISO 14064–3, if this standard is used by the attestation provider.'' [1448] On the other hand, one of the commenters that did not support

[1431] *See, e.g.,* letters from APCIA; and PLASTICS (stating that allowing the provider to ''pick the attestation standard'' could ''add variability to costs and reporting methodology, thereby undermining the Proposed Rule's claimed goal of promoting consistency'').

[1432] *See, e.g.,* letters from ERM CVS (agreeing with the Commission's statement but stating that the attestation standards of the PCAOB, AICPA, and IAASB are ''generic auditing/assurance/attestation standards and may not always address the complexities of non-financial or GHG emissions assurance/attestation''); and PwC. *But see* letter from RILA (stating that it appreciated the proposed rules' flexibility, but applying PCAOB, AICPA, and IAASB attestation standards ''prematurely will cause confusion and inconsistency, especially since it is still not clear what 'reasonable assurance' means under these standards with respect to GHG emissions disclosures'').

[1433] *See* letter from CAQ (stating that the PCAOB's attestation standards would need to be updated if required for use by the Commission); and Mazars. *See also, e.g.,* letters from Deloitte & Touche (stating that the AICPA, IAASB, and PCAOB standards are well-established and would provide needed transparency to investors, but that it sees a risk of investor confusion beyond those standards); and KPMG (stating that if the Commission were to limit the requirements to the PCAOB; AICPA; and IAASB standards the other elements of the proposed rules, such as the minimum criteria for a report, could be removed).

[1434] *See* letter from CAQ.

[1435] *See* letter from CFA Institute. Other commenters suggested that the PCAOB may need to update its attestation standards. *See, e.g.,* letters from Crowe (stating that the standard setters for the AICPA and IAASB attestation standards have issued standards or guidance on sustainability information, including GHG emissions information, while the PCAOB standards do not explicitly address these topics); and RSM US LLP (stating that if ''the Commission determines that attestation engagements related to GHG emissions should be conducted in accordance with PCAOB standards, we believe the PCAOB may deem it appropriate to update its attestation standards.'').

[1436] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[1437] *See* letter from Crowe.

[1438] *See* letter from KPMG.

[1439] *See* letters from ANSI NAB (''ANAB believes that ISO standards, including ISO 14064–3, ISO 14065, and ISO 14066 form the basis for quality auditing of GHG emissions and environmental information, and that attestation bodies should be required to perform attestation engagements in accordance with these requirements.''); Futurepast (stating that attestation bodies that are not public accounting firms should be required to perform attestation engagements in accordance with ISO standards); and LRQA.

[1440] *See, e.g.,* letters from AIA; Anthesis Grp.; CCR (stating that ''precluding the use of ISO 14064–3 under the proposed rules would require a significant population of registrants to reevaluate and potentially change service providers, reducing efficiencies gained through prior attestation engagements and narrowing the field of service providers qualified to issue an acceptable attestation report under the proposed rules''); Chevron; Eni SpA; ERM CVS; First Environment; ISO; ISO Comm. GHG; NAM; SCS Global Services; S. Robinson (5–3–22) (stating that ''nearly two thirds of GHG reporting firms and approximately one third of all S&P 500 firms already report and receive external attestation using ISO'');.and USTAG TC207. *See also* letter from Bureau Veritas (recommending that ''validation and verification bodies'' be accredited to ''ISO 17029'').

[1441] The ISO is an independent, non-governmental international organization with a membership of 169 national standards bodies. *See* ISO, About us, available at *https://www.iso.org/about-us.html.*

[1442] *See, e.g.,* letters from Chevron (stating its view that ISO 14064–3 is the ''most predominantly used in the United States''); NAM; and US TAG TC207.

[1443] *See* letter from Futurepast (noting that Futurepast's president ''helped write'' the ISO standards ''as a U.S. Expert to ISO Technical Committee 207'').

[1444] *See* letter from SCS Global Services.

[1445] *See* letter from US TAG TC207 (stating that the ISO Technical Committee 207, which is responsible for the development, review, and revision of ISO environmental and climate change standards, includes 120 member countries, each represented by its national standards body, and includes liaisons with 32 organizations that monitor the committee's standards development activities and can provide input during standards development, including, among others, the European Commission, International Chamber of Commerce, and World Trade Organization).

[1446] *See* letter from NAM. *See also* letter from D. Hileman (stating that the Commission should require that attestation or verification reports be provided pursuant to standards publicly available and established by groups that have followed ''due process for broad stakeholder process'' and that ''[d]evelopment of ISO standards follows a similar trajectory'').

[1447] *See* letter from Futurepast. *See also* letter from ANSI NAB (stating that it supports the proposed requirement for attestation providers to be independent, which is supported by accreditation requirements such as those set forth in ISO 14065).

[1448] *See* letter from ERM CVS.

the proposed requirement for the attestation standards to be publicly available at no cost to investors explained that the fees ISO charges for standards are designed to support its standards writing activity and that it ''does not have any other agenda than the publication of high quality, consensus-based standards.'' [1449] Another commenter stated that ''[a]lthough ISO standards must be purchased for a fee, we believe that the nominal fee required to obtain ISO 14064–3 would not be a serious obstacle to investors who desire to review the standard.'' [1450]

A few commenters mentioned other potential attestation standards for the Commission's consideration. One commenter recommended that the Commission consider the CDP's criteria for third party verification standards [1451] and another commenter stated that the final rules should permit the use of ''the standards accepted by the CDP so as to avoid inadvertently excluding qualified providers.[1452] In response to a request for comment included in the Proposing Release, one commenter stated that it did not believe that AccountAbility's AA1000 Series of Standards would meet the proposed requirements because, among other reasons, it does not believe AccountAbility's process for developing and publishing standards would meet the proposed due process requirements.[1453] However, another commenter stated that the final rules should be inclusive of AccountAbility's AA1000 Series of Standards.[1454]

Several commenters agreed that the Commission should require the GHG emission attestation report to meet certain minimum requirements in addition to any form and content requirements set forth by the attestation standard or standards used, as proposed.[1455] One commenter stated that the proposed minimum attestation report requirements are ''similar to the requirements of an independent auditor's report, which is well-understood by the investment community.'' [1456] Another commenter stated that the proposed minimum requirements for the attestation report are particularly important if standards beyond those of the AICPA, IAASB, and PCAOB are permitted.[1457] One commenter stated that the Commission should also require a description of the role of internal audit in the underlying GHG emissions data and whether or how the GHG emissions attestation provider relied on internal audit's work in the minimum report requirements.[1458]

On the other hand, a few commenters recommended against requiring additional minimum requirements for attestation reports.[1459] One of these commenters stated that the report requirements from the attestation standard used should be sufficient.[1460] Another commenter recommended that the Commission clarify whether a report that states the GHG emissions attestation provider is disclaiming an opinion on the GHG emissions would satisfy the requirements of Regulation S–K.[1461]

Regarding the proposed provision requiring the identification of the criteria against which the subject matter was measured or evaluated, a few commenters agreed that reference to proposed Item 1504 would meet the ''suitable criteria'' requirement under the prevailing attestation standard.[1462] One commenter stated that, in addition to referencing proposed Item 1504, the attestation report should refer to ''the (publicly available) standard used by the registrant to determine the emissions.'' [1463]

In the Proposing Release, the Commission included a request for comment asking if it requires or permits a registrant to use the GHG Protocol as the methodology for determining GHG emissions, would the provisions of the GHG Protocol qualify as ''suitable criteria'' against which the Scope 1 and Scope 2 emissions disclosure should be evaluated.[1464] A number of commenters agreed that if the Commission required or permitted a registrant to use the GHG Protocol as the methodology for determining GHG emissions, the provisions of the GHG protocol would qualify as ''suitable criteria.'' [1465] On the other hand, one commenter stated that ''the reporting standards are not fully developed enough to establish criteria for reliability measuring GHG emissions.'' [1466]

c. Final Rules

We are adopting the GHG emissions attestation engagement and report requirements with some modifications from the proposal.[1467] Consistent with the proposed rules, the final rules (Item 1506(a)(2)) provide that the attestation report must be provided pursuant to standards that are established by a body or group that has followed due process procedures, including the broad distribution of the framework for public comment.[1468] Most commenters who discussed this aspect of the proposal supported the proposed requirement related to due process procedures,[1469] and we continue to believe that requiring the attestation report to be provided pursuant to standards that are established by a body or group that has followed due process procedures would help to ensure that the standards upon which the attestation engagement and report are based are the result of a transparent, public, and reasoned process.[1470] As the Commission stated in the Proposing Release, this requirement should also help to protect investors who may rely on the attestation report by limiting the standards to those that have been sufficiently developed.[1471]

The proposed rules also would have required the attestation standards to be publicly available at no cost. We

[1449] *See* letter from Futurepast.

[1450] *See* letter from CCR.

[1451] *See* letter from 3Degree.

[1452] *See* letter from Climate Risk Consortia.

[1453] *See* letter from ERM CVS (additionally stating that, under AA1000, the disclosure of data for individual metrics such as GHG emissions cannot be assured separately from assurance on the implementation and application of AA1000APS, which pertains to sustainability management, and that it does not believe that many Commission registrants would be willing to disclose compliance with AA1000APS and obtain assurance over all of these disclosures).

[1454] *See* letter from Climate Risk Consortia.

[1455] *See, e.g.,* letters from CAQ (stating that the proposed minimum requirements for the attestation report ''will provide investors with increased trust and confidence in the GHG emissions data''); CFA Institute; Crowe; and RSM US LLP.

[1456] *See* letter from CFA Institute.

[1457] *See* letter from CAQ.

[1458] *See* letter from D. Hileman Consulting.

[1459] *See, e.g.,* letters from C2ES; and ERM CVS (stating that it believes it would be difficult to prescribe minimum contents that would be applicable under all standards used but welcoming the Commission to provide additional guidance on the contents of the attestation report, such as the importance of a description of the work undertaken).

[1460] *See* letter from C2ES (stating that in ''common practice, the attestation reports deliver a statement explaining the items reviewed, findings, a list of the metrics as verified and statement of independence,'' which ''is sufficient'').

[1461] *See* letter from Grant Thornton (drawing a comparison to Article 2 of Regulation S–X, which requires ''the clear expression of an opinion on the financial statements'' and stating that a ''report that states that the auditor is disclaiming an opinion on the financial statements for any reason does not satisfy the requirements of Regulation S–X.'').

[1462] *See, e.g.,* letters from ERM CVS; Futurepast; and Mazars.

[1463] *See* letter from ERM CVS.

[1464] *See* Proposing Release, section II.H.3.

[1465] *See* letter from Anthesis Grp.; CRS (stating that, in general, ''the market-based methodology for Scope 2 accounting as found in 2015 GHG Protocol Scope 2 Guidance would qualify as suitable criteria against which Scope 2 emissions disclosure should be evaluated''); D. Hileman Consulting; ERM CVS; Futurepast; KPMG; Mazars; PwC; WBCSD; and WRI.

[1466] *See* letter from Travelers.

[1467] *See* 17 CFR 229.1506(a)(2), (c).

[1468] *See* 17 CFR 229.1506(a)(2).

[1469] *See supra* note 1423 and accompanying text.

[1470] *See* Proposing Release, section II.H.3.

[1471] *See id.*

received feedback from some commenters indicating that including such a requirement in the final rules would preclude the use of certain standards that are currently widely used by GHG emissions attestation providers with respect to voluntary assurance over GHG emissions disclosures but that are not publicly available for free.[1472] After consideration of this feedback, the final rules will require that the attestation report be provided pursuant to standards that, in addition to being developed using due process, are either (i) publicly available at no cost, or (ii) widely used for GHG emissions assurance.[1473] In the Proposing Release, the Commission explained that open access is an important consideration when determining the suitability of attestation standards because it enables investors to evaluate the report against the requirements of the attestation standard.[1474] We continue to believe that open access is an important consideration for the reasons the Commission previously stated; however, we also recognize that the benefits provided by open access may also exist when a standard is widely used in the marketplace such that registrants, GHG emissions attestation providers, and investors have significant experience using, or evaluating disclosure assured pursuant to, that standard. In addition, it is important to recognize the value that investors have found in the voluntary assurance services currently being provided with respect to climate and GHG emissions disclosures. By making this modification to the final rules, we expect that many registrants and GHG emissions attestation providers will be able to continue to use assurance standards they are already using for their voluntary disclosures, assuming that those standards meet the due process requirement.[1475] This approach will not only reduce the costs of complying with the final rules [1476] but will likely benefit investors by leveraging the experience that GHG emissions attestation providers already have with particular standards, which could lead to assurance engagements being performed with a greater level of skill initially than if GHG emissions attestation providers were required to gain expertise with an unfamiliar standard.

Several commenters agreed with the Commission's statement in the Proposing Release that the attestation standards of the PCAOB, AICPA, and IAASB would meet the proposed attestation standard requirements.[1477] We continue to be of the view that the PCAOB, AICPA, and IAASB standards meet the due process requirements and are publicly available at no cost to investors. In addition, in light of our modifications to the final rules, we also believe that the ISO standards related to the attestation of GHG emissions disclosures would meet these requirements. We agree with those commenters that stated the process the ISO undertakes for the development of its standards is consistent with due process requirement included in the final rules.[1478]

The ISO TC 207/SC7 is the technical committee responsible for the development of ISO 14064–3—Greenhouse gases—Part 3: Specification with guidance for the verification and validation of greenhouse gas statements.[1479] The committee includes members from 120 countries, each represented by the country's national standards body, and the committee also liaises with 32 organizations who monitor standards development activities and can provide input during standards development.[1480] Members organize consultations among stakeholders in their country to develop a national position on ISO standards.[1481] The ISO member from the United States is ANSI and it publishes on its website a listing of draft ISO standards that are open to public comment.[1482] Moreover, ISO follows a consensus process for approval of its standards.[1483] This multi-stakeholder process, which includes an opportunity for public comment on proposed standards, is consistent with the reasoned and transparent process the Commission described in the Proposing Release as being the foundation for standards that are sufficiently developed. This leads us to the conclusion that ISO standards align with the due process requirement in the final rules.

As commenters have noted, ISO standards are not available for free. The ISO standards are, however, widely used for GHG emissions assurance. For example, a recent report determined that for S&P 500 companies that voluntarily obtained assurance over their climate-related disclosures, including in many cases GHG emissions disclosures, the most common standard referenced by non-accounting firm GHG emission attestation providers was ISO 14064–3.[1484] Specifically, the report found that ISO standards were used in connection with 196 out of a total 346 engagements.[1485] This frequency of use aligns with the ''widely used'' criteria in the final rules.

It is important to note that by highlighting these standards, we do not mean to imply that other standards, either those currently in existence, or those that may develop in the future, would not be suitable for use under the final rules. Commenters recommended a number of alternative approaches, such as providing a list of acceptable standards,[1486] or requiring the use of a

[1472] *See supra* note 1428 and accompanying text.

[1473] *See* 17 CFR 229.1506(a)(2).

[1474] *See* Proposing Release, section II.H.3.

[1475] Registrants and GHG emissions attestation providers would also need to meet the other requirements included in the final rules relating to the level and scope of the engagement and the expertise and independence of the provider, among other requirements.

[1476] *See* letter from Futurepast (stating that one benefit of having non-accounting firm attestation providers provide assurance pursuant to ISO or IAASB ISAE standards is that it would make ''available to registrants a much larger pool of potential service providers,'' which ''will enhance competition and likely result in lower costs to registrants'').

[1477] *See supra* note 1432 and accompanying text. The PCAOB has announced an ongoing project to evaluate its attestation standards for purposes of developing any potential recommendation to amend, consolidate or eliminate certain standards as appropriate. *See* PCAOB, Attestation Standards Update (Updated Sept. 26, 2022), available at *https://pcaobus.org/oversight/standards/standard-setting-research-projects/attestation-standards-update.* The AICPA included its attestation standards as an active project under consideration on its 2022–23 strategy work plan. *See* AICPA, 2022–23 ASB strategy work plan, available at *https://us.aicpa.org/content/dam/aicpa/research/standards/auditattest/asb/downloadable documents/2022-2023-asb-strategy-work-plan.pdf.*

[1478] *See supra* notes 1445 and 1446 and accompanying text.

[1479] *See* ISO/TC 207/SC7, About us, available at *https://committee.iso.org/home/tc207sc7.* More generally, the ISO is a non-governmental organization established in 1947 and based in Geneva, Switzerland. Its mission is to promote the development of standardization and related activities in the world with a view to facilitating the international exchange of goods and services, and to developing cooperation in the spheres of intellectual, scientific, technological and economic activity. *See* ANSI, U.S. Representation in ISO, available at *https://www.ansi.org/iso/us-representation-in-iso/introduction.* ISO is composed of representatives from 170 national standards bodies. *See* ISO, About us, available at *https://www.iso.org/about-us.html.*

[1480] *See* letter from USTAG TC207. The 32 organizations include the European Commission, International Accreditation Forum, International Chamber of Commerce, United Nations Conference on Trade and Development, World Health Organization, and World Trade Organization, among others. *See id.*

[1481] *See id.*

[1482] *See* ANSI Standards Action, available at *https://www.ansi.org/resource-center/standards-action.*

[1483] *See* ISO, Developing standards, available at *https://www.iso.org/developing-standards.html.*

[1484] *See* CAQ, *S&P 500 and ESG Reporting* (Updated June 2023) (providing statistics for 2021).

[1485] *See id.*

[1486] *See supra* note 1430 and accompanying text. *See also* letter from Climate Risk Consortia (recommending that the Commission permit the use of ''the standards accepted by the CDP'').

particular standard.[1487] Although we considered these alternatives, we ultimately agreed with those commenters who stated that the Commission should take a flexible approach to the acceptable standards in recognition that more than one suitable standard exists, and others could develop in the future.[1488]

The final rules (Item 1506(c)) require the form and content of the GHG emissions attestation report to follow the requirements set forth by the attestation standard or standards used, as proposed; however, in a shift from the proposal, the final rules do not prescribe minimum report requirements.[1489] The Commission explained in the Proposing Release that the proposed minimum components were all common elements of current assurance reports,[1490] a point that was affirmed in the feedback we received from commenters.[1491] We continue to expect that the attestation standards that meet the requirements of the final rules will generally include all of the elements that were proposed.[1492] Therefore, the benefit of including the proposed minimum requirements would be marginal, at best, and could be viewed as redundant and adding unnecessary complexity and associated burdens to the final rules. Instead, simply requiring the attestation report to follow the form and content requirements of the attestation standard or standards should provide investors with important information about the attestation engagement in a consistent and comparable manner. Nevertheless, in light of this shift to a more principles-based approach, to the extent that a particular attestation standard does not include elements sufficiently similar to those commonly included in an assurance report, the GHG emissions attestation provider should consider including such information in its attestation report to facilitate investors' understanding of the nature and scope of the engagement. Although some commenters suggested additional minimum requirements that could be included in the final rules,[1493] we decided against including any additional requirements for the same reason.

A few commenters asked the Commission to clarify the level of assurance that is required for historical periods in a registrant's filing.[1494] We are therefore clarifying that the final rules apply on a prospective basis only with disclosure for historical periods phasing in over time. Specifically, in the first year that an AF or LAF is required to provide an attestation report, such report is only required to cover the Scope 1 and/or Scope 2 emissions for its most recently completed fiscal year. To the extent the AF or LAF disclosed Scope 1 and/or Scope 2 emissions for a historical period, it would not be required to obtain an assurance report covering such historical period in the first year of the attestation rule's applicability. However, for each subsequent fiscal year's annual report, the registrant will be required to provide an attestation report for an additional fiscal year until an attestation report is provided for the entire period covered by the registrant's GHG emissions disclosures. In circumstances where more than one GHG emissions provider may have provided an attestation report for the different fiscal years included in the filing, a GHG emissions attestation provider should be clear about its involvement with any historical information, including disclaiming any such involvement where applicable.[1495]

In response to a request for comment, a few commenters agreed that a reference to proposed Item 1504 would meet the ''suitable criteria'' requirement under the prevailing attestation standard and that the provisions of the GHG Protocol would qualify as ''suitable criteria'' against which Scope 1 and Scope 2 emissions disclosure should be evaluated.[1496] Consistent with the Proposing Release, we reiterate that prevailing attestation standards require the criteria against which the subject matter is measured or evaluated to be ''suitable.'' [1497] Suitable criteria, when followed, will result in reasonably consistent measurement or evaluation of the registrant's disclosure that is within the scope of the engagement.[1498] Consistent with commenter feedback, Item 1505 of Regulation S–K will satisfy the suitable criteria requirements of the prevailing attestation standards because the proposed requirements set forth relevant, objective standards that call for measurable and complete disclosure of GHG emissions that would allow for a consistent evaluation of the registrant's disclosure.[1499] In addition, in response to a question from a commenter,[1500] we are clarifying that a report that states the GHG emissions attestation provider is disclaiming an opinion on the GHG emissions would not constitute compliance by the AF or LAF with the requirement to obtain an attestation report over its Scope 1 and/or Scope 2 emissions under the final rules.

Consistent with the proposed rules, the final rules do not require a registrant to obtain an attestation report specifically covering the effectiveness of internal control over GHG emissions disclosure.[1501] Such a report would not be required even when the GHG emissions attestation engagement is performed at a reasonable assurance level. As explained in the Proposing Release, given the current evolving state of GHG emissions reporting and assurance, existing DCP obligations and

[1487] *See supra* notes 1433, 1435, 1437, and 1439 and accompanying text.

[1488] *See supra* note 1428 and accompanying text. For example, in the Proposing Release, the Commission included a request for comment asking if AccountAbility's AA1000 Series of Standards would meet the proposed requirements for attestation standards. We received one comment that stated the final rule should be written in a way that is inclusive of all standards, including AA1000, among others, but the commenter did not provide any substantiative reasons why AA1000 would meet the proposed criteria. *See* letter from Climate Risk Consortia. Another commenter stated that the process for developing the AA1000 standard would not meet the proposed due process requirements. *See* letter from ERM CVS. Although the feedback we received from commenters was mixed, to the extent that the AA1000 standard meets the criteria in the final rule, registrants and GHG emissions attestation providers would not be precluded from using it in connection with complying with the final rules. The staff of the Commission's Office of the Chief Accountant is available to consult with registrants about whether a particular standard meets the requirements in the final rules.

[1489] *See* 17 CFR 229.1506(c).

[1490] The Commission explained in the Proposing Release that it primarily derived the proposed requirements from the AICPA's attestation standard (*e.g.,* SSAE No. 18), which are largely similar to the report requirements under PCAOB AT–101 and IAASB ISAE 3410. *See* Proposing Release, section II.H.3.

[1491] *See supra* note 279 and accompanying text.

[1492] *See supra* note 1490. *See also* ISO 14064–3, §§ 6.3.2 and 9.3.

[1493] *See supra* note 1458 and accompanying text.

[1494] *See, e.g.,* letters from Deloitte & Touche (requesting that the Commission clarify the level of assurance that is required for historical periods); and Grant Thornton (same).

[1495] This guidance parallels similar practices in the context of the financial statement audit. *See, e.g.,* PCAOB AS 3101, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion,* paragraph 18h, available at *https://pcaobus.org/oversight/standards/auditing-standards/details/AS3101.*

[1496] *See supra* note 1462 and accompanying text.

[1497] *See* Proposing Release, section II.H.3.

[1498] Characteristics of suitable criteria include relevance, objectivity, measurability, and completeness. *See, e.g.,* AICPA SSAE No. 18, AT–C § 105.A16 and A42; AICPA SSAE No. 21, AT–C § 105.A16 and .A44. In addition to relevance and completeness, the characteristics of suitable criteria under IAASB ISAE 3000.A23 include reliability, neutrality and understandability. Therefore, despite the differences in the characteristics listed, the underlying concepts and objectives are consistent.

[1499] In addition, to the extent an AF or LAF chooses to disclose its Scope 1 and/or Scope 2 emissions pursuant to Item 1505 and leverages the GHG Protocol's methodologies, we agree with the commenters that stated the provisions of the GHG Protocol would qualify as ''suitable criteria'' against which the Scope 1 and/or Scope 2 emissions disclosure should be evaluated. *See supra* note 1366 and accompanying text.

[1500] *See* letter from Grant Thornton.

[1501] *See* Proposing Release, section II.H.3.

the requirement that AFs and LAFs (initially) obtain at least limited assurance of such disclosure are appropriate first steps toward enhancing the reliability of GHG emissions disclosure.[1502]

As explained above in section II.H.3, in a modification from the proposal, the final rules will not require that GHG emissions disclosure be provided in a separately captioned ''Climate-Related Disclosure'' section in the relevant filing. Therefore, the final rules do not require a registrant to include an attestation report in such a section, although a registrant may choose to do so.

One commenter asked the Commission to clarify whether, to the extent the Commission permits the use of standards other than those developed by the PCAOB, AICPA, and IAASB, the Commission should clarify ''whether all practitioners should be required to consider 'other information' in the same way as CPAs.'' [1503] The GHG emissions attestation provider must perform the engagement in accordance with the requirements included in the attestation standard being used. We are clarifying that, to the extent an attestation standard requires an attestation provider to consider 'other information,' then the provider would be required to comply with such a requirement to perform the engagement in accordance with the standard.

One commenter stated that, due to the proposed phase in for the assurance requirements, an LAF or AF may be required to obtain assurance over its GHG emissions disclosures, while its consolidated public subsidiaries are not (or not yet) subject to the same level of assurance.[1504] This commenter asked the Commission to consider clarifying whether the consolidated subsidiary is expected to obtain assurance based on the requirements of its parent entity or entities, and if not, how the assurance provider for the parent entity or entities would report the level of assurance provided over the individual components of the reporting entity.[1505] In response to the specific factual scenario raised by this commenter, we are clarifying that the consolidated information included in the parent company's Commission filing would need to comply with the final rules' requirements applicable to the parent company. This means that a subsidiary's information that is part of the consolidated reporting of its parent company will need to be assured as part of the assurance over the parent company's consolidated reporting even if the consolidated subsidiary itself is not subject to assurance. This is consistent with how the auditing standards over consolidated financial statements generally apply.

Along similar lines, another commenter stated that there might be instances where a subsidiary of a registrant has a separate attestation engagement performed over its GHG emissions data to meet local statutory or jurisdictional requirements and the subsidiary might choose an attestation provider at the local level that differs from the attestation provider retained to perform the assurance required under the Commission's rules.[1506] This commenter stated, for example, if a subsidiary's attestation engagement was performed by an accounting firm provider that used AICPA standards, then AICPA attestation standards would allow the provider performing the assurance required under the Commission's rules to use the work of another practitioner; however, AICPA standards do not address the ability of an accounting firm provider to use the work of a non-accountant practitioner, particularly when the non-accountant uses different attestation standards.[1507] Consistent with our response above, we are clarifying that the consolidated information included in the parent company's Commission filing would need to comply with the final rules' requirements applicable to the parent company. As is the case with other new disclosure requirements, the Commission staff is available to answer practice questions as registrants begin applying the final rules.

4. Additional Disclosure by the Registrant (Item 1506(d))

a. Proposed Rules

In addition to the proposed minimum attestation report requirements described above, the proposed rules would have required disclosure of certain additional matters related to the attestation of a registrant's GHG emissions.[1508] With respect to the Scope 1 and Scope 2 emissions attestation required pursuant to proposed Item 1505(a) for AFs and LAFs, the proposed rules would have required the registrant to disclose in the filing, based on relevant information obtained from any GHG emissions attestation provider:

- Whether the attestation provider has a license from any licensing or accreditation body to provide assurance, and if so, the identity of the licensing or accreditation body, and whether the attestation provider is a member in good standing of that licensing or accreditation body;
- Whether the GHG emission attestation engagement is subject to any oversight inspection program, and if so, which program (or programs); [1509] and
- Whether the attestation provider is subject to record-keeping requirements with respect to the work performed for the GHG emissions attestation engagement and, if so, identify the record-keeping requirements and the duration of those requirements.[1510]

The Commission stated that these disclosures are not typically included in an attestation report and would not be included in the GHG emissions attestation report under the proposed rules.[1511] Instead, the registrant would be required to provide these disclosures in the separately captioned ''Climate-Related Disclosure'' section, where the GHG emissions disclosure would be provided pursuant to the proposed rules.[1512]

b. Comments

A few commenters generally agreed that the Commission should require the proposed items of disclosure to be provided by the registrant in the filing that includes the attestation report (where the GHG emissions and other climate-related disclosures are presented), based on relevant information obtained from the GHG emissions attestation provider as proposed.[1513] Alternatively, several commenters stated that they supported such disclosure requirements when the GHG emissions attestation provider is not registered with the PCAOB.[1514] One

[1502] *See id.* Under prevailing attestation standards for limited assurance engagements, the testing of and attestation over internal controls are not required. *See, e.g.,* AICPA SSAE No. 22, AT–C § 210.A16. With respect to reasonable assurance, while there are requirements under prevailing attestation standards to consider and obtain an understanding of internal controls, there is no required attestation of the effectiveness of internal controls such as that included in section 404(b) of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act). *See* 15 U.S.C. 7262(b) (requiring a registered public accounting firm that prepares or issues an audit report for certain issuers to attest to, and report on, the assessment made by the management of the issuer with respect to internal controls).

[1503] *See* letter from KPMG.

[1504] *See* letter from Grant Thornton.

[1505] *See id.*

[1506] *See* letter from Crowe.

[1507] *See id.*

[1508] *See* Proposing Release, section II.H.4.

[1509] In the Proposing Release, the Commission stated that one example of an oversight program would be the AICPA peer review program, among others. *See id.*

[1510] *See id.*

[1511] *See id.*

[1512] *See id.*

[1513] *See* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* and ICAEW.

[1514] *See, e.g.,* letters from CAQ; CFA Institute; Crowe (''If a registrant uses its financial statement

of these commenters explained that when a registrant uses a PCAOB-registered accounting firm as its GHG emissions attestation provider it should not be required to make the proposed additional disclosures ''[g]iven that a PCAOB-registered accounting firm is already complying with stringent requirements for things such as licensure, oversight, and record-keeping,'' which is ''well understood by investors.'' [1515] On the other hand, one commenter stated that registrants should not be required to provide these additional items of disclosure because, in its view, these are not ''appropriate determinations to be made by registrants and instead believe that this disclosure, if retained, should be included in the attestation provider's report itself.'' [1516]

Some commenters stated they agreed with the proposed requirement for a registrant to disclose whether the GHG emissions attestation provider has a license from an accreditation body.[1517] One of these commenters explained that this information ''would be helpful to investors as they could then rely on the licensing and accreditation bodies to vet the provider's expertise rather than needing to evaluate other related information.'' [1518] A few commenters stated that they disagreed with the proposed requirement for registrants to disclose whether the attestation provider has a license from any licensing or accreditation provider. One commenter explained that ''[i]n the absence of a universal certification or credential, registrants will seemingly bear the risk and burden of making a determination regarding the qualifications of an appropriate provider and disclosing these qualifications, and many registrants may lack the expertise to make such a determination or disclosure.'' [1519] Similarly, another commenter stated that the ''entity granting and monitoring professional practice for these credentials should bear the responsibility for making public disclosures'' on these topics with the GHG emissions attestation provider providing ''a citation to the granting entity's website.'' [1520] One commenter urged the Commission to ''defer action'' on this matter until after the rules have been implemented for a period of time.[1521]

The Proposing Release included a request for comment asking if, in lieu of only requiring disclosure about whether the GHG emissions attestation provider has a license from an accreditation body, the Commission instead should require a GHG emissions attestation provider to be licensed to provide assurance by specified licensing or accreditation bodies, and if so, which bodies the Commission should specify.[1522] One commenter stated that ''review by a licensed or accredited firm with minimum standards is essential for reliable GHG emissions reporting.'' [1523] Conversely, one commenter stated that the Commission should not require accreditation or require a GHG emissions attestation provider ''to be a member in good standing of a particular body'' because it could unintentionally disqualify an appropriate provider.[1524] Although the proposed rules would not have required a GHG emissions attestation provider to be licensed, one commenter asked the Commission to clarify ''which existing licensing or accrediting bodies meet SEC standards'' under the proposed rules.[1525]

Some commenters agreed that the Commission should require a registrant to disclose whether the GHG emissions attestation engagement is subject to any oversight inspection program, and if so, which program(s), as proposed.[1526] One commenter stated that this proposed requirement ''would provide decision-useful information to investors.'' [1527] On the other hand, one commenter disagreed with the proposed requirement and suggested instead the Commission require the attestation provider to publicly disclose on its website certain information such as the ''qualifications and experience of its principals'' and ''errors and omissions insurance information,'' among other things.[1528] Another commenter stated that such requirement is ''only relevant if the Commission also specifies the particular standards under which the attestation engagement should be performed.'' [1529] One commenter stated that such information ''should be communicated by the attestation provider as part of their reporting, rather than being reported by the issuer, who may or may not be able to confirm the information (notwithstanding its responsibility to do so in all SEC filings).'' [1530] In addition, one commenter stated that the Commission should work toward establishing oversight over GHG emissions attestation providers in the near future,[1531] and other commenters asked the Commission to ''clarify what regulatory environment applies to GHG attestation providers'' [1532] or stated that it was not clear what any oversight inspection program would include.[1533]

A few commenters stated that they supported the proposed requirement for registrants to disclose whether the GHG emissions attestation provider is subject to record-keeping requirements for the engagement.[1534] The Proposing Release included a request for comment asking if, in lieu of requiring disclosure about such matters, the Commission instead should specify that the record-keeping requirements of a GHG emissions attestation provider must be of a certain minimum duration.[1535] One commenter stated it believed ''the record-keeping requirement for the GHG attestation provider should extend to the duration of the securities law protections for investors.'' [1536]

One commenter recommended that the Commission include an additional element of disclosure and require registrants to disclose the terms that they negotiate with third-party verification firms to enable investors to evaluate the adequacy of third-party oversight.[1537]

auditor, who currently must meet the requirements in Article 2 of Reg. S–X, to also perform any required GHG emissions attestation, we recommend the SEC consider exempting those registrants from additional disclosures.''); and PwC (stating that given the importance of licensing, oversight, and record-keeping requirements they should be added to the qualifications necessary to be a GHG emissions attestation provider).

[1515] *See* letter from CAQ.

[1516] *See* letter from ABA. *See also* letter from D. Hileman (stating that ''none of the proposed requirements in this section should be borne by the registrant'').

[1517] *See, e.g.,* letters from ICAEW; ICI; Morningstar; and RSM.

[1518] *See* letter from RSM.

[1519] *See* letter from ABA.

[1520] *See* letter from D. Hileman.

[1521] *See* letter from Futurepast.

[1522] *See* Proposing Release, section II.H.4.

[1523] *See* letter from Salesforce. *See also* letter from CFA Institute (stating that it supported requiring GHG emissions attestation providers to be members in good standing of a specified accreditation body that provides oversight to service providers that apply attestation standards).

[1524] *See* letter from Climate Risk Consortia.

[1525] *See* letter from IECA.

[1526] *See* letters from ICAEW; ICI; Morningstar; and PwC.

[1527] *See* letter from Morningstar. *See also* letter from PwC (stating that this information ''would be beneficial to an investor in assessing the quality of the provider'' but requesting that the Commission make the existence of an oversight inspection program a required qualification for a provider as opposed to an item subject only to disclosure).

[1528] *See* letter from Futurepast.

[1529] *See* letter from RSM.

[1530] *See* letter from NASBA.

[1531] *See* letter from Center Amer. Progress.

[1532] *See* letter from Grant Thornton.

[1533] *See* letter from IECA.

[1534] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* ICAEW; ICI; Grant Thornton; and RSM.

[1535] *See* Proposing Release, section II.H.4.

[1536] *See* letter from Grant Thornton. *See also* letter from Third Coast (stating that the ''proposed rule should explicitly support retention strategies that focus on validating the digital originality of these highly sensitive data sets when directly controlled by the registrant organization'').

[1537] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.* (recommending this additional

Continued

In the Proposing Release, the Commission included a request for comment asking if it should include disclosure requirements when there is a change in, or disagreement with, the registrant's GHG emissions attestation provider that are similar to the disclosure requirements in Item 4.01 of Form 8–K and 17 CFR 229.304 (''Item 304 of Regulation S–K'').[1538] A few commenters stated that they would support such a requirement.[1539] One commenter stated that the ''level of detail'' in Item 304 of Regulation S–K ''is excessive for non-accountants,'' but indicated it would support a ''slimmed down'' version of this requirement.[1540]

c. Final Rules

The Commission is adopting the requirement for registrants to disclose certain additional information related to the attestation of a registrant's GHG emissions with significant modifications from the proposal.[1541] To reduce the burdens on issuers that would have arisen under the proposed rules, and in response to certain commenter feedback described above, we are not adopting a requirement for registrants to disclose (1) whether the attestation provider has a license from any licensing or accreditation body to provide assurance; and (2) whether the attestation provider is subject to record-keeping requirements with respect to the work performed for the GHG emissions attestation engagement. However, consistent with the proposal, the final rules (Item 1506(d)) require registrants to disclose whether the GHG emission attestation engagement is subject to any oversight inspection program, subject to certain modifications.[1542] In addition, in a modification from the proposal, the final rules require registrants to disclose certain information when there is a change in, and disagreement with, the registrant's GHG emissions attestation provider as discussed in greater detail below.[1543]

The decision not to adopt a requirement for a registrant to disclose whether its GHG emissions attestation provider has a license from any licensing or accreditation body will eliminate the potential for confusion about when disclosure is required, thus reducing the burden associated with the final rules. Although the existence of a license for a GHG emissions attestation provider that is a certified public accountant is straightforward to determine because certified public accountants and their firms must be registered with state boards of accountancy,[1544] it may be more difficult for a registrant to determine if a non-accountant GHG emissions attestation provider holds a license. Furthermore, although accreditation and certification organizations exist for GHG emissions attestation providers that are not accountants,[1545] it may be difficult for registrants and even GHG emissions attestation providers themselves to determine whether the credential conferred by such organization constitutes a ''license,'' or if it is some other type of accreditation or certification. Therefore, we agree with the commenter that pointed out the ''absence of a universal certification or credential'' likely would make it difficult for registrants to determine whether disclosure is required.[1546]

We decided not to require a registrant to disclose whether the attestation provider is subject to record-keeping requirements with respect to the work performed for the GHG emissions attestation engagement to reduce burdens on registrants. Upon further consideration, this proposed requirement would seem to have marginal benefit to investors making investment or voting decisions while adding complexity to issuer disclosures. Instead, the final rules focus the disclosure requirements on the more significant disclosure of the existence of an oversight inspection program.[1547]

The proposed rules would have required a registrant to disclose whether the GHG emissions attestation engagement is subject to any oversight inspection program, and if so, which program (or programs).[1548] We are adopting this requirement as proposed.[1549] In response to commenters,[1550] we are clarifying, for purposes of the final rules, that we would consider a GHG emissions attestation engagement to be subject to an oversight inspection program if it is possible that the assurance services could be inspected pursuant to the oversight program, even if it is not certain that the services will be inspected in a particular inspection cycle. An example of such an oversight inspection program is the AICPA's peer review program, which includes within its scope attestation engagements performed by a certified public accountant in accordance with AICPA standards.[1551] Commenters did not offer any examples of oversight inspection programs that would include within their scope GHG emissions attestation engagements performed by *non-accountants.* Even if no such programs currently exist, it is possible that they could develop in the future given the evolving nature of GHG emissions assurance practices. Accordingly, we continue to believe that the existence of an oversight inspection program will help investors better understand the qualifications of the GHG emissions attestation provider, which in turn will help them determine whether the assurance services have enhanced the reliability of the GHG emissions disclosure.

In addition to requiring a registrant to disclose whether the GHG emissions attestation engagement is subject to any oversight inspection program as proposed, the final rules also require a registrant to disclose whether the GHG emissions attestation provider is subject to any oversight inspection program, and if so, which program (or programs).[1552] To be clear, this requirement is not limited to oversight inspection programs that include within their scope, or require the inspection of, the GHG emissions attestation engagement. Rather, the final rules

requirement since the Commission did not propose to establish minimum standards for limited assurance engagements).

[1538] *See* Proposing Release, section II.H.2.

[1539] *See, e.g.,* letters from CII; PwC (recommending that the disclosures be modeled after the requirements of Item 304 of Regulation S–K); and RSM US LLP. *See also* letter from CFA Institute (stating that it would not object to a requirement to disclose a change in attestation provider).

[1540] *See* letter from ERM CVS (stating that it would particularly support a requirement to disclose the ''most likely circumstances'' for dismissal or disagreement between the registrant and the GHG emissions attestation provider and identifying examples).

[1541] *See* 17 CFR 229.1506(d).

[1542] *See* 17 CFR 229.1506(d)(1).

[1543] *See* 17 CFR 229.1506(d)(2).

[1544] *See, e.g.,* National Association of State Boards of Accountancy, Getting a License, available at *https://nasba.org/licensure/gettingacpalicense/* (explaining the licensure process for certified public accountants and accounting firms by state boards of accountancy).

[1545] *See, e.g.,* letter from ANSI NAB (describing itself as the ''only peer recognized accreditation body operating an accreditation program for oversight of greenhouse gas (GHG) validation and verification bodies (attestation providers) in the United States.'').

[1546] *See* letter from ABA.

[1547] *See* 17 CFR 229.1506(d).

[1548] *See* Proposing Release, section II.H.4.

[1549] *See* 17 CFR 229.1506(d).

[1550] *See supra* notes 1532 and 1533 and accompanying text.

[1551] Under the AICPA Peer Review Program, firms that are members of the AICPA are required to have a peer review of their accounting and auditing practice once every three years in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews. The peer review is conducted by an independent evaluator, known as a peer reviewer, who reviews a sample of the firm's work against the requirements of applicable professional standards in all material respects. *See* Summary of AICPA Peer Review Program, available at *https://us.aicpa.org/research/standards/peerreview/peer-review-summary.html.*

[1552] *See* 17 CFR 229.1506(d).

require the disclosure of ''any'' oversight inspection program that applies to the GHG emissions attestation provider.[1553] Therefore, a registrant must disclose any oversight inspection program the GHG emissions attestation provider is subject to for any type of engagement (*e.g.,* a financial statement audit or other review).[1554] This additional requirement will provide investors with a better understanding of the qualifications of the GHG emissions attestation provider because such oversight can provide a check on a provider's overall activities and drive improvements in the quality of their services.[1555]

We considered whether to only require disclosure about the existence of oversight inspections programs from registrants who engage GHG emission attestation providers that are not registered with the PCAOB, as suggested by some commenters.[1556] However, we are concerned that requiring this disclosure only with respect to certain GHG emission attestation providers could result in confusion and believe that requiring registrants to provide such disclosure with respect to all GHG emissions attestation providers will enhance the consistency and comparability of disclosures. Moreover, to the extent that a particular GHG emissions attestation provider is registered with the PCAOB, we would not expect it to be time consuming or difficult for a registrant to make this disclosure, which would presumably remain the same from year-to-year absent any changes to PCAOB rules.

We also considered whether to require such disclosure to be included in the attestation report as recommended by one commenter,[1557] instead of requiring the registrant to disclose this information in the filing that includes the attestation report as proposed. We understand that whether the attestation provider is subject to any oversight inspection program is in the first instance known by the attestation provider rather than the registrant, and therefore it may seem reasonable to require the attestation provider to make the disclosure rather than the registrant. However, we do not expect it would be difficult or burdensome for a registrant to obtain this information from the GHG emissions attestation provider, and in fact, we expect that most registrants would want to know about the existence of an oversight inspection program before retaining an attestation provider in most instances and therefore likely will already have such information in their possession. Moreover, we continue to believe that requiring such disclosure to be included in the attestation report may create confusion because this disclosure may not be required by existing attestation standards.

As stated above, the Commission included a request for comment in the Proposing Release asking if it should require disclosure when there is a change in, or disagreement with, the registrant's GHG emissions attestation provider that is similar to the disclosure requirements in Item 4.01 of Form 8–K and Item 304 of Regulation S–K.[1558] The commenters that responded to the request for comment generally agreed with including such a requirement in the final rules.[1559] Because we believe that requiring the disclosure of information regarding changes in, and disagreements with, a GHG emissions attestation provider would provide investors with important information about the provider and the conduct of the attestation engagement, which investors need to help them assess the reliability of the registrant's GHG emissions disclosures, we have included a provision in the final rules that will require AFs and LAFs subject to Item 1506(a) to disclose certain information when the registrant's GHG emissions attestation provider resigns (or indicates that it declines to stand for re-appointment after completion of the attestation engagement) or is dismissed.[1560]

We have generally modeled this aspect of the final rules on the disclosure requirements in Item 4.01 of Form 8–K and Item 304 of Regulation S–K, tailored to fit the context of a GHG emissions attestation engagement and to limit additional burdens.[1561] In particular, our decision to require the disclosure in the filing that contains the GHG emissions disclosures and attestation report (*e.g.,* a registration statement or an annual report that requires disclosure pursuant to Item 1506), instead of an alternative such as requiring a registrant to provide the disclosure in a Form 8–K, should serve to limit additional burdens associated with this provision. We believe that requiring similar disclosure for GHG emissions attestation providers to be included in the annual report or registration statement that contains the attestation report is appropriate because it will provide investors with the essential information they need to evaluate the assurance services provided while minimizing the need for additional filings by a registrant.

Specifically, the final rules (Item 1506(d)(2)) will require an AF or LAF subject to Item 1506(a) to disclose whether its former GHG emissions attestation provider resigned or was dismissed and the date thereof.[1562] If so, the registrant must state whether during the performance of the attestation engagement for the fiscal year covered by the attestation report there were any disagreements with the former GHG emissions attestation provider over any measurement or disclosure of GHG emission or attestation scope of procedures.[1563] The final rules will

[1553] *See id.*

[1554] Examples of such oversight inspection programs include the AICPA's peer review program or the PCAOB's inspection program. The AICPA's peer review program and PCAOB's inspection program are two examples of types of oversight inspection programs that a GHG emissions attestation provider may be subject to generally; however, only the AICPA's peer review program would include within its scope the GHG emissions attestation engagement. The PCAOB's inspection jurisdiction is limited to audits of issuers and registered brokers and dealers and does not include attestation engagements for GHG emissions disclosure within its scope. *See* 15 U.S.C. 7214 (setting forth the PCAOB's inspection jurisdiction). Consistent with our explanation above, commenters did not offer any examples of oversight inspection programs that apply to non-accountant GHG emissions attestation providers.

[1555] For example, in the context of inspections of PCAOB-registered public accounting firms, academic literature suggests that engagement-specific PCAOB inspections may have spillover effects on non-inspected engagements. *See, e.g.,* Daniel Aobdia, *The Impact of the PCAOB Individual Engagement Inspection Process—Preliminary Evidence,* 93Acct. Rev. 53, 53–80 (2018) (concluding that ''engagement-specific PCAOB inspections influence non-inspected engagements, with spillover effects detected at both partner and office levels'' and that ''the information communicated by the PCAOB to audit firms is applicable to non-inspected engagements''); Daniel Aobdia, *The Economic Consequences of Audit Firms' Quality Control System Deficiencies,* 66 Mgmt. Sci. (2020) (concluding that ''common issues identified in PCAOB inspections of individual engagements can be generalized to the entire firm, despite the PCAOB claiming its engagement selection process targets higher risk clients'' and that ''[PCAOB quality control] remediation also appears to positively influence audit quality'').

[1556] *See supra* note 400 and accompanying text.

[1557] *See supra* note 402 and accompanying text.

[1558] *See* Proposing Release, Section II.H.2.

[1559] *See supra* note 1539 and accompanying text.

[1560] *See* 17 CFR 229.1502(d)(2).

[1561] Although we have generally modeled these aspects of the final rules on existing requirements, in addition to the substantive differences discussed herein, we have also made several non-substantive changes and updates for readability. For the avoidance of doubt, neither the final rules nor this discussion should be construed as a modification or interpretation of the existing requirements on which they were modeled.

[1562] *See* 17 CFR 229.1506(d)(2)(i). Therefore, the registrant will be required to provide disclosure in circumstances where: (1) a GHG emissions attestation provider resigns or is dismissed during the fiscal year covered by the attestation report but it does not issue the attestation report; and (2) a GHG emissions attestation provider issues an opinion or conclusion on GHG emissions disclosure for the relevant fiscal year but is dismissed or resigns before the attestation report is filed.

[1563] *See* 17 CFR 229.1506(d)(2)(i)(B).

require the registrant to describe each such disagreement and state whether the registrant has authorized the former GHG emissions attestation provider to respond fully to the inquiries of the successor GHG emissions attestation provider concerning the subject matter of each such disagreement.[1564] Like the other elements of the disclosure requirement, this is modeled on the requirement to disclose disagreements between a registrant and its independent auditor in connection with the auditor's dismissal or resignation in Item 304 of Regulation S–K, and just as in that context, it is important that significant disagreements are brought to the attention of investors.[1565] The disclosure of the existence of a disagreement in the event of the resignation or dismissal of the GHG emissions attestation provider will enable investors to assess the possible effects of such disagreement and whether it could have impacted the reliability of the GHG emissions disclosure, which, as discussed above, provides investors with information about a registrant's business, results of operations, and financial condition. The final rules also include two instructions defining the term ''disagreements'' for purposes of the disclosure and explaining the circumstances in which it is sufficient to conclude that a disagreement has been communicated to the registrant.[1566] This definition and explanation is consistent with Item 304 of Regulation S–K and its Instructions, with minor modifications to take into account the circumstances of a GHG emissions attestation engagement.[1567]

We have determined to take an incremental approach to requiring disclosure about the resignation or dismissal of a GHG emissions attestation provider and therefore have not included a requirement for the registrant to request the former GHG emissions attestation provider to furnish the registrant with a letter addressed to the Commission stating whether it agrees with the statements made by the registrant with respect to the resignation or dismissal and disagreement (if applicable). The final rules, however, do not preclude a registrant from disclosing its explanation of the dismissal or resignation to its former GHG emissions attestation provider, and although not required, we encourage any GHG emissions attestation provider to convey concerns it has with the registrant's description of those events to the Commission's Office of the Chief Accountant.

The requirement to disclose certain information when a GHG emissions attestation provider resigns or is dismissed only applies to AFs and LAFs that are required to obtain an attestation report pursuant to Item 1506(a). It does not apply if an AF or LAF is not required to disclose its GHG emissions (and therefore is not required to obtain an attestation report) because the AF or LAF determines that its GHG emissions are not material for a particular fiscal year. In addition, for the avoidance of doubt, Item 1506(d)(2) does not apply to registrants that voluntarily obtain assurance over their GHG emissions disclosure and provide certain information about the engagement pursuant to Item 1506(e). We expect that the documentation regarding resignations and dismissals and any disagreements between the registrant and the GHG emissions attestation provider will be readily available to the registrant such that it would not be difficult or costly to comply with this requirement.

5. Disclosure of Voluntary Assurance (Item 1506(e))

a. Proposed Rules

The Commission proposed to require a registrant that was not required to include a GHG emissions attestation report under the proposed rules to disclose certain information if the registrant's GHG emissions disclosures were voluntarily subjected to third-party attestation or verification.[1568] Specifically, the Commission proposed new Item 1505(e) of Regulation S–K to require a registrant to disclose within the separately captioned ''Climate-Related Disclosure'' section in the filing the following information if the registrant's GHG emissions disclosures were subject to third-party attestation or verification:

(i) Identify the provider of such assurance or verification;

(ii) Describe the assurance or verification standard used;

(iii) Describe the level and scope of assurance or verification provided;

(iv) Briefly describe the results of the assurance or verification;

(v) Disclose whether the third-party service provider has any other business relationships with or has provided any other professional services to the registrant that may lead to an impairment of the service provider's independence with respect to the registrant; and

(vi) Disclose any oversight inspection program to which the service provider is subject (*e.g.,* the AICPA's peer review program).[1569]

The Commission explained that, taken together, these proposed disclosure items should help investors understand the nature and reliability of the attestation or verification provided and help them assess whether the voluntary assurance or verification has enhanced the reliability of the GHG emissions disclosure.[1570]

b. Comments

Many of the commenters that specifically addressed the proposed requirement to provide disclosures regarding voluntary attestation or verification supported the proposal.[1571] One commenter stated, ''[i]f a registrant receives assurance for their GHG emissions, regardless of whether they are required to do so under the final [Commission] rule, they should be required to disclose this information . . . as proposed.'' [1572] Alternatively, one commenter stated that registrants that obtained voluntary assurance should follow the same proposed attestation requirements that would apply to mandatory assurance over Scope 1 and Scope 2 disclosures (*e.g.,* proposed Items 1505(a) through (d)) to protect investors from attestation reports provided under standards that did not meet a minimum set of criteria established by the Commission.[1573]

Several commenters supported the proposed requirements to: identify the provider of such assurance or verification; disclose the assurance or verification standard used; describe the level and scope of assurance or verification provided; and briefly describe the results of the assurance or verification.[1574] A few commenters supported the proposed requirement to disclose whether the third-party service provider had any other business relationships with or has provided any other professional services to the registrant that may lead to an impairment of the service provider's independence with respect to the

[1564] *See* 17 CFR 229.1506(d)(2)(i)(B)(1)–(2).

[1565] *See Registrants and Independent Accountants Amended Rules for Increased Disclosure of Relationships,* Release No. 33–5550 (Dec. 20, 1974) [40 FR 1010, 1011 (Jan. 6, 1975)].

[1566] *See* 17 CFR 229.1506(d)(2)(ii)–(iii).

[1567] *See* 17 CFR 229.304(a)(1)(iv); and Instructions 4 and 5 to Item 304.

[1568] *See* Proposing Release, section II.H.5.

[1569] *See id.*

[1570] *See id.*

[1571] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* CEMEX; C. Howard; and CII.

[1572] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[1573] *See* letter from KPMG.

[1574] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* CEMEX; and C. Howard.

registrant.[1575] However, one commenter stated that it did not support such a disclosure requirement because it did ''not believe the third-party provider should be independent.'' [1576] A few commenters supported the requirement to disclose any oversight program to which the service provider is subject,[1577] while one commenter suggested aligning with the Science Based Targets Initiative.[1578] One commenter stated that it did not support requiring attestation providers to disclose any oversight inspection programs to which they are subject because investors could, in its view, wrongly assume that attestation providers that are subject to oversight are necessarily more qualified than those that are not.[1579] One commenter stated it is not clear what any oversight inspection program would include.[1580]

The Proposing Release included a request for comment asking whether registrants should be required to furnish a copy of, or provide a link to, the assurance or verification report.[1581] One commenter stated that registrants should be asked to provide a copy of the attestation or verification report when available.[1582] Another commenter stated that if summarizing the report in accordance with proposed Item 1505(e) effectively means that the report is filed, then furnishing the report would, in the commenter's view, be a more appropriate alternative.[1583] The Proposing Release also asked whether, instead of requiring a registrant to disclose whether the third-party service provider has any other business relationships with or has provided any other professional services to the registrant that may lead to an impairment of the service provider's independence with respect to the registrant as proposed, the Commission should require the third-party service provider to be independent, according to the standard proposed under Item 1505(b) with respect to mandatory attestation over Scope 1 and Scope 2 emissions.[1584] In response, one commenter stated that it supported such a requirement,[1585] and one commenter stated that it did not support such a requirement, explaining that it would severely narrow the options registrants have to hire such providers.[1586] Finally, some commenters requested clarification on the use of the terminology ''assurance'' and ''verification,'' and the difference between the two.[1587]

c. Final Rules

We are adopting final rules (Item 1506(e)) that require any registrant that is not required to include a GHG emissions attestation report pursuant to Item 1506(a) to disclose certain information about the assurance engagement if the registrant's GHG emissions disclosure was voluntarily subject to assurance.[1588] Under the final rules, a registrant will be required to disclose the following information if the registrant's GHG emissions disclosure was subject to third-party assurance:

(i) Identification of the service provider of such assurance;

(ii) Description of the assurance standard used;

(iii) Description of the level and scope of assurance services provided;

(iv) Brief description of the results of the assurance services;

(v) Whether the service provider has any material business relationships with or has provided any material professional services to the registrant; and

(vi) Whether the service provider is subject to any oversight inspection program, and if so, which program (or programs) and whether the assurance services over GHG emissions are included within the scope of authority of such oversight inspection program.[1589]

The final rules require disclosure of this information whenever assurance services are voluntarily obtained by the registrant. Although we considered requiring a registrant to provide disclosure only when the registrant chooses to disclose the results of the assurance services, we decided not to adopt this alternative because it could incentivize a registrant not to disclose unfavorable results from voluntary assurance services when that information would be meaningful to an investor evaluating the reliability of a registrant's GHG emissions disclosure. If a registrant chooses to voluntarily obtain assurance over its GHG emissions disclosure, it is important that investors be made aware of the fact that assurance was obtained, the nature of the services provided, and the results of those assurance services so that they can evaluate how much reliance to place upon the disclosed GHG emissions data when making investment decisions.

Although the proposed rules would have required a registrant to disclose certain information if its GHG emissions disclosure was voluntarily subject to third-party ''attestation'' or ''verification,'' the final rules are narrower in scope in that they only require a registrant to disclose certain information about ''assurance'' services a registrant voluntarily obtains over its GHG emissions disclosure.[1590] For purposes of the final rules, assurance services are services performed in accordance with professional standards that are designed to provide assurance, which would include, for example, an examination providing reasonable assurance or a review providing limited assurance.[1591] Certain ''attestation'' engagements may be designed to provide limited or reasonable assurance over identified information and therefore such services would fall within the scope of the final rules, but in many cases ''verification'' services are not designed to provide assurance.

[1575] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* C. Howard; and CII.

[1576] *See* letter from CEMEX.

[1577] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* C. Howard; and Morningstar.

[1578] *See, e.g.,* letter from CEMEX. Science Based Targets Initiative (''SBTi'') is a partnership between CDP, the United Nations Global Compact, World Resources Institute, and the World Wide Fund for Nature, which seeks to define and promote best practices in emissions reductions and net zero targets in line with climate science, among other objectives. *See* SBTi, *Who We Are/What We Do,* available at *https://sciencebasedtargets.org/about-us.*

[1579] *See* letter from Futurepast.

[1580] *See* letters from IECA. *But see* letter from CEMEX (stating that ''the oversight inspection program is clear'').

[1581] *See* Proposing Release, section II.H.5.

[1582] *See* letter from CEMEX.

[1583] *See* letter from KPMG.

[1584] *See* Proposing Release, section II.H.5.

[1585] *See* letter from Futurepast.

[1586] *See* letter from CEMEX.

[1587] *See, e.g.,* letters from CEMEX; C. Howard; and IECA.

[1588] *See* 17 CFR 229.1506(e). Under the proposed rules, all registrants would have been subject to the requirement to disclose Scopes 1 and 2 emissions, but only AFs and LAFs would have been subject to the proposed requirement to obtain attestation. Therefore, under the proposed rules, there would have been a category of registrants that were required to disclose GHG emissions in their filings but were not required to obtain an attestation report. The situation is different under the final rules because only AFs and LAFs are required to disclose Scopes 1 and/or 2 emissions in certain circumstances, and these categories of registrants are also required to obtain an attestation report. Thus, under the final rules, there is no category of registrants that is required to disclose GHG emissions but not obtain an attestation report. As a result, Item 1506(e), which requires disclosure of voluntary assurance, only applies to (i) non-AF and non-LAF registrants that voluntarily disclose their GHG emissions in a Commission filing and voluntarily obtain assurance over such disclosure; and (ii) as explained above in section II.I.1, filings made by AFs and LAFs after the compliance date for the GHG emissions disclosure requirements but before Item 1506(a) requires limited assurance.

[1589] *See* 17 CFR 229.1506(e).

[1590] *See id.*

[1591] For examples of attestation engagements designed to provide assurance, *see, e.g.,* PCAOB AT section 101; AICPA SSAE No. 21 AT–C sections 205and 206 and AICPA SSAE No. 22 AT–C section 210; and IAASB ISAE 3000 (Revised) and ISAE 3410. *See also* Proposed ISSA 5000. The Proposing Release discussed the differences between limited and reasonable assurance. *See* Proposing Release, section II.H.1.

In contrast to assurance services, non-assurance services are services that are not designed to provide assurance, which would include, for example, agreed upon procedures engagements and, as indicated above, in many cases, verification engagements.[1592]

We have decided to focus the final rules on requiring disclosure of assurance services because investors are likely to place greater reliance on GHG emissions disclosure that has been subject to assurance than disclosure that has not been subject to assurance.[1593] Current voluntary ESG assurance practices have been varied with respect to the levels of assurance provided (*e.g.,* limited versus reasonable), the assurance standards used, the types of service providers, and the scope of disclosure covered by the assurance.[1594] Therefore, we believe it is appropriate to require registrants to provide investors with some basic information about the assurance services voluntarily obtained to help them understand the nature of the services provided and to help investors determine whether the assurance services have enhanced the reliability of the GHG emission disclosure. Similarly, requiring a brief description of the results of the voluntary assurance services will provide transparency about the reliability of any disclosed GHG emissions data, which in turn will help investors weigh how much importance to give that data when making investment decisions. Since non-assurance services are not designed to provide assurance, they do not connote the same degree of reliability as assurance services. Based on our experience, investors likely do not rely upon non-assurance services to the same degree as assurance services. Therefore, the final rules will not require a registrant to provide Item 1506(e) information about any voluntary non-assurance services (*e.g.,* agreed upon procedures) obtained over its GHG emissions disclosure to avoid the potential for confusion.[1595] Finally, we think these changes to the final rules respond to several commenters who requested that the Commission clarify the terminology ''assurance'' and ''verification'' and the differences between the two.[1596]

To the extent that registrants voluntarily provide more disclosure to investors than what is required under Item 1506(e), registrants should remain cognizant of their obligation to provide investors with truthful and accurate information and to avoid making any materially misleading statements or omissions.[1597] Importantly, this includes ensuring that any description or characterization of any assurance or any other type of services obtained with respect to GHG emissions disclosure is accurate.

Consistent with the general support expressed by commenters, registrants are required to disclose each of the proposed categories of information in the final rules with respect to voluntary assurance services with some minor modifications.[1598] The final rules require registrants to identify the provider of such assurance services.[1599] The identity of the assurance provider is a basic, but important, piece of information for investors, particularly considering the broad spectrum of providers that may provide assurance services (*e.g.,* public accounting firms registered with the PCAOB, unregistered public accounting firms, and potentially other types of service providers).

If voluntary assurance services are obtained, the final rules also require registrants to disclose the assurance standard used.[1600] As noted above, the assurance landscape is currently evolving and there is diversity in practice.[1601] Identification of the

[1592] For examples of engagements that are not designed to provide assurance, *see, e.g.,* PCAOB AT section 201, Agreed-Upon Procedures Engagements, available at *https://pcaobus.org/oversight/standards/attestation-standards/details/AT201;* AICPA SSAE No. 19 AT–C section 215, Agreed-Upon Procedures Engagements, available at *https://us.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/at-c-00215.pdf;* and IAASB International Standard on Related Services 4400 (Revised) Agreed-Upon Procedures Engagements, available at *https://www.iaasb.org/_flysystem/azure-private/publications/files/ISRS-4400-Revised-Agreed-Upon-Procedures-final.pdf.* It is possible that a service identified or described as a ''verification'' could be designed to provide assurance (either limited or reasonable). *See, e.g.,* ISO 14064–3 (defining ''reasonable assurance'' as the ''level of assurance where the nature and extent of the *verification activities* have been designed to provide a high but not absolute level of assurance on historical data and information'' and ''limited assurance'' as the ''level of assurance where the nature and extent of the *verification activities* have been designed to provide a reduced level of assurance on historical data and information) (emphasis added). The key factor for purposes of determining whether disclosure is necessary under Item 1506(e) is whether the third-party services are *designed to provide assurance.*

[1593] A number of commenters on the proposed mandatory attestation requirements stated that they supported the proposal because it would help increase the reliability of the disclosure. *See supra* note 1106 and accompanying text. Relatedly, academic research suggests that investors prefer audited to non-audited information. *See* J. Cohen, *et al., Retail investors' perceptions of the decision-usefulness of economic performance, governance, and corporate social responsibility disclosures,* 23(1) Behavioral Research in Accounting 127 (2011) (''Auditing appears to be of use in lending credibility to the disclosure of nonfinancial information, in the view of most respondents.''); F.D. Hodge, Investors' perceptions of earnings quality, auditor independence, and the usefulness of audited financial statements, 17 Accounting Horizons-Supplement 42 (2003) (''Retail investors recognize the agency problems related to their investment and prefer audited financial information because of that.''). A financial statement audit is a type of ''reasonable assurance'' engagement. *See, e.g.,* PCAOB AS 1015, *Due Professional Care in the Performance of Work,* paragraph 10, available at *https://pcaobus.org/oversight/standards/auditing-standards/details/AS1015.*

[1594] *See* Proposing Release, section II.H.1. The Commission explained in the Proposing Release that this fragmentation has diminished the comparability of assurance provided and may require investors to become familiar with many different assurance standards and the varying benefits of different levels of assurance. *See id.* For example, investors may see that a service provider has produced an assurance report for a registrant's GHG emissions disclosure and have an expectation that such assurance will enhance the reliability of the disclosure, without always understanding, for example, what level of assurance (*e.g.,* limited versus reasonable) is being provided or what scope of assurance (*e.g.,* the disclosure covered by the assurance) is being provided with respect to the registrant's GHG emissions disclosure. *See id.* As noted above, the consequences of such fragmentation have also been highlighted by certain international organizations, including IOSCO. *See supra* note 1089 and accompanying text.

[1595] One commenter, which supported requiring mandatory attestation over Scope 1 and Scope 2 emissions for AFs and LAFs as proposed, expressed concerns that, among other things, ''inconsistencies in the nature and extent of procedures performed in voluntary attestation may detract from the benefits of the required attestations'' and also stated that ''[d]isclosing that the data was 'verified' would compound the confusion.'' *See* letter from PwC. This commenter's proposed solution was to subject any attestation—voluntary or required—to the proposed requirements that applied to the proposed mandatory attestation requirements. Although we are not adopting this commenter's recommendation, we think the approach we are taking in the final rules to require disclosure of certain information about assurance services voluntarily obtained by a registrant will reduce the potential for confusion while providing investors with information to help them evaluate whether the assurance services have enhanced the reliability of the GHG emissions disclosure.

[1596] *See supra* note 1587 and accompanying text.

[1597] *See, e.g.,* Securities Act section 17(a) [15 U.S.C. 77q(a)], Exchange Act section 10(b) [15 U.S.C. 78j(b)], and Exchange Act Rule 10b–5 [17 CFR 240.10b–5].

[1598] *See* 17 CFR 229.1506(e). In the Proposing Release, the Commission included a request for comment asking if registrants should be required to disclose the voluntary assurance or verification fees associated with the GHG emissions disclosure. One commenter responded to the request for comment and stated that it believed requiring the disclosure of such fees is unnecessary because the disclosure would not be useful for investors and would burden registrants. *See* letter from CEMEX. We have decided not to require the disclosure of voluntary assurance fees and instead focus on requiring the disclosure of the general categories of information specified in the final rules, which will be most useful to investors.

[1599] *See* 17 CFR 229.1506(e)(1).

[1600] *See* 17 CFR 229.1506(e)(2). *See also supra* note 1591 and accompanying text (citing examples of attestation engagements providing assurance and applicable standards).

[1601] *See, e.g.,* CAQ, *S&P 500 and ESG Reporting* (Updated June 2023) (pointing to the use of assurance methodologies such as AICPA AT–C 205, Assertion-Based Examination Engagements, AICPA AT–C 210, Review Engagements; and IAASB ISAE 3000 (Revised), and ISAE 3410, Assurance Engagements on Greenhouse Gas Statements).

assurance standard would enable investors to better understand the service that has been provided and to assess whether the standard is sufficiently developed, which may be particularly important given that some service providers may use standards that are developed by accreditation bodies with notice and public comment and other robust due processes for standard setting in the public interest, while other service providers may use standards that do not have these characteristics.

In addition, if voluntary assurance services are obtained, the final rules require registrants to describe the level and scope of assurance provided and to briefly describe the results of the assurance services.[1602] Registrants must clearly identify the level of assurance provided. Identifying the scope of the assurance provided will help investors understand whether the scope of the engagement aligns with the scope of the registrant's GHG emissions disclosure (*e.g.,* Scope 1 or 2). Providing investors with clear and transparent disclosure about the level and scope of assurance obtained is necessary to help investors weigh the level of reliance they should place on assurance services and determine whether the assurance services have enhanced the reliability of the GHG emissions disclosure. In addition, as noted above, requiring disclosure of the results of the assurance will provide transparency about the reliability of any disclosed GHG emissions data so that investors can weigh how much importance to give that data when making investment decisions.

As explained above, with respect to voluntary assurance, the proposed rules would have required a registrant to disclose whether the third-party service provider has any other business relationships with or has provided any other professional services to the registrant that may lead to an impairment of the service provider's independence with respect to the registrant.[1603] In a modification to the proposed rules, Item 1506(e)(5) requires a registrant to disclose whether the service provider has any material business relationships with or has provided any material professional services to the registrant.[1604] We have decided not to adopt the requirement for a registrant to determine whether any business relationships or other professional services ''may lead to an impairment of the service provider's *independence*'' (emphasis added) because of the variety of independence standards that could apply to the services. The assurance standard dictates the requirements for independence for engagements conducted in accordance with the standard. The final rules do not prescribe a particular assurance standard that third-party service providers must use with respect to the disclosure required under Item 1506(e).[1605] This could result in registrants and third-party providers applying different standards, which may not be apparent to investors and could reduce comparability. The modifications we have made in the final rules, however, will help avoid potential confusion and will enhance transparency related to the independence and objectivity of the third-party service provider by requiring registrants to disclose material business relationships and material professional services while also disclosing the assurance standard used by the service provider.[1606] Accordingly, the final rules serve much the same purpose as the proposed rules; namely, providing investors with information to evaluate the impartiality and objectivity of the service provider, which will in turn enable investors to determine whether the voluntary assurance services have enhanced the reliability of the GHG emissions disclosure. We continue to believe that assurance of GHG emissions disclosure by independent assurance providers improves the reliability of, and investor confidence in, such disclosure.[1607]

One commenter recommended that the Commission require a provider to be independent instead of simply requiring disclosure of the relevant facts;[1608] however, in keeping with the approach we are taking in the final rules with respect to voluntary assurance, which is focused on requiring the disclosure of information regarding the voluntary assurance services provided rather than imposing requirements addressing what the services must entail, the final rules require registrants to provide disclosure of material business relationships or other material professional services and the assurance standard used to enable investors to determine how much reliance to place on the assurance services.[1609]

Consistent with the proposed rules, the final rules require registrants to disclose any oversight inspection program to which the service provider is subject.[1610] This is the same requirement that applies to AFs and LAFs in Item 1506(d). As we explained in the discussion of Item 1506(d) in section II.I.4 above, the requirement to disclose any oversight inspection program to which the service provider is subject is not limited to oversight inspection programs that include within their scope, or require the inspection of, the assurance services provided for the GHG emissions disclosure. Rather, the final rules require the disclosure of ''any'' oversight inspection program, which includes any oversight program the service provider is subject to for any type of engagement (*e.g.,* a financial statement audit or other review).[1611] Examples of such oversight inspection programs include the AICPA's peer review program and the PCAOB's inspection program.[1612] As explained in section II.I.4 above, this information will help investors better understand the qualifications of an assurance provider, which in turn will help them determine whether the assurance services have enhanced the reliability of the GHG emissions disclosure.[1613]

However, to provide investors with a more complete understanding of such oversight inspection program, in a modification to the proposed rules, the final rules also require a registrant to disclose whether such oversight inspection program includes within its scope the assurance services over GHG emissions disclosure obtained by the registrant.[1614] Again, this is the same requirement that applies to AFs and LAFs in Item 1506(d). As explained above, we would consider assurance

[1602] *See* 17 CFR 229.1506(e)(3), (4).

[1603] *See* Proposing Release, section II.H.5.

[1604] *See* 17 CFR 229.1506(e)(5). A GHG emissions assurance engagement, by itself, does not trigger the requirement to provide disclosure under Item 1506(e)(5).

[1605] For examples of independence standards, *see, e.g.,* PCAOB Ethics and Independence Rules and Standards; AICPA Code of Professional Conduct; and International Ethics Standards Board for Accountants (IESBA) International Code of Ethics for Professional Accountants (including International Independence Standards).

[1606] *See* 17 CFR 229.1506(e)(2), (5).

[1607] *See* Proposing Release, sections II.H.2 and II.H.5.

[1608] *See* letter from Futurepast.

[1609] *See* 17 CFR 229.1506(e)(2), (5).

[1610] *See* 17 CFR 229.1506(e)(6).

[1611] *See id.*

[1612] *See id.* The PCAOB's oversight inspection program is another non-exhaustive example of an oversight inspection program that would fall within the scope of the required disclosure, which, along with the additional explanation we are providing, will help clarify this requirement for commenters. *See supra* note 1580 and accompanying text.

[1613] As stated above in section II.I.4, this is true even in circumstances where the oversight inspection program does not include within its scope the assurance services for the GHG emissions disclosure because such oversight can provide a check on a provider's overall activities and drive improvements in the quality of their services overall. *See supra* note 1555 and accompanying text.

[1614] *See* 17 CFR 229.1506(e)(6).

services over GHG emissions disclosure to be within the scope of an oversight inspection program if it is possible for the assurance services to be inspected pursuant to the oversight program, even if it is not certain that the services will be inspected in a particular inspection cycle. Requiring registrants to disclose the existence of an oversight inspection program provides investors with valuable information about the qualifications of a GHG emissions attestation provider regardless of whether the oversight inspection program includes the inspection of assurance over GHG emissions disclosure within its scope. Similarly, requiring disclosure of whether the GHG emission assurance services would fall within the scope of such program would further facilitate investors' evaluation of the reliability of the assurance results and GHG emissions disclosure.[1615] One commenter stated that the Commission should not require the disclosure of oversight inspection programs because it could wrongly suggest that attestation providers that are subject to oversight are necessarily more qualified than those that are not.[1616] We agree with the commenter that it is not necessarily true that an assurance provider that is subject to oversight is more qualified than a provider that is not.[1617] But whether a provider is subject to oversight is one relevant factor for investors to consider when assessing the reliability of assurance results and GHG emissions disclosure and such oversight can provide a check on a provider's activities and drive improvements in quality as explained above.

The proposed rules would have required a registrant to include the proposed disclosure regarding voluntary attestation within the separately captioned ''Climate-Related Disclosure'' section in the Commission filing where the GHG emissions data is disclosed.[1618] Since the final rules leave the placement of climate-related disclosures, other than the financial statement disclosures, largely up to the registrant, a registrant will not be required to include the disclosure regarding voluntary assurance within a separately captioned ''Climate-Related Disclosure'' section in the Commission filing.[1619] Rather, registrants should provide the disclosure required by this section in the same Commission filing and alongside the GHG emissions disclosure to which the voluntary assurance services relate.

Under the final rules, a registrant is responsible for disclosing the required information about the voluntary assurance services in its Commission filings. In these circumstances, we do not view the assurance provider as having prepared or certified the filing or any information contained therein. In addition, Item 1506(e) will not require registrants to file or furnish any voluntary assurance reports to the Commission.

Although the final rules do not require a registrant that has obtained voluntary assurance over its GHG emissions disclosure to file or furnish an assurance report to the Commission, for the avoidance of doubt, and in response to commenters,[1620] we are amending Rule 436 to provide that any description of assurance services regarding a registrant's GHG emissions disclosure provided in accordance with Item 1506(e) of Regulation S–K will not be considered a part of the registration statement prepared or certified by an expert or person whose profession gives authority to the statements made within the meaning of sections 7 and 11 of the Securities Act.[1621] Therefore, a registrant is not required to obtain and include the written consent of the GHG emissions attestation provider pursuant to Securities Act section 7 or Rule 436.[1622] Even though we believe that accountability for experts under section 11 is a central tenet of the Securities Act,[1623] this limited exception should encourage registrants to voluntarily obtain assurance over their GHG emission disclosure, which will benefit investors because assurance helps to enhance the reliability of a registrant's GHG emissions disclosure.

As discussed above in section II.I.2.c, we are also amending Rule 436 to provide that a report by a GHG emissions attestation provider covering Scope 1, Scope 2, and/or Scope 3 emissions at a limited assurance level shall not be considered a part of the registrant statement that is prepared or certified by an expert or person whose profession gives authority to the statements made within the meaning of sections 7 and 11 of the Securities Act.[1624] To the extent that a registrant that voluntarily obtains assurance over its GHG emissions disclosures decides to voluntarily file or furnish an assurance report to the Commission at the limited assurance level, the GHG emissions attestation provider would be entitled to rely on this amendment to Rule 436 if its terms are met. In these circumstances, a registrant would be required to submit a letter from the GHG emissions attestation provider that acknowledges their awareness of the use in certain registration statements of any of their reports which are not subject to the consent requirement of section 7 pursuant to the amendments to Item 601 of Regulation S–K.[1625] However, if a registrant voluntarily chooses to file or furnish an assurance report to the Commission that does not meet the requirements of Rule 436(i)(1) (*e.g.,* the assurance report is provided at a reasonable assurance level), or if the registrant chooses to voluntarily disclose more information than is required under Item 1506(e) of Regulation S–K, then, by its terms, the exception in Rule 436 would not apply, and the assurance provider may be required to provide a consent in accordance with applicable statutory provisions and rules and would be subject to Section 11 liability.[1626]

[1615] The PCAOB's inspection jurisdiction is limited to audits of issuers and broker-dealers registered with the Commission and would not include engagements for the assurance of GHG emissions disclosures within its scope. *See supra* note 1357. However, as stated in the Proposing Release, an example of an oversight inspection program that includes within its scope assurance engagements is the AICPA peer review program. *See* Proposing Release, section II.H.4.

[1616] *See* letter from Futurepast.

[1617] *See supra* note 1579.

[1618] *See* Proposing Release, section II.H.5.

[1619] *See supra* section II.A.3.

[1620] *See supra* note 1345 and accompanying text.

[1621] *See* 17 CFR 230.436(i)(2).

[1622] *See* 15 U.S.C. 77g; 17 CFR 230.436. For the avoidance of doubt, a registrant would not have to obtain and include the written consent of the GHG emissions attestation provider pursuant to 17 CFR 229.601(b)(23), which is the Regulation S–K provision requiring a registrant to file the written consent of an expert as an exhibit to a Securities Act registration statement or Exchange Act report that incorporates by reference a written expert report attached to a previously filed Securities Act registration statement.

[1623] *See* 15 U.S.C. 77k(a)(4). *See also* 77 Cong. Rec. 2910, 2934 (1933) (Statement of Rep. Chapman) (''Under its provisions the issuer, the underwriter, and the technical expert (including the engineer, the lawyer, the appraiser, the accountant, in connection with the issuance of securities) are held responsible for making a full disclosure of every material fact in connection with an issue of corporate securities. The burden of proof is placed on them to show that after the exercise of the degree of diligence expected of reasonably prudent men they 'had reasonable ground to believe and did believe . . . that such statement was true or that there was no such omission.' '').

[1624] *See* 17 CFR 230.436(i)(1).

[1625] *See* 17 CFR 229.601(b)(27). *See also supra* section II.I.2.c. for further discussion of the amendments to Item 601 of Regulation S–K.

[1626] Although the amendments to Rule 436 will clarify that assurance providers will not be liable to shareholders in actions under section 11 of the Securities Act (to the extent the provider qualifies for the exception), we remind registrants and providers that there are other remedies available to shareholders and the Commission, such as section 10(b) of the Exchange Act and Rule 10b–5 thereunder, which are not affected by the amendments to Rule 436.

J. Safe Harbor for Certain Climate-Related Disclosures (Item 1507)

1. Proposed Rules

The Commission proposed a safe harbor for Scope 3 emissions data to mitigate potential liability concerns that registrants may have about providing emissions information derived largely from third parties in a registrant's value chain. The proposed safe harbor provided that disclosure of Scope 3 emissions by or on behalf of the registrant would be deemed not to be a fraudulent statement unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.[1627] As proposed, the safe harbor would extend to any statement regarding Scope 3 emissions that is disclosed pursuant to proposed Items 1500 through 1506 of Regulation S–K and made in a document filed with the Commission. For purposes of the proposed safe harbor, the term ''fraudulent statement'' was defined to mean a statement that is an untrue statement of material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or that constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud as those terms are used in the Securities Act or the Exchange Act or the rules or regulations promulgated thereunder.[1628]

Although the proposed safe harbor only applied to Scope 3 emissions disclosures, the Commission solicited comment on whether the safe harbor should apply to other climate-related disclosures, such as Scopes 1 and 2 emissions disclosures, any targets and goals disclosures, or the proposed financial statement metrics disclosures.[1629] The Commission also solicited comment on whether to provide a safe harbor for disclosures related to a registrant's use of internal carbon pricing, scenario analysis,[1630] and a transition plan.[1631] The Commission further requested comment on whether it should adopt a provision similar to 17 CFR 229.305(d) that would apply the PSLRA safe harbors to forward-looking statements made in response to specified climate-related disclosure items, such as proposed Item 1502 pertaining to impacts of climate-related risks on strategy.[1632] Finally, the Commission solicited comment on whether the safe harbor should apply indefinitely or, instead, should sunset after the passage of a certain number of years or after certain conditions are satisfied.[1633]

2. Comments

Several commenters supported the adoption of a Scope 3 emissions safe harbor in the form proposed.[1634] These commenters stated that the proposed safe harbor for Scope 3 emissions disclosure was appropriate because of the uncertainties involved in the calculation of those emissions due to the need to rely on estimates [1635] and data from third parties.[1636] Some of these commenters also stated that the proposed safe harbor would encourage more robust disclosure of a registrant's Scope 3 emissions.[1637] A few commenters specifically supported basing the Scope 3 emissions safe harbor on the proposed standard that a registrant's Scope 3 emissions disclosure would not be deemed to be a fraudulent statement unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.[1638]

Many other commenters recommended strengthening and/or broadening the scope of the proposed safe harbor to include other types of climate-related disclosures.[1639] In this regard several commenters stated that a more robust safe harbor for climate-related disclosures than what was proposed would encourage registrants to provide more robust and ''higher quality'' disclosures for investors while the proposed safe harbor would potentially chill climate reporting.[1640]

For example, some commenters stated that the proposed Scope 3 emissions safe harbor appeared to be based on a negligence liability standard, which would provide protection that was too weak to be of much use for many registrants.[1641] Some commenters recommended that the Commission remove the proposed ''reasonable basis'' requirement, condition the safe harbor only on a registrant acting in good faith when calculating and reporting its Scope 3 emissions, and, for loss of the safe harbor, require knowing or intentional fraud in the sense that the registrant must have actual knowledge that the third-party information it is utilizing is unreliable.[1642]

Some commenters, as well as the Commission's Small Business Capital Formation Advisory Committee,[1643] recommended adoption of a safe harbor that would cover any climate risk-related statement, historical or forward-looking, required by the final rules.[1644] Some commenters stated that the safe harbor should cover all forward-looking climate-related disclosures, including disclosure of forward-looking impacts.[1645] Other commenters stated that a safe harbor for Scope 3 emissions and other climate-related disclosures should provide protection at least as strong as that provided by the PSLRA safe harbors.[1646] In this regard some commenters stated that the safe harbor should be modeled on the market risk disclosure safe harbor under 17 CFR 229.305(d).[1647] Some commenters stated

[1627] *See* Proposing Release, section II.G.3.

[1628] *See id.*

[1629] *See id.*

[1630] *See* Proposing Release, section II.C.

[1631] *See* Proposing Release, section II.E.2.

[1632] *See* Proposing Release, section II.C.

[1633] *See* Proposing Release, section II.G.3.

[1634] *See, e.g.,* letters from CalPERS; Calvert; CEMEX; IAC Recommendation; Impax Asset Mgmt.; and TotalEnergies.

[1635] *See, e.g.,* letters from CalPERS; Calvert; CEMEX; and TotalEnergies.

[1636] *See, e.g.,* letters from CEMEX; Impax Asset Mgmt.; and TotalEnergies.

[1637] *See, e.g.,* letters from PRI; and SKY Harbor.

[1638] *See, e.g.,* letters from CEMEX; and TotalEnergies.

[1639] *See, e.g.,* letters from AALA; Airlines for America; Amer. Bankers; American Exploration and Production Council (June 17, 2022) (''AXPC''); API; AZ Farm; BCSE; Beller *et al.;* BHP; BlackRock; BNP Paribas; BOA; BPI; Business Roundtable; California Bankers Association (June 17, 2022) (''CA Bankers''); CA Farm; Can. Bankers; CEMEX; Chamber; Chevron; Citigroup; Davis Polk; Delahaye Advisors LLC (June 17, 2022) (''Delahaye''); Energy Transfer; Enerplus; Exxon; HP; J. Herron; Impax Asset Mgmt.; Institute of International Bankers (June 17, 2022) (''IIB''); IIF; Japanese Bankers Association (June 17, 2022) (''JPN Bankers); Loan Syndications and Trading Association (June 17, 2022) (''LSTA''); NAA; NAM; Nareit; Nasdaq; NMA; RILA; Salesforce; SBCFAC Recommendation; Soc. Corp. Gov.; Sullivan Cromwell; Unilever; and United Air.

[1640] *See, e.g.,* letters from BOA; Business Roundtable; Chamber; Nasdaq; and Soc. Corp. Gov.

[1641] *See, e.g.,* letters from Beller *et al.;* BOA; and Chamber.

[1642] *See, e.g.,* letters from Beller *et al.;* BHP; BOA; and NAM.

[1643] *See* SBCFAC Recommendation.

[1644] *See, e.g.,* letters from Amer. Bankers; BIO; BOA; Chamber; Delahaye; Nasdaq; RILA; Soc. Corp. Gov.; Sullivan Cromwell; and T Rowe Price.

[1645] *See, e.g.,* letters from Airlines for America; Chevron; Cleary Gottlieb; IIF; Nareit; and NMA.

[1646] *See, e.g.,* letters from Alphabet *et al.;* BHP; BPI; Business Roundtable; Chevron; LSTA; and Nasdaq.

[1647] *See, e.g.,* letters from BHP (stating that clear safe harbors for mandated climate-related disclosures, such as those related to internal carbon prices, scenario analysis, transition plans and targets and goals, would be more appropriate than implicit or uncertain reliance on the PSLRA safe harbors, and recommending that, ''similar to 17 CFR 229.305(d), the information required or permitted by Item 1502 (Strategy, business model, and outlook), Item 1503 (Risk Management) and Item 1506 (Targets and goals) of Regulation S–K, except for historical facts, should be explicitly considered a 'forward-looking statement' for purposes of the PSLRA safe harbors''); and Chevron

Continued

that the Commission should adopt a forward-looking statement safe harbor for climate-related disclosures made in connection with initial public offerings (''IPOs'') [1648] or by partnerships, limited liability companies, and direct participation investment programs, which are excluded from the PSLRA safe harbors.[1649] Commenters stated that excluding climate-related disclosures made in connection with IPOs or by entities such as partnerships from safe harbor protections could potentially impede capital formation and discourage private companies from going public.[1650]

Several commenters recommended including specific disclosure items, in addition to Scope 3 emissions disclosures, within the scope of the safe harbor, such as Scopes 1 and 2 emissions disclosures,[1651] financial impact disclosures,[1652] and disclosures related to a registrant's use of internal carbon pricing,[1653] scenario analysis,[1654] and a transition plan,[1655] or the setting of targets and goals.[1656] Other commenters stated that the safe harbor should cover any climate-related disclosures based on third-party data or estimates.[1657] Commenters stated that because many of the required climate-related disclosures will involve complex assessments that are substantially based on estimates, assumptions, still-evolving science and analytical methods, and the use of third-party data, the safe harbor should cover all such climate-related disclosures.[1658] Still other commenters stated that the safe harbor should protect against not only private rights of action but Commission enforcement proceedings as well.[1659]

Some commenters opposed adoption of a safe harbor for Scope 3 emissions disclosure.[1660] A few commenters indicated that it would be inappropriate to adopt a safe harbor for Scope 3 emissions disclosure or any other climate-related disclosure that provided historical or current information.[1661] These commenters further stated that a separate forward-looking statement safe harbor for climate-related disclosures was not necessary because the PSLRA safe harbor is available to protect forward-looking climate-related disclosures.[1662] One other commenter stated that providing a safe harbor for Scope 3 emissions disclosure would disincentivize registrants from providing accurate disclosures.[1663]

Several commenters supported adoption of a Scope 3 emissions safe harbor but only if it was subject to a sunset provision.[1664] These commenters stated that the Scope 3 emissions safe harbor should eventually be phased out because of an expectation that Scope 3 reporting methodologies will be refined, Scope 3 tools and resources will improve, and the cost of Scope 3 emissions reporting will decline, which should reduce the uncertainties and difficulties in connection with Scope 3 emissions reporting.[1665] Commenters recommended various time horizons before sunsetting, such as one year,[1666] three years,[1667] five years,[1668] and five to seven years.[1669] By contrast, several other commenters stated that the Scope 3 emissions safe harbor should not be subject to a sunset.[1670] One commenter stated that the Scope 3 emissions safe harbor should be indefinite because the underlying data will always be under the control of third parties.[1671] Another commenter stated that there should be a meaningful safe harbor for the entirety of any final rule considering the ''unique'' challenges that registrants must overcome to meet the proposed climate-related disclosure obligations.[1672]

3. Final Rules

Because the final rules will not require the disclosure of Scope 3 emissions from any registrant,[1673] we are not adopting a safe harbor for such disclosures in the final rules. Instead, for the reasons discussed below and consistent with the feedback from commenters that asked the Commission to promulgate a safe harbor for certain climate-related disclosures (in addition to the Scope 3 emissions disclosure safe harbor that was proposed),[1674] we are adopting a provision (Item 1507) stating that disclosures (other than historic facts) provided pursuant to the following subpart 1500 provisions constitute ''forward-looking statements'' for purposes of the PSLRA safe harbors:

- 17 CFR 229.1502(e) (transition plans);
- 17 CFR 229.1502(f) (scenario analysis);
- 17 CFR 229.1502(g) (internal carbon pricing); and
- 17 CFR 229.1504 (targets and goals).[1675]

In addition, as discussed in more detail below, the final rules provide that the PSLRA safe harbors will apply to these forward-looking statements in connection with certain transactions and disclosures by certain issuers notwithstanding that these transactions and issuers are excluded from the PSLRA safe harbors in subparagraphs (a) and (b) of section 27A of the Securities Act and section 21E of the Exchange Act.

When proposing the climate disclosure rules, the Commission indicated that, because transition planning, scenario analysis, and internal carbon pricing involve assumptions, judgments, and predictions about future events, the PSLRA safe harbors would be applicable to forward-looking statements concerning transition plans, scenario analysis, and internal carbon

(stating that, in comparable circumstances, when the Commission adopted novel and complex disclosure requirements regarding market risk, ''the Commission recognized the challenges companies would face in preparing this novel information and specifically provided PSLRA safe-harbor protection for it,'' and recommending that the Commission adopt a similar safe harbor for GHG emissions disclosure).

[1648] *See, e.g.,* letters from Chamber; and Nasdaq.

[1649] *See, e.g.,* letter from Nareit; *see also* letter from AFPM (stating that any forward-looking statement safe harbor should apply to all business organizations providing the climate-related disclosures).

[1650] *See, e.g.,* letters from Chamber; Nareit; and Nasdaq.

[1651] *See, e.g.,* letters from AZ Farm; BHP; BlackRock; BOA; Can. Bankers; Citigroup; Energy Transfer; J. Herron; IIB; International Association of Drilling Contractors (June 16, 2022) (''IADC''); NAA; NAM; NMA; Salesforce; Unilever; and United Air.

[1652] *See, e.g.,* letters from Can. Bankers; CEMEX; Citigroup; Energy Transfer; IIB; and NAM.

[1653] *See, e.g.,* letters from Beller *et al.;* BHP; BlackRock; BOA; CEMEX; and Chevron.

[1654] *See, e.g.,* letters from BCSE; Beller *et al.;* BHP; BlackRock; BOA; Can. Bankers; CEMEX; Chevron; HP; IADC; and IIF.

[1655] *See, e.g.,* letters from BHP; BlackRock; BOA; Can. Bankers; CEMEX; Chevron; HP; IIB; and IIF.

[1656] *See, e.g.,* letters from Beller *et al.;* BHP; BlackRock; BOA; Can. Bankers; CEMEX; Citigroup; Enerplus; HP; Impax Asset Mgmt.; IIB; and NAM.

[1657] *See, e.g.,* letters from API; BNP Paribas; BPI; Cleary Gottlieb; Exxon; IIF; NMA; and T Rowe Price.

[1658] *See, e.g.,* letters from Amer. Bankers; BOA; Chamber; and Sullivan Cromwell.

[1659] *See, e.g.,* letters from BOA; and JPN Bankers.

[1660] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* CIEL; ClientEarth US (June 17, 2022) (''ClientEarth''); and Consumer Reports (June 17, 2022).

[1661] *See* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* and ClientEarth.

[1662] *See id.*

[1663] *See* letter from CIEL.

[1664] *See, e.g.,* letters from As You Sow; Bailard; CalPERS; Calvert; Ceres; CFA; ERM CVS; Friends of the Earth US (June 17, 2022) (''Friends of Earth''); IATP; ICCR; Nasdaq; PRI; SKY Harbor; and Soros Fund.

[1665] *See, e.g.,* letters from As You Sow; Friends of Earth; IATP; PRI; and Soros Fund.

[1666] *See* letter from ERM CVS.

[1667] *See, e.g.,* letters from IATP; and ICCR.

[1668] *See* letter from SKY Harbor.

[1669] *See* letter from Calvert; *see also* letter from C2ES (recommending that the safe harbor be re-evaluated every 5–7 years).

[1670] *See, e.g.,* letters from AALA; Alphabet *et al.;* AXPC; CEMEX; Delahaye; J. McClellan; Mtg. Bankers; and Nikola Corporation (June 17, 2022) (''Nikola'').

[1671] *See* letter from CEMEX.

[1672] *See* letter from AXPC.

[1673] *See supra* section II.H.3.

[1674] *See supra* note 1639 and accompanying text.

[1675] *See* 17 CFR 229.1507(a)(1).

pricing.[1676] Moreover, because the proposed targets and goals disclosure provision would require a registrant to disclose how it intends to achieve its climate-related targets or goals, the Commission similarly stated that the PSLRA safe harbors would apply to forward-looking statements made in the context of such targets and goals disclosure.[1677] Because estimates and assumptions based on future events are intrinsically involved in disclosures concerning a registrant's transition plan, use of scenario analysis or internal carbon pricing, and targets and goals, we continue to believe that such disclosures constitute ''forward-looking statements'' for purposes of the PSLRA safe harbors.

The PSLRA statutory provisions define ''forward-looking statement'' to include a number of different types of statements.[1678] Several of these definitional provisions are potentially applicable to statements made in the context of disclosures regarding transition plans, scenario analysis, and internal carbon pricing made pursuant to Item 1502 and regarding targets and goals made pursuant to Item 1504. To the extent that disclosures made in response to these Items or to any other subpart 1500 provision contain one or more of the following statements, they will fall within the PSLRA statutory definition of ''forward-looking statement'':

- A statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, capital structure, or other financial items;[1679]
- A statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;[1680]
- A statement of future economic performance, including any such statement contained in a discussion and analysis of financial condition by the management, made pursuant to Commission rules;[1681]
- Any statement of the assumptions underlying or relating to the above statements;[1682] and
- A statement containing a projection or estimate of items specified by Commission rule or regulation.[1683]

If a forward-looking statement falls squarely within any of the above-described forward-looking statements, certain parties may rely on the existing PSLRA safe harbors for disclosures made pursuant to any of the subpart 1500 provisions, assuming the other requirements of the PSLRA provisions are met.[1684] We recognize, however, the concern of some commenters that the PSLRA safe harbors may not be applicable to disclosures related to transition plans, scenario analysis, internal carbon price, and targets and goals to the extent the disclosures consist of a complex mix of factual and forward-looking statements and because the PSLRA safe harbors do not apply to certain parties and certain transactions.[1685]

In addition to the forward-looking statement exemptions expressly provided under the PSLRA, the Commission has authority under the PSLRA to provide exemptions from liability for other statements based on projections or other forward-looking information if the Commission determines that such exemption is consistent with the public interest and the protection of investors.[1686] The Commission previously exercised this authority when it adopted a rule providing a forward-looking statement safe harbor for certain statements made concerning market risk.[1687]

After considering feedback from commenters, we have concluded that using the authority provided by the PSLRA to extend its protections to disclosures (other than historical facts) concerning transition plans, scenario analysis, internal carbon pricing, and targets and goals is consistent with the public interest and the protection of investors. We expect that the disclosures required by these items will include a complex mixture of both forward-looking and factual information related to climate-related risks and assumptions concerning those risks. Thus, we are providing a safe harbor for these disclosures to avoid having to disentangle the information to claim protection for forward-looking statements under the PSLRA safe harbors, which would increase the compliance burden under the final rules and potentially reduce the usefulness of those disclosures for investors. We also believe that a safe harbor for these disclosures will help incentivize more comprehensive disclosures on these matters to the benefit of investors.[1688]

Statements made by issuers and/or in connection with transactions[1689] currently excluded from the PSLRA statutory safe harbor for forward-looking statements that will be eligible for the final rules' safe harbor include forward-looking statements: made in connection with an offering of securities by a blank check company;[1690] made with respect to the business or operations of an issuer of penny stock; made in connection with a rollup transaction; or

[1676] *See* Proposing Release, sections II.C and E.

[1677] *See* Proposing Release, section II.I.

[1678] *See* 15 U.S.C. 77z–2(i)(1) and 15 U.S.C. 78u–5(i)(1).

[1679] *See* 15 U.S.C. 77z–2(i)(1)(A) and 15 U.S.C. 78u–5(i)(1)(A). For example, a statement of potential capital expenditures made in response to Item 1502(e) (transition plans) and Item 1502(d) (narrative discussion of material impacts of climate-related risks) would likely constitute a forward-looking statement.

[1680] *See* 15 U.S.C. 77z–2(i)(1)(B) and 15 U.S.C. 78u–5(i)(1)(B). For example, a statement of plans to transition to more efficient operations or a different mix of products or services made in response to Item 1502(d), Item 1502(e), or Item 1504 (targets and goals) would likely constitute a forward-looking statement.

[1681] *See* 15 U.S.C. 77z–2(i)(1)(C) and 15 U.S.C. 78u–5(i)(1)(C). For example, a statement of future economic performance made pursuant to Items 1502(d), Item 1504, or Item 303 of Regulation S–K would likely constitute a forward-looking statement.

[1682] *See* 15 U.S.C. 77z–2(i)(1)(D) and 15 U.S.C. 78u–5(i)(1)(D).

[1683] *See* 15 U.S.C. 77z–2(i)(1)(F) and 15 U.S.C. 78u–5(i)(1)(F). For example, a projection or estimate of a registrant's future GHG emissions made pursuant to Item 1504 would likely constitute a forward-looking statement.

[1684] Other safe harbors, such as Securities Act Rule 175 and Exchange Act Rule 3b–6 and the bespeaks caution doctrine may also continue to apply to disclosures made pursuant to any of the subpart 1500 provisions, depending on specific facts and circumstances.

[1685] *See, e.g.,* letters from BOA; and Chamber. For example, the PSLRA safe harbors do not apply to statements made in connection with an IPO, *see* 15 U.S.C. 77z–2(b)(2)(D) and 15 U.S.C. 78u–5(b)(2)(D), or made in connection with an offering by, or related to the operations of, a partnership, limited liability company, or a direct participation investment program, *see* 15 U.S.C. 77z–2(b)(2)(E) and 15 U.S.C. 78u–5(b)(2)(E).

[1686] 15 U.S.C. 77z–2(g) and 15 U.S.C. 78u–5(g). The PSLRA also provides that it does not limit, ''either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.'' 15 U.S.C. 77z–2(h) and 15 U.S.C. 78u–5(h).

[1687] 17 CFR 229.305; *see* Disclosure of Market Risk Sensitive Instruments Release.

[1688] *See supra* note 1640 and accompanying text.

[1689] In addition to issuers, consistent with the PSLRA safe harbors, the safe harbor will apply to: a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer. *See* 15 U.S.C. 77z–2(a)(2)–(4) and 15 U.S.C. 78u–5(a)(2)–(4); *see also infra* note 1691.

[1690] The Commission recently amended Securities Act Rule 405 and Exchange Act Rule 12b–2 to define ''blank check company'' for purposes of Securities Act Section 27A and Exchange Act Section 21E to mean a company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person. *See Special Purpose Acquisition Companies, Shell Companies, and Projections,* Release No. 33–11265 (Jan. 24, 2024), [89 FR 14158 (Feb. 26, 2024)].

made in connection with an IPO,[1691] or in connection with an offering by, or relating to the operations of, a partnership, limited liability company, or a direct participation investment program.[1692]

We have determined that it is consistent with the public interest and the protection of investors to extend the safe harbor to these entities, such as partnerships and limited liability companies, and to transactions, such as IPOs, all of which are currently excluded from the PSLRA statutory safe harbor for forward-looking statements, because such entities may be subject to material climate-related risks that will require them to provide the disclosures pursuant to Items 1502(e), (f), or (g), or Item 1504. Extending the PSLRA safe harbor to these specified disclosures will encourage more comprehensive disclosures under these Items and help limit any negative effects to capital formation that may result from the perceived compliance costs associated with these provisions of the final rules.[1693]

Because the disclosure items pertaining to transition plans, scenario analysis, internal carbon pricing, and targets and goals are likely to involve a complex mixture of estimates and assumptions, some of which may be based on a combination of facts and projections, the safe harbor we are adopting provides that all information required by the subpart 1500 provisions concerning transition plans, scenario analysis, internal carbon pricing, and targets and goals is considered forward-looking statements for purposes of the statutory PSLRA safe harbors, except for historical facts.[1694] This provision should encourage more comprehensive disclosures regarding these subpart 1500 items, to the benefit of investors, despite their novelty and complexity.

Consistent with the operation of the PSLRA safe harbor, the final rules' forward-looking safe harbor will not be available for statements consisting solely of historical fact because such information does not involve the assumptions, judgments, and predictions about future events that necessitates additional protections.[1695] The safe harbor provision provides as non-exclusive examples of historical facts that are excluded from the safe harbor information related to carbon offsets or RECs described pursuant to a target or goal and a registrant's statements in response to Item 1502(e) (transition plan disclosure) or Item 1504 (targets and goals disclosure) about material expenditures actually incurred.[1696] Like the terms of a material contract, parties covered by the safe harbor should know with reasonable certainty information about a purchased carbon offset or REC, such as the amount of carbon avoidance, reduction, or removal represented by the offset or the amount of generated renewable energy represented by the REC, as well as the nature and source of the offset or REC, and should not need the protection of a forward-looking safe harbor if those items are required to be disclosed pursuant to Item 1504.[1697] Similarly, statements in response to Item 1502(e) (transition plan disclosure) and Item 1504 (targets and goals disclosure) about material expenditures actually incurred will not be eligible for the Item 1507 safe harbor because those statements consist of historical facts.

The PSLRA safe harbor does not apply to forward-looking statements included in financial statements prepared in accordance with generally accepted accounting principles (''GAAP'').[1698] Consistent with this, the final rules' safe harbor will not be available for forward-looking statements included in a registrant's consolidated financial statements. In addition, any such forward-looking statements that are incorporated by reference from the financial statements into a registrant's subpart 1500 disclosures will not be eligible for the Item 1507 safe harbor.

Notwithstanding deeming certain disclosures to be ''forward-looking statements'' and expanding the PSLRA protections to include certain issuers and transactions under Item 1507, the rest of the PSLRA requirements apply to the Item 1507 safe harbor. For example, in order for the safe harbor protections to apply, a forward-looking statement must be accompanied by a meaningful cautionary statement that identifies important factors that could cause actual results to differ materially from those in the forward-looking statement.[1699]

Although some commenters asked the Commission to include Scopes 1 and 2 emissions disclosures within the scope of any safe harbor, we decline to follow this recommendation.[1700] Because the methodologies underlying the calculation of those scopes are fairly well-established,[1701] we do not believe that it is necessary to provide a safe harbor from private litigation for such disclosures. We also decline to extend the safe harbor to Commission enforcement actions because existing Securities Act Rule 175 and Exchange Act Rule 3b–6 already provide a suitable safe harbor from liability for forward-looking statements in certain Commission enforcement actions.[1702]

Although some commenters recommended that we sunset any safe harbor,[1703] we decline to follow this recommendation at this time. The Commission may determine at a future date, after assessing how disclosure practices have evolved, whether it makes sense to amend or remove the safe harbor.

K. Financial Statement Effects (Article 14)

1. Introduction

The Commission proposed amendments to Regulation S–X that would require certain disclosures in registrants' financial statements. Specifically, the Commission proposed that if a registrant is required to file the disclosure required by proposed subpart 1500 in a filing that also requires audited financial statements, then the registrant would be required to disclose in a note to its financial statements certain disaggregated financial

[1691] The limitation in 15 U.S.C. 77z–2(a)(1) and 15 U.S.C. 78u–5(a)(1) is not applicable. *See* Item 1507(a)(3). Thus, notwithstanding 15.U.S.C. 77z(2)(a)(1) and 15 U.S.C. 78(u)(a)(1), the safe harbor will apply where an issuer that, at the time the statement is made, is not subject to the reporting requirements of section 13(a) or section 15(d) of the Exchange Act.

[1692] *See* 17 CFR 229.1507(a)(2).

[1693] *See* 15 U.S.C. 77z–2(b)(1)(B)–(D) and 77z–2(b)(2)(C)–(E); and 15 U.S.C. 78u–5(b)(1)(B)–(D) and 78u–5(b)(2)(C)}(E). We are not using our exemptive authority to extend the PSLRA safe harbors to: (i) issuers specified in Securities Act section 27A(b)(1)(A) and Exchange Act section 21E(b)(1)(A) (specified ''bad actors''); (ii) forward looking-statements contained ina registration statement of, or otherwise issued by, an investment company as specified in Securities Act section 27A(b)(2)(B) and Exchange Act section 21E(b)(2)(B); and (iii) forward-looking statements made by an issuer in a going-private transaction, *see* section 27A(b)(2)(E) and Exchange Act section 21E(b)(1)(E), in connection with a tender offer, *see* Securities Act section 27A(b)(2)(C) and Exchange Act section 21E(b)(2)(C), or in a beneficial ownership report required to be filed pursuant to section 13(d) of the Exchange Act, *see* Securities Act section 27A(b)(2)(F) and Exchange Act section 21E(b)(2)(F). *See also* the discussion below of forward-looking statements made in consolidated financial statements, which are excluded from both the PSLRA and Item 1507 safe harbors.

[1694] *See* 17 CFR 229.1507(b). The Commission adopted a similar provision in the market risk disclosure context. *See* 17 CFR 229.305(d)(2)(i).

[1695] *See* 15 U.S.C. 77z–2(a) and 15 U.S.C. 78u–5(a).

[1696] *See* 17 CFR 229.1507(b).

[1697] *See* 17 CFR 229.1504(d).

[1698] *See* 15 U.S.C. 77z–2(b)(2)(B) and 15 U.S.C. 78u–5(b)(2)(B).

[1699] *See* 15 U.S.C. 77z–2(c)(1)(A) and 15 U.S.C. 78u–5(c)(1)(A).

[1700] *See supra* note 1651 and accompanying text.

[1701] *See, e.g., supra* note 916 and accompanying text.

[1702] Securities Act Rule 175 and Exchange Act Rule 3b–6 also apply to private litigation.

[1703] *See supra* note 1664 and accompanying text.

statement metrics.[1704] The proposed rules would have required disclosure falling under three categories of information:

- Financial Impact Metrics; [1705]
- Expenditure Metrics; and
- Financial Estimates and Assumptions.[1706]

The proposed Financial Impact Metrics would have required disclosure of the impacts of severe weather events and other natural conditions and any efforts to reduce GHG emissions or otherwise mitigate exposure to transition risks on the line items in a registrant's financial statements.[1707] Disclosure of the Financial Impact Metrics would have been required if the sum of the absolute value of all impacts on the line item was one percent or more of the total line item for the relevant fiscal year.[1708] The proposed Expenditure Metrics would have required registrants to disclose expenditures expensed and costs incurred to mitigate risks related to the same severe weather events and other natural conditions and transition activities.[1709] Under the Expenditure Metrics, disclosure would have been required if the aggregate amount of expenditures expensed or the aggregate amount of capitalized costs was one percent or more of the total expenditure expensed or total capitalized costs incurred, respectively, for the relevant fiscal year.[1710] In addition, the proposed rules would have required disclosure of Financial Estimates and Assumptions impacted by severe weather events and other natural conditions and transition activities and would have permitted a registrant to include the impact of any opportunities arising from these events and activities on any of the financial metrics disclosed.[1711]

Although commenters' views were mixed, a number of commenters supported adoption of the proposed financial statement disclosure requirements.[1712] Commenters stated that the proposed requirements would promote consistency across reporting and would satisfy investor demand for reliable information about the financial impacts of climate-related risks.[1713] One commenter stated that ''integrating climate risk information into financial statements goes to the very purpose of disclosures—helping investors understand how climate-related risks impact the profitability and resilience of a company and its financial position.'' [1714] Some commenters asserted that it was important to include the disclosures in the notes to the financial statements so that the information is subject to independent audit and registrants' internal control over financial reporting (''ICFR'').[1715] Another commenter stated that although existing regulations are clear that registrants must incorporate material climate considerations into the financial statements, this is not being done consistently, and therefore the proposed rules are important to help prevent companies from misrepresenting their financial positions.[1716] Some commenters supported including some climate-related disclosures in the audited financial statements subject to certain revisions as described below.[1717] One of these commenters stated that the linkage of the climate-related risks disclosed elsewhere in the filing to the financial statements is essential.[1718] This commenter explained that ''[a]nchoring the disclosures outside the financial statements to those within the financial statements will have a focusing effect and increase the reliability and consistency of both.'' [1719]

Conversely, many commenters expressed the view that the proposed rules would be difficult to implement and would require registrants to make costly and burdensome adjustments to their controls, procedures, and accounting records to provide the disclosures.[1720] Many commenters asserted that the proposed requirements would result in the disclosure of a potentially overwhelming volume of information that would be immaterial to investors.[1721] Some commenters stated

[1704] *See* Proposing Release, section II.F.1.

[1705] The Proposing Release and the proposed rules used the term ''metrics'' to describe the proposed Regulation S–X amendments, including the proposed Financial Impact Metrics and the proposed Expenditure Metrics. *See* Proposing Release, section II.F. The final rules do not use the term ''metrics'' to describe the Regulation S–X amendments because we think it is more accurate to characterize them as disclosures of financial statement effects. *See* 17 CFR 210.14–01, 14–02.

[1706] *See* Proposing Release, section II.F.1.

[1707] *See* Proposing Release, section II.F.2.

[1708] *See id.*

[1709] *See* Proposing Release, section II.F.3.

[1710] *See id.*

[1711] *See* Proposing Release, sections II.2, 3, and 4.

[1712] *See, e.g.,* letters from Aron Cramer, BSR (May 31, 2022) (''A. Cramer''); AGs of Cal. *et al.;* Amer. For Fin. Reform, Evergreen Action *et al.;* Amer. For Fin. Reform, Sunrise Project *et al.;* Bailard; Bloomberg; BMO Global Asset Mgmt.; Boston Trust Walden (June 16, 2022) (''Boston Trust''); CalPERS; CalSTRS; Carbon Tracker Initiative (June 17, 2022) (''Carbon Tracker''); Center Amer. Progress; CFB; Climate Advisers (June 17, 2022); D. Higgins; ERM CVS; Dana Investment Advisors (June 16, 2022) (''Dana Invest.''); Earthjustice; Investor Advocates for Social Justice (June 17, 2022) (''IASJ''); ICGN; Impax Asset Mgmt.; Maple-Brown; Minnesota State Board of Investment (June 16, 2022) (''MN SBI''); Morningstar; NY City Comptroller; NY St. Comptroller; PRI; R. Bentley; R. Burke; R. Palacios; RMI; U.S. Reps. Castor *et al.;* Seattle City Employees' Retirement System (June 17, 2022) (''Seattle City ERS''); Sens. J. Reed *et al.;* SFERS; SKY Harbor; UAW Retiree; UCS; USIIA; US SIF; and WSP. Several commenters stated that they supported the inclusion of some climate-related information in the financial statements because climate-related impacts or risks can materially affect a company's financial position and operations. *See* letters from Can. PCPP; Boston Common Asset Mgmt; East Bay Mun.; Mackenzie Investments (June 14, 2022) (''Mackenzie Invest.''); and Paradice Invest. Mgmt.

[1713] *See, e.g.,* letters from Boston Trust; CalPERS; Can. PCPP; Carbon Tracker; CFA; East Bay Mun.; Dana Invest.; ERM CVS; ICGN; Inherent Group, LP (June 17, 2022) (''Inherent Grp.''); Prentiss; PwC; R. Bentley; and Seventh Gen.

[1714] *See* letter from Center Amer. Progress.

[1715] *See, e.g.,* letters from As You Sow; CFA Institute; Climate Accounting Audit Project (June 17, 2022) (''Climate Accounting Audit Project''); CSB; ERM CVS; NY City Comptroller; PGIM; Sarasin and Partners LLP (June 10, 2022) (''Sarasin''); Seattle City ERS; Sens. J. Reed *et al.;* and UAW Retiree.

[1716] *See* letter from Sarasin. *See also* letter from Carbon Tracker; Carbon Tracker, *Flying Blind: The Glaring Absence of Climate Risks in Financial Reporting* (Sept. 2021), available at *https://carbontracker.org/reports/flying-blind-the-glaring-absence-of-climate-risks-in-financial-reporting/*; Carbon Tracker, *Still Flying Blind: The Absence of Climate Risk in Financial Reporting* (Oct. 2022), available at *https://carbontracker.org/reports/still-flying-blind-the-absence-of-climate-risk-in-financial-reporting/.*

[1717] *See, e.g.,* letters from Amazon; Amer. Academy Actuaries; Calvert; CEMEX; Ceres and the Center for Audit Quality (''Ceres, *et al.*'') (Mar. 28, 2023); CFA Institute; Colorado Public Employees' Retirement Association (June 17, 2022) (''CO PERA''); IAA; Inclusive Cap.; ISS ESG (June 22, 2022); MFA; Northern Trust; PIMCO; PwC; TIAA; TotalEnergies, and Unilever.

[1718] *See* letter from CFA Institute.

[1719] *See id.*

[1720] *See, e.g.,* letters from ABA; ACLI; AFPM; BlackRock; Business Roundtable; Can. Bankers; Chevron; CohnReznick LLP (June 22, 2022) (''Cohn Rez.''); ConocoPhillips (''Compliance with the proposed rules . . . will require registrants to implement an entirely separate and additional set of books or ledgers of activity-based costing, which will be costly and time-consuming.''); Corteva; HP; INGAA; Kevin Connor, Es. (June 17, 2022) (''K. Connor''); Marathon Oil; NACCO (identifying costs related to the ''development of expansive new systems . . . , hiring of new staff . . . , and utilization of outside consultants.''); National Alliance of Forest Owners (June 17, 2022) (''NAFO''); NAM (''The extreme burden of building new processes and systems to track quantitative climate impacts, with no materiality threshold or even a de minimis exception for minor events or immaterial impacts, would impose colossal costs and strain resources at all public companies.''); NG; NYSE Sustainability Advisory Council (June 20, 2022) (''NYSE SAC''); OPC; PPL; Semiconductor Industry Association (June 17, 2022) (''SIA''); Soc. Corp. Gov. (identifying costs related to the ''[d]evelopment of new systems, processes, and controls'' and ''the hiring of additional internal staff and outside consultants''); Sullivan Cromwell; Vodafone; and Williams Cos. (''Williams would also expect a significant increase in core financial statement audit fees due to the additional granular disclosure requirements, the significant expansion of related internal controls related to the new disclosures, and the high degree of judgment and estimation required in developing the disclosed information.'').

[1721] *See, e.g.,* letters from BlackRock; Cleco Corporate Holdings (June 17, 2022) (''Cleco''); Daniel Churay (June 16, 2022); Energy Transfer; Edison Electric Institute and the American Gas

Continued

that the Commission's existing rules elicit sufficient disclosure for investors [1722] or would elicit sufficient disclosure when combined with the Commission's proposed amendments to Regulation S–K.[1723]

A number of commenters recommended alternatives to the proposed financial statement disclosures. For example, some commenters stated that in lieu of the proposed rules, the Commission should instead require registrants to discuss the impact of climate-related matters on the registrant's financial position in Item 303 of Regulation S–K (*i.e.,* MD&A).[1724] Other commenters stated that registrants are already required to disclose material climate-related impacts in MD&A.[1725] A number of commenters recommended that the Commission work with the FASB to determine whether accounting standards should be developed to address climate-related financial statement disclosures or that the Commission should simply refer the development of standards to the FASB.[1726] Other commenters stated that the Commission should instead update or issue new guidance addressing climate-related risk disclosure [1727] or consider requiring disclosure of the financial impacts in a separate report published outside of the financial statements.[1728] Finally, some commenters stated that the proposed financial statement metrics should only apply to registrants in certain sectors or industries, such as the energy sector.[1729]

After consideration of the feedback received from commenters, we are adopting rules that require certain financial statement effects to be disclosed in a note to the financial statements, but with modifications. We appreciate the significant concerns raised by commenters with respect to the potential burdens resulting from the proposed financial statement disclosures, including the adjustments that registrants stated they would need to make to their controls, processes, and accounting records in order to comply with the proposed requirements.[1730] Therefore, we are adopting rules that require registrants to provide decision-useful information to investors but that are significantly narrower in scope than the proposed rules, which should help to mitigate concerns about the potential burdens of the disclosure.

The Commission is not adopting the proposed Financial Impact Metrics and is modifying the scope of the proposed Expenditure Metrics and proposed Financial Estimates and Assumptions in the final rules, including by narrowing several aspects of the final rules as compared to the proposal. Declining to adopt the Financial Impact Metrics will reduce costs and ease many of the burdens that commenters stated would arise as a result of a requirement to disclose financial impacts on a line item basis.[1731] As discussed in greater detail below, the final rules are focused on requiring the disclosure of capitalized costs, expenditures expensed, charges, and losses [1732] incurred as a result of severe weather events and other natural conditions, and capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs, subject to disclosure thresholds.[1733] These capitalized costs, expenditures expensed, charges, and losses represent quantitative information that is derived from transactions and amounts recorded in a registrant's books and records underlying the financial statements. The final rules require registrants to disclose where on the balance sheet and income statement these capitalized costs, expenditures expensed, charges, and losses are presented.[1734] However, the balance sheet and income statement line items where these capitalized costs, expenditures expensed, charges, and losses are presented will be far fewer in number as compared to the number of line items that would have been impacted by the proposed Financial Impact Metrics, which, for example, would have required registrants to disclose changes in revenues due to disruptions of business operations.[1735] To narrow the scope further, the final rules do not require the disclosure of any impacts on the statement of cash flows, as would have been required under the proposed rules.[1736]

In addition, although we are retaining a one percent disclosure threshold in the final rules, registrants will not be required to apply it on a line item basis to determine whether disclosure is required since we are not adopting the proposed Financial Impact Metrics. Instead, as discussed in greater detail below, the final rules require the application of the one percent

Association (June 17, 2022) (''EEI & AGA''); Exxon; Magellan Midstream Partners, L.P. (June 17, 2022) (''Magellan''); State Treasurer of Missouri (June 17, 2022) (''MO Treas.''); MRC Global Inc (June 17, 2022) (''MRC Global''); Richard C. Breeden, Harvey L. Pitt, Phillip R. Lochner Jr., Richard Y. Roberts, Paul S. Atkins (June 17, 2022) (''R. Breeden *et al.*''); and Transocean (June 16, 2022).

[1722] *See, e.g.,* letters from Business Roundtable; Dow, Inc.; LTSE; NG; and NIRI Capital Area Chapter (July 6, 2022) (''NIRI'').

[1723] *See* letter from Deutsche Bank Securities Inc. (June 17, 2022) (''Deutsche Bank'').

[1724] *See, e.g.,* letters from ABA; Airlines for America; Alphabet *et al.;* Amer. Bankers; BDO USA LLP; BPI; California Resources Corporation (June 17, 2022) (''Cal. Resources''); Can. Bankers; CAQ; FEI's Committee on Corporate Reporting (June 17, 2022) (''CCR''); Climate Risk Consortia; Connor Grp.; Diageo; Dominion Energy; Eni SpA; Grant Thornton; LLP; IIB; IIF; Financial Reporting Committee of the Institute of Management Accountants (June 21, 2022) (''IMA''); IPA; JLL (June 17, 2022) (''JLL''); Linklaters LLP (June 17, 2022) (''Linklaters''); Mtg. Bankers; NG; Royal Gold (June 17, 2022); Shearman Sterling; SIFMA AMG; Soc. Corp. Gov. (Sept 9, 2022); T. Rowe Price; Unilever; Walmart; and Wells Fargo.

[1725] *See, e.g.,* letters from BlackRock; ConocoPhillips; Hannon Armstrong; and Sullivan Cromwell.

[1726] *See, e.g.,* letters from ABA; AEPC; API; Autodesk; BDO USA LLP; Bipartisan Policy; BlackRock; BPI; Cal. Resources; Connor Grp.; Joint Trade Associations: CRE Finance Council, Housing Policy Council, Institute for Portfolio Alternatives, Mortgage Bankers Association, NAIOP, the Commercial Real Estate Development Association, Nareit, National Apartment Association, National Association of Home Builders of the United States, National Association of REALTORS, NMHC, The Real Estate Roundtable, CRE Financial Council (June 13, 2022) (''CRE Fin. *et al.*''); Davis Polk; Deutsche Bank; Etsy; IPA; MRC Global; Nareit; OPC; RILA; Shearman Sterling; SIFMA AMG; S.P. Kothari and Craig Lewis (June 17, 2022) (''S.P. Kothari *et al.*''); and Sullivan Cromwell. *See also* letter from AICPA (stating that prescribing accounting principles requires a robust and transparent standard-setting process and advising the Commission to ''consider whether it is ideally positioned to establish new accounting rules on this topic.'').

[1727] *See, e.g.,* letters from BIO; and EMC.

[1728] *See, e.g.,* letters from AFEP (June 17, 2022); AHLA; McCormick; and BIO.

[1729] *See, e.g.,* letters from ACLI; and Soros Fund (''While we believe it is valuable for all companies to evaluate how climate impacts and expenditures are tied to line items in their financial statements, we believe only companies in high emitting industries and large accelerated filers should be required to disclose the proposed financial statement metrics, and we do not believe it should be pursuant to Regulation S–X.'').

[1730] *See supra* note 1720 and accompanying text.

[1731] *See supra* note 1730 and accompanying text.

[1732] While the final rules use the terms ''charges'' and ''losses'' in the disclosure requirements related to expenditures, these terms represent impacts that would have been disclosed under the proposed Financial Impact Metrics and, accordingly, we do not consider these to be an expansion of the proposed disclosure requirements. *See infra* note 1735 for an explanation of the overlap between the proposed Financial Impact Metrics and the proposed Expenditure Metrics.

[1733] *See* 17 CFR 210.14–02(c), (d), and (e).

[1734] *See id. See infra* section K.3.c.i for further discussion of the requirement to disclose where on the balance sheet and income statement the required capitalized costs, expenditures expensed, charges, and losses are presented.

[1735] *See* Proposing Release, section II.F.2. In response to a request for comment included in the Proposing Release, commenters stated that the Financial Impact Metrics and Expenditure Metrics, as proposed, potentially would result in some overlapping disclosures with respect to costs and expenditures (*i.e.,* certain costs included in the aggregate disclosures required by the proposed Expenditure Metrics would also have been captured by the proposed Financial Impact Metrics line item disclosures).

[1736] *See* Proposing Release, section II.F.2 (''A registrant would be required to determine the impacts of severe weather events, other natural conditions, transition activities, and identified climate-related risks described above on each consolidated financial statement line item.'').

disclosure threshold to only two categories of aggregate amounts: (1) expenditures expensed as incurred and losses; and (2) capitalized costs and charges, in both cases incurred as a result of severe weather events and other natural conditions. The final rules use different denominators for the disclosure thresholds as compared to the proposal and include de minimis thresholds to help respond to commenters' concerns about burdens.[1737] The requirement to disclose capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs is not subject to a one percent disclosure threshold. Rather, disclosure is only required if carbon offsets and RECs have been used as material component of a registrant's plans to achieve its disclosed climate-related targets or goals.[1738] As discussed in greater detail above, instead of requiring the disclosure of expenditures related to transition activities in the financial statements as proposed, the final rules will require registrants to disclose material expenditures related to (1) activities to mitigate or adapt to climate-related risk (in management's assessment), (2) disclosed transition plans, and (3) disclosed targets and goals, outside of the financial statements as part of the amendments to Regulation S–K.[1739] The final rules we are adopting seek to realize many of the benefits of the proposed rules in terms of enhanced financial statement disclosure while minimizing the likelihood that issuers will need to undertake costly updates to their internal systems and processes. Physical risks, such as severe weather events and other natural conditions, can significantly affect public companies' financial performance or position.[1740] Investors need disaggregated disclosure of capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions to better understand the effect such events have on the financial statements.[1741] By expanding on the information provided in the financial statements, the final rules will help investors ''assess a registrant's exposure to physical risks,'' [1742] and ''better understand the overall vulnerability of assets . . . [and] loss experience.'' [1743] In addition, the requirement to provide disaggregated disclosure of capitalized costs, expenditures expensed, and losses incurred in connection with the purchase and use of carbon offsets and RECs will provide investors with needed transparency about the financial statement effects of a registrant's purchase and use of carbon offsets and RECs as part of its climate-related business strategy. As such, the disclosure required by the final rules will help investors make better informed investment or voting decisions by eliciting more complete disclosure of financial statement effects and improving the consistency, comparability, and reliability of such disclosures. In this way, the final rules appropriately balance the need for enhanced financial statement disclosures with the potential costs entailed to produce such disclosures given the current state of financial reporting practices.

Consistent with the proposed rules, the final rules require a registrant to include the financial statement disclosures in any filing that is required to include disclosure pursuant to subpart 1500 and that also requires the registrant to include its audited financial statements.[1744] For the avoidance of doubt, this means that a registrant is required to comply with the requirements in Article 14 even if it does not have information to disclose pursuant to subpart 1500, as long as the applicable Commission filing requires the registrant to comply with subpart 1500. Including disclosure of the financial statement effects in a note to the financial statements, as proposed, as opposed to including them outside of the financial statements, such as exclusively in the MD&A section of registrants' filings as recommended by some commenters,[1745] will subject these disclosures to the same financial statement audit and ICFR as similar financial disclosures, which will improve their consistency, quality, and reliability and thereby provide an important benefit to investors.

In addition, the disclosure requirements we are adopting will apply to public companies generally as opposed to only requiring companies in certain industries or sectors to comply with the final rules. The final rules are focused on requiring the disclosure of capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions, which are occurrences that can happen to public companies in any sector or industry, and therefore it would not be appropriate to only require public companies in certain sectors or industries to comply with the rules. The decision not to limit the scope of Article 14 to only public companies in certain sectors or industries is consistent with the approach we are taking with respect to the amendments to Regulation S–K, which similarly are not limited to public companies in certain sectors or industries.

Furthermore, the financial statement disclosure requirements included in the final rules will apply to SRCs and EGCs. A few commenters raised concerns about the application of the proposed

[1737] *See infra* section II.K.3.c.ii for further discussion of the disclosure threshold requirement. In addition, in response to commenters' concerns, we are adopting a principle for attributing an expenditure to a severe weather event or other natural condition and for determining the amount to be disclosed. *See infra* section II.K.3.c.iii.

[1738] *See infra* section II.K.3.c.vi for further discussion of this requirement.

[1739] *See supra* sections II.D.1.c, II.D.2.c, and II.G.3.a.

[1740] *See, e.g.,* Richard Vanderford, *A Punishing Year of Thunderstorms has Led to Record-Breaking Losses,* The Wall Street Journal (Nov. 24, 2023) (stating that thunderstorms (formally known as severe convective storms) ''have so far led to at least $55.67 billion in insured damages in the U.S. this year through Nov. 13 . . . Insured damages from the storms had never before topped $50 billion.''). *See also* NOAA National Centers for Environmental Information, U.S. Billion-Dollar Weather and Climate Disasters (2024), available at *https://www.ncei.noaa.gov/access/billions/* (stating that, in 2023, 28 confirmed weather/climate disaster events with losses exceeding $1 billion each affected the United States, including 1 drought event, 4 flooding events, 19 severe storm events, 2 tropical cyclone events, 1 wildfire event, and 1 winter storm event, with damages totaling at least $92.9 billion); Form Letter F (stating that increasingly severe weather events ''affect numerous corporate assets and operations, putting pressure on essential supply chains, posing harm to facilities, and undermining the ability of businesses to meet targets'' and therefore investors need to be aware of how companies are impacted by these financial risks).

[1741] *See, e.g.,* letters from As You Sow (stating its support for requiring the disclosure of ''costs of physical risks,'' among other things, in the financial statements); Boston Trust (supporting the disclosure of expenditures related to severe weather events); CalPERS (stating that it is important to require the disclosure of the impact of ''extreme temperatures, flooding, drought, [and] wildfires'' in the financial statements); ICGN (supporting the disclosure of how physical impacts are accounted for in the financial statements); Maple Brown (stating that requiring disclosures in the financial statements would make it ''better equipped to price in potential risks'' such as ''the physical risks associated with more frequent and extreme weather events''); MNSBI (stating a need for disaggregated physical and transition risk-related impacts on the financial statements); and UCS (''Requiring issuers to disclose disaggregated financial metrics that will be subject to audit must remain in the rule.'').

[1742] *See* letter from Boston Trust.

[1743] *See* letter from IAA.

[1744] *See* 17 CFR 210.14–01(a). For example, the note to the financial statements will not be required in a Form 10–Q filing. Similarly, the note to the financial statements will not be required for unaudited interim financial statements included in a registration statement. *See, e.g.,* 17 CFR 210.3–01, 3–02, 8–03, 10–01. *See also infra* note 2380 and section II.L.3, which discuss the applicability of the rules to foreign private issuers.

[1745] *See supra* note 1724 and accompanying text. Registrants are reminded that they may nonetheless have an obligation to discuss climate-related information in MD&A if the information meets the requirements for disclosure under Item 303 of Regulation S–K. *See* 17 CFR 229.303; 2010 Guidance.

financial statement disclosure requirements to smaller companies, including SRCs.[1746] We considered whether it would be appropriate to exempt SRCs and EGCs from the financial statement disclosure requirements. We recognize that SRCs generally may avail themselves of the scaled disclosure requirements in Article 8 of Regulation S–X. However, as the Commission expressed in the Proposing Release, we determined that it is appropriate to apply the financial statement disclosure requirements to SRCs and EGCs because severe weather events and other natural conditions can pose significant risks to the operations and financial conditions of all registrants. We expect that the narrower scope of the final rules we are adopting will significantly mitigate the costs and burdens for registrants of all sizes as compared to the proposed rules, including certain aspects of the final rules that may particularly benefit SRCs and EGCs, such as a de minimis disclosure threshold, which is discussed in further detail below. The final rules also provide SRCs and EGCs with a longer phased in compliance period than other registrants, which will give them more time to prepare to comply with the final rules.[1747] In addition, as explained in greater detail below in section II.L.3, the final rules, including the amendments to Regulation S–X, will not apply to a private company that is a party to a business combination transaction, as defined by Securities Act Rule 165(f), involving a securities offering registered on Form S–4 or F–4.

We do not agree with those commenters who stated that the Commission should not adopt the amendments and instead refer the matter to the FASB.[1748] Although the Commission has recognized the FASB's financial accounting and reporting standards as ''generally accepted'' for purposes of the Federal securities laws, as explained above in section II.B, the Securities Act and the Exchange Act (as confirmed by the Sarbanes-Oxley Act of 2002) make it clear that the Commission has the ultimate responsibility and broad authority to set accounting standards, principles, and financial statement disclosure requirements for registrants.[1749] The Commission is exercising its authority to prescribe the financial statement disclosure requirements included in the final rules in response to the need expressed by investors for information related to the financial statement impacts of severe weather events as discussed elsewhere in this release.[1750] Significantly, the rules we are adopting amend both Regulation S–K, which prescribes the narrative disclosure requirements for registrants' periodic filings with the Commission, and Regulation S–X, which prescribes the requirements for the financial statements included in those filings. Therefore, adopting financial statement requirements as part of this rulemaking will provide for consistent disclosure of information across registrants' public filings and avoid potential inconsistencies that could arise through an approach that requires both Commission and independent FASB action.[1751] In addition, the final rules will apply regardless of whether the registrant applies U.S. GAAP, IFRS, or local GAAP, and therefore rulemaking by the Commission ensures that registrants are subject to the same requirements since the adoption of standards by the FASB would be limited to registrants that apply U.S. GAAP to their financial statements. Under each of these circumstances, it is appropriate for the Commission to adopt rules to ensure that investors are receiving the consistent, comparable, and reliable information they need to make timely investing and voting decisions.[1752]

2. Financial Impact Metrics

a. Proposed Rules

The Commission proposed to amend Regulation S–X to require a registrant to disclose Financial Impact Metrics. More specifically, the Financial Impact Metrics would have required a registrant to disclose the financial impacts from severe weather events and other natural conditions and transition activities on any relevant line item in the registrant's consolidated financial statements during the fiscal years presented.[1753] The Commission explained in the Proposing Release that this proposed requirement was intended to complement the proposed requirement in Item 1502(d) of Regulation S–K that called for a registrant to provide a narrative discussion of whether and how any of its identified climate-related risks have affected or are reasonably likely to affect the registrant's consolidated financial statements.[1754] The Commission also explained in the Proposing Release that requiring disclosure of the impacts from severe weather events and other natural conditions and transition activities would capture a broad spectrum of physical and transition risks.[1755] To aid in the comparability of disclosures and to assist issuers, the proposed rules identified flooding, drought, wildfires, extreme temperatures, and sea level rise as non-exclusive examples of severe weather events and other natural conditions that may require

[1746] *See, e.g.,* letters from Abrasca; Cohn Rez.; Henry H. Huang (Apr. 16, 2022) (''H. Huang''); NAM; US SBA; and Volta.

[1747] *See infra* section II.O.3 for a discussion of the compliance dates for the final rules.

[1748] *See supra* note 1726 and accompanying text. Some commenters, however, stated that the Commission should not defer to the FASB. *See, e.g.,* letters from Ceres; and CFA Institute.

[1749] *See, e.g.,* 15 U.S.C. 77s(a) (Among other things, the *Commission* shall have authority, for the purposes of this subchapter, to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the *Commission* deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the *issuer,* or any person under direct or indirect common control with the *issuer.* The rules and regulations of the *Commission* shall be effective upon publication in the manner which the *Commission* shall prescribe); 15 U.S.C. 7218(c) (Nothing in this Act, including this section and the amendment made by this section, shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.); and *Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter,* Release No. 33–8221 (Apr. 25, 2003) [68 FR 23333, 23334 (May 1, 2003)] (While the Commission consistently has looked to the private sector in the past to set accounting standards, the securities laws, including the Sarbanes-Oxley Act, clearly provide the Commission with authority to set accounting standards for public companies and other entities that file financial statements with the Commission.). *See also* FASB Accounting Standards Codification (''FASB ASC'') Topic 105–10–10–1 (''Rules and interpretive releases of the Securities and Exchange Commission . . . are also sources of authoritative GAAP for SEC registrants.'').

[1750] *See supra* note 1741 and accompanying text.

[1751] The final rules establish presentation and disclosure requirements; they do not alter or establish recognition and measurement requirements. As discussed in greater detail above in section II.B, the Commission has previously adopted presentation and disclosure requirements regarding the form and content of the financial statements. For example, Rule 5–02 of Regulation S–X prescribes the various line items and certain additional disclosures that should appear on the face of the balance sheet or related notes. *See* 17 CFR 210.5–02.

[1752] *See General Revision of Regulation S–X,* Release No. 6233 (Sept. 25, 1980) [45 FR 63660, 63661 (Sept. 25, 1980)] (explaining, in connection with amendments to Regulation S–X, that the Commission does not believe ''any decision to require particular disclosures . . . through rulemaking in [Regulation] S–X, conflicts with the basic policy of relying on the FASB for leadership in establishing financial accounting and reporting standards'').

[1753] *See* Proposing Release, section II.F.2.

[1754] *See id.*

[1755] *See id.*

disclosure.[1756] The Commission further noted that there has been an increased recognition of the current and potential effects, both positive and negative, of these events and associated physical risks on a registrant's business as well as its financial performance and position.[1757] With respect to transition risks, the Commission proposed to require a registrant to disclose the financial impact of any identified transition risks and any efforts to reduce GHG emissions or otherwise mitigate exposure to transition risks (collectively, ''transition activities'') on any relevant line items in the registrant's consolidated financial statements during the fiscal years presented.[1758]

The proposed rules prescribed a specific quantitative disclosure threshold for the Financial Impact Metrics. Specifically, a registrant would have been required to disclose the impacts of severe weather events, other natural conditions, and transition activities on the consolidated financial statements included in the relevant filing unless the aggregated impact of the severe weather events, other natural conditions, and transition activities was less than one percent of the total line item for the relevant fiscal year.[1759] The Commission stated that this quantitative threshold would provide a bright-line standard for registrants and should reduce the risk of underreporting such information.[1760] The Commission further stated that the proposed quantitative threshold could promote comparability and consistency among a registrant's filings over time and among different registrants compared to a more principles-based approach.[1761] The Commission also pointed out that it has used similar one-percent thresholds in other contexts (within the financial statements and without),[1762] and that, more generally, other rules such as 17 CFR 229.103 and 17 CFR 229.404 use quantitative disclosure thresholds to facilitate comparability, consistency, and clarity in determining when information must be disclosed.[1763]

Under the proposed rules, impacts would have, at a minimum, been required to be disclosed on an aggregated, line-by-line basis for all negative impacts and, separately, on an aggregated, line-by-line basis for all positive impacts.[1764] For purposes of determining whether the disclosure threshold has been met, a registrant would be required to aggregate the absolute value of the positive and negative impacts on a line-by-line basis, which the Commission explained would better reflect the significance of the impact of severe weather events, other natural conditions, and transition activities on a registrant's financial performance and position.[1765]

To provide additional clarity, the proposed rules included the following examples of disclosures that may be required to reflect the impact of the severe weather events and other natural conditions on each line item of the registrant's consolidated financial statements (*e.g.,* line items of the consolidated income statement, balance sheet, or cash flow statement):

- Changes to revenues or costs from disruptions to business operations or supply chains;
- Impairment charges and changes to the carrying amount of assets (such as inventory, intangibles, and property, plant, and equipment) due to the assets being exposed to severe weather, flooding, drought, wildfires, extreme temperatures, and sea level rise;
- Changes to loss contingencies or reserves (such as environmental reserves or loan loss allowances) due to impact from severe weather events; and
- Changes to total expected insured losses due to flooding or wildfire patterns.[1766]

With respect to the financial impacts of transition activities, the proposed rules included the following examples of potential impacts:

- Changes to revenue or cost due to new emissions pricing or regulations resulting in the loss of a sales contract;
- Changes to operating, investing, or financing cash flow from changes in upstream costs, such as transportation of raw materials;
- Changes to the carrying amount of assets (such as intangibles and property, plant, and equipment), for example, due to a reduction of the asset's useful life or a change in the asset's salvage value by being exposed to transition activities; and
- Changes to interest expense driven by financial instruments such as climate-linked bonds issued where the interest rate increases if certain climate-related targets are not met.[1767]

The Commission noted in the Proposing Release that an analogous approach to disaggregated, or separately stated, disclosure has been taken in other contexts within the financial statements and elsewhere, including in segment reporting,[1768] and that the importance of disaggregated disclosure in a registrant's financial statements is also supported by concepts set forth in FASB ASC Topic 606 *Revenue from Contracts with Customers* and IFRS 15 *Revenue from Contracts with Customers.*[1769] The Commission further noted that disaggregation of certain financial statement line items is also

[1756] *See id.* With the exception of wildfires, all of these examples were identified by the Commission more than a decade ago in its 2010 Guidance as events that could potentially affect a registrant's operations and results.

[1757] *See id.* (citing, among other sources, the FSOC's Report on Climate Related Financial Risk 2021, which discussed significant costs from the types of events identified in the proposed rule).

[1758] *See id.*

[1759] *See id.*

[1760] *See id.*

[1761] *See id.*

[1762] *See, e.g.,* 17 CFR 210.5–03.1(a) (stating that if the total of sales and revenues reported under this caption includes excise taxes in an amount equal to 1% or more of such total, the amount of such excise taxes shall be shown on the face of the statement parenthetically or otherwise) and 17 CFR 210.12–13 (requiring disclosure of open option contracts by management investment companies using a 1% of net asset value threshold, based on the notional amounts of the contracts).

[1763] *See* Proposing Release, section II.F.2 (citing 17 CFR 229.103(b)(2) (requiring disclosure of a legal proceeding primarily involving a claim for damages if the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis), (c)(3)(iii) (requiring disclosure of a judicial proceeding that has been enacted or adopted regulating the discharge of materials into the environment or primarily for the purpose of protecting the environment, if a governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions or monetary sanctions, exclusive of interest and costs, of less than $300,000) and 17 CFR 229.404(a) (requiring disclosure of any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, in which the registrant was or is to be a participant and the amount involved exceeds $120,000, and in which any related person had or will have a direct or indirect material interest).

[1764] *See id.*

[1765] *See id.*

[1766] *See id.*

[1767] *See id.*

[1768] For example, in segment reporting, a registrant must present within its consolidated financial statements a separate presentation of certain financial statement line items for each segment. *See* FASB ASC Topic 280 *Segment Reporting* and IFRS 8 *Operating Segments* (requiring segment reporting disclosures to be included in the audited financial statements). The Commission has noted the importance of disaggregated disclosure in the segment reporting context, stating that it ''has long been aware of the importance of meaningful segment information to reasoned investment decision-making.'' *See Industry and Homogenous Geographic Segment Reporting,* Release No. 33–6514 (Feb. 15, 1984) [49 FR 6737, 6738 (Feb. 23, 1984)]. For simplicity, we do not refer to the corresponding IFRS in each instance where we reference the FASB ASC. Accordingly, references in this release to the FASB ASC should be read to refer also to the corresponding IFRS for foreign private issuers applying those standards.

[1769] *See* Proposing Release, section II.F.2. FASB ASC Topic 606 and IFRS 15 require, among other things, disclosure of disaggregated revenue recognized from contracts with customers into categories that depict how the nature, amount, timing, and uncertainty of revenue and cash flows are affected by economic factors.

required by Article 5 of Regulation S–X, which calls for separate disclosure of specific balance sheet and income statement line items when practicable or when certain percentage thresholds are met, depending on the nature of the information.[1770]

Finally, the Commission proposed to require registrants to disclose the impacts of any climate-related risks identified pursuant to proposed Item 1502(a) of Regulation S–K—both physical risks and transition risks—on any of the financial statement metrics.[1771]

b. Comments

i. General Comments

Some commenters supported the proposal to require disclosure of Financial Impact Metrics.[1772] These commenters generally indicated that the proposed disclosures would be used by investors to make investment and voting decisions.[1773] Specifically, one commenter stated that the Financial Impact Metrics would be used by investors in voting, engaging, buying, and selling decisions and would help investors determine whether the company is ''properly oriented to manage for the long-term.'' [1774] Some commenters asserted that the proposed Financial Impact Metrics would provide investors with the information they need in a standardized or comparable way [1775] and that the level of detail required would be helpful for investors.[1776]

Commenters also asserted that the proposed Financial Impact Metrics are necessary to fill a void in the information currently provided to investors. For example, one commenter stated that requiring disclosure on a line item basis would ''overcome the longstanding problem of registrant climate risk disclosure that is too generic and boilerplate, or non-existent, despite repeated efforts by the [Commission] to encourage more detailed information in this broad area of risk.'' [1777] Some of these commenters suggested that the Commission provide additional guidance to facilitate the disclosure of the Financial Impact Metrics.[1778]

Some commenters generally supported requiring the disclosure of climate-related impacts in the financial statements, but they identified certain challenges and recommended certain revisions to the proposed Financial Impact Metrics.[1779] For example, as discussed in greater detail below, a number of these commenters recommended that the Commission replace the one percent disclosure threshold with a requirement to disclose the financial impacts if material.[1780] Several commenters recommended revising the line-by-line disclosures to take a less granular or less disaggregated approach.[1781]

Some commenters stated that the Commission should require disclosure of climate-related events and transition activities on a separate basis as proposed.[1782] One commenter stated that it supported the proposed requirement to separately report climate-related events and transition activities because it would be consistent with the TCFD framework and facilitate investors' understanding of the disclosures.[1783] One commenter stated that the Commission should instead require climate impacts to be considered in the aggregate, rather than distinguishing between those attributable to severe weather events versus transition activities since the distinction between the two may not always be clear.[1784] Other commenters recommended limiting the proposed disclosure to the impacts of severe weather events and other natural conditions and eliminating the proposed requirements related to identified climate-related risks and transition activities.[1785] One of these commenters explained that this would be consistent with an approach that only requires disclosure of impacts that would be recognized under GAAP.[1786] Another commenter stated that it would not support a rule that only required disclosures for severe weather events because this would result in other climate risks remaining ''hidden to investors.'' [1787]

Conversely, many of the commenters who provided feedback on the proposed Financial Impact Metrics did not support the proposed requirements.[1788]

[1770] *See* Proposing Release, section II.F.2. The analogies presented in this paragraph are not intended to imply that FASB ASC Topic 280, IFRS 8 or other concepts would have to be applied when accounting for and disclosing the financial statement effects required by the final rules. The analogies are also not intended to imply that the determination of when disclosure may be required and how that determination is made is the same across all these concepts.

[1771] *See* Proposing Release, section II.F.2.

[1772] *See, e.g.,* letters from A. Cramer; A. Payton (June 17, 2022); AGs of Cal. *et al.;* American Academy of Actuaries (June 17, 2022) (''Amer. Academy Actuaries''); Anthesis; Arjuna Capital (June 17, 2022) (''Arjuna''); As You Sow; Better Markets; Bloomberg; BMO Global Asset Mgmt.; Boston Trust; CalPERS; CalSTRS; Carbon Tracker; Center Amer. Progress; CFB; Church Investment Group (June 15, 2022) (''Church Grp.''); Climate Accounting Audit Project; Climate Advisers; CSB; Dana Invest.; D. Higgins; Domini Impact; Ecofin; ERM CVS; H. Huang; IASJ; ICGN; Impax Asset Mgmt.; Inherent Grp.; Mercy Investment Services (June 16, 2022) (''Mercy Invest.''); M. Hadick; Miller/Howard; Morningstar; The Committee on Mission Responsibility Through Investment of the Presbyterian Church (June 14, 2022) (''MRTI''); Northern Trust; NY City Comptroller; NY St. Comptroller; Parnassus; PGIM; PRI; R. Bentley; R. Burke; U.S. Reps. Castor *et al.;* RMI; Rockefeller Asset Mgmt.; R. Palacios; Sarasin; Seattle City ERS; Sens. J. Reed *et al.;* Seventh Gen.; SFERS; SKY Harbor; Terra Alpha; UAW Retiree; UCS; UNCA Divest (June 15, 2022) (''UNCA''); United Church Funds (June 15, 2022); USIIA; US SIF; WSP; and Xpansiv Ltd. (June 17, 2022) (''Xpansiv''). Certain of these commenters stated they also would support requiring registrants to disclose changes to the cost of capital resulting from climate-related events. *See, e.g.,* letters from Carbon Tracker; Eni SpA; and ICGN. *But see* letter from TotalEnergies (stating that the Commission should not require disclosure of changes to cost of capital).

[1773] *See, e.g.,* letters from Anthesis; Better Markets; BMO Global Asset Mgmt.; Church Grp.; ICGN; Morningstar; Parnassus; PGIM; PRI; SKY Harbor; and Terra Alpha.

[1774] *See* letter from CalPERS.

[1775] *See, e.g.,* letters from Carbon Tracker; RMI; and UCS.

[1776] *See* letter from PGIM; and SKY Harbor (stating that it would avail itself of ''the additional detail and metrics'' to further assess impacts on a registrant's financial condition).

[1777] *See* letter from Center Amer. Progress. *See also* letter from Amer. Academy Actuaries.

[1778] *See, e.g.,* letters from Miller/Howard; and RMI. *See also, e.g.,* letters from Eni SpA; and TotalEnergies

[1779] *See, e.g.,* letters from AFG (June 17, 2022); BC IM Corp.; BHP; Calvert; CEMEX; Ceres; CFA Institute; CO PERA; Dell; Eni SpA; Eversource; IAA; Inclusive Cap.; PwC; TIAA; and TotalEnergies.

[1780] *See, e.g.,* letters from AFG; BC IM Corp.; BHP; CEMEX; CO PERA; Dell; Eni Spa; Eversource; IAA; and TotalEnergies.

[1781] *See, e.g.,* letters from BHP; Eni SpA; ICAEW; PIMCO; and TotalEnergies.

[1782] *See, e.g.,* letters from Anthesis; Eni SpA; H. Huang; Morningstar; and TotalEnergies. One commenter recommended that the Commission highlight elements of the proposed financial statement metrics where one specific type of transition activity—carbon offsets—may be relevant. *See* letter from D. Hileman Consulting (similarly suggesting the Commission highlight insurance).

[1783] *See* letter from ISS ESG.

[1784] *See* letter from Deloitte & Touche. *See also* letter from KPMG (noting that the separation between physical and transition risks may not always be feasible and recommending ''the final rule allow for a hybrid categorization, with the distinction being explained in the contextual information'').

[1785] *See, e.g.,* letters from BPI (stating that the proposed amendments to Regulation S–X ''should be removed, or, at a minimum, significantly narrowed''); Climate Risk Consortia (generally opposing the proposed amendments to Regulation S–X but recommending revisions if retained in the final rules); Dell (recommending revisions to the proposed rules to enhance the operation of the requirements while ensuring that investors receive material disclosure); Eversource; and SIFMA (generally opposing the proposed amendments to Regulation S–X but recommending revisions if retained in the final rules).

[1786] *See* letter from SIFMA.

[1787] *See* letter from Sarasin.

[1788] *See, e.g.,* letters from Association of American Railroads (June 17, 2022) (''AAR''); ABA; ACA Connects; ACCO; ACLI; AEPC; AFEP; AFPA; AFPM; AHLA; Airlines for America; Alliance Resource; Allstate; Alphabet *et al.;* Amazon; Amer.

Commenters generally asserted that it would not be feasible to provide the disclosures as proposed.[1789] Several commenters explained that companies currently do not track climate-related impacts by financial statement line item and companies do not have processes in place to do so under current accounting systems.[1790] A number of commenters stated that registrants would be required to create new accounting systems, processes, controls, and infrastructure to track, quantify, and disclose the proposed Financial Impact Metrics.[1791] Many commenters stated that the proposed Financial Impact Metrics would be burdensome and costly.[1792]

Some commenters questioned whether the proposed Financial Impact Metrics would benefit investors. For example, a number of commenters stated that the proposed Financial Impact Metrics would likely result in non-comparable or inconsistent data across registrants and therefore would not be useful or relevant to investors.[1793] In addition, one registrant stated that investors have not asked them to provide the level of detail that the Financial Impact Metrics would require.[1794] Some commenters pointed out that requiring registrants to disclose the Financial Impact Metrics on every line item could disincentivize companies from voluntarily disaggregating information in their financial statements, which would result in a loss of information for investors.[1795] One commenter asserted that the proposed Financial Impact Metrics are not included in the TCFD framework and it is unclear that these requirements would be adopted globally, which, in this commenter's view, would limit their usefulness for global investors and potentially undermine investment in U.S. registrants.[1796]

Other commenters expressed accounting-related concerns with respect to the Financial Impact Metrics. For example, some commenters asserted that certain of the disclosures that would be required by the proposal, such as disclosures regarding changes to revenue, would not be consistent with GAAP.[1797] Similarly, some commenters asserted that no accounting principles or guidance exist for certain of the proposed Financial Impact Metrics, which would make it difficult for auditors to opine on this information.[1798] In addition, a few commenters stated that the proposed Financial Impact Metrics would require public companies to seek information from the private companies they do business with and that private companies may not have the capabilities to respond to those inquiries.[1799]

Further, a number of commenters stated that it would be very difficult or impossible to accurately estimate the potential future or unrealized impacts of severe weather events and transition activities by financial statement line item.[1800] Some commenters also raised concerns about a registrant's ability to include indirect effects of climate-related events when disclosing financial impacts.[1801]

ii. Disclosure Threshold

Several commenters specifically expressed their support for the one percent disclosure threshold.[1802] Some of these commenters stated that a one percent disclosure threshold would reduce the risk of underreporting.[1803] For example, one commenter explained that setting the disclosure threshold too high could result in companies failing to undertake the necessary inquiry because they may conclude there is no way the threshold would be triggered.[1804] A few commenters explained that a percentage threshold is beneficial because it provides registrants and auditors with bright-line guidance.[1805] Other commenters asserted the Commission acted within its authority in prescribing a particular percentage disclosure threshold.[1806]

Conversely, many commenters stated that they did not support the proposed

Bankers; APCIA; API; Barrick Gold; BDO USA LLP; BlackRock; BNP Paribas; BOA; BPI; Business Roundtable; CA Bankers; Cal. Resources; Can. Bankers; CCR; Chamber; ChampionX Corporation (June 17, 2022) (''ChampionX''); Chevron; Citigroup; Cleary; Cleco; Cleveland Cliffs; Climate Risk Consortia; Cohn Rez; Connor Grp.; ConocoPhillips; Corteva; CREFC; CRE Fin. *et al.;* D. Burton, Heritage Fdn; Dominion Energy; Dow; EEI & AGA; Energy Transfer; EMC; Energy Infrastructure; Electric Power Supply Association (June 17, 2022) (''EPSA''); Ernst & Young LLP; Exxon; FDRA; FedEx; Fed. Hermes; Fidelity; G. Farris; GM; GPA Midstream; HP; IADC; IC; ICI; ID Ass. Comm.; IIB; IIF; IMA; INGAA; IPA; Information Technology Industry Council (June 17, 2022) (''ITIC''); K. Connor; LSTA; LTSE; Magellan; Marathon; Microsoft; Mid-Size Bank; Moody's; MO Treas.; MRC Global; Mtg. Bankers; NACCO; NAM; Nareit; National Electrical Manufacturers Associations (June 17, 2022) (''NEMA''); NIRI; NMA; National Multifamily Housing Council and National Apartment Association (June 17, 2022) (''NMHC *et al.*''); NRP; NYSE SAC; OPC; Petrol. OK; PPL; R. Breeden, *et al.;* Real Estate NY; Reinsurance AA; RILA; Royal Gold; Shearman Sterling; Shell; SIA; SIFMA; SMME; Soc. Corp. Gov.; Soros Fund; SouthState; Southwest Airlines Co. (June 17, 2022) (''Southwest Air''); S.P. Kothari *et al.;* State St.; Sullivan Cromwell; Tapestry Networks' Audit Committee Leadership Network (June 16, 2022) (''Tapestry Network''); Transocean; Travelers; TRC; T. Rowe Price; Tucson Electric Power (June 16, 2022) (''Tucson Electric''); Vodafone; Walmart; Western Energy Alliance and the U.S. Oil & Gas Association (June 15, 2022) (''WEA/USOGA''); Wells Fargo; Western Midstream; and Williams Cos.

[1789] *See, e.g.,* letters from ABA; ACLI; AEPC; Airlines for America; BNP Paribas; BOA; BPI; CCR; Corteva; GM; ITIC; LSTA; Marathon; Mtg. Bankers; NACCO; and Soc. Corp. Gov.

[1790] *See, e.g.,* letters from ABA; ACLI; AEPC; APCIA; Chamber; Cohn Rez.; GM; IMA; INGAA; LSTA; Marathon; Mid-Size Bank; NACCO; NAM; Nareit; RILA; SMME; and Williams Cos.

[1791] *See, e.g.,* letters from ABA; Abrasca; ACA Connects; Airlines for America; Alliance Resource; Amer. Bankers; API; BlackRock; Chamber; Citigroup; Cleco; Climate Risk Consortia; Cohn Rez.; ConocoPhillips; Corteva; Deloitte & Touche; Deutsche Bank; Ernst & Young LLP; FedEx; Grant Thornton; HP; IC; ICI; IIB; INGAA; Linklaters; Microsoft; NG; NRF; NYSE SAC; OPC; Performance Food Group Company (June 17, 2022) (''PFG''); PPL; Salesforce; Shell; SIA; Soc. Corp. Gov.; Southwest Air; Transocean; TRC; Uber; United Air; Vodafone; and Williams Cos.

[1792] *See, e.g.,* letters from ACA Connects; AFPA; AFPM; Airlines for America; Alliance Resource; APCIA; BlackRock; Cleco; Corteva; EEI & AGA; Exxon; GM; Grant Thornton; IADC; NAFO; NEMA; NOV Inc. (June 16, 2022) (''NOV''); NYSE SAC; OPC; PFG; PPL; Professional Services Council (June 17, 2022) (''PSC''); Salesforce; Shell; Soc. Corp. Gov.; Southwest Air; State St.; Sullivan Cromwell; TRC; United Air; WEA/USOGA; and Western Midstream.

[1793] *See, e.g.,* letters from AFEP; AFPM; Alphabet *et al.;* Amazon; Barrick Gold; BP; Business Roundtable; Cal. Resources; Chevron; Cleveland Cliffs; CRE Fin. *et al.;* Dominion Energy; Energy Infrastructure; EPSA; Exxon; ICI; ITIC; IPA; JPN Bankers; Moody's; NAFO; Nareit; NG; NMA; NYSE SAC; Transocean; Travelers; T. Rowe Price; Vodafone; Walmart; and Western Midstream.

[1794] *See* letter from Corteva.

[1795] *See, e.g.,* letters from ABA; BDO USA LLP; and Energy Infrastructure.

[1796] *See* letter from Dow. Several commenters more generally asserted that registrants should not be required to disclose information that exceeds the scope of the TCFD framework, such as the proposed Financial Impact Metrics. *See, e.g.,* letters from Blackrock; and MFA.

[1797] *See, e.g.,* letters from AAR; ABA; AFEP; Alphabet *et al.;* Amazon; APCIA; Autodesk; BOA; Business Roundtable; CCR; Chamber; Grant Thornton; IADC; INGAA; JLL; KPMG; Nutrien; Sullivan Cromwell; Tapestry Network; Transocean; Travelers; Tucson Electric; and Unilever. *See also* letter from Deloitte & Touche (stating that the Commission should consider providing further guidance on how to calculate the estimated loss of revenue from disruptions to business operations).

[1798] *See, e.g.,* letters from Climate Risk Consortia; G. Farris; Nareit; Nutrien; and Walmart.

[1799] *See, e.g.,* letters from Atlas Sand; Brigham; and ConocoPhillips.

[1800] *See, e.g.,* letters from AIC; Business Roundtable; and D. Burton, Heritage Fdn.

[1801] *See, e.g.,* letters from BHP; Chamber; GPA Midstream; Grant Thornton; KPMG; Nareit; PGIM; Williams Cos.; and Volta.

[1802] *See, e.g.,* letters from AGs of Cal. *et al.;* CalPERS; Carbon Tracker; Center Amer. Progress; CFA; Climate Advisers; Dana Invest.; ICGN; Impax Asset Mgmt.; MN SBI (encouraging the Commission to implement reporting thresholds for physical events separately from reporting thresholds for transition activities and not permit netting); Sarasin; Sens. J. Reed *et al.;* and US SIF.

[1803] *See, e.g.,* letters from CalPERS; and US SIF.

[1804] *See* letter from CalPERS.

[1805] *See, e.g.,* letters from Carbon Tracker; and Sens. J. Reed *et al.*

[1806] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* and Carbon Tracker.

disclosure threshold of one percent.[1807] A number of these commenters asserted that the threshold was too low [1808] and it would result in an excessive amount of detail, which would be immaterial and not useful to investors.[1809] Several commenters stated that it could confuse investors because investors could equate the level of detail that would be disclosed with a level of precision that is not consistent with the nature of the disclosures.[1810] Some commenters asserted that requiring disclosure at a one percent threshold would give disproportionate prominence to the proposed financial statement metrics relative to other risks addressed in the financial statements.[1811]

Other commenters were concerned that a one percent disclosure threshold would not result in consistent and comparable disclosure because the reported line items in the financial statements can vary significantly across registrants.[1812] A few commenters stated that applying the one percent disclosure threshold on a line item basis could result in only partial disclosure of expenditures related to a climate-related event since the total impact could be recorded in multiple financial statement line items, which would diminish the usefulness of the information to investors.[1813] In addition, some commenters asserted that registrants would not be able to calculate the monetary value for the one percent disclosure threshold until the end of the relevant period, which would require registrants to evaluate each transaction to determine if it counts towards the threshold.[1814]

Other commenters stated that one percent is significantly below the five percent ''rule of thumb'' for materiality used by many registrants and auditors,[1815] and that, in their view, a one percent disclosure threshold is not consistent with existing guidance from the Commission staff.[1816] Several commenters stated that the examples provided in the Proposing Release of other one percent disclosure thresholds were not comparable.[1817] For example, with respect to the one percent disclosure threshold applicable to excise taxes, one commenter asserted that, unlike excise taxes, registrants would not be able to precisely measure the impacts of severe weather events and transition activities, and therefore the two situations are distinguishable.[1818] A few commenters questioned the Commission's authority to establish a one percent disclosure threshold.[1819] Several commenters also stated that the proposed line item disclosure threshold is not aligned with the TCFD framework,[1820] and another commenter stated that the TCFD framework provides registrants with more flexibility to describe financial impacts.[1821]

Other commenters asserted that a one percent threshold would place an unreasonable burden on smaller companies.[1822] For example, one commenter asserted that it is more likely that smaller companies' impacts would exceed the one percent disclosure threshold.[1823] In addition, some commenters stated that the Commission did not adequately justify or explain its rationale for using a one percent disclosure threshold.[1824]

Other commenters raised concerns about the ability to audit the disclosures triggered by the one percent threshold or that the threshold could increase inefficiencies and costs associated with the audit.[1825] Specifically some of these commenters stated that the proposed one percent threshold may lead registrants to conclude that the one percent threshold is a de facto materiality threshold and should be applied to other financial statement disclosures that are triggered by materiality.[1826]

Due to these and other concerns, many commenters stated that if the proposed Financial Statement Metrics are retained in the final rules, then the Commission should require disclosure only if the impacts are material.[1827] One

[1807] *See, e.g.,* letters from American Apparel & Footwear Association (June 17, 2022) (''AAFA''); ABA; AFPA; AFPM; Airlines for America; Amer. Bankers; Amer. Chem.; API; Beller *et al.;* B. Herron; BIO; Bipartisan Policy; BlackRock; BOA; BP; Business Roundtable; Chamber; Chevron; Citigroup; ConocoPhillips; Cummins Inc. (June 17, 2022) (''Cummins''); Dell; Deloitte & Touche; Deutsche Bank; Devon Energy; Dow; Enel Group (June 17, 2022) (''Enel''); Ernst & Young LLP; Electronic Transactions Association (June 16, 2022) (''ETA''); Exxon; FHL Bank Des Moines; Fidelity; Fortive Corporation (June 8, 2022) (''Fortive''); G. Farris; GPA Midstream; Grupo Bancolombia (June 17, 2022); Healthcare Distribution Alliance (June 16, 2022) (''HDA''); HP; IAA; IADC; IC; ICAEW; ICI; INGAA; ITIC; K. Connor; KPMG; Linklaters; LSTA; Marathon; McCormick; MFA; Mid-Size Bank; NMHC *et al.;* NOIA; The National Restaurant Association and the Restaurant Law Center (June 16, 2022) (''NRA/RLC''); NRF; NYSE SAC; Occidental Petroleum; Petrol. OK; RE ER; Reinsurance AA; RILA; Salesforce; SEC Professionals Group (June 16, 2022) (''SEC Professionals''); Redington (June 17, 2022) (''Redington''); Shearman Sterling; Shell; SIA; SIFMA; Soc. Corp. Gov.; Southwest Air; State St.; Trane Technologies plc (June 16, 2022) (''Trane''); Transocean; Travelers; TRC; T. Rowe Price; Western Midstream; and Zions.

[1808] *See, e.g.,* letters from ABA; Abrasca; AFEP; AFPA; Alliance Resource; Allstate; APCIA; BIO; BlackRock; Business Roundtable; CA Bankers; Cal. Resources; CAQ; Cleary Gottlieb; Climate Risk Consortia; ConocoPhillips; CO PERA; Deloitte & Touche; Energy Transfer; IADC; IIB; LTSE; Marathon; MFA; NASBA; NG; NRA/RLC; NRP; NYSE SAC; PPL; PwC; Reinsurance AA; Salesforce; SIA; SouthState; State St.; Transocean; Tyson; and Warner Music.

[1809] *See, e.g.,* letters from AEPC; AFEP; AFG; AFPM; AllianceBernstein; Allstate; Alphabet *et al.;* APCIA; ARC–A&A; Barrick Gold; BHP; Business Roundtable; BPI; CCR; ChampionX; Cleary Gottlieb; Cleco; Climate Risk Consortia; ConocoPhillips; Dell; Deloitte & Touche; Deutsche Bank; Dominion Energy; Energy Transfer; EPSA; FHL Bank Des Moines; G. Farris; HP; IADC; IC; IIB; IIF; ITIC; JLL; LTSE; Magellan; Marathon; McCormick; MFA; Mid-Size Bank; NACCO; NG; NRP; PGIM; PwC; Shearman Sterling; SouthState; Southwest Air; Transocean; TRC; T. Rowe Price; Tucson Electric; and Warner Music.

[1810] *See, e.g.,* letters from CA Bankers; Can. Bankers; Deloitte & Touche; ICAEW; Redington; and RILA.

[1811] *See, e.g.,* letters from AAR; AEPC; Airlines for America; Alliance Resource; Baker Tilly; BCSE; Cal. Resources; CAQ; Chevron; Diageo; Energy Infrastructure; Energy Transfer; GPA Midstream; IADC; INGAA; ITIC; Linklaters; NMHC *et al.;* Transocean; and United Air.

[1812] *See, e.g.,* letters from Alphabet *et al.;* Autodesk; BIO; BOA; BDO USA LLP; CCR; Crowe; Fortive; ID Ass. Comm.; Moody's; and NAM.

[1813] *See, e.g.,* letters from AFPM; CAQ; Moody's; Occidental Petroleum; and PwC.

[1814] *See, e.g.,* letters from Chamber; CRE Fin. *et al.;* IPA; Soc. Corp. Gov.; and Williams Cos.

[1815] *See, e.g.,* letters from Connor Grp.; Energy Transfer; Eversource; GPA Midstream; INGAA; MFA; TRC; United Air; and Western Midstream.

[1816] *See, e.g.,* letters from ACLI; AEPC; AIMA; B. Herron; BlackRock; Cal. Resources; Cleveland Cliffs; Connor Grp.; Corteva; Diageo; EEI & AGA; Energy Transfer; GPA Midstream; Hannon Armstrong; HP; IMA; Inclusive Cap.; INGAA; JLL; Linklaters; NMA; RILA; Royal Gold; SEC Professionals; Soc. Corp. Gov.; Travelers; TRC; Tucson Electric; United Air; Vodafone; and Western Midstream. These commenters generally stated that, in their view, the 1% disclosure threshold was not consistent with Staff Accounting Bulletin No. 99.

[1817] *See, e.g.,* letters from AEPC; Airlines for America; Alphabet *et al.;* Amer. Chem.; BHP; Bipartisan Policy; BPI; Chamber; Crowe; Deloitte & Touche; Dow; Energy Transfer; Ernst & Young LLP; IADC; INGAA; ITIC; Transocean; and TRC.

[1818] *See* letter from Deloitte & Touche.

[1819] *See, e.g.,* letters from Amer. Bankers (''Putting aside for the moment the very real question of whether the Commission has the authority to require such extensive information reporting, such a regime is neither cost effective nor necessary to inform investor decisions.''); and NAM (''The NAM does not believe it is lawful or appropriate for the SEC to set a bright-line test that would mandate reporting on risks and events that may or may not be material for a given business.'').

[1820] *See, e.g.,* letters from Chamber; Diageo; EEI & AGA; Mid-Size Bank; and State St.

[1821] *See* letter from Chamber.

[1822] *See, e.g.,* letters from Abrasca; and US SBA.

[1823] *See* letter from US SBA.

[1824] *See, e.g.,* letters from ABA; Bipartisan Policy; Business Roundtable; and Petrol. OK.

[1825] *See, e.g.,* letters from CAQ; Chamber; INGAA; Linklaters; NAM; RSM US LLP; and Vodafone.

[1826] *See, e.g.,* letters from Barrick Gold; and Crowe.

[1827] *See, e.g.,* letters from AAFA; ABA; Abrasca; ACCO; ACLI; AEPC; AFEP; AFG; AHLA; AIC; AIMA; Airlines for America; AllianceBerstein; Alphabet *et al.;* Amer. Bankers; API; ARC–A&A; Autodesk; Baker Tilly; Barrick Gold; BC IM Corp.; BCSE; BHP; Bipartisan Policy; BlackRock; BNP Paribas; BOA; BP; BPI; Can. Bankers; CCR; Ceres, *et al.;* Chamber; Citigroup; Cleco; Cohn Rez.; Connor Grp.; ConocoPhillips; CO PERA; Corteva; D. Burton, Heritage Fdn.; Deloitte & Touche; Devon

commenter stated that a materiality standard would better align with how registrants track and view impacts internally,[1828] while another commenter stated that applying a materiality standard could mitigate operational challenges presented by the proposed rules.[1829] Another commenter stated that a materiality standard would strike a better balance between anticipated benefits to investors and the cost of and burden of the reporting on registrants.[1830] A few commenters noted that aligning with existing materiality concepts may elicit disclosure above or below the one percent disclosure threshold.[1831]

On the other hand, some of the commenters who supported the requirement to apply a one percent disclosure threshold also specifically disagreed with moving to a materiality standard.[1832] A few of these commenters stated that applying a materiality standard would result in underreporting [1833] or would not provide investors with as much decision-useful information.[1834] One commenter pointed out that Regulation S–X is composed of requirements to disclose specific financial information in a specific format and stated that the Commission did not need to establish the materiality of every one of those items for all registrants.[1835] Similarly, another commenter explained that registrants have experience disclosing information in their financial statements without applying materiality, such as information regarding executive compensation, related-party transactions, and share repurchases.[1836]

Several commenters suggested that the Commission should apply a different percentage threshold, such as five percent [1837] or ten percent.[1838] A few commenters asserted that the appropriateness of a particular percentage disclosure threshold may depend on the line item that is used as the denominator.[1839] For example, one of the commenters that recommended using a five percent threshold acknowledged that a percentage lower than five percent may be appropriate if the threshold is anchored to one of the larger line items in the financial statements, such as total operating expenses.[1840] Another commenter suggested using a percentage disclosure threshold based on total assets or income instead of individual line items.[1841] A couple of commenters stated that increasing the threshold to a higher percentage would not be an improvement because registrants still would not know the results of each line item until the end of the reporting period and therefore registrants would still have to track essentially all transactions.[1842] Another commenter emphasized the need for consistency over the desire for any particular percentage.[1843]

Some commenters offered their views on the appropriateness of using a dollar-based disclosure threshold. A few commenters stated that, to the extent the Commission does not adopt a principles-based approach, the Commission should consider adopting a combination of a higher percentage threshold along with a dollar threshold.[1844] Another commenter stated that if the Commission incorporates a dollar amount into the threshold it should be significantly higher than $1 million.[1845] One commenter suggested a materiality standard combined with a dollar-based disclosure threshold.[1846] A couple of commenters stated that they did not support applying a dollar threshold.[1847]

One commenter stated that the Commission should not apply a disclosure threshold and instead should require disclosure of any impacts.[1848] A couple of commenters asserted that the Commission should also require registrants to determine whether an impact that falls below the prescribed one percent threshold would nevertheless be material given its nature and, if so, to require disclosure of that impact.[1849] One commenter suggested setting a basic principle based on materiality and backstopping the materiality standard with a numerical disclosure threshold set at five percent in the short- and medium-term or ten percent in the long term.[1850] Alternatively, one commenter stated that relying on a one percent disclosure threshold alone could create a ''loophole'' for larger companies and therefore the Commission should clarify that disclosure would still be required for impacts that fall below one percent if they are material.[1851]

Commenters also provided feedback on the proposed requirement for registrants to aggregate the absolute value of the positive and negative impacts on a line-by-line basis before determining whether the disclosure threshold has been met. A number of commenters disagreed with the proposal to aggregate the absolute value of impacts.[1852] Some of these commenters

Energy; D. Wen; EMC; Enbridge; Enel; Energy Infrastructure; EPSA; ETA; Ernst & Young LLP; Exxon; FDRA; FedEx; Fenwick West; FHL Bank Des Moines; Fidelity; Fortive; G. Farris; GPA Midstream; HDA; HP; Hydro One; IAA; IC; ICAEW; ID Ass. Comm.; ICI; IIF; IMA; IN Chamber; INGAA; IPA; IPI; ISS ESG; ITIC; JLL; J. Shoen; J. Weinstein; KPMG; LSTA; Magellan; Marathon; McCormick; MFA; Microsoft; Mouvement Enterprises; MRC Global; Mtg. Bankers; NAM; Nareit; NASBA; NG; NIRI; NMHC *et al.;* NOIA; Northern Trust; NRF; NRP; NYSE SAC; Occidental Petroleum; PFG; Pacific Gas and Electric Company (June 17, 2022) (''PGEC''); PPL; Prologis; PSC; PwC; R. Breeden *et al.;* Reinsurance AA; Royal Gold; Salesforce; SEC Professionals; Shell; SIFMA; Soc. Corp. Gov.; Tapestry Network; TotalEnergies; Trane; Travelers; T. Rowe Price; Tucson Electric; Unilever; Walmart; Western Midstream; and Zions.

[1828] *See* letter from ABA.

[1829] *See* letter from Ernst & Young LLP.

[1830] *See* letter from IAA.

[1831] *See, e.g.,* letters from Ceres, *et al.;* and PwC.

[1832] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* CalPERS; Center Amer. Progress; and Sens. J. Reed *et al.*

[1833] *See* letter from CalPERS; and US SIF. *See also* letter from ICGN (stating that ''there is inadequate consistency in how registrants are integrating material climate factors into their financial statements, and therefore a rule by the SEC on this matter is important to ensure implementation''); and Impax Asset Mgmt. (stating that the Commission was wise to propose the 1% disclosure threshold because ''[t]oo often, we have seen that companies take an atomistic approach to materiality'').

[1834] *See* letter from Center Amer. Progress.

[1835] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[1836] *See* letter from Sens. J. Reed *et al.*

[1837] *See, e.g.,* letters from Abrasca; Amer. Chem.; Calvert; CEMEX (recommending a range of between 5% and 10%); Dow; Eni SpA; Eversource; Inclusive Cap; and PGIM.

[1838] *See, e.g.,* letters from APCIA (recommending applying a 10% threshold and incorporating qualitative considerations); JBG Smith; NAM; Nareit; NRA/RLC; and TotalEnergies.

[1839] *See, e.g.,* letters from CalPERS; Energy Transfer; and Eversource.

[1840] *See* letter from Eversource.

[1841] *See* letter from Energy Transfer.

[1842] *See, e.g.,* letters from AFPA; and Chamber.

[1843] *See* letter from Morningstar.

[1844] *See, e.g.,* letters from B. Herron; and FHL Bank Des Moines.

[1845] *See* letter from AIC (stating that a disclosure threshold of $1 million applies to the disclosure of certain environmental proceedings in Item 103 of Regulation S–K).

[1846] *See* letter from D. Hileman Consulting.

[1847] *See, e.g.,* letters from BHP; and Eni SpA.

[1848] *See* letter from PRI.

[1849] *See, e.g.,* letters from ICGN (''While we agree with the proposed threshold of 1% of the total line item (including for expenditure items), where the aggregate impact is less than this, but investors have expressed a clear interest in understanding this impact (thus making it material), registrants should be required to offer commentary on how the impact was assessed.''); and Sarasin (''While we agree with the proposed threshold of 1% of the total line item (including for expenditure items), additional disclosure would be appropriate where the aggregate impact is less than this, but investors have expressed a clear interest in understanding this impact (thus making it material).'').

[1850] *See* letter from Beller, *et al.*

[1851] *See* letter from ClientEarth.

[1852] *See, e.g.,* letters from AAR; ABA; AFPA; Alliance Resource; API; CCR; CEMEX; Chamber; Cleco; Cleveland Cliffs; Dell; D. Hileman Consulting; EEI & AGA; Etsy; Exxon; G. Farris; GPA Midstream; IADC; NAM; PPL; Reinsurance AA; RILA; Soc. Corp. Gov.; Transocean; T. Rowe Price; United Air; and Williams Cos.

stated that it would be a significant departure from typical accounting practices,[1853] and others asserted it would be unworkable and would result in the disclosure of individually immaterial information.[1854] One commenter suggested that any aggregation requirements should allow a registrant to set a minimum materiality threshold for individual items.[1855] On the other hand, some commenters supported aggregating the absolute value of impacts, with one commenter stating it better reflects the significance of the impact on a registrant's financial performance and position.[1856]

A few commenters stated that the Commission should instead use a net value.[1857] For example, some commenters stated that the proposed rules fail to take into account mitigation efforts such as insurance, which would net against the gross value of any loss.[1858] Specifically, one commenter asserted that disclosure of losses, net of insurance proceeds, is appropriate if it is probable that the insurance recovery would be realized and if the provision for the loss and the insurance receivable are recognized in the same period in accordance with FASB ASC 450–20.[1859] In addition, one commenter asserted that using absolute values would not accurately reflect the economics of the (re)insurance industry, which manages its weather risks through reinsurance.[1860] On the other hand, some commenters opposed the netting of positive and negative impacts.[1861] One commenter asserted that netting would involve many assumptions and there is more value for investors in absolute numbers.[1862] Other commenters stated that netting could incentivize greenwashing.[1863] Finally, some commenters asserted that registrants should be required to determine if the disclosure threshold has been met or exceeded separately for physical events and transition activities.[1864]

iii. Terminology and Attribution

A number of commenters pointed out that ''severe weather events and other natural conditions'' is not defined in the proposal and they asserted that additional clarification or guidance is needed.[1865] Some commenters stated that the proposed amendments to Regulation S–X refer to ''severe weather events,'' while the proposed amendments to Regulation S–K refer to ''extreme weather events,'' and that the amendments provided overlapping, but different, examples.[1866] A few commenters suggested that the Commission should limit any required disclosures to a specified list of severe weather events and other natural conditions.[1867] For example, one commenter suggested that the Commission could establish a list of weather events and update it on a monthly or quarterly basis,[1868] but another commenter stated that maintaining a list of events would be impractical.[1869] A few commenters suggested that the Commission could borrow or refer to a list of severe weather events and other natural conditions prepared by a third party.[1870] Other commenters suggested specific additions to the list of non-exclusive examples included in the proposed rules.[1871] Many of these commenters stated that registrants will likely have different views on what constitutes a severe weather event, which will reduce comparability.[1872]

In addition, a number of commenters stated that it was unclear whether registrants would need to determine that a severe weather event or other natural condition was, in fact, caused by climate change before disclosure would be required, while other commenters assumed that such a determination was required.[1873] Some commenters stated that registrants would not have the ability to determine whether a weather event or natural condition was caused by climate change,[1874] and other commenters stated that the Commission failed to provide guidance on this issue.[1875]

Several commenters stated that it was unclear whether the proposed financial statement metrics are intended to capture all severe weather events or only those above a historical baseline.[1876] Specifically, one commenter asked the Commission to provide guidance on how registrants should distinguish ''events and conditions that are severe and relate to climate risks from those that are consistent with historical patterns.'' [1877] Other commenters stated that it is not clear how the severity of a weather event should be assessed.[1878] For

[1853] *See, e.g.,* letters from AAR; IADC; NAM; PPL; and Transocean.

[1854] *See, e.g.,* letters from Alliance Resource; BHP; Cleco; NAM; and Shearman Sterling.

[1855] *See* letter from J. Herron.

[1856] *See* letter from Dana Invest.

[1857] *See, e.g.,* letters from AAR; CEMEX; Dell; GPA Midstream; Inclusive Cap.; PSC; Soc. Corp. Gov.; and United Air.

[1858] *See, e.g.,* letters from GPA Midstream; United Air; and Williams Cos.

[1859] *See* letter from Prologis.

[1860] *See* letter from Reinsurance AA.

[1861] *See, e.g.,* letters from BC IM Corp. (stating ''there is more value for investors in absolute numbers in this context.''); Center Amer. Progress; ClientEarth; ICGN (''We are not in favor of netting positive and negative impacts due to the dangers that this hides large and material absolute impacts.''); MN SBI; Morningstar (''Fundamentally, disclosure of absolute values should allow investors to distinguish between negative impacts (such as severe weather, regulatory changes) and positive impacts (such as mitigation, resilience, and opportunities).''); PwC (''In determining whether the disclosure threshold is met, we believe that positive and negative impacts should be considered separately, not netted (*e.g.,* if a winery receives insurance proceeds for grapes damaged by a wildfire, they should consider the gross loss in assessing whether disclosure is triggered.''); Sarasin; and Third Coast.

[1862] *See* letter from BC IM Corp.

[1863] *See, e.g.,* letters from ClientEarth; and Third Coast.

[1864] *See, e.g.,* letter from MN SBI.

[1865] *See, e.g.,* letters from Abrasca; AEPC; Alliance Resource; Amazon; Anthesis; APCIA; BDO USA LLP; BHP; BPI; Ceres, *et al.;* Chamber; Cleary Gottlieb; Corteva; Davis Polk; Deutsche Bank; EEI & AGA; EMC; Eni SpA; EPSA; FedEx; GPA Midstream; IADC; IIF; INGAA; Marathon; Morningstar; Mtg. Bankers; Nareit; NRA/RLC; NRP; Occidental Petroleum; PwC; RSM US LLP; Shearman Sterling; Shell; Soc. Corp. Gov.; Transocean; Travelers; Tucson Electric; Unilever; and Volta.

[1866] *See, e.g.,* letters from Amazon; KPMG (recommending that the Commission align the terminology between the proposed rules under Regulation S–K and Regulation S–X); and PwC (same).

[1867] *See, e.g.,* letters from Abrasca; Cohn Rez.; and Nutrien. *See also* Reinsurance AA (''The RAA recommends the Commission exclude specific weather events from the definition of physical C–R risks for (re)insurers.'').

[1868] *See* letter from Cohn Rez.

[1869] *See* letter from Nutrien.

[1870] *See, e.g.,* letters from Amer. Academy Actuaries (Actuaries Climate Index or Actuaries Climate Risk Index to aid the identification of physical risks); Anthesis (TCFD's list of acute and chronic physical risks); and Morningstar (technical screen criteria of the EU Taxonomy Regulation (Reg (EU) 2020/852) pertaining to climate-related hazards).

[1871] *See, e.g.,* letters from Anthesis (cyclones, water stress, severe precipitation, and severe wind); Climate Advisers (deforestation); and WSP (water stress).

[1872] *See, e.g.,* letters from Abrasca; AHLA; Alliance Resource; Autodesk; BHP; BOA; Business Roundtable; Chevron; ConocoPhillips; Energy Infrastructure; EPSA; IADC; IIF; Marathon; NRF; NRP; NYSE SAC; Occidental Petroleum; Shell; Soc. Corp. Gov.; Transocean; and Unilever.

[1873] *See, e.g.,* letters from AHLA; Airlines for America; Alliance Resource; APCIA; Atlas Sand; B. Herron; BPI; Brigham; Business Roundtable; Chamber; Davis Polk; Deutsche Bank; EEI & AGA; Energy Infrastructure; Eversource; GM; GPA Midstream; ID Ass. Comm.; IC; Magellan; NAM; Nareit; NMA; NRF; PGIM; Prologis; Reinsurance AA; Shell; SIA; Soc. Corp. Gov.; Travelers; and United Air.

[1874] *See, e.g.,* letters from AAR; APCIA; Atlas Sand; Brigham; Chamber; ConocoPhillips; GPA Midstream; HP; IADC; ID Ass. Comm.; NRF; PGEC; Reinsurance AA; Texas Public Policy Foundation (June 16, 2022); Transocean; and Travelers.

[1875] *See, e.g.,* letters from APCIA; CAQ; Corteva; IADC; Prologis; and Williams Cos.

[1876] *See, e.g.,* letters from Airlines for America; EEI & AGA; EPSA; Grant Thornton; KPMG; PwC; SIA; Volta; and Western Midstream.

[1877] *See* letter from Grant Thornton.

[1878] *See, e.g.,* letters from Alliance Resource; Chamber; EEI & AGA; Grant Thornton; and KPMG.

example, one commenter questioned whether the severity of a hurricane should be assessed by looking to factors such as the wind speed categorization or the financial impact on the registrant itself.[1879] Another commenter suggested that the Commission should clarify that what is considered to be a severe weather event in one region may not be considered severe in a different region.[1880] One commenter asked for guidance on how to identify the beginning and ending dates of severe weather events because the impact from a weather event can continue even after the meteorological event has itself passed.[1881] Similarly, another commenter asked the Commission to provide additional examples of how to disclose a weather event like a hurricane or wildfire, both in the year that the event happened and for future years where the impacts may continue to manifest on the financial statements.[1882]

In addition, commenters asked the Commission to clarify what constitutes ''other natural conditions,'' [1883] and in particular, some commenters asserted that it would be difficult to identify chronic risks.[1884] For example, one commenter stated that the impact of sea level rise may be difficult to discern in a particular reporting period and might only be apparent over substantially longer periods.[1885] In addition, a few commenters raised concerns about the inclusion of ''wildfires'' in the list of severe weather events and natural conditions, pointing out, among other things, that wildfires have many different causes, including humans, or the cause of a wildfire may not be known for some time.[1886] One commenter asked the Commission to provide additional examples of ''other natural conditions.'' [1887]

On the other hand, some commenters stated that registrants should have flexibility to determine what constitutes a severe weather event or other natural condition.[1888] Several commenters asserted that the Commission should not limit climate risk disclosures to a specified set of severe weather events because companies will face different climate risks.[1889] Other commenters suggested that the Commission should require disclosure of ''unusual climate events'' instead of ''severe weather events'' and allow registrants to define what they consider to be unusual for the area in which they operate.[1890]

A number of commenters also raised concerns about the definition and scope of transition activities.[1891] Commenters expressed concerns that the scope of transition activities could broadly encompass ordinary business activities that are motivated by the intent to be more efficient.[1892] Other commenters were concerned that registrants would be required to disclose competitively sensitive information.[1893] In addition, a number of commenters stated that registrants are unlikely to interpret transition activities in a consistent manner and therefore the proposed disclosures would not result in decision-useful information for investors.[1894]

Some commenters requested that the Commission provide additional guidance related to transition activities.[1895] For example, one commenter urged the Commission to clarify when a transition activity ends, asserting that it was not clear if a registrant's disclosure obligation would cease once the registrant achieves its stated transition goal.[1896] Another commenter asked the Commission to clarify the scope of transition activities included in proposed Rule 14–02(d) because, in the commenter's view, the proposed provision could be read to mean that a registrant is only required to disclose the financial impact of activities or efforts of the registrant, and not the ''broad range of climate-related changes in technology, market forces and other occurrences instituted by entities not related to the registrant that may nonetheless impact the registrant's financials.'' [1897] This commenter pointed out that proposed Rule 14–02(f), which would require the disclosure of expenditures related to transition activities, already covers disclosure of the financial impact of activities or efforts of the registrant.[1898]

Other commenters suggested potential alternatives to the proposed requirements related to transition activities. A couple of commenters stated that the Commission should only require registrants to disclose the impact of certain specified transition activities, such as efforts taken exclusively to reduce GHG emissions.[1899] Another commenter suggested ''that the Commission instead require companies to track and report on transition activities that management has identified and reported on under the proposed [amendments to] Regulation S–K.'' [1900] One commenter suggested that the Commission could issue sector-specific guidance for industries where most registrants' balance sheets reflect expenditures related to clean energy, decarbonization, or resilience, to help companies determine what constitutes transition-related expenses.[1901]

Many commenters raised concerns about registrants' abilities to isolate or attribute the effects of severe weather events and other natural conditions and transition activities on the financial statements.[1902] Commenters pointed out that some events may have multiple contributing causes or that the cause

[1879] *See* letter from Grant Thornton.

[1880] *See* letter from RSM US LLP.

[1881] *See* letter from Marathon.

[1882] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[1883] *See, e.g.,* letters from EEI & AGA; EMC; Grant Thornton; NRP; and RSM US LLP. *See also* letter from Chamber (questioning whether earthquakes should be included under ''other natural conditions'').

[1884] *See, e.g.,* letters from C2ES (Feb.13, 2023); Grant Thornton; Prologis; and WSP.

[1885] *See* letter from Grant Thornton.

[1886] *See, e.g.,* letters from BDO USA LLP; Chamber; and Deloitte & Touche.

[1887] *See* letter from RSM US LLP.

[1888] *See, e.g.,* letters from Carbon Tracker; Cleco; Eni SpA; Eversource; Sarasin; and TotalEnergies.

[1889] *See, e.g.,* letters from Autodesk; CEMEX; and Center. Amer. Progress.

[1890] *See, e.g.,* letters from Cleco; and EEI & AGA.

[1891] *See, e.g.,* letters from AEPC; AHLA; Airlines for America; Alliance Resource; Chamber; Cleco; Climate Risk Consortia; Dell; EEI & AGA; Enbridge; EPSA; FedEx; GM; GPA Midstream; IADC; IIF; INGAA; Microsoft; Mtg. Bankers; NAM; Occidental Petroleum; PGIM; PwC; Shell; Tucson Electric; Unilever; United Air; and Western Midstream.

[1892] *See, e.g.,* letters from Alliance Resource; Alphabet *et al.;* Amazon; BP; BPI; Business Roundtable; CCR; Chamber; Cleco; Climate Risk Consortia; Connor Grp.; Dell; Diageo; EEI & AGA; EPSA; Ernst & Young LLP; Eversource; FedEx; GM; IMA; JLL; KPMG; Microsoft; NAM; Occidental Petroleum; PGIM; RILA; Shell; Soc. Corp. Gov.; Sullivan Cromwell; Unilever; United Air; and Walmart.

[1893] *See, e.g.,* letters from GM; IADC; and Petrol. OK.

[1894] *See, e.g.,* letters from Airlines for America; CCR; Cleveland Cliffs; Climate Risk Consortia; Ernst & Young LLP; Microsoft; PGIM; and Sullivan Cromwell.

[1895] *See, e.g.,* letters from AHLA; Alphabet *et al.;* Amazon; Deloitte & Touche; Occidental Petroleum; and PwC.

[1896] *See* letter from Amazon. *See also* letter from C2ES (Feb. 13, 2023).

[1897] *See* letter from Center Amer. Progress.

[1898] *See id.*

[1899] *See, e.g.,* letters from EEI & AGA; and Soc. Corp. Gov.

[1900] *See* letter from Amazon.

[1901] *See* letter from C2ES (Feb. 13, 2023).

[1902] *See, e.g.,* letters from AAR; ABA; Abrasca; AEPC; AFPA; AFPM; AHLA; Airlines for America; Alliance Resource; Alphabet *et al.;* APCIA; Autodesk; Barrick Gold; BDO USA LLP; BHP; BOA; BP; BPI; Business Roundtable; Cal. Resources; Can. Bankers; CAQ; CCR; Chamber; Citigroup; Cleary Gottlieb; Cleco; Climate Risk Consortia; Connor Grp.; ConocoPhillips; Crowe; Cummins; Davis Polk; Dell; Deloitte & Touche; Diageo; Dominion Energy; EEI & AGA; Energy Transfer; Ernst & Young LLP; Eversource; Exxon; FedEx; Fortive; G. Farris; GM; HDA; IADC; INGAA; JLL; JPN Bankers; KPMG; Linklaters; Marathon; McCormick; Mid-Size Bank; Mtg. Bankers; NACCO; NAM; Nareit; NOIA; NRA/RLC; PFG; PGEC; RILA; RMI; Shearman Sterling; Southwest Air; Travelers; TRC; Tucson Electric; Unilever; United Air; Vodafone; Walmart; Western Midstream; and Williams Cos.

may not be clear.[1903] For example, several commenters stated that companies incur many expenses for core business purposes that may also be characterized as helping to mitigate climate-related risks.[1904] Another commenter pointed out that if a registrant's insurance costs increase, it will be difficult for a registrant to attribute this increase, or a portion of this increase, to climate-related risks.[1905] In addition, one commenter noted that there may be circumstances where financial impacts are attributable to both physical risks and transition risks, such as when a facility is destroyed in a storm and the registrant decides to rebuild it with storm-protection features and LEED-certification, and the commenter questioned how the impacts should be attributed in those circumstances.[1906] Many commenters also stated that it would be difficult to quantify climate-related events, conditions, and activities.[1907] For example, where an expenditure is made in part for a climate-related purpose, commenters questioned whether registrants should attribute the entire cost or only an incremental portion of the cost to climate-related events.[1908] A number of other commenters questioned how registrants would be expected to quantify indirect financial impacts such as those affecting a registrant's supply or value chain.[1909] Some commenters stated that there are currently no accounting principles or guidance to help registrants make these determinations [1910] and another commenter pointed out that it may require the expertise of a climate specialist.[1911] Commenters generally requested additional guidance to address these issues.[1912]

Commenters suggested various possibilities for addressing concerns about attribution and quantification. A few commenters stated that registrants should be permitted to make a reasonable estimate and disclose the assumptions that resulted in the estimate.[1913] Commenters suggested that disclosing the relevant assumptions would help investors interpret any estimations that may be required.[1914] One commenter recommended that any final rules should allow registrants to disclose either a single amount or a range, along with appropriate contextual information. This commenter noted that if the Commission proceeds with a single amount, registrants would require guidance on how the amount should be determined.[1915] Another commenter suggested that a registrant should be allowed to explain that it was unable to disclose the required information on a disaggregated basis due to impacts that were caused by a mixture of factors.[1916] Other commenters suggested that when disaggregation is not possible due to multiple contributing factors, registrants should provide qualitative information to explain the factors.[1917]

One commenter asserted that applying an entity-specific allocation methodology would not result in decision-useful information, and instead recommended attributing a financial statement impact or expenditure to climate risk only when the climate risk is a ''significant contributing factor,'' and otherwise requiring registrants to provide contextual information to explain the impact, which would help avoid accusations of greenwashing that might occur if registrants were required to attribute substantially all events, conditions, and activities to climate risk.[1918] Another commenter urged the Commission to clarify that disclosure is only required where the relevant impacts can be reasonably determined to be primarily or entirely driven by physical or transition risk activities, are material to the business, and are reasonably estimable.[1919]

On the other hand, a few commenters stated that the Commission does not need to prescribe a particular approach to attribution or allocation.[1920] One of these commenters pointed out that registrants already are required to allocate costs across multiple risks when preparing their financial statements.[1921]

iv. Alternatives

Commenters suggested a number of potential alternatives to the proposed financial statement metrics.[1922] Several commenters recommended that the Commission limit any requirement to disclose climate-related impacts to ''first order effects'' or direct impacts only.[1923] Specifically with respect to severe weather events, some commenters stated that it would be operationally possible to track specific, direct costs incurred due to severe weather events and natural conditions.[1924] For example, one commenter noted that certain property damage and related repair costs sustained as a result of severe weather could ''easily be segregated, analyzed, and quantified within our current processes.'' [1925] Another commenter stated that calculating direct costs incurred due to severe weather events might be straightforward because the costs are recorded in the registrant's financial records.[1926] One commenter recommended that the ''Commission consider limiting Article 14 of Regulation S–X requirements to

[1903] *See, e.g.,* letters from Abrasca; AFPA; AHLA; Barrick Gold; BHP; Cal. Resources; CCR; Climate Risk Consortia; Connor Grp.; Deloitte & Touche; Dominion Energy; EEI & AGA; Energy Infrastructure; HDA; IADC; INGAA; JPN Bankers; KPMG; Linklaters; Mid-Size Bank; Nareit; PFG; PGEC; Southwest Air; TRC; and Vodafone.

[1904] *See, e.g.,* letters from AAR; ACLI; Diageo; Energy Infrastructure; PFG; Salesforce; and Walmart.

[1905] *See* letter from TRC.

[1906] *See* letter from KPMG.

[1907] *See, e.g.,* letters from ABA; Airlines for America; Alliance Resource; Alphabet *et al.;* BDO USA LLP; BOA; CAQ; CCR; Chamber; Climate Risk Consortia; Connor Grp.; ConocoPhillips; Deutsche Bank; EEI & AGA; Ernst & Young LLP; Eversource; Exxon; GM; Grant Thornton; KPMG; Marathon; McCormick; Mtg. Bankers; NACCO; NAFO; NAM; PGEC; Prologis; Southwest Air; Travelers; TRC; Western Midstream; and Williams Cos.

[1908] *See, e.g.,* letters from AAR; EEI & AGA; and GM.

[1909] *See, e.g.,* letters from BHP; Chamber; GPA Midstream; Grant Thornton; Nareit; PGIM; United Air; Volta; Western Midstream; and Williams Cos.

[1910] *See, e.g.,* letters from AEPC; Barrick Gold; G. Farris; IIF; Nareit; NRF; TRC; and Walmart.

[1911] *See* letter from SEC Professionals.

[1912] *See, e.g.,* letters from AAFA; BDO USA LLP; Chamber; Climate Accounting Audit Project; Crowe; Deloitte & Touche; Deutsche Bank; Eversource; INGAA; JPN Bankers; PGIM; and RMI.

[1913] *See, e.g.,* letters from AFPA; Anthesis; C2ES; ERM CVS; MN SBI; and Morningstar.

[1914] *See, e.g.,* letters from Eni SpA; and ERM CVS.

[1915] *See* letter from KPMG.

[1916] *See* letter from Abrasca.

[1917] *See, e.g.,* letters from BHP; CEMEX; Sarasin; and SKY Harbor.

[1918] *See* letter from KPMG.

[1919] *See* letter from Airlines for America.

[1920] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* and TotalEnergies.

[1921] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[1922] In many cases, the commenters discussed in this section expressed a stronger preference for other approaches discussed above, such as not adopting or reducing the proposed disclosure requirements but offered these alternatives to the proposed rules as well.

[1923] *See, e.g.,* letters from BOA; C2ES; Citigroup; and SIA.

[1924] *See, e.g.,* letters from Autodesk (noting that if a fire or storm destroys a registrant's facilities, the associated costs, impairments, and contingencies would be accounted for and, if material, disclosed under U.S. GAAP); Crowe; Dow; and Nutrien (noting that it would be operationally possible to track specific costs incurred to mitigate transition risks or costs incurred due to severe weather events and natural conditions).

[1925] *See* letter from Dow (explaining, however, that ''[q]uantifying the indirect impact of [severe weather events] on sales and cost of sales would be exceedingly difficult and require significant judgment, estimates and assumptions, thereby limiting the comparability of such information with other registrants and the usefulness of such information to investors'').

[1926] *See* letter from Crowe. *See also* letter from PwC (stating that the financial impact of some climate-related risks—for example, losses arising from asset impairments or operations and maintenance expenses associated with site restoration—may already be disclosed under existing GAAP, although the disclosures may not clearly link to the impact of climate).

physical impacts and related expenditures only.'' [1927] More generally, another commenter recommended streamlining the proposed rules to focus on ''what issuers can easily produce.'' [1928]

A few commenters recommended alternative approaches that focused on requiring the disclosure of discrete expenditures. For example, one commenter recommended that the Commission require a table in a note to the financial statements that presents discrete and separable expenditures, both expensed and capitalized, in three distinct categories: (i) climate-related events, (ii) transition activities for publicly-disclosed climate-related targets and goals, and (iii) all other transition activities.[1929] Similarly, another commenter recommended that the Commission should require disclosure of ''identifiable direct costs and capital expenditures incurred for the express purpose of addressing climate events and transition issues,'' which ''could be produced and audited with a level of certainty and comparability that is consistent with GAAP financial statements.'' [1930]

Other commenters recommended taking a more aggregated approach to disclosure. For example, one commenter suggested aggregating costs and benefits relating to climate-related events into categories (revenues, expenditures, and profits), and aggregating impacts on the balance sheet into the categories (assets, liabilities, and equity), which the commenter stated would ensure investors are able to identify the magnitude of the impacts affecting the company without unnecessary complication and cost for registrants.[1931] Another commenter recommended requiring disclosure at the event or activity level rather than disclosing impacts on financial statement line items, and focusing on discrete, material climate-related events and transition activities.[1932] Similarly, another commenter recommended analyzing potential impacts by broad accounting topics, such as impairments or useful life of assets, which would simultaneously cover several lines of the income statement, balance sheet, and cash flow statement.[1933] One commenter suggested that the Commission could enhance comparability by identifying a minimum set of line items for which disclosure is required while permitting registrants to present disclosure on additional line items in order to better reflect their business model and industry.[1934] On the other hand, one commenter recommended a more disaggregated approach to disclosure.[1935]

Additionally, one commenter recommended that the Commission adopt a ''top down approach'' by linking disclosure of short-term risks identified under the proposed amendments to Regulation S–K to financial statement impacts that would be required to be disclosed at a specified threshold, and supplemented by the disclosure of other material impacts.[1936] Another commenter suggested requiring the disclosure of climate-related cash-flow metrics, focused on providing gross cash flows of climate-related expenditures, with an indication of which cash flows have been capitalized, which the commenter stated would provide an understanding of real cash-flow impacts that could be more directly linked to the Regulation S–K disclosures and would be more useful for investors.[1937] One commenter stated that the Commission should consider amending its industry guides for the oil and gas industry, among others, to require better disclosure of the financial statement impacts of climate change.[1938]

c. Final Rules

After consideration of the comments, including those expressing significant concerns about the burdens associated with this aspect of the proposal, we are not adopting the proposed Financial Impact Metrics.[1939] While the proposed Financial Impact Metrics would have provided additional transparency for investors, we were persuaded by those commenters that stated the proposed Financial Impact Metrics would be burdensome and costly for registrants because of the updates that would be necessary to internal systems and processes. [1940] Therefore, at this time, we have chosen not to adopt these disclosures. These concerns led us to adopt a significantly narrower set of requirements that are focused on requiring the disclosure of a discrete set of actual expenses that registrants incur and can attribute to severe weather events and other natural conditions. In line with the views of certain commenters,[1941] we expect these requirements to be more feasible for registrants to disclose under current financial reporting processes. Moreover, given the overlapping nature of some of the disclosures that would have been required by the proposed Financial Impact Metrics and the capitalized costs, expenditures expensed, charges, and losses that are required to be disclosed under the final rules,[1942] the requirements we are adopting will provide many of the same benefits of transparency and insights that the proposed Financial Impact Metrics would have provided, albeit without as much detail, which should reduce the burden on registrants.

In addition, as discussed in greater detail below in section II.K.3.c.ii, we emphasize that registrants currently have an obligation under GAAP to consider material impacts on the financial statements, and the fact that the impact may be driven by climate-related matters does not alter registrants'

[1927] *See* letter from Dell.

[1928] *See* letter from MFA. *See also* letter from Ceres, *et al.* (''Disclosure of financial impacts from climate-related activities should be derived from transactions and amounts recorded in the books and records underlying the financial statements.'').

[1929] *See* letter from Amazon. *See also* letter from C2ES (Feb. 13, 2023) (describing the expenditure table included in Amazon's comment letter as a more workable alternative but reiterating concerns with other aspects of the proposed rules, such as the disclosure threshold).

[1930] *See* letter from ABA. *See also* letter from Ceres (recommending disclosure of current period and planned capital expenditures to show the portion of investments attributable to addressing transition risks and opportunities and the adaptation to or mitigation of physical risks associated with climate change).

[1931] *See* letter from PIMCO.

[1932] *See* letter from Alphabet *et al.*

[1933] *See* letter from TotalEnergies. *See also* letter from iClima Earth (''Require companies to split both their revenue and their CAPEX figures into 'green' and 'brown.' '').

[1934] *See* letter from Eni SpA.

[1935] *See* letter from Dana Invest. (''We would propose a separate disclosure footnote to disaggregate any category impact if any single identified climate-related risk within an aggregated category was 1% or more of the total line item on its own.'').

[1936] *See* letter from KPMG (noting that this approach would be based on amounts recorded in the financial statements).

[1937] *See* letter from CFA Institute.

[1938] *See* letter from Ceres (recommending that the Commission also consider also expanding its industry guides for mining, bank holding companies, real estate limited partnerships, and property-casualty insurance underwriters). The industry guides for oil and gas, mining, and bank and savings and loan companies have been codified by the Commission. *See* 17 CFR 229.1201 through 1208 (oil and gas); 17 CFR 229.1300 through 1305 (mining); and 17 CFR 229.1401 through 1406 (bank and savings and loan).

[1939] As discussed in greater detail below, since we are not adopting the proposed Financial Impact Metrics, a registrant will not have the option to disclose the impact of any climate-related opportunities on the Financial Impact Metrics. *See infra* section II.K.5.c. For the same reason, we are not adopting the requirement set forth in proposed Rule 14–02(i) requiring a registrant to include the impacts of any climate-related risks identified pursuant to proposed Item 1502(a) on the Financial Impact Metrics.

[1940] *See supra* note 1791 and accompanying text.

[1941] *See supra* notes 1924 and 1926 and accompanying text.

[1942] *See supra* notes 1732 and 1735.

financial reporting obligations.[1943] Therefore, a registrant should consider whether it currently has an obligation to disclose information that would have been covered by the proposed Financial Impact Metrics. Our decision not to adopt the proposed Financial Impact Metrics does not affect registrants' ongoing responsibility to consider material impacts, including those that may be climate-related, when preparing their financial statements and related disclosures.

Although we are not adopting the proposed Financial Impact Metrics at this time, certain aspects of the proposed rules discussed at length above also applied to, or were substantially similar to, the proposed Expenditure Metrics. For example, the proposed one percent disclosure threshold and terminology such as ''severe weather events and other natural conditions'' were included in the proposals for both proposed metrics.[1944] A number of commenters provided feedback on these issues generally, without indicating that their comments were limited to only the proposed Financial Impact Metrics or to only the proposed Expenditure Metrics.[1945] In addition, some of the alternatives discussed above are relevant to the proposed Expenditure Metrics.[1946] As such, we also considered these comments with respect to the proposed Expenditure Metrics. Below, our discussion focuses on additional issues that commenters raised with respect to the proposed Expenditure Metrics. As a result, our rationale for the final rules takes into consideration all of the commenter feedback we received on the proposed rules.

3. Expenditure Effects

a. Proposed Rules

The Commission proposed to amend Regulation S–X to require a registrant to disclose Expenditure Metrics. As proposed, the Expenditure Metrics referred to the positive and negative impacts associated with the same severe weather events, other natural conditions, transition activities, and identified climate-related risks as the proposed Financial Impact Metrics.[1947] Registrants would have been required to separately aggregate the amounts of (i) expenditures expensed and (ii) capitalized costs incurred during the fiscal years presented.[1948] For each of those categories, a registrant would have been required to disclose separately the amount incurred during the fiscal years presented (i) toward positive and negative impacts associated with the climate-related events and (ii) toward transition activities.[1949] The proposed rules provided that the registrant could also choose to disclose the impact of efforts to pursue climate-related opportunities.[1950] As discussed above, under the proposal, if a registrant elected to disclose the impact of an opportunity, it would have been required to do so consistently and would have been required to follow the same presentation and disclosure threshold requirements applicable to the required disclosures of the Expenditure Metrics.[1951] The Proposing Release explained that the amount of expenditure disclosed pursuant to the proposed Expenditure Metrics would be a portion, if not all, of the registrant's total recorded expenditure (expensed or capitalized), as calculated pursuant to the accounting principles applicable to the registrant's financial statements.[1952]

The proposed Expenditure Metrics were subject to the same disclosure threshold as the Financial Impact Metrics, which the Commission explained would promote comparability, consistency, and clarity in determining when information must be disclosed.[1953] The Commission explained in the Proposing Release that for purposes of calculating the disclosure thresholds for the Expenditure Metrics, a registrant could separately determine the amount of expenditure expensed and the amount of expenditure capitalized; however, a registrant would have been required to aggregate expenditure related to climate-related events and transition activities within the categories of expenditure (*i.e.,* amount capitalized and amount expensed).[1954] This approach was designed to better reflect the significance of climate-related expenditure compared to a calculation approach that allowed for a disclosure threshold to be measured at the individual event or activity level, which may result in more limited disclosures.

The Proposing Release provided examples of how a registrant would evaluate and disclose the proposed Expenditure Metrics, including examples of contextual information that could require disclosure, such as information about the specific climate-related events and transition activities that were aggregated for purposes of determining the impacts on the capitalized and expensed amounts.[1955] To provide additional clarity, the proposed rules clarified that a registrant may be required to disclose the amount of expenditure expensed or capitalized costs, as applicable, incurred for the climate-related events to increase the resilience of assets or operations, retire or shorten the estimated useful lives of impacted assets, relocate assets or operations at risk, or otherwise reduce the future impact of severe weather events and other natural conditions on business operations.[1956] The proposed rules also clarified that a registrant may be required to disclose the amount of expenditure expensed or capitalized costs, as applicable, incurred for climate-related transition activities related to research and development of new technologies, purchase of assets, infrastructure, or products that are intended to reduce GHG emissions, increase energy efficiency, offset emissions (purchase of energy credits), or improve other resource efficiency.[1957]

The Commission stated in the Proposing Release that separate disclosure of total expense and total capitalized costs incurred toward the climate-related events and transition activities should provide important information to help investors make better informed investment or voting decisions.[1958] The Commission pointed out that the financial impacts of expenditure typically appear in different places within the financial statements (*e.g.,* in an asset line item(s) on the balance sheet or in an expense line item(s) in the income statement), and therefore the proposed approach, which would require registrants to first identify the relevant climate-related

[1943] *See infra* notes 2068 and 2069 and accompanying text.

[1944] *See* Proposing Release, sections II.F.2 and 3.

[1945] *See, e.g.,* letters from B. Herron (opposing the 1% disclosure threshold generally without distinguishing between the proposed Financial Impact Metrics and the proposed Expenditure Metrics); Moody's (''[W]e therefore suggest the Commission dispense with the one-percent rule in favor of a more principles-based approach for reporting any financial statement metrics.''); and Sens. J. Reed *et al.* (stating its support for the 1% disclosure threshold without distinguishing between the proposed Financial Impact Metrics and the proposed Expenditure Metrics).

[1946] *See supra* section II.K.2.b.iv.

[1947] *See* Proposing Release, section II.F.3.

[1948] The Proposing Release explained that these metrics are focused on expenditures (spending) incurred in each reported fiscal year(s), and it stated that the number of periods of the expenditure metrics should correspond to the number of years of income statement or cash flow statement presented in the consolidated financial statements. *See id.*

[1949] *See id.*

[1950] *See id.*

[1951] *See id.*

[1952] *See id.* (citing 17 CFR 210.4–01(a)(1) and (2)).

[1953] *See id.*

[1954] *See id.*

[1955] *See id.*

[1956] *See id.*

[1957] *See id.*

[1958] *See id.*

expenditures and then compile those impacts in one location, was intended to address this dispersed presentation.[1959]

b. Comments

As discussed above, some commenters generally stated that they supported the proposed amendments to Regulation S–X, including the financial statement disclosures.[1960] Other commenters specifically stated that they supported the proposed Expenditure Metrics.[1961] As previously noted, some of the commenters who supported the proposed amendments to Regulation S–X, including the Expenditure Metrics, recommended revising certain aspects of the proposal,[1962] such as the one percent disclosure threshold.[1963]

Many of the commenters that supported the proposed Expenditure Metrics stated that the disclosure requirement would provide useful information to investors.[1964] For example, one commenter stated that the proposed Expenditure Metrics would allow investors to gauge whether the qualitative discussions included in a registrant's periodic report match the substance of the registrant's expenditures.[1965] Another commenter stated that requiring the reporting of expenses associated with climate-related events would allow investors to ''better understand the overall vulnerability of assets, loss experience, and long term investment in asset resiliency or adaptation.'' [1966] Several commenters noted that the proposed Expenditure Metrics would help investors understand a registrant's ability to meet stated GHG emissions reduction targets or other climate-related targets and goals.[1967] One commenter stated that understanding the quantification of costs such as operating and capital expenditures enables it to improve its valuation models.[1968] Another commenter noted favorably that the proposed Expenditure Metrics were similar to one of the TCFD's seven cross-sector metrics, and that the ISSB's exposure draft similarly included language requiring ''the amount of capital expenditure, financing, or investment deployed towards climate-related risks and opportunities.'' [1969] A few commenters specifically stated that they supported applying the one percent disclosure threshold to the proposed Expenditure Metrics.[1970]

On the other hand, consistent with the feedback the Commission received on the proposed Financial Impact Metrics, and as discussed at length above, many of the commenters who provided feedback on the proposed Expenditure Metrics did not support the proposed requirements. Many commenters generally stated that they did not support the proposed amendments to Regulation S–X for the feasibility and other reasons described above.[1971] Other commenters specifically stated that they disagreed with the proposed Expenditure Metrics.[1972] For example, some commenters stated that the proposed Expenditure Metrics would be time intensive and costly for companies.[1973] One of these commenters stated that registrants ''do not measure capital expenditures by climate purpose'' and therefore the proposed disclosures would require ''the implementation of costly controls and procedures organization wide.'' [1974] Similarly, another commenter stated that many smaller issuers use accounting software packages that offer limited expenditure tracking functionality and therefore the proposed Expenditure Metrics would likely require significant upgrades to cash outflow tracking infrastructure.[1975] Some commenters stated that they opposed the use of a one percent disclosure threshold in the context of the Expenditure Metrics.[1976] Other commenters raised concerns about registrants' abilities to separately identify the cost of climate risk mitigation activities.[1977] A few commenters stated that the proposed Expenditure Metrics would not provide decision-useful information to investors because, among other things, the information is unlikely to be comparable among registrants.[1978]

Some commenters asserted that the proposed Financial Impact and Expenditure Metrics would require overlapping disclosure.[1979] These commenters generally stated that registrants should only be required to disclose the relevant information once.[1980] One of these commenters recommended that the proposed Expenditure Metrics focus on actions related to transition plans and the mitigation of physical risks.[1981] On the other hand, one commenter stated that

[1959] *See id.*

[1960] *See, e.g.,* letters from A. Cramer, AGs of Cal. *et al.;* Anthesis; Arjuna; Bailard; BC IM Corp.; Bloomberg; Better Markets; Church Grp.; Climate Accounting Audit Project; Can. PCPP; CFB; CSB; Dana Invest.; D. Higgins; Domini Impact; Ecofin; Educ. Fnd. Amer.; H. Huang; IASJ; IMA; Impax Asset Mgmt.; Inherent Grp.; K. Ramanna *et al.;* LSEG; Mercy Invest.; Miller/Howard; MRTI; NY City Comptroller; NY SIF; NY St. Comptroller; Parnassus; Prentiss; R. Bentley; R. Burke; RMI; Rockefeller Asset Mgmt.; R. Palacios; Seventh Gen.; SKY Harbor; Terra Alpha; UAW Retiree; UNCA; United Church; US SIF; and Xpansiv.

[1961] *See, e.g.,* letters from As You Sow; BMO Global Asset Mgmt.; Boston Trust; CalPERS; Carbon Tracker; CEMEX; ERM CVS; ICGN; M. Hadick; Morningstar; PRI; Sarasin; SEIA; Sens. J. Reed *et al.;* S. Spears; UCS; and WSP.

[1962] *See, e.g.,* letters from AFG; Amer. Academy Actuaries; BC IM Corp.; BHP; Calvert; CEMEX; CO PERA; IAA; ISS ESG; Northern Trust; PGIM; PwC; TIAA; TotalEnergies; and Trane.

[1963] *See, e.g.,* letters from AFG; Amer. Academy Actuaries; BC IM Corp.; BHP; Calvert; CEMEX; CO PERA; IAA; ISS ESG; Northern Trust; PGIM; PwC; TotalEnergies; and Trane.

[1964] *See, e.g.,* letters from BMO Global; Boston Trust; CalPERS; Carbon Tracker; IAA; ICGN; PRI; Sarasin; SEIA; Sens. J. Reed *et al.;* and WSP.

[1965] *See* letter from CalPERS.

[1966] *See* letter from IAA. *See also* letter from Boston Trust (stating that the proposed Expenditure Metrics would help investors assess a registrant's exposure to physical risks and evaluate its overall resilience planning).

[1967] *See* letters from BMO Global Asset Mgmt.; NY City Comptroller; PRI; Sens. J. Reed *et al.;* and S. Spears. *See also* letter from M. Hadick (stating that investors need to know if a registrant's level and type of capital expenditures is commensurate with the registrant's plans).

[1968] *See* letter from Rockefeller Asset Mgmt.

[1969] *See* letter from PRI. The exposure draft preceded the final standards adopted by the ISSB in June 2023, *i.e.,* General Requirements for Disclosure of Sustainability-related Financial Information (IFRS S1) and Climate-related Disclosures (IFRS S2). *See supra* note 150 and accompanying text.

[1970] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* and Sarasin. *See also* letter from Morningstar (''Morningstar recommends applying the same threshold to financial impact and expenditure metrics.'').

[1971] *See, e.g.,* letters from AAFA; AAR; ACA Connects; AEPC; AFEP; AFPA; AHLA; Airlines for America; Alliance Resource; Allstate; Alphabet *et al.;* Amer. Bankers; Amer. Chem.; APCIA; API; Autodesk; Barrick Gold; B. Herron; BlackRock; BNP Paribas; BOA; BPI; Brigham; Business Roundtable; CA Bankers; Cal. Resources; Can. Bankers; Chamber; Chevron; Cleary Gottlieb; Cleco; Cleveland Cliffs; Climate Risk Consortia; ConocoPhillips; Corteva; CREFC; CRE Fin. *et al.;* Deutsche Bank; Devon Energy; Dominion Energy; EEI & AGA; Energy Infrastructure; Energy Transfer; EPSA; Ernst & Young LLP; Exxon; FedEx; Fed. Hermes; Fidelity; G. Farris; GM; Grant Thornton; IC; ICI; IIB; IIF; INGAA; IPA; ITIC; JPN Bankers; K. Connor; K. Tubb, Heritage Fnd, Linklaters; LTSE; LSTA; Magellan; Mid-Size Bank; Moody's; MRC Global; Mtg. Bankers; NAFO; NAM; Nareit; NG; NMA; NMHC *et al.;* NRF; NRP; NYSE SAC; Occidental Petroleum; Petrol. OK; PPL; Reinsurance AA; RILA; Royal Gold; Salesforce; Shell; SIA; SMME; Soc. Corp. Gov.; SouthState; Southwest Air; State St.; Sullivan Cromwell; Tapestry Network; Travelers; TRC; Tucson Electric; Tyson; Vodafone; Wells Fargo; Western Midstream; and Williams Cos.

[1972] *See, e.g.,* letters from ACLI; AFPM; HDA; HP; IADC; McCormick; NIRI; NOV; and Transocean.

[1973] *See, e.g.,* letters from BP; Cohn Rez.; HP; IADC; NOV; and Transocean.

[1974] *See* letter from HP.

[1975] *See* letter from Cohn Rez.

[1976] *See, e.g.,* letters from C2ES; and TotalEnergies.

[1977] *See, e.g.,* letters from PGEC; and Unilever.

[1978] *See, e.g.,* letters from ACLI; and IADC.

[1979] *See, e.g.,* letters from BIO; BHP; Carbon Tracker; Eni SpA; KPMG; Morningstar; PGIM; SIA; and TotalEnergies. *See also supra* note 1735 (discussing the overlapping nature of the proposed Financial Impact and Expenditure Metrics).

[1980] *See, e.g.,* letters from BIO; BHP; Carbon Tracker; Eni SpA; KPMG; and TotalEnergies.

[1981] *See* letter from PGIM.

the Commission should require both the proposed Financial Impact and Expenditure Metrics in the final rules because they provide different perspectives and are both decision-useful for investors.[1982]

Some commenters agreed that it would be appropriate to require separate disclosure of capitalized costs and expenditures expensed.[1983] One of these commenters explained that capitalized costs and expenditures expensed have different effects on the value of assets and are recorded separately elsewhere in the financial statements.[1984] Another commenter stated that requiring the disclosures of expenditures expensed would be particularly helpful because otherwise they may not be subject to the same scrutiny or disclosure requirements as capitalized costs.[1985] Several commenters stated that additional examples or guidance would be useful.[1986]

Some commenters requested clarification regarding the proposed Expenditure Metrics. One commenter suggested that the Commission should provide an accounting definition of ''expenditures.'' [1987] Another commenter asked the Commission to clarify what it meant by a ''capitalized cost,'' for example, whether it only includes costs associated with purchases of Property, Plant and Equipment (PP&E) or if the definition is broader and also includes costs initially recognized as a debit on the balance sheet such as prepaid expenses.[1988] The commenter also noted that costs could be both capitalized and expensed in the same period, and therefore the rules should address how the costs should be presented in that circumstance.[1989] Similarly, one commenter asserted that whether something is identified as an expenditure or a capitalized cost would require registrants to make subjective judgments that are unlikely to be uniform across industries.[1990] Another commenter warned that a registrant could ''game'' the rules by classifying costs as expenditures, rather than capitalizing the costs, to avoid triggering the disclosure threshold.[1991] Some commenters generally asked the Commission to provide additional examples and guidance for calculating the proposed Expenditure Metrics.[1992]

c. Final Rules

i. Scope (Rules 14–02(c) and (d))

The proposed Expenditure Metrics would have required registrants to disclose expenditures expensed and capitalized costs to mitigate the risks of severe weather events and other natural conditions and related to transition activities.[1993] After consideration of the comments, we are adopting a requirement (Rules 14–02(c) and (d)) to disclose expenditures expensed and capitalized costs with a number of changes from the proposed rules based on commenter feedback.[1994] In response to the concerns identified by commenters above, we have modified the proposed requirements and are adopting final rules that require disclosures that significantly reduce the burdens for registrants while providing investors with decision-useful information.

The final rules focus on requiring the disclosure of capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions, which is similar to certain of the alternatives suggested by commenters.[1995] Having considered the various alternatives presented by commenters, we concluded that focusing on the disclosure of discrete expenditures related to severe weather events and other natural conditions strikes an appropriate balance between providing investors with useful information and limiting the burdens on registrants.

Under the final rules, a registrant must disclose:

(1) The aggregate amount of expenditures expensed as incurred and losses, excluding recoveries, incurred during the fiscal year as a result of severe weather events and other natural conditions, and

(2) The aggregate amount of capitalized costs and charges, excluding recoveries, recognized during the fiscal year as a result of severe weather events and other natural conditions.[1996]

The proposed rules would have required registrants to disclose costs and expenditures incurred to ''mitigate the risks from severe weather events and other natural conditions.'' [1997] Some commenters indicated that it would be feasible, and significantly less burdensome, to instead segregate and quantify discrete costs incurred due to severe weather events.[1998] Requiring disclosure of expenditures related to mitigation activities would present challenges for registrants in terms of forecasting and determining their expectations about future severe weather events at the time they are making expenditure decisions. In addition, costs and expenditures related to mitigation activities may present similar issues to transition activities, which are discussed in further detail below, because the mitigation of the risks of severe weather events may be only one of several reasons why a company makes a business decision to incur a particular expenditure. Therefore, we have decided to require registrants to disclose capitalized costs, expenditures expensed, charges, and losses incurred ''as a result of'' severe weather events and other natural conditions.[1999] The capitalized costs,

[1982] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[1983] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* Eni SpA; and Morningstar.

[1984] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[1985] *See* letter from Carbon Tracker.

[1986] *See, e.g.,* letters from Eni Spa; Morningstar; and TotalEnergies.

[1987] *See* letter from TotalEnergies.

[1988] *See* letter from Grant Thornton.

[1989] *See id.*

[1990] *See* letter from Can. Bankers.

[1991] *See* letter from Sarasin.

[1992] *See, e.g.,* letters from J. McClellan (seeking clarification on expensed or capitalized costs partially incurred towards the climate-related events and transition activities); RSM US LLP; and Salesforce (seeking clarification around what constitutes ''expenditures incurred for climate-related transition activities related to research and development of new technologies, purchase of assets, infrastructure or products that are intended to reduce GHG emissions, increase energy efficiency, offset emissions (purchase of energy credits), or improve other resource efficiency'').

[1993] *See* Proposing Release, section II.F.3.

[1994] *See supra* note 1720 and accompanying text.

[1995] *See supra* section II.K.2.b.iv. *See also* letter from Dell (requesting that the ''Commission consider limiting Article 14 of Regulation S–X requirements to physical impacts and related expenditures only'').

[1996] *See* 17 CFR 210.14–02(c), (d). Under the final rules, disclosure must be provided for the registrant's most recently completed fiscal year, and to the extent previously disclosed or required to be disclosed, for the historical fiscal year(s) included in the consolidated financial statements in the filing. *See* 17 CFR 210.14–01(d). In addition, foreign private issuers that file consolidated financial statements under home country GAAP and reconcile to U.S. GAAP, would be required to use U.S. GAAP (including the provisions of the final rules) as the basis for calculating and disclosing this information. Foreign private issuers that file consolidated financial statements under IFRS as issued by the IASB, would apply IFRS and the final rules as the basis for calculating and disclosing the financial statement effects. *See also infra* note 2380 which discusses proposed amendments to Form 20–F.

[1997] *See* Proposing Release, section II.F.3.

[1998] *See, e.g.,* letters from Dow (stating that direct costs related to property damage and related repair costs as a result of extreme weather events on the U.S. Gulf Coast ''can easily be segregated, analyzed, and quantified within our current processes''); and Nutrien (stating that if there is a fire at one of its locations that it can attribute to a severe weather event it could ''readily identify costs associated with demolition, clean-up and rebuilding of those physical assets for disclosure'').

[1999] *See* 17 CFR 210.14–02(c) and (d). Although the proposed Expenditure Metrics only required the disclosure of costs and expenditures related to the mitigation of risks from severe weather events and other natural conditions, the proposed Financial Impact Metrics would have required registrants to disclose costs and expenditures incurred as a result of severe weather events and other natural

expenditures expensed, charges, and losses that will be disclosed under the final rules are already captured in a registrant's income statement or balance sheet and measured and reported in accordance with U.S. GAAP or IFRS.[2000] Thus, this approach will be less costly and burdensome for registrants as compared to the proposed rules.

In response to commenter requests for additional clarity,[2001] we are prescribing an attribution principle that registrants must use to determine whether a capitalized cost, expenditure expensed, charge, or loss is ''as a result of'' a severe weather event or other natural condition.[2002] The attribution principle will also simplify the determination of the amount required to be disclosed by eliminating the need to allocate portions of costs and expenditures, which will reduce compliance costs for registrants.[2003]

Under the final rules, the requirement to disclose capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions remains subject to a one percent disclosure threshold; however, we are modifying the denominators used for the threshold and adopting de minimis thresholds that exempt disclosure of amounts that aggregate to less than $100,000 in the income statement or less than $500,000 in the balance sheet, as explained in greater detail below.[2004] In addition, under the final rules, registrants must separately disclose, as part of the required contextual information, any recoveries resulting from severe weather events and other natural conditions to reflect the net effect that severe weather events and other natural conditions have on a registrant's financial statements.[2005]

As proposed, the Expenditure Metrics would have required registrants to disclose separately the aggregate amount of expenditure expensed and the aggregate amount of capitalized costs.[2006] In a shift from the proposal, the final rules require registrants to separately disclose where on the income statement and balance sheet, as applicable, the capitalized costs, expenditures expensed, charges, and losses are presented.[2007] As explained above, significantly fewer line items are impacted by the final rules we are adopting than would have been impacted by a requirement to disclose the proposed Financial Impact Metrics. Only those line items that reflect capitalized costs, expenditures expensed, charges, and losses fall within the scope of the disclosures, as is further illustrated below in section II.K.3.c.vii. For example, we do not expect that gross revenues would be impacted under the final rules. In addition, we do not believe that requiring registrants to disclose in which line item each of the required capitalized costs, expenditures expensed, charges, and losses are presented will increase the burden as compared to the proposed Expenditure Metrics because the disclosures required under the final rules are simply a disaggregation of financial statement line items. Requiring registrants to separately disclose in which line item the capitalized costs, expenditures expensed, charges, and losses are presented will enhance the usefulness of the disclosures for investors by allowing them to understand the effects of severe weather events and other natural conditions on a registrant's financial position and performance. This information will facilitate their analyses and cash flow projections year-on-year and across registrants.

The proposed rules would have required registrants to disclose expenditures expensed and capitalized costs incurred to reduce GHG emissions or otherwise mitigate exposure to transition risks.[2008] With respect to transition activities, many commenters pointed out that registrants make business decisions, such as incurring an expenditure to purchase a piece of machinery that is more energy efficient, for multiple reasons, and as a result, a registrant's transition activities may be inextricably intertwined with its ordinary business activities.[2009] Consequently, commenters raised concerns about registrants' abilities to identify, attribute, and quantify the impact of transition activities on the financial statements.[2010] In addition, requiring disclosure for transition activities would present challenges for registrants in terms of forecasting and determining their expectations about transition activities at the time they are making expenditure decisions. Taking these comments into consideration, we have determined not to require registrants to disclose costs and expenditures related to general transition activities in the financial statements at this time.

Although we are not adopting the broader requirement for disclosure of transition activities in the financial statements, registrants will be required to disclose capitalized costs, expenditures expensed, and losses related to the purchase and use of carbon offsets and RECs in the financial statements.[2011] The proposed rules identified the amount of expensed or capitalized cost, as applicable, related to ''offset emissions (purchase of energy credits)'' as one example of the disclosures that may be required [2012] and the purchase and use of carbon offsets and RECs is a type of transition activity that does not present the definitional or scoping concerns presented by transition activities more generally. In addition, carbon offsets and RECs that are expensed or capitalized are discrete transactions that are currently captured in a registrant's income statement or balance sheet.[2013] Moreover, requiring the disclosure of capitalized costs, expenditures expensed, and losses related to the acquisition and use of carbon offsets and RECs will complement the disclosures regarding carbon offsets and RECs required by the amendments to Regulation S–K that we are adopting in this release.[2014]

Furthermore, although the final rules under Article 14 do not require registrants to disclose costs and expenditures incurred to reduce GHG emissions or otherwise mitigate exposure to transition risks in the financial statements, the final rules under subpart 1500 of Regulation S–K will require registrants to provide quantitative and qualitative disclosure of material expenditures in certain circumstances as described in greater

conditions because those costs would have constituted line-item impacts to a registrant's financial statements. Therefore, the requirement to disclose costs and expenditures incurred as a result of severe weather events and other natural conditions is a subset of the information that was included in the proposal.

[2000] *See, e.g.,* letter from KPMG (''We recommend that the final rule clarify that the required disclosures are indeed a disaggregation of amounts already recognized in the financial statements.'').

[2001] *See supra* note 1912 and accompanying text.

[2002] The attribution principle is discussed in greater detail below in section II.K.3.c.iii. *See also* 17 CFR 210.14–02(g).

[2003] *See id.* The attribution principle will also apply to recoveries, which are discussed in greater detail below in section II.K.3.c.iv. *See also* 17 CFR 210.14–02(f) and (g).

[2004] *See* 17 CFR 210.14–02(b).

[2005] *See* 17 CFR 210.14–02(f). *See infra* section II.K.6.a.iii for further discussion of the requirement to disclose contextual information.

[2006] *See* Proposing Release, section II.F.3.

[2007] *See* 17 CFR 210.14–02(c), (d), and (e)(1).

[2008] *See* Proposing Release, section II.F.3.

[2009] *See supra* note 1892 and accompanying text.

[2010] *See supra* notes 1902 and 1907 and accompanying text.

[2011] *See* 17 CFR 210.14–02(e). *See also* 17 CFR 229.1500(a) and (m) (defining ''carbon offsets'' and ''renewable energy credits or certificates'').

[2012] *See* Proposing Release, section II.F.3.

[2013] There is currently a diversity in practice in accounting for carbon offsets and RECs. *See infra* note 2110.

[2014] *See supra* note 2023.

detail above,[2015] which should result in the disclosure of some of the information for expenditures related to transition activities that we would have expected to be disclosed under the proposed rules, albeit outside of the financial statements. Requiring the disclosure of these expenditures outside of the financial statements and subject to materiality rather than a bright-line threshold, among other things, should mitigate the compliance burden and related concerns raised by commenters with respect to the proposed requirement to disclose transition expenditures in the financial statements.[2016] While we are adopting the requirements to disclose expenditures related to transition activities outside the financial statements, we remind registrants that current accounting standards may require the disclosure of material expenditures within the financial statements,[2017] which may include material expenditures incurred in furtherance of a registrant's transition activities, depending upon the application of these current accounting standards. Current accounting standards specify minimum presentation and disclosure requirements. Importantly, however, the FASB's Conceptual Framework provides additional guidance for evaluating whether financial information is representationally faithful. In particular, the Conceptual Framework states ''[t]o be a perfectly faithful representation,'' a depiction ''would be complete, neutral and free from error.'' The Conceptual Framework further states, ''[a] complete depiction includes *all* information necessary for a user to understand the phenomenon being depicted, including *all* necessary descriptions and explanations'' [2018] (emphasis added). Accordingly, additional disaggregation and disclosure of material expenditures, whether on the face of the primary financial statements or in the notes to the financial statements, may be needed to meet the objective of the financial reporting as explained by the Conceptual Framework.[2019] For example, a registrant may consider whether disaggregating material cash outflows to acquire property, plant, and equipment [2020] purchased to meet the registrant's transition plans, targets, or goals on the statement of cash flows or in a related note is appropriate to provide complete information about the entity's cash flows for the period.

Under the final rules, registrants are required to disclose the aggregate amounts of (1) carbon offsets and RECs expensed, (2) carbon offsets and RECs capitalized, and (3) losses incurred on the capitalized carbon offsets and RECs during the fiscal year.[2021] This disclosure requirement is not subject to the one percent disclosure threshold that applies to the disclosure of severe weather events and other natural conditions. Instead, disclosure is required if carbon offsets or RECs have been used as a material component of a registrant's plan to achieve disclosed climate-related targets or goals,[2022] which is consistent with the requirement to disclose information about carbon offsets and RECs included in the amendments to Regulation S–K that we are adopting in this release and therefore will help limit the burden for registrants and avoid confusion for investors.[2023] In addition, registrants are required to disclose the beginning and ending balances of capitalized carbon offsets and RECs on the balance sheet for the fiscal year.[2024] The beginning and ending balances are currently existing information in a registrant's balance sheet that will provide investors with information to help them understand the registrant's activity related to the purchase and use of carbon offsets and RECs, further illustrating how a registrant is using carbon offsets and RECs as a material component of its plan to achieve a target or goal. Registrants are also required to disclose where on the income statement or balance sheet the capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs are presented under the final rules.[2025]

One commenter stated that the proposed rules would likely require many smaller issuers to make significant upgrades to their cash outflow tracking infrastructure.[2026] The commenter identified upgrades that would be needed to cash outflow tracking infrastructure to capture the costs and investments for each separate risk, transition activity, and weather event.[2027] However, as discussed above, the final rules will not require disclosure of the proposed Financial Impact Metrics or costs and expenditures related to transition activities in the financial statements. Rather, the amendments to Regulation S–X have been narrowed to focus on severe weather events and other natural conditions and carbon offsets and RECs, which will be less burdensome for registrants. Furthermore, the final rules do not require any disclosure of the impacts to the statement of cash flows.

We did not include in the final rules the proposed requirement for a registrant to disclose the impact of any climate-related risks identified by the registrant pursuant to proposed Item 1502(a) on any of the financial metrics included in the proposed rules, including the proposed Expenditure Metrics.[2028] A few commenters sought clarification about the scope of this proposed requirement or questioned what disclosure objective it was intended to achieve.[2029] Because the final rules we are adopting are more narrowly focused on requiring the disclosure of capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions, we do not think it would be in keeping with this approach to also require a registrant to disclose the impacts from any climate-related risks identified by the registrant pursuant to Item 1502(a).

[2015] *See supra* sections II.D.2.c (transition plan disclosure) and II.G.3.a (targets and goals disclosure).

[2016] *See supra* section II.D.2.c. for additional discussion of how these revisions mitigate the compliance burdens.

[2017] *See, e.g.,* ASC 230 *Statement of Cash flows* (requiring classification of cash receipts and cash payments as resulting from operating, investing, and financing activities); ASC 280 *Segments* (noting that a registrant ''shall disclose both of the following about each reportable segment if the specified amounts are included in the determination of segment assets reviewed by the chief operating decision maker or are otherwise regularly provided to the chief operating decision maker, even if not included in the determination of segment assets . . . (b) total expenditures for additions to long-lived assets . . .'') (ASC 280–10–50–25); and ASC 730 *Research and Development* (requiring disclosure of the total research and development costs charged to expense in each period for which an income statement is presented) (ASC 730–10–50–1).

[2018] See FASB, Statement of Financial Accounting Concepts No. 8—Conceptual Framework for Financial Reporting—Chapter 3, Qualitative Characteristics of Useful Financial Information (As Amended) (Aug. 2018), para. QC12–QC13.

[2019] See FASB, Statement of Financial Accounting Concepts No. 8—Conceptual Framework for Financial Reporting—Chapter 1, The Objective of General Purpose Financial Reporting (As Amended) (Dec. 2021).

[2020] ASC 230–10–45–13.

[2021] *See* 17 CFR 210.14–02(e).

[2022] *See* 17 CFR 210.14–02(e)(1).

[2023] *See* 17 CFR 229.1504(d) (requiring the disclosure of certain information regarding carbon offsets or RECs ''if carbon offsets or RECs have been used as a material component of a registrant's plan to achieve climate-related targets or goals''). *See also supra* section II.G.3.b.

[2024] *See* 17 CFR 210.14–02(e)(1).

[2025] *See id.*

[2026] *See supra* note 1975 and accompanying text.

[2027] *See id.*

[2028] *See* Proposing Release, section II.F.2.

[2029] *See, e.g.,* letters from ABA; Amer. for Fin. Reform, Sunrise Project *et al.;* and Deloitte & Touche. *See also* letter from Travelers (Mar. 10, 2023) (objecting to the proposed requirement for a registrant to disclose the impact of any climate-related risks identified by the registrant pursuant to proposed Item 1502(a) on any of the financial metrics included in the proposed rule).

We recognize that a number of commenters expressed support for the Expenditure Metrics as proposed, including some who stated that the proposed requirements would provide investors with important information about ''long term investments in asset resiliency'' or would help investors understand a registrant's ability to meet its climate-related targets and goals.[2030] Although the final rule is more narrow in scope than the proposal, the information elicited by the final rules will provide investors with comparable, reliable, and decision-useful information about registrants' capitalized costs, expenditures expensed, charges, and losses related to severe weather events and other natural conditions, which will serve to protect investors, while minimizing costs and burdens on registrants.

ii. Disclosure Threshold (Rule 14–02(b))

In the final rules, we are retaining a quantitative disclosure threshold for capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions.[2031] Providing a bright-line standard for registrants will simplify compliance compared to a more principles-based standard, reduce the risk of underreporting such information, and promote comparability and consistency among a registrant's filings over time and among different registrants.[2032] Accordingly, the final rules require disclosure of:

(1) Expenditures expensed as incurred and losses if the aggregate amount of such expenditures expensed as incurred and losses equals or exceeds one percent of the absolute value of income or loss before income tax expense or benefit for the relevant fiscal year; and

(2) Capitalized costs and charges recognized if the aggregate amount of the absolute value of capitalized costs and charges recognized equals or exceeds one percent of the absolute value of stockholders' equity or deficit, at the end of the relevant fiscal year.[2033]

Such disclosure is not required, however, if the aggregate amount of expenditures expensed and losses as incurred in the income statement is less than $100,000 for the relevant fiscal year.[2034] With respect to the balance sheet, registrants are not required to provide disclosure if the aggregate amount of capitalized costs and charges is less than $500,000 for the relevant fiscal year.[2035]

In a shift from the proposal, we are using different denominators for the disclosure thresholds. Specifically, the denominators we are adopting are: (1) income or loss before income tax expense or benefit, and (2) stockholders' equity or deficit.[2036] Income or loss before income tax expense or benefit is a frequently disclosed line item on the income statement that provides an accounting-based measure of financial performance. Stockholders' equity or deficit is a disclosed line item in the balance sheet that reflects stockholders' ownership interest in the book value of the registrant and represents the net difference between the assets and liabilities of the registrant.

Although we did not receive commenter feedback specifically objecting to the denominators for the proposed Expenditure Metrics (*i.e.,* ''total expenditure expensed'' or ''total capitalized costs''), we have decided to use these alternative denominators because income or loss before income tax expense or benefit and stockholders' equity or deficit are well known and understood by registrants and investors and are easily calculable based on line items in the financial statements that are defined under U.S. GAAP and IFRS.[2037] These alternative denominators are broadly responsive to commenters who raised concerns that the proposed rules would be inconsistent with existing GAAP[2038] or would not result in comparable disclosure,[2039] although neither of these concerns was specifically directed at the proposed denominators for the disclosure threshold. Since the line items we have chosen for the denominators in the final rules are well known and represent aggregated financial activity, we expect at least some companies will have insight into the expected amount or magnitude of these denominators in advance of the end of the fiscal year, which could help facilitate the establishment of internal accounting controls related to the required disclosure and support the establishment of ICFR and accurate and timely disclosure.[2040] In addition, as mentioned above, income or loss before income tax expense or benefit is a measure of profitability, and requiring a registrant to disclose expenditures expensed and losses incurred as a result of severe weather events and other natural conditions will help investors understand the impact these events and conditions had on the registrant's profitability. Likewise, stockholders' equity or deficit represents shareholders' interest in the book value of an entity, and requiring a registrant to disclose the capitalized costs and charges incurred as a result of severe weather events and other natural conditions will help investors understand the impact these events and conditions have on assets attributable to shareholders.

The final rules provide that the disclosure thresholds should be calculated using the absolute values of the relevant denominator.[2041] We think it is appropriate to use the absolute values because the balances for these line items may represent debit or credit balances (which are not inherently either positive or negative) in the books and records, and thus using an absolute value will avoid any confusion that could arise from using a negative number resulting from an accounting convention for the disclosure threshold.[2042]

In addition, the final rules require registrants to use the absolute value of capitalized costs and charges recognized for the numerator to determine whether the applicable disclosure threshold is triggered for the balance sheet disclosures since capitalized costs and charges can offset one another.[2043] Expenditures expensed as incurred and losses in the income statement do not offset one another and therefore the use of absolute values is unnecessary to

[2030] *See supra* notes 1966 and 1967 and accompanying text.

[2031] *See* 17 CFR 210.14–02(b).

[2032] *See* Proposing Release, section II.F.2.

[2033] *See* 17 CFR 210.14–02(b).

[2034] *See* 17 CFR 210.14–02(b)(1).

[2035] *See* 17 CFR 210.14–02(b)(2).

[2036] *See* 17 CFR 210.14–02(b).

[2037] For example, while some registrants are not explicitly required to present income or loss before income tax expense or benefit in accordance with 17 CFR 210.5–03.10 in their financial statements, U.S. GAAP includes presentation and disclosure requirements that result in information sufficient to calculate income or loss before income tax expense or benefit, and registrants often do present this amount. In addition, while IFRS does not explicitly require income or loss before income tax expense or benefit, the standards do require disclosure of profit or loss and income tax expense.

[2038] *See supra* note 1797 and accompanying text.

[2039] *See supra* note 1793 and accompanying text.

[2040] Some commenters raised concerns that registrants would not be able to calculate the monetary value for the 1% disclosure threshold until the end of the relevant period, which would require registrants to evaluate every transaction to determine if it counts towards the threshold. *See supra* note 1814 and accompanying text. Our decision to use income or loss before income tax expense or benefit and shareholders' equity or deficit as the denominators in the final rules should mitigate this concern to some extent for registrants because we expect that many registrants will have insight into the magnitude of these denominators prior to the end of the fiscal year.

[2041] *See* 17 CFR 210.14–02(b).

[2042] Other rules in Regulation S–X use absolute values in determining whether a threshold has been exceeded. *See* 17 CFR 210.1–02(w) (setting forth the income test for determining whether a subsidiary is a significant subsidiary).

[2043] *See* 17 CFR 210.14–02(b)(2).

determine whether the applicable disclosure threshold is triggered. Although the proposed Expenditure Metrics did not use absolute values in the numerator to determine whether the applicable disclosure threshold was triggered,[2044] the proposed Financial Impact Metrics did, and commenter feedback on the use of absolute values in that context was varied. A few commenters supported using the absolute value, and one investor stated that the absolute value would better reflect the significance of the impact on a registrant's financial performance and position.[2045] On the other hand, a few commenters objected to using the absolute value and stated it could result in the disclosure of individually immaterial information.[2046] We agree with the commenter that stated using the absolute value to determine whether the disclosure threshold is triggered will better reflect the significance of the impact on a registrant's financial position because the absolute value takes into account each of the relevant capitalized costs or charges (*i.e.,* the full magnitude of the costs or charges), whereas a net amount would not necessarily reflect the total effect on the registrant.

In a further shift from the proposal, we have included de minimis thresholds in the final rules.[2047] As discussed above, some commenters expressed the view that the proposed one percent disclosure threshold would place an unreasonable burden on smaller companies because it is more likely that the impacts on smaller companies would exceed the one percent disclosure threshold.[2048] In addition, a few commenters mentioned a de minimis exception in their letters.[2049] We recognize the possibility that a one percent disclosure threshold could be disproportionately burdensome for smaller companies or companies in the early stages of developing a product or business line for which one percent of income or loss before income tax expense or benefit or stockholders' equity or deficit could be a very small amount. In addition to smaller companies, we think de minimis thresholds will also be helpful for companies that have income or loss before income tax expense or benefit near breakeven in a particular year, perhaps due to anomalous circumstances. Therefore, we have included in the final rules de minimis thresholds of: (1) $100,000 for expenditures expensed as incurred and losses in the income statement, and (2) $500,000 for capitalized costs and charges recognized on the balance sheet.[2050] As a practical matter, this means that, under the final rules, registrants for which one percent of the absolute value of income or loss before income tax expense or benefit is less than $100,000 will not have to provide disclosure until the aggregate amount of expenditures expensed and losses incurred as a result of severe weather events and other natural conditions equals or exceeds $100,000.[2051] Similarly, under the final rules, registrants for which one percent of the absolute value of stockholders' equity or deficit is less than $500,000 will not have to provide disclosure until the absolute value of the aggregate amount of capitalized costs and charges incurred as a result of severe weather events and other natural conditions equals or exceeds $500,000.[2052] We have decided to use a higher de minimis threshold for capitalized costs and charges recognized on the balance sheet because generally the disclosure threshold applicable to the balance sheet—one percent of the absolute value of stockholders' equity or deficit—will result in larger numbers than the disclosure threshold applicable to the income statement, and therefore a larger de minimis threshold is appropriate and proportionate. Moreover, as noted below in section IV, in 2022 the $100,000 de minimis value for the income statement would have exceeded one percent of income or loss before income tax expense or benefit for approximately 17% of registrants, and the $500,000 de minimis value for the balance sheet would have exceeded one percent of stockholders' equity or deficit for approximately 24% of registrants. Thus, approximately the same number of companies will benefit from the de minimis thresholds by using these values.

While a number of commenters asserted that requiring disclosure at a one percent threshold would result in an excessive amount of immaterial detail for investors, the changes we have made from the proposal address this concern.[2053] Specifically, the final rules require disclosure of specific categories of discrete capitalized costs, expenditures expensed, charges, and losses, which in our view is unlikely to result in immaterial disclosure. As discussed in greater detail below, the final rules also include an attribution principle that limits the required disclosure to circumstances where the severe weather event or other natural condition was a significant contributing factor in incurring the capitalized cost, expenditure expensed, charge, or loss.[2054] The final rules include de minimis thresholds, and the denominators used in the final rules—stockholders' equity or deficit and income or loss before income tax expense or benefit—are aggregated amounts and therefore we expect that in many instances they will result in a larger denominator than what was included in the proposal. Given the narrower scope of the final rules, the one percent threshold should not result in an excessive amount of detail or immaterial disclosure. Some commenters also raised concerns that the one percent disclosure threshold could confuse investors by giving too much prominence to the climate-related disclosures relative to the impacts of other risks disclosed in the financial statements or could suggest a level of precision that does not exist.[2055] However, the final rules require disclosure of capitalized costs, expenditures expensed, charges, and

[2044] As explained above, the proposed Expenditure Metrics did not require the disclosure of charges, and therefore there was no potential for offsetting, although charges would have been required disclosures under the proposed Financial Impact Metrics. *See supra* note 1732.

[2045] *See supra* note 1856 and accompanying text.

[2046] *See supra* note 1854 and accompanying text.

[2047] *See* 17 CFR 210.14–02(b).

[2048] *See supra* note 1823 and accompanying text.

[2049] *See* letter from NAM (''The extreme burden of building new processes and systems to track quantitative climate impacts, with no materiality threshold or even a de minimis exception for minor events or immaterial impacts, would impose colossal costs and strain resources at all public companies.''). *See also* letter from Cleveland Cliffs (stating a similar view).

[2050] *See* 17 CFR 210.14–02(b). There is precedent in Regulation S–X for using $100,000 as a de minimis threshold. *See* 17 CFR 210.3–11 (permitting a registrant to submit unaudited financial statements if gross receipts and expenditures are not in excess of $100,000).

[2051] *See* 17 CFR 210.14–02(b)(1). For example, if a registrant had $5 million in income or loss before income tax expense or benefit for the relevant fiscal year, the registrant's disclosure threshold for the income statement would be $50,000 ($5,000,000 × .01 = $50,000). Since $50,000 falls below the $100,000 de minimis threshold, the registrant would not be required to provide the disclosure required by Rule 14–02(b)(1) and (c) until the aggregate amount of expenditures expensed as incurred and losses equals or exceeds $100,000 (*i.e.,* the de minimis threshold).

[2052] *See* 17 CFR 210.14–02(b)(2). For example, if a registrant had $25 million in stockholders' equity or deficit for the relevant fiscal year, the registrant's disclosure threshold for the balance sheet would be $250,000 ($25,000,000 × .01 = $250,000). Since $250,000 falls below the $500,000 de minimis threshold, the registrant would not be required to provide the disclosure required by Rule 14–02(b)(2) and (d) until the aggregate amount of capitalized costs and charges equals or exceeds $500,000 (*i.e.,* the de minimis threshold).

[2053] *See supra* note 1809 and accompanying text.

[2054] *See* 17 CFR 210.14–02(g) and *infra* Section II.K.3.c.iii.

[2055] *See supra* notes 1810 and 1811 and accompanying text.

losses that are currently recorded in a registrant's financial statements in accordance with GAAP, and therefore the disclosures should have the same degree of precision as the other information provided in the financial statements. Moreover, the required disclosures will be in a note to the financial statements along with other disaggregated disclosures addressing a variety of topics, and therefore its placement will be on equal footing with other information included in such notes.

Other commenters stated that applying the one percent disclosure threshold on a line-item basis could result in only partial disclosure of expenditures related to a climate-related event since the impact could be recorded in multiple financial statement line items—for which the disclosure threshold may not be triggered—which would diminish the usefulness of the information to investors.[2056] Our decision not to adopt the proposed Financial Impact Metrics should alleviate this concern to a great extent. However, it remains true that, under the final rules, the application of the disclosure threshold separately to (i) capitalized costs and charges in the balance sheet, and (ii) expenditures expensed and losses in the income statement could result in a situation where the threshold for only one of the financial statements is triggered and certain costs related to a particular severe weather event or other natural condition may not be required to be disclosed. We acknowledge that in some circumstances this may result in investors only receiving a partial picture of the financial statement effects of a particular event or condition; however, applying the disclosure threshold separately to the income statement and the balance sheet will be more straightforward for registrants to implement and therefore will help to limit the overall burden of the final rules. Moreover, registrants are not prohibited from disclosing how the severe weather event or other natural condition affected both the income statement and balance sheet, even if the disclosure threshold for one of the financial statements is not triggered. One commenter suggested that a registrant could ''game'' the rules by classifying costs as expenditures, rather than capitalizing costs, to avoid triggering the disclosure threshold.[2057] We think the likelihood of this occurring is low because registrants are required to follow GAAP in determining whether to expense a cost or capitalize it and these amounts will be subject to audit.

Certain commenters argued that the Commission should apply a different percentage threshold, such as five or ten percent.[2058] Although we considered those options, in light of the other changes we are making to the disclosure threshold, such as using an aggregated denominator and including a de minimis threshold, we think one percent will generally not result in immaterial disclosure nor result in undue burdens on registrants. In this regard, we agree with those commenters who stated that the appropriate percentage threshold depends upon what is used as the denominator.[2059] For the same reason, we considered, but are not adopting, the other alternative disclosure thresholds that commenters suggested, such as only using a dollar threshold or requiring the disclosure of all relevant expenditures.[2060]

Certain commenters stated that the examples provided in the Proposing Release of other one percent disclosure thresholds were not analogous.[2061] Generally, these commenters suggested that the examples were not analogous, at least in part, because they involved amounts that are knowable under current accounting practice and have discrete impacts on a smaller number of larger line items (as opposed to every line item).[2062] Although the alignment with other disclosure thresholds is not dispositive of whether a threshold elicits appropriate disclosure for investors, the final rules' focus on requiring the disclosure of amounts that are currently recorded in a registrant's financial statements in accordance with GAAP and that pertain to a significantly smaller number of line items (as well as the revisions made to the denominators for the disclosure thresholds) should align the final rules more closely with other instances where the Commission has used a one percent or other numerical disclosure threshold.[2063]

We have considered the feedback we received from commenters urging the Commission to forgo the one percent disclosure threshold and instead require disclosure only if material.[2064] We agree that the concept of materiality plays an important role in the Federal securities laws. As such, as discussed above, we have significantly modified the scope of the proposed disclosures and the proposed disclosure threshold and have included de minimis exceptions to focus the final requirements on eliciting material information for investors. We are not, however, eliminating the threshold entirely and moving to a more principles-based disclosure standard because, as discussed in the Proposing Release,[2065] the proposed quantitative disclosure threshold provides registrants with greater clarity in implementing the rules, reduces the risk of underreporting, and increases consistency and comparability. This approach is consistent with the feedback we received from some commenters that expressed concerns about the risks of underreporting in the context of the financial statements, as evidenced by the limited climate-related disclosure under current accounting standards despite increasing demand by investors for such disclosure.[2066]

We agree with, and further emphasize, the point made by those commenters who asserted that registrants are already required to disclose the financial statement effect of material climate risks under existing rules.[2067] Registrants currently have an

[2056] *See supra* note 1813.

[2057] *See supra* note 1991.

[2058] *See supra* notes 1837 and 1838 and accompanying text.

[2059] *See supra* note 1839 and accompanying text.

[2060] *See supra* notes 1846 and 1848 and accompanying text.

[2061] *See supra* note 1817.

[2062] *See, e.g.,* letters from BHP (''Further, while we acknowledge that the Commission currently uses a specific 1% threshold for certain disclosures, we note that the disclosure examples provided by the Commission are generally narrow in scope, factual in nature and limited to certain line items in the financial statements (for example, the amount of excise taxes included in revenue)''); Ernst & Young LLP (''But we note that, unlike the climate-related impacts, excise taxes are discrete event charges that are easily calculated and tracked in a registrant's accounting books and records.''); and IADC (''The Commission argues that a 1% quantitative threshold is used in other contexts, but the examples the Commission cites are circumstances where the quantitative amounts involved are knowable under current accounting practice, have discrete impacts on specific financial line items, and address scenarios in which more detailed disclosure is appropriate.'').

[2063] As noted in the Proposing Release, Regulation S–X (and other aspects of the Federal securities laws) includes a variety of different percentage thresholds prescribing disaggregated disclosure–rather than relying only on principles-based materiality thresholds. *See, e.g.,* 17 CFR 210.5–03.1(a) (stating that if the total sales and revenues reported under this caption includes excise taxes in an amount equal to 1% or more of such total, the amount of such excise taxes shall be shown on the face of the statement parenthetically or otherwise); 17 CFR 210.5–02.8 (requiring registrants to state separately, in the balance sheet or a note thereto, any amounts in excess of 5% of total current assets).

[2064] *See supra* note 1827 and accompanying text.

[2065] *See* Proposing Release, section II.F.2.

[2066] *See supra* note 1833. *But see, e.g.,* letter from M. Winden (suggesting increased enforcement to the extent underreporting exists).

[2067] *See supra* note 1716 and accompanying text. *See also* letter from CFA Institute (''We would also observe that existing U.S. GAAP and IFRS standards—as highlighted in publications by the FASB and IASB, as noted by the SEC in the

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obligation to consider material impacts on the financial statements, and the fact that a material impact may be driven by climate-related matters does not alter a registrant's obligation.[2068] The Commission and accounting standard-setting bodies and their staff have all reminded registrants, through the issuance of guidance, of existing accounting and disclosure requirements that may apply to climate-related matters when there is a material impact on the financial statements.[2069] Although the final rules require registrants to disclose certain expenditures if they exceed the one percent disclosure threshold, that requirement does not affect registrants' ongoing responsibility to consider material impacts, whether climate-related or not, when preparing their financial statements and related disclosures.[2070] This may include determining whether costs and expenditures that do not trigger the disclosure threshold may be material to the registrant, taking into consideration all relevant quantitative and qualitative factors.[2071]

iii. Attribution Principle (Rule 14–02(g))

A number of commenters raised concerns about the ability of registrants to isolate, attribute, and quantify expenditures related to severe weather events and other natural conditions.[2072] In response to these concerns, we are adopting a principle for attributing a cost, expenditure, charge, loss, or recovery to a severe weather event or other natural condition and for determining the amount to be disclosed. The final rules (Rule 14–02(g)) require a registrant to attribute a cost, expenditure, charge, loss, or recovery to a severe weather event or other natural condition and disclose the entire amount of the expenditure or recovery when the event or condition is a significant contributing factor in incurring the cost, expenditure, charge, loss, or recovery.[2073]

Some commenters suggested that registrants should be permitted to make a reasonable estimate and disclose the assumptions that resulted in the estimate, or suggested that the Commission did not need to prescribe a particular approach to attribution or quantification because registrants already have experience allocating costs across risks when preparing financial statements.[2074] Although we considered those possibilities, we are adopting ''significant contributing factor'' as the attribution principle for the final rules, which was recommended by a commenter.[2075] We think it is appropriate to do so for a number of reasons. First, it is important to establish an attribution principle because allowing a registrant to apply an entity-specific methodology may not result in consistent or comparable information from one registrant to another which would limit the usefulness of the disclosures to investors. Second, the ''significant contributing factor'' principle will strike an appropriate balance by requiring disclosure when a severe weather event or other natural condition was a significant factor resulting in the registrant incurring the expenditure or receiving the recovery, while not requiring disclosure where a severe weather event or other natural condition was only a minor factor, thereby reducing the cost burden on registrants. Moreover, many areas of U.S. GAAP currently require a registrant to apply the concept of significance (even though U.S. GAAP does not define the term ''significant''),[2076] which should help facilitate registrants' use of this attribution principle. Although the application of this attribution principle may require the exercise of judgment, financial statement preparers are accustomed to applying judgment in many circumstances under U.S. GAAP, and, as stated above, preparers have experience applying the concept of significance.[2077] Finally, in addition to enhancing consistency and comparability of how the disclosures are developed, specifying an attribution and quantification principle in the final rules will reduce the burden associated with attributing (since there is no allocation involved) and quantifying costs and expenditures.

iv. Recoveries (Rule 14–02(f))

In addition, the final rules (Rule 14–02(f)) provide that, if a registrant is required to disclose capitalized costs, expenditures expensed, charges, or losses incurred as a result of severe weather events and other natural conditions, then it must separately disclose the aggregate amount of any recoveries recognized during the fiscal year as a result of the severe weather events and other natural conditions for which capitalized costs, expenditures expensed, charges, or losses have been disclosed.[2078] Registrants would have been required to disclose the financial impacts of severe weather events and

Proposal—require consideration of climate-related risks in the measurement of various financial statement estimates.'').

[2068] For example, although U.S. GAAP and IFRS Accounting Standards do not refer explicitly to climate-related matters, registrants have an obligation to consider material impacts when applying, for example, FASB ASC Topic 330 *Inventory* (IAS 2 *Inventories*) and FASB ASC Topic 360 *Property, Plant, and Equipment* (IAS 36 *Impairment of Assets*). *See also supra* note 2069.

[2069] *See, e.g.,* 2010 Guidance (stating that ''registrants must also consider any financial statement implications of climate change issues in accordance with applicable accounting standards, including [FASB ASC] Topic 450, Contingencies, and [FASB ASC] Topic 275, Risks and Uncertainties.''); FASB Staff Educational Paper, Intersection of Environmental, Social, and Governance Matters with Financial Accounting Standards (Mar. 2021), available at *https://www.fasb.org/Page/ShowPdf?path=FASB_Staff_ESG_Educational_Paper_FINAL.pdf* (''When applying the financial accounting standards, an entity must consider the effects of certain material ESG matters, similar to how an entity considers other changes in business and operating environment that have a material direct or indirect effect on the financial statements and notes thereto.''); IFRS, Effects of climate-related matters on financial statements (Nov. 2020 and July 2023), available at *https://www.ifrs.org/content/dam/ifrs/supporting-implementation/documents/effects-of-climate-related-matters-on-financial-statements.pdf* (stating that the IFRS has re-published ''this educational material to remind stakeholders of the long-standing requirements in IFRS Accounting Standards to report on the effects of climate-related matters in the financial statements when those effects are material.'').

[2070] *See id.* Notwithstanding the final rules' 1% disclosure threshold, registrants have a fundamental obligation not to make materially misleading statements or omissions in their disclosures and may need to provide such additional information as is necessary to keep their disclosures from being misleading. *See* 17 CFR 230.408 and 17 CFR 240.12b–20.

[2071] *See* Concept Release (discussing materiality in the context of, among other matters, restating financial statements). *See also* Staff Accounting Bulletin No. 99 (Aug. 12, 1999), available at *https://www.sec.gov/interps/account/sab99.htm* (emphasizing that a registrant or an auditor may not substitute a percentage threshold for a materiality determination that is required by applicable accounting principles).

[2072] *See supra* notes 1902 and 1907 and accompanying text.

[2073] *See* 17 CFR 210.14–02(g).

[2074] *See supra* notes 1913 and 1921 and accompanying text.

[2075] *See supra* note 1918 and accompanying text.

[2076] See, *e.g.,* FASB ASC Topic 280 Segment Reporting, FASB ASC 323 Equity Method and Joint Ventures, FASB ASC 810 Consolidations, and FASB ASC 820 Fair Value Measurement.

[2077] To illustrate the application of the attribution principle, if a tornado damages the roof of a registrant's factory and the registrant incurs costs to repair the damage, the tornado would be a significant contributing factor in incurring the costs to repair the roof and the registrant would be required to disclose the entire cost incurred (if the applicable disclosure threshold is triggered), notwithstanding the fact that if the roof had been in place for some period of time there could be other factors that contributed to the roof's condition after the tornado.

[2078] *See* 17 CFR 210.14–02(f). We expect most recoveries to consist of insurance proceeds; however, we appreciate that other transactions or agreements may result in recovery of amounts as a result of severe weather events and other natural conditions, such as guarantees or indemnifications, and therefore have not limited the disclosure to only insurance proceeds.

other natural conditions, including the receipt of insurance proceeds, as part of the Financial Impact Metrics included in the proposed rules. Although we are not adopting the proposed Financial Impact Metrics, along the lines of the proposal, the final rules provide that any recoveries should be disclosed as part of the contextual information required by the rules.[2079] Several commenters raised concerns about the treatment of mitigation efforts, such as insurance, under the proposed rules.[2080] Relatedly, other commenters asserted that registrants should not be permitted to use ''net'' amounts to determine whether disclosure is required under the rules.[2081] Having considered those comments, we are persuaded that permitting a registrant to use a net amount to determine whether capitalized costs, expenditures expensed, charges, and losses have exceeded the disclosure threshold would be inconsistent with the intent of the rules because the net amount could obscure the magnitude of the financial effects of severe weather events and other natural conditions experienced by the registrant. For example, obtaining insurance is a risk mitigation activity that may ultimately result in payment to the registrant for costs and expenditures incurred, but it does not mean that the financial effects did not occur in the first place. The existence of recoveries, such as insurance proceeds, is important information for investors because without it, investors could be under the misperception that severe weather events and other natural conditions have a greater effect on a registrant's operations than is the case. Therefore, requiring registrants to disclose whether they have recognized any recoveries, such as insurance proceeds, as a result of the severe weather events and natural conditions for which capitalized costs, expenditures expensed, charges, or losses have been disclosed, will provide investors with information that is important to understand the financial statement effects of the capitalized costs, expenditures expensed, charges, and losses.[2082] In addition, such disclosure will complement other contextual information that may be disclosed by a registrant such as a discussion of the composition of the capitalized costs, expenditures expensed, charges, or losses.[2083] Similar to the final rules' other disclosure requirements, a registrant will be required to identify where the recoveries are presented in the income statement and the balance sheet.[2084]

v. Severe Weather Events and Other Natural Conditions (Rules 14–02(c) and (d))

A number of commenters requested that the Commission provide additional guidance to help registrants apply the meaning and scope of ''severe weather events and other natural conditions.'' [2085] Some commenters pointed out that the proposed amendments to Regulation S–K used the phrase ''extreme weather events,'' and that the examples of extreme weather events provided in the Proposing Release were different, but overlapping, with the examples of severe weather events included in the proposed amendments to Regulation S–X.[2086] In response to these comments and to provide greater clarity, the final amendments to Regulation S–K and Regulation S–X both use the phrase ''severe weather events.'' [2087] In addition, both include the same examples; specifically, in a change from the proposal, the examples of severe weather events included in the final amendments to Regulation S–X include hurricanes and tornadoes.[2088] These revisions are consistent with our expectation that there will be significant overlap between the severe weather events and other natural conditions a registrant identifies for purposes of disclosure under Rule 14–02 and the types of physical risks (*i.e.,* acute risks (including severe weather events) and chronic risks) a registrant identifies for purposes of disclosure under the amendments to Regulation S–K.

However, in response to questions raised by commenters,[2089] we are clarifying that a registrant is not required to make a determination that a severe weather event or other natural condition was, in fact, caused by climate change in order to trigger the disclosure required by Rule 14–02 related to such event or condition. Requiring such a determination for severe weather events or other natural conditions was not the intent of the proposed amendments to Regulation S–X, and it is not required by Rule 14–02.[2090] In this way, although there is

[2079] *See id. See infra* section II.K.6.a.iii for further discussion of the requirement to disclose contextual information.

[2080] *See supra* note 1858 and accompanying text.

[2081] *See supra* note 1861 and accompanying text.

[2082] One commenter appeared to suggest that it would be contrary to accounting principles to require registrants to disclose costs and expenditures that are not net of insurance proceeds. *See* letter from Prologis. However, the final rules do not prescribe how a registrant must account for insurance proceeds in its financial statements, and registrants should prepare their financial statements in accordance with GAAP. Rather, the final rules require a registrant to disaggregate certain costs and expenditures in the notes to the financial statements and require a registrant to disclose separately whether it has recognized any recoveries, such as insurance proceeds, as part of the contextual information that must be provided to help investors understand the financial statement effect.

[2083] *See* 17 CFR 210.14–02(a).

[2084] *See* 17 CFR 210.14–02(f). Under the final rules it is possible that the disclosure threshold could be triggered for a registrant's balance sheet, but not its income statement, and vice versa, resulting in only partial disclosure of capitalized costs, expenditures expensed, charges, and losses related to severe weather events and other natural conditions incurred during the fiscal year. *See supra* section II.K.3.c.ii. The final rules require a registrant to disclose the aggregate amount of any recoveries recognized during the fiscal year as a result of the severe weather events and other natural conditions for which capitalized costs, expenditures expensed, charges, or losses have been disclosed. *See* 17 CFR 210.14–02(f). We acknowledge that in some circumstances this may result in a registrant only disclosing a portion of its expenditures corresponding to the event or condition that resulted in the recovery, which could create the impression that a registrant's recoveries for a particular fiscal year exceed its expenditures related to severe weather events and other natural conditions. However, as explained above, to the extent this is a concern for an issuer, there is nothing in the final rules that would prevent a registrant from disclosing how the severe weather event or other natural condition affected both the income statement and balance sheet, even if the disclosure threshold for one of the financial statements is not triggered. *See supra* section II.K.3.c.ii.

[2085] *See supra* note 1865 and accompanying text.

[2086] *See supra* note 1866 and accompanying text.

[2087] *See* 17 CFR 229.1500 (defining ''physical risks'' to include ''acute risks'' (including severe weather events) and ''chronic risks''); and 17 CFR 210.14–02 (c), (d), and (h). Although we do not believe there was any confusion about this issue, for the avoidance of doubt, we are confirming that ''severe'' modifies both the weather events and other natural conditions. *See* 17 CFR 210.14–02(c), (d), and (h).

[2088] *See* 17 CFR 229.1500; and 17 CFR 210.14–02 (c), (d), and (h). The proposed amendments to Regulation S–K included hurricanes, floods, tornadoes, and wildfires as examples of ''acute risks'' and included sustained higher temperatures, sea level rise, and drought as examples of ''chronic risks.'' These remain unchanged in the final amendments to Regulation S–K. *See* 17 CFR 229.1500. As noted above, the final amendments to Regulation S–X include hurricanes and tornadoes as examples of severe weather events and other natural conditions, in addition to the following examples that were included in the proposed amendments to Regulation S–X and remain unchanged in the final rules: flooding, drought, wildfires, extreme temperatures, and sea level rise. We have retained the ''extreme temperatures'' terminology in the final amendments to Regulation S–X instead of using the ''sustained higher temperatures'' terminology included in the final amendments to Regulation S–K because we want to emphasize that disclosure under Rule 14–02 is only required if the weather event or other natural condition is ''severe.''

[2089] *See supra* note 1873 and accompanying text.

[2090] Similarly, a few commenters raised concerns about determining the cause of a wildfire, *see supra* note 1886 and accompanying text, but as we have stated, registrants will not be required to determine the cause of the severe weather event or natural condition for purposes of providing disclosure under Rule 14–02. The cause of a severe weather event or natural condition is irrelevant in

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significant overlap between the disclosure of climate-related physical risks pursuant to Regulation S–K and the severe weather events and other natural conditions that a registrant identifies pursuant to Rule 14–02, the events covered by Rule 14–02 would also cover severe weather events and other natural conditions that are not necessarily related to climate.[2091]

Since Rule 14–02 requires event-based disclosure, the decision not to require a registrant to determine whether a severe weather event or other natural condition was caused by climate change should simplify the analysis that a registrant has to undertake to determine whether disclosure is required. We expect that the final rules will elicit disclosure appropriately aligned with the corresponding risk-based Regulation S–K disclosure without presenting the financial-statement specific challenges associated with making a determination about whether particular events relate to climate or climate change.

The list of examples of severe weather events and other natural conditions included in Rule 14–02 is not intended to be exclusive or exhaustive, nor are the examples intended to create a presumption about whether disclosure is required for those events in every circumstance.[2092] Rather, under the final rules, registrants will have the flexibility to determine what constitutes a severe weather event or other natural condition based on the particular risks faced by the registrant, taking into consideration the registrant's geographic location, historical experience,[2093] and the financial impact of the event on the registrant, among other factors. We do not agree with those commenters who suggested that we should provide a comprehensive list of severe weather events, or refer to a list from another source, because doing so would be inconsistent with the dynamic nature of these events.[2094] Furthermore, a particular weather event may be ''severe'' in one region but not in another region.

We considered whether the non-exclusive list of examples should be expanded to include other types of severe weather events or other natural conditions identified by commenters in their comment letters;[2095] however, we designed the list as non-exhaustive and non-exclusive because we think it is more appropriate to take a flexible approach to enable registrants to exercise judgment in identifying severe weather events or other natural conditions based on the impacts those events have on their financial condition.

Some commenters asserted that allowing registrants to exercise judgment about which severe weather events or natural conditions to analyze would reduce comparability.[2096] Although more prescriptive requirements can increase comparability, our view is that greater flexibility for registrants to determine which severe weather events and other natural conditions affect them in light of their particular facts and circumstances will yield better disclosures for investors compared to a static list of potential events that may or may not be relevant to every registrant now and in future years. Additionally, requiring registrants to use a prescribed list of events could lead to significant gaps in disclosure over time. We expect that the final rules will give registrants the flexibility to adopt reasonable approaches to identifying severe weather events and other natural conditions and adapt to changing circumstances. As a result, the final rules provide a level of flexibility that even a regularly updated, prescribed list of events would be unable to match—resulting in what we believe is appropriate, decision-useful information to investors.

Some commenters raised questions about how to identify the beginning and ending dates of severe weather events and how to disclose weather events where the impact from the weather event may continue into the future.[2097] We have streamlined the final rules to focus on requiring the disclosure of expenditures for specific transactions that are recorded in a registrant's books and records during the fiscal year, and that are attributable to severe weather events or other natural conditions. This more straightforward approach will make it clearer when disclosure is required and avoid many of the questions raised by commenters in this regard.

vi. Carbon Offsets and Renewable Energy Credits (Rule 14–02(e))

If carbon offsets or RECs have been used as a material component of a registrant's plan to achieve its disclosed climate-related targets or goals, the final rules (Rule 14–02(e)) require registrants to disclose (1) the aggregate amount of carbon offsets and RECs expensed, (2) the aggregate amount of capitalized carbon offsets and RECs recognized, and (3) the aggregate amount of losses[2098] incurred on the capitalized carbon offsets and RECs, during the fiscal year.[2099] As explained above, although the final rules do not include a requirement for registrants to disclose costs and expenditures related to transition activities in the financial statements as proposed,[2100] we think it is appropriate to require registrants to disclose costs, expenditures, and losses related to one type of transition activity—the acquisition[2101] and use of carbon offsets and RECs—because the acquisition and use of carbon offsets and RECs do not present the definitional or scoping concerns raised by commenters with respect to transition activities generally.[2102] Significantly, requiring disclosure of capitalized costs, expenditures expensed, and losses recognized in the notes to the financial statements when carbon offsets or RECs have been used as a material component of a registrant's plan to achieve its disclosed climate-related targets or goals will complement the disclosures required by the amendments to Regulation S–K[2103] and will anchor the

determining whether disclosure is required under Rules 14–01 and 14–02.

[2091] For example, the ''natural conditions'' referenced in Rule 14–02 need not be climate-related, and therefore may include types of non-climate-related occurrences, such as earthquakes, if severe and depending on the registrant's particular facts and circumstances. *See* letter from Chamber. In addition to simplifying the analysis for registrants, as discussed below, disclosure of these non-climate-related severe weather events and other natural conditions is consistent with the other event-based disclosure reflected in the final amendments to Regulation S–X and will elicit material information for investors.

[2092] We believe providing examples of severe weather events and other natural conditions will aid in the comparability of the resulting disclosure while assisting issuers in making the disclosures. *See* Proposing Release, section II.F.2.

[2093] For example, in determining whether high temperatures constitute a severe natural condition, a relevant factor may include average seasonal temperatures.

[2094] *See supra* notes 1867 and 1870 and accompanying text.

[2095] *See, e.g.,* letters from Anthesis (cyclones, water stress, severe participation, and severe wind); Chamber (earthquakes); Climate Advisers (deforestation); and WSP (water stress).

[2096] *See supra* note 1872 and accompanying text.

[2097] *See supra* notes 1881 and 1882 and accompanying text.

[2098] For example, an impairment could result in the recognition of a loss on a capitalized carbon offset.

[2099] *See* 17 CFR 210.14–02(e)(1). The final rules do not prevent registrants from disclosing additional information about other transactions involving their carbon offsets and RECs.

[2100] *See* Proposing Release, section II.F.3. Proposed Rule 14–02(f), which would have required the disclosure of expenditures related to transition activities, provided that a registrant may be required to disclose the amount of expense or capitalized cost, as applicable related to ''offset emissions (purchase of energy credits),'' among other things. *See supra* note 2012.

[2101] Carbon offsets and RECs may be acquired in various ways. For example, they may be purchased or granted.

[2102] *See supra* note 1891 and accompanying text.

[2103] *See* 17 CFR 229.1504(d).

disclosures required outside the financial statements to those required within the financial statements, making a connection which one commenter generally described as having ''a focusing effect'' and increasing ''the reliability and consistency of both.'' [2104] Although we considered applying the one percent disclosure thresholds applicable to severe weather events and other natural conditions to carbon offsets and RECs, using the same trigger for disclosure in the amendments to Regulation S–K and the amendments to Regulation S–X will provide investors with a comprehensive understanding of the registrant's use of carbon offsets and RECs, which will help investors evaluate the role of these instruments in a registrant's climate-related strategy and help them assess the likely financial effects of a disclosed material transition risk.[2105]

In addition, the final rules require registrants to disclose the beginning and ending balances of capitalized carbon offsets and RECs on the balance sheet for the fiscal year.[2106] The beginning and ending balances of carbon offsets and RECs are an important data point for investors to understand as they assess a registrant's transition risks. Specifically, while the disclosure of expenditures related to the acquisition and use of carbon offsets and RECs will provide information about the registrant's activity throughout the fiscal period, it does not provide information about the carbon offsets still available to the registrant for use in future periods, which some commenters indicated is important information.[2107] The requirement to provide the beginning and ending balances will help provide a more complete picture of the financial impact of a registrant's use of carbon offsets and RECs as a material component of its plan to achieve a disclosed target or goal. While this particular data point was not part of the proposal, which would have required disclosure of costs and expenditures related to transition activities more generally, the beginning and ending balances are currently existing information in a registrant's balance sheet and therefore we expect the cost and burdens of disclosing this information to be minimal. The final rules also require a registrant to disclose where on the balance sheet and income statement these capitalized costs, expenditures expensed, and losses are presented.[2108] If a registrant is required to disclose capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs, the final rules provide that a registrant must also state, as part of the contextual information required, the registrant's accounting policy for carbon offsets and RECs.[2109] We understand there is currently a diversity in practice in how registrants account for carbon offsets and RECs, and therefore an explanation of the registrant's accounting policy will help enhance the usefulness and comparability of this disclosure for investors.[2110]

vii. Presentation of Disclosure (Rules 14–02(c) and (d))

As discussed above, the final rules (Rule 14–02(c) and (d)) require disclosure of the amount of (1) capitalized costs and charges on the balance sheet, and (2) expenditures expensed as incurred and losses in the income statement, during the fiscal year, as a result of severe weather events and other natural conditions.[2111] Under the final rules, registrants must separately aggregate the (1) capitalized costs and charges on the balance sheet, and (2) expenditures expensed as incurred and losses in the income statement to determine whether the applicable disclosure threshold is triggered and for purposes of disclosure.[2112] The capitalized costs, expenditures expensed, charges, and losses must be segregated between the balance sheet and the income statement depending on which financial statement they are recorded within upon recognition in accordance with applicable GAAP. For each of the balance sheet and income statement disclosures, if the applicable disclosure threshold is met, a registrant is required to disclose the aggregate amount of expenditures expensed and losses and the aggregate amount of capitalized costs and charges incurred during the fiscal year and separately identify where on the income statement and balance sheet these amounts are presented as illustrated in greater detail below.[2113]

With respect to capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs, registrants must disclose these amounts if carbon offsets or RECs have been used as a material component of a registrant's plan to achieve its disclosed climate-related targets or goals.[2114] Unlike the disclosures related to severe weather events and other natural conditions, a registrant is not required to separately determine whether the disclosure threshold is triggered for costs, expenditures, and losses that are recorded on the balance sheet versus the income statement for disclosures related to carbon offsets and RECs.[2115] If disclosure is required because carbon offsets or RECs have been used as a material component of a registrant's plan to achieve its disclosed climate-related targets or goals, then a registrant must separately disclose the following: (1) the aggregate amount of each of the capitalized costs, expenditures expensed, and losses related to carbon

[2104] *See supra* note 1718 and accompanying text. This commenter was referring generally to the Commission's proposal to amend both Regulation S–K and Regulation S–X when it stated its support for anchoring disclosures required outside the financial statements to disclosures required inside the financial statements and was not directly addressing the requirement to disclose expenditure related to carbon offsets or RECs. *See id.* However, this commenter's general assertion is equally applicable to the requirements in the final rules to disclose certain information about carbon offsets and RECs inside and outside the financial statements.

[2105] *See* letter from J. McClellan (stating that a registrant's intent to meet its climate-related targets or goals through any purchase of offsets or RECs ''is directly connected to climate related financial metrics'' and ''[t]here is consensus that significant capital expenditures will be required to meet the most ambitious targets, and investors will want to understand how a registrant is deploying capital against its target.'').

[2106] *See* 17 CFR 210.14–02(e)(1).

[2107] *See, e.g.,* letters from Rockefeller Asset Mgmt. (''It would be helpful to understand a company's intended utilization of carbon offsets and the corresponding quantification of carbon credits that may need to be purchased.''); and Carbon Direct (''Accurate and separate disclosure of . . . the procurement and retirement of carbon offset credits to attempt to compensate for these emissions, are critical for informed investment decisions.'').

[2108] *See* 17 CFR 210.14–02(e)(1).

[2109] *See* 17 CFR 210.14–02(e)(2). *See infra* section II.K.6.a.iii for further discussion of the requirement to disclose contextual information.

[2110] On Dec. 15, 2021, the FASB Chair added a research project to explore accounting for regulatory credits (such as carbon offsets and RECs among others). Respondents provided feedback on this project indicating that the lack of guidance in GAAP for accounting for regulatory credits results in a significant diversity in practice. In May 2022, the FASB added a project to its technical agenda on regulatory credits (such as carbon offsets and RECs among others). *See* 2021 FASB Agenda Consultation Report, available at *https://fasb.org/Page/ShowPdf?path=2021%20FASB%20Agenda%20Consultation%20Report.pdf.* In addition, in July 2022, the IASB added a pollutant pricing mechanisms project to their reserve list as a result of its Third Agenda Consultation. The project aims to develop specific requirements for pollutant pricing mechanisms. *See* Third Agenda Consultation Feedback Statement, available at *https://www.ifrs.org/content/dam/ifrs/project/third-agenda-consultation/thirdagenda-feedbackstatement-july2022.pdf.*

[2111] *See* 17 CFR 210.14–02(c) and (d).

[2112] *See* 17 CFR 210.14–02(b), (c), and (d). Similarly, the proposed Expenditure Metrics would have required a registrant to separately aggregate the amount of expenditures expensed and the amount of capitalized costs to determine whether the applicable disclosure threshold was triggered. *See* Proposing Release, section II.F.3.

[2113] *See* 17 CFR 210.14–02(c) and (d).

[2114] *See* 17 CFR 210.14–02(e)(1).

[2115] *See id.*

offsets and RECs during the fiscal year; (2) the beginning and ending balances of capitalized carbon offsets and RECs on the balance sheet for the fiscal year; and (3) where on the balance sheet and the income statement the capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs are presented, as illustrated in greater detail below.[2116]

We are providing the following example to help illustrate the operation of the final rules. Assume a registrant (1) capitalized $1,200,000 of expenditures related to Severe Weather Event A; (2) incurred an impairment charge of $750,000 in the income statement to write-off $750,000 of inventory from the balance sheet related to Natural Condition B; (3) capitalized $1,000,000 of expenditures to replace the inventory written off related to Natural Condition B; (4) expensed $2,000,000 of expenditures related to Severe Weather Event C; and (5) received $400,000 in insurance recoveries related to Severe Weather Event A. The registrant determined that Severe Weather Events A and C and Natural Condition B were significant contributing factors in incurring the capitalized costs, expenditures expensed, charges, losses, and recovery described above. In addition, the registrant used carbon offsets and RECs as a material component of its plan to achieve a disclosed climate-related target or goal, and it capitalized $1,000,000 and expensed $3,000,000 of carbon offsets or RECs during the period. The registrant had a beginning balance of capitalized carbon offsets or RECs of $2,500,000 and ended the year with $500,000 in capitalized carbon offsets or RECs remaining on its balance sheet. The registrant would determine whether the financial statement effects as a result of severe weather events and other natural conditions would trigger the disclosure requirements based on the thresholds, as illustrated below:

Expenditure category	Current fiscal year balances (stockholders' equity from balance sheet, income or loss before income tax expense or benefit from income statement)	Severe weather event A	Natural condition B	Severe weather event C	Percentage impact
Balance Sheet (capitalized costs and charges)	$150,000,000	$1,200,000	$1,750,000	.....	1.97
Income Statement (expenditures expensed as incurred and losses)	75,000,000	.....	750,000	$2,000,000	3.67

In the above example, the expenditures incurred toward Severe Weather Event A was $1,200,000 (capitalized on balance sheet), the capitalized cost, charge, and loss incurred as a result of Natural Condition B was $1,750,000 (charge on balance sheet and loss in income statement of $750,00 and capitalized cost of $1,000,000 on the balance sheet), and the expenditures incurred toward Severe Weather Event C was $2,000,000 (expense in the income statement). The aggregate amount of the absolute value of capitalized costs and charges on the balance sheet ($2,950,000) exceeded the one percent threshold of stockholders' equity, and therefore disclosure would be required for these costs and charges. The aggregate amount of expenditures expensed as incurred and losses in the income statement ($2,750,000) exceeded the one percent threshold of income or loss before income tax expense or benefit, and therefore disclosure would be required for the expenses and loss. In addition, the registrant used carbon offsets and RECs as a material component of its plan to achieve a disclosed climate-related target or goal, and therefore disclosure would be required for the carbon offsets and RECs. The registrant's resulting disclosure of such costs and expenditures may be provided, for example, as illustrated in the following table (excluding disclosure of contextual information):

Note X. Financial statement effects related to severe weather events and other natural conditions and carbon offsets and renewable energy credits:

Category	Balance sheet		Income statement		
	Year ended Dec. 31,		Year ended Dec. 31,		
	20X2	20X3	20X1	20X2	20X3
Severe Weather Events and Other Natural Conditions.					
Capitalized Costs and Charges:					
Inventory	$–	[a] $250,000	.....	.....	.....
PP&E	$–	1,200,000	.....	.....	.....
Expenditures Expensed as Incurred and Losses:					
General & Administrative	.....	.....	$–	$–	$(2,000,000)
Other Income/(Loss)	.....	.....	$–	$–	(750,000)

[a] $1,000,000 + ($750,000) = $250,000.

In this example, the required contextual information may include disclosure such as the specific severe weather events, natural conditions, and transactions that were aggregated for purposes of determining the effects on the balance sheet and income statement amounts and, if applicable, policy decisions made by a registrant, such as any significant judgments made to determine the amount of capitalized costs, expenditures expensed, charges,

[2116] *See id.*

and losses.[2117] Also, as part of the contextual information, a registrant would be required to disclose the $400,000 in insurance recoveries recognized in the consolidated financial statements as a result of Severe Weather Event A, including identification of where it is presented in the income statement or balance sheet.

CARBON OFFSETS AND RECS

Carbon Offsets and RECs at Jan. 1, 20X3	$2,500,000
Capitalized Carbon Offsets and RECs	1,000,000
Expensed Carbon Offsets and RECs	(3,000,000)
Carbon Offsets and RECs at Dec. 31, 20X3	$500,000

Carbon offsets and RECs are presented in the Intangible Assets line item on the balance sheet and expensed in the General and Administrative line item on the income statement.[a]

[a] As noted above, there is diversity in practice in accounting for carbon offsets and RECs. *See supra* note 2110 and accompanying text. In this example, the entity capitalizes all of its costs of carbon offsets and RECs and presents these amounts within the intangible assets line item. We are providing this example for illustrative purposes only and this is not meant to indicate a preferred method of accounting or presentation. Registrants should consider their specific facts and circumstances when determining the appropriate accounting treatment and disclose their accounting policy in accordance with 17 CFR 210.14–02(e)(2).

In this example, the required contextual information would include the registrant's accounting policy for the carbon offsets and RECs.[2118]

Currently, expenditures, costs, charges, losses, and recoveries may appear in different places within the financial statements (*e.g.,* in one or more asset line items or expense line items on the balance sheet or income statement, respectively). The final rules address this dispersed presentation by requiring registrants to first identify the relevant expenditures, costs, charges, losses, and recoveries and then separately disclose where on the balance sheet and income statement these costs and expenditures are presented.[2119] Such an approach should provide insight into, and context for understanding, the nature of a registrant's business, and provide consistency and comparability for users of the financial statements.

Similar to the examples of disclosure that were included in the proposed rules, the final rules state that a registrant may be required to disclose the aggregate amount of expenditures expensed and losses as incurred as a result of severe weather events and other natural conditions, for example, to restore operations, relocate assets or operations affected by the event or condition, retire affected assets, repair affected assets, recognize impairment loss of affected assets, or otherwise respond to the effect that severe weather events and other natural conditions had on business operations.[2120] The final rules also state that a registrant may be required to disclose the aggregate amount of capitalized costs and charges incurred as a result of severe weather events and other natural conditions, for example, to restore operations, retire affected assets, replace or repair affected assets, recognize an impairment charge for affected assets, or otherwise respond to the effect that severe weather events and other natural conditions had on business operations.[2121]

4. Financial Estimates and Assumptions (Rule 14–02(h))

a. Proposed Rules

The Commission proposed to require registrants to disclose whether the estimates and assumptions used to produce their consolidated financial statements were impacted by exposures to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions or any climate-related risks identified by the registrant pursuant to Item 1502(a) of Regulation S–K.[2122] For such impacts, registrants would have been required to provide a qualitative description of how these events impacted the development of the estimates and assumptions used in the preparation of their financial statements.[2123]

Like the other proposed financial statement metrics, the proposed rules also included a provision that would have required separate disclosure focused on transition activities, including identified transition risks.[2124] If the estimates and assumptions the registrant used to produce the consolidated financial statements were impacted by risks and uncertainties associated with, or known impacts from, a potential transition to a lower carbon economy or any climate-related targets it disclosed, the registrant would have been required to provide a qualitative description of how the development of the estimates and assumptions were impacted by such a potential transition or the registrant's disclosed climate-related targets.[2125] If a registrant elected to disclose the impact of an opportunity on its financial estimate and assumptions, then it would have been required to do so consistently and would have been required to follow the same applicable presentation and disclosure requirements.[2126]

The Commission explained in the Proposing Release that estimates and assumptions are currently required for accounting and financial reporting purposes (*e.g.,* projected financial information used in impairment calculations, estimated loss contingencies, estimated credit risks, commodity price assumptions) and expressed its belief that the proposed disclosures could provide decision-useful information and transparency to investors about the impact of climate-related events and transition activities, including disclosed targets and goals, on

[2117] *See* 17 CFR 210.14–02(a). *See infra* section II.K.6.a.iii for further discussion of the requirement to disclose contextual information.

[2118] *See* 17 CFR 210.14–02(a) and (e)(2).

[2119] *See* 17 CFR 210.14–02(c), (d), (e)(1), and (f).

[2120] *See* 17 CFR 210.14–02(c). In response to a question raised by a commenter, with respect to the capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions, we are clarifying that the final rules do not require a registrant to disclose both the capitalization of expenditures and subsequent expense of expenditures in the same period. *See supra* note 1989. Rather, the final rules require the disclosure of expenditures expensed and losses ''as incurred.'' See 17 CFR 210.14–02(c). For example, a registrant that purchased new machinery to replace machinery that was damaged due to a severe weather event would be required to disclose the cost to purchase the new machinery (assuming the relevant disclosure threshold is met), but the registrant would not be required to disclose (or include in the numerator for purposes of calculating the disclosure threshold) the subsequent depreciation associated with the machinery.

[2121] *See* 17 CFR 210.14–02(d).

[2122] *See* Proposing Release, section II.F.4.

[2123] *See id.*

[2124] *See id.*

[2125] *See id.*

[2126] *See id.*

such estimates and assumptions.[2127] In addition, the Commission stated that such disclosure could allow investors to evaluate the reasonableness of the registrant's estimates and assumptions, which are used to prepare the registrant's financial statements.[2128] The Proposing Release noted that current accounting standards require registrants to consider how climate-related matters may intersect with and affect the financial statements, including their impact on estimates and assumptions. However, the Proposing Release explained that the nature of climate-related events and transition activities discussed in the proposed rules may manifest over a longer time horizon, and therefore targeted disclosure requirements may be necessary to elicit decision-useful information for investors in a consistent manner.[2129]

In addition, the Commission noted in the Proposing Release that some registrants have already provided disclosure along the lines of the proposed requirements, which the Commission said provided support for the feasibility of making such disclosures.[2130] The Proposing Release provided examples of financial statement estimates and assumptions that may require disclosure pursuant to the proposed rules, such as those related to the estimated salvage value of certain assets, estimated useful life of certain assets, projected financial information used in impairment calculations, estimated loss contingencies, estimated reserves (such as environmental reserves or loan loss allowances), estimated credit risks, fair value measurement of certain assets, and commodity price assumptions.[2131]

b. Comments

A number of commenters stated that they supported the proposal to require the disclosure of whether and how the estimates and assumptions the registrant used to produce the consolidated financial statements were impacted by exposures to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions and a potential transition to a lower carbon economy, or any climate-related targets disclosed by the registrant.[2132] Several commenters stated that the proposed rules would provide useful information for investors.[2133] For example, one commenter asserted that disclosures of registrants' estimates and assumptions are ''[e]qually if not more important'' than the line item disclosures themselves.[2134] Another commenter stated that requiring the disclosure of impacts on estimates and assumptions is necessary because for financial risk to be assessed and quantified using financial metrics, investors need to understand the degree of uncertainty of projections and be able to use that information to alter investment choices.[2135] One commenter stated that it would use disclosures about impacts on estimates and assumptions to uncover emerging trends affecting the registrant or other companies similarly situated with respect to the climate related event.[2136]

The Commission included a request for comment in the Proposing Release asking if it should require disclosure of only significant or material estimates and assumptions that were impacted by climate-related events and transition activities, or whether it should require disclosure of only estimates and assumptions that were materially impacted by climate-related events and transition activities.[2137] A number of commenters recommended that the Commission only require the disclosure of estimates and assumptions that were materially impacted by climate-related events.[2138] On the other hand, a few commenters recommended that the Commission only require the disclosure of material estimates and assumptions impacted by climate-related events.[2139] A few commenters recommended that the Commission require disclosure of material estimates and assumptions that were materially impacted by climate-related events.[2140] At least two commenters more generally stated that the proposed estimates and assumptions disclosure should be qualified by materiality.[2141] Some of these commenters asserted that if not qualified by materiality, the proposed rules would result in a large volume of immaterial information.[2142] On the other hand, one commenter stated that the requirement should not be limited to only significant or material estimates and assumptions because it would create a risk that registrants would fail to produce decision-useful information for investors.[2143]

A few commenters stated that they did not support the proposed disclosures of estimates and assumptions.[2144] For example, some commenters pointed out that existing accounting standards already require the disclosure of material financial estimates and related assumptions, which would include those impacted by climate-related risks.[2145] Another commenter stated that amending Regulation S–X to require these disclosures when, in its view, existing standards already require this disclosure could lead registrants to include a statement in their reports that climate-related events were not considered (if they were not a key assumption in calculating estimates), which could imply a negative connotation that, in fact, they should have been considered.[2146]

Some commenters stated that it would be challenging to provide the disclosures,[2147] or stated that additional guidance was needed.[2148] For example, one commenter stated that without additional guidance it would be

[2127] *See id.*

[2128] *See id.*

[2129] *See id.*

[2130] *See id.*

[2131] *See id.*

[2132] *See, e.g.,* letters from As You Sow; Bailard; BC IM Corp.; Boston Trust; CalPERS; Calvert; Center Amer. Progress; D. Higgins; H. Huang; IAA; ICGN; U.S. Reps. Castor *et al.;* Miller/Howard; NY St. Comptroller; PRI; R. Bentley; R. Burke; Rho Impact; Sens. J. Reed *et al.;* SKY Harbor; and UCS.

[2133] *See, e.g.,* letters from Calvert; Carbon Tracker; PwC; and SKY Harbor.

[2134] *See* letter from Calvert.

[2135] *See* letter from IAA.

[2136] *See* letter from SKY Harbor.

[2137] *See* Proposing Release, section II.F.4.

[2138] *See, e.g.,* letters from AAFA; Abrasca; Airlines for America; ITIC; KPMG; and Unilever.

[2139] *See, e.g.,* letters from C2ES; Eni Spa; and Morningstar.

[2140] *See, e.g.,* letters from BIO; and CEMEX. *See also* letter from Carbon Tracker (''In principle, the focus should be on the significant accounting estimates and assumptions that would be materially impacted by an energy transition (*e.g.,* climate-related events and transition activities).'').

[2141] *See, e.g.,* letters from SIFMA AMG; and T. Rowe Price. Similarly, one commenter suggested that the disclosure of financial estimates and assumptions impacted by climate-related opportunities should only be required where the opportunities are highly likely to occur or a core element of the registrant's strategy, but if the opportunity is otherwise uncertain, it should not be factored into the estimates or assumptions. *See* letter from Sarasin.

[2142] *See, e.g.,* letters from SIFMA AMG; and T. Rowe Price.

[2143] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[2144] *See, e.g.,* letters from Carpenter Tech; D. Burton, Heritage Fdn.; McCormick; Petrol. OK; Reinsurance AA; and TotalEnergies.

[2145] *See, e.g.,* letters from AFEP (pointing to IFRS accounting standards); TotalEnergies (''[W]e believe existing accounting standards already require disclosure of material financial estimates and related assumptions.''); and Western Midstream (''The disclosure of contingencies and management's assessment of long-lived asset impairments are already critical accounting estimates for many companies requiring significant judgment and disclosure in the financial statements.'').

[2146] *See* letter from Alliance Resource.

[2147] *See, e.g.,* letters from AAR; and Ernst & Young LLP.

[2148] *See, e.g.,* letters from Ernst & Young LLP; and PwC.

challenging for registrants to develop estimates to isolate the relevant exposures.[2149] Another commenter stated that it would be helpful to provide additional guidance about when the disclosures would be triggered when there may be more than one contributing factor.[2150] This commenter suggested focusing on changes to estimates and assumptions primarily or solely due to climate rather than instances when changes ''are inextricably linked to other contributing factors.'' [2151] Another commenter suggested that the Commission should clarify that registrants have an existing obligation to disclose climate-related financial estimates and assumptions and the proposed rule is providing guidance on the form and location of the already required disclosure.[2152]

Some commenters stated that the scope of the proposed disclosures should be limited to critical accounting estimates.[2153] In particular, one commenter suggested it would be more meaningful if the proposed requirements were included in a registrant's MD&A section of its periodic reports along with the other critical accounting estimates.[2154] One commenter stated that the Commission should not limit disclosure to whether and how climate-related events and transition activities affected critical accounting estimates.[2155] This same commenter also stated that the Commission should not limit the disclosures of impacts to financial estimates and assumptions to only a subset of risks.[2156]

The Commission included a request for comment in the Proposing Release asking if, for the proposed financial statement metrics, it should require a registrant to disclose material changes in estimates, assumptions, or methodology among fiscal years and the reasons for those changes, and if so, whether the Commission should require the material changes disclosure to occur on a quarterly, or some other, basis.[2157] Some commenters stated that registrants should be required to disclose material changes in estimates and assumptions for the proposed financial statement metrics.[2158] A few of these commenters noted that current regulations already require disclosure of material changes in estimates and assumptions.[2159] However, some commenters asserted that current regulations may not be effectively eliciting this disclosure.[2160] One commenter suggested that the Commission should require material changes in estimates and assumptions to be provided on a quantitative basis by financial statement caption because the information would be useful in showing the variability of key estimates and assumptions going forward and their future impact on cash flows.[2161] With respect to timing, one commenter suggested that disclosures regarding material changes in estimates and assumptions could be made on an annual basis with prior year changes and adjustments noted.[2162] Conversely, one commenter stated that registrants should not be required to disclose material changes in estimates and assumptions.[2163] In addition, one commenter asked the Commission to clarify that nothing in the proposed rules would create an affirmative obligation for a foreign private issuer to provide interim updates for any material changes beyond what they would already be required to disclose on Form 6–K.[2164]

c. Final Rules

We are adopting the proposed requirements (Rule 14–02(h)) for registrants to disclose impacts on financial estimates and assumptions with some modifications.[2165] First, the Commission proposed to require a registrant to disclose whether the estimates and assumptions the registrant used to produce the consolidated financial statements were impacted by risks and uncertainties associated with, or known impacts from, a potential transition to a lower carbon economy or any climate related targets disclosed by the registrant.[2166] The final rules, instead of requiring disclosures related to ''a potential transition to a lower carbon economy,'' require registrants to disclose financial estimates and assumptions related to a narrower category of transition activities, specifically, ''any . . . transition plans disclosed by the registrant.'' [2167] As noted above, commenters, including registrants, raised concerns about the scope of transition activities and potential difficulties with identifying and quantifying their impacts when they overlapped with a registrant's ordinary business decisions.[2168] To reduce the potential burden on registrants, we have decided to narrow the scope of transition activities covered by this aspect of the final rule to only those transition plans disclosed by the registrant.[2169] Consistent with the proposed rules, the final rules also require a registrant to disclose whether the estimates and assumptions the registrant used to produce the consolidated financial statements were impacted by risks and uncertainties associated with, or known impacts from, any climate-related targets disclosed by the registrant.[2170]

Second, consistent with commenters' suggestion,[2171] we are modifying the proposed requirements by adding a materiality qualifier in the final rules. The final rules require registrants to disclose whether the estimates and assumptions used to prepare the consolidated financial statements were materially impacted by exposures to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions, such as hurricanes, tornadoes,[2172] flooding, drought, wildfires, extreme temperatures, and sea level rise, or any climate-related targets or transition

[2149] *See* letter from Ernst & Young LLP.

[2150] *See* letter from PwC.

[2151] *See* letter from PwC.

[2152] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[2153] *See, e.g.,* letters from PwC and RSM US LLP. *See also* Eni Spa (''We agree that financial estimates and assumptions impacted by climate-related events and transition risks are critical accounting estimates and so should fall within the scope of 17 CFR 229.303(b)(3).''). Critical accounting estimates are those estimates made in accordance with generally accepted accounting principles that involve a significant level of estimation uncertainty and have had or are reasonably likely to have a material impact on the financial condition or results of operations of the registrant. *See* 17 CFR 229.303(b)(3).

[2154] *See* letter from RSM US LLP.

[2155] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al. See also* letter from Sarasin (''We believe the critical accounting estimate disclosure requirement terminology is appropriate to capture the need for climate-related disclosures, but should not limit the disclosure needed to understand fully how climate considerations have been incorporated into the critical assumptions and estimates.'').

[2156] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[2157] *See* Proposing Release, section II.F.4.

[2158] *See, e.g.,* letters from ERM CVS; Carbon Tracker; Center Amer. Progress; CFA Institute; ICGN; Morningstar; and Sarasin.

[2159] *See, e.g.,* letters from Carbon Tracker; ICGN; and Sarasin.

[2160] *See, e.g.,* letters from Carbon Tracker; and Center Amer. Progress.

[2161] *See* letter from CFA Institute.

[2162] *See* letter from Carbon Tracker.

[2163] *See* letter from TotalEnergies.

[2164] *See* letter from BHP.

[2165] *See* 17 CFR 210.14–02(h).

[2166] *See* Proposing Release, section II.F.4.

[2167] *See* 17 CFR 210.14–02(h).

[2168] *See supra* note 1892 and accompanying text.

[2169] *See* 17 CFR 210.14–02(h).

[2170] *See id.*

[2171] *See supra* notes 2138–2141 and accompanying text.

[2172] We have added hurricanes and tornadoes to the list of severe weather events and other natural conditions included in Rule 14–02(h) to be consistent with the addition of these two types of severe weather events or natural conditions in Rule 14–02(c) and (d). *See supra* section II.K.3.c.v.

plans disclosed by the registrant.[2173] If so, then consistent with the proposed rules, the final rules require registrants to provide a qualitative description of how the development of such estimates and assumptions were impacted by the events, conditions, and disclosed targets or transition plans identified above.[2174]

As described above, a number of commenters indicated that if we adopted a requirement to disclose impacts on estimates and assumptions, then it would be appropriate to include a materiality qualifier in the final rules, and those commenters recommended various permutations related to the materiality qualifier.[2175] After considering this feedback, we have modified the final rules to focus on estimates and assumptions that have been materially impacted because a registrant may use numerous inputs and assumptions, including qualitative considerations, when developing accounting estimates. Focusing on estimates and assumptions that were materially impacted by the events, conditions, and disclosed targets and plans will help to reduce operational challenges and burdens that could arise if registrants were required to assess all impacts when determining the disclosures that would be required. We considered whether it would be appropriate to instead include two materiality qualifiers and require the disclosure of material estimates and assumptions that were materially impacted. However, we think that adding a second materiality qualifier is unnecessary because the disclosures that would result from the two different alternatives would likely be the same. Namely, we think it is unlikely that there could be ''material'' impact to an estimate or assumption if the estimate or assumption itself was not material to the financial statements.[2176] We also considered whether to require disclosure of any impacts to material estimates and assumptions or to not include any materiality qualifiers in the final rules, but we think the approach we are taking appropriately balances investors' need for decision-useful information with a desire to reduce operational challenges for registrants.

We continue to believe that disclosure of whether and how climate-related events impacted the development of financial estimates and assumptions will provide important information to investors. As the Commission stated in the Proposing Release, such disclosure will provide insight into the impacts described above on the registrant's financial statements and will allow investors to assess the reasonableness of the registrant's estimates and assumptions.[2177] Among other things, these disclosures will allow investors to evaluate material impacts on future cash flows, which will help investors make more informed investing decisions. We also agree with those commenters that stated disclosure of impacts on financial estimates and assumptions would enable investors to evaluate a registrant's ''physical risk resilience,'' [2178] or would inform investors ''of the scope, likelihood, and magnitude of potential risks as perceived by the company'' and enable ''comparative analysis against peers.'' [2179]

Some commenters stated that they did not support the proposed requirement to disclose financial estimates and assumptions because existing accounting standards already require the disclosure of this information and therefore this additional requirement would be unnecessary or could be confusing for investors.[2180] Although we agree with commenters that U.S. GAAP and IFRS require the disclosure of material estimates and assumptions in many circumstances,[2181] including significant inputs associated with material estimates and assumptions, the final rules will enhance transparency and consistency by requiring registrants to disclose how estimates and assumptions are materially impacted by severe weather events, natural conditions, and disclosed targets and transition plans, which may require more specific disclosures in certain situations than is currently required under applicable accounting standards.

In addition, although we agree with commenters that the proposed requirements share similarities with critical accounting estimates,[2182] we do not think those disclosures obviate the need for this requirement because the final rules go further by requiring specific disclosure about how estimates and assumptions are materially impacted by risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions and any climate-related targets or transition plans disclosed by the registrant. While critical accounting estimates are often presented outside of the financial statements, the disclosure regarding material impacts to estimates and assumptions will be located in a single note to the financial statements along with the other financial statement disclosures we are adopting, which will enhance the usefulness of the disclosure to investors. Furthermore, we do not think the required disclosure will be confusing to investors. To the contrary, it will provide investors with more decision-useful information about the estimates and assumptions used to prepare the financial statements than is required under applicable accounting standards. Registrants are presumably making business decisions and taking actions to achieve their disclosed transition plans and targets and these decisions may have material impacts on their estimates and assumptions. Providing investors with an understanding of these impacts will help them better evaluate a registrant's financial position, performance, and future cash flows. Other commenters raised concerns about registrants' abilities to isolate the relevant impacts when there may be more than one contributing factor.[2183] We expect these concerns to be mitigated to some extent by the final rules, which include a materiality qualifier and thereby focus management on a narrower category of impacts for which management should have greater insight. In addition, the final rules require registrants to provide a qualitative description of the impacts, which generally is less burdensome to produce than if management had to identify a specific amount.

In addition, we are reiterating a few examples that were included in the Proposing Release where severe weather events, natural conditions, or a registrant's disclosed targets or transition plans could affect a

[2173] *See* 17 CFR 210.14–02(h). As previously discussed, the final rules include similar requirements under subpart 1500 of Regulation S–K to disclose material impacts on financial estimates and assumptions as a direct result of disclosed actions under a transition plan or as a direct result of a disclosed target or goal or actions taken to make progress toward meeting the target or goal. *See* 17 CFR 229.1502(e), discussed *supra* section II.D.2, and 17 CFR 229.1504(c)(2), discussed *supra* section II.G.3. When responding to these Regulation S–K provisions, a registrant may cross-reference from the disclosure provided under 17 CFR 210.14–02(h) to the extent such disclosure is responsive to these subpart 1500 provisions.

[2174] *See* 17 CFR 210.14–02(h). For the avoidance of doubt, if the registrant's estimates and assumptions were not materially impacted by exposures to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions, or any climate-related targets or transition plans disclosed by the registrant, then no disclosure is required under Rule 14–02(h).

[2175] *See supra* notes 2138–2141 and accompanying text.

[2176] *See supra* note 381 and accompanying text.

[2177] *See* Proposing Release, section II.F.4.

[2178] *See* letter from Morningstar.

[2179] *See* letter from BMO Global.

[2180] *See supra* notes 2145 and 2146 and accompanying text.

[2181] *See supra* note 2145.

[2182] *See supra* notes 2153 and 2154 and accompanying text.

[2183] *See supra* note 2150 and accompanying text.

registrant's financial estimates and assumptions.[2184] For example, a registrant's climate-related targets and related commitments, such as a disclosed commitment to achieve net-zero emissions by 2040, may impact certain accounting estimates and assumptions. Also, for example, if a registrant disclosed a commitment that would require decommissioning an asset by a target year, then the registrant's useful life and salvage value estimates used to compute depreciation expense as well as its measurement of asset retirement obligation should reflect alignment with that commitment. Financial statement estimates and assumptions that may require disclosure pursuant to the final rules may include those related to the estimated salvage value of certain assets, estimated useful life of certain assets, projected financial information used in impairment calculations, estimated loss contingencies, estimated reserves (such as environmental reserves, asset retirement obligations, or loan loss allowances), estimated credit risks, fair value measurement of certain assets, and commodity price assumptions.

Finally, although we considered whether it would be appropriate to require disclosure of material changes in estimates, assumptions, or methodology among fiscal years and the reasons for those changes,[2185] at this time we are not including such a requirement in the final rules. The narrower scope of the final rules, which is focused on discrete transactions that are currently recognized in a registrant's financial statements in accordance with GAAP, reduces the need for explicit requirements regarding material changes in estimates and assumptions underlying the financial disclosures. Current requirements under GAAP would continue to apply to material changes in estimates and assumptions.[2186] In addition, in response to the commenter that asked for clarification about whether foreign private issuers would have to provide interim updates,[2187] we are clarifying that the final rules will not affect existing filing obligations under Form 6–K.

5. Opportunities

a. Proposed Rules

The proposed rules would have permitted a registrant, at its option, to disclose the impact of any opportunities arising from severe weather events and other natural conditions, any impact of efforts to pursue climate-related opportunities associated with transition activities, and the impact of any other climate-related opportunities, including those identified by the registrant pursuant to proposed Item 1502(a) of Regulation S–K, on any of the financial statement metrics.[2188] The Proposing Release explained that if a registrant makes a policy decision to disclose the impact of a climate-related opportunity on the proposed financial statement metrics, it must do so consistently (*e.g.,* for each fiscal year presented in the consolidated financial statements, for each financial statement line item, for all relevant opportunities identified by the registrant) and must follow the same presentation and disclosure threshold requirements applicable to the required disclosures related to the financial impact metrics and expenditure metrics.[2189]

b. Comments

A number of commenters stated that they supported the proposal to make the disclosure of climate-related opportunities optional.[2190] Commenters stated that investors would benefit from this information about positive impacts,[2191] including because it is key for investors to understand how a company is reducing its climate-related financial risks.[2192] However, a few of these commenters explained that concerns about requiring the sharing of sensitive or competitive business information weighed in favor of making the proposed disclosure optional.[2193] In addition, some commenters stated that they supported the proposal to require the disclosure of opportunities to be made consistently.[2194]

One commenter asserted that the disclosure of opportunities in the financial statements should be limited to amounts that can be objectively verified and reliably quantified.[2195] Similarly, another commenter stated it should be limited to ''virtually certain opportunities'' to avoid misleading investors.[2196] A few commenters expressed concerns about potential greenwashing related to the disclosure of opportunities.[2197] However, one commenter explained that, although there is a risk that the disclosure of opportunities could lead to greenwashing, by including the information in a filing with the Commission, registrants would be subject to liability and would be required to disclose their assumptions and methodologies.[2198]

Other commenters stated that the disclosure of opportunities should not be permitted in the audited financial statements.[2199] For example, one commenter explained that opportunities should not be disclosed in the financial statements because opportunities appear to be forward-looking and speculative and may be subject to management bias.[2200] Some commenters stated that it may be difficult to develop internal controls for the disclosure of opportunities [2201] or that opportunities may be complex to audit.[2202] A few commenters suggested that registrants could address opportunities in the MD&A section of their periodic reports.[2203]

Some commenters stated that they would support the Commission mandating the disclosure of opportunities.[2204] One of these commenters stated that mandated disclosure of opportunities would facilitate an understanding of the strategic or competitive advantages a company may have in terms of furthering physical risk resilience.[2205] Another commenter expressed support for mandatory disclosure of climate-related opportunities except when such opportunities are unrelated to the registrant's core or existing lines of

[2184] *See* Proposing Release, section II.F.4.

[2185] *See supra* note 2157 and accompanying text.

[2186] See FASB ASC Topic 250, Accounting Changes and Error Corrections and IFRS IAS 8 Accounting Policies, Changes in Accounting Estimates and Errors.

[2187] *See supra* note 2164 and accompanying text.

[2188] *See* Proposing Release, sections II.F.2, 3, and 4.

[2189] *See* Proposing Release, section II.F.2.

[2190] *See, e.g.,* letters from Anthesis; BC IM Corp.; Bloomberg; C2ES; Eni Spa; ERM CVS; ICGN; Miller/Howard; Moody's; NY City Comptroller; Reinsurance AA; Sarasin; TotalEnergies; and T. Peterson.

[2191] *See, e.g.,* letters from Anthesis; C2ES; and Mazars.

[2192] *See* letter from C2ES.

[2193] *See, e.g.,* letters from Anthesis; C2ES; and Reinsurance AA.

[2194] *See, e.g.,* letters from ICGN; RSM US LLP; and Sarasin.

[2195] *See* letter from PwC.

[2196] *See* letter from CEMEX.

[2197] *See, e.g.,* letters from Bloomberg; D. Higgins; R. Bentley; and R. Burke.

[2198] *See* letter from Anthesis.

[2199] *See, e.g.,* letters from McCormick; and Nutrien.

[2200] *See* letter from Nutrien.

[2201] *See, e.g.,* letters from CEMEX; and Nutrien.

[2202] *See, e.g.,* letters from CEMEX; and RSM US LLP.

[2203] *See, e.g.,* letters from Eni Spa; Mazars (recommending that opportunities would be discussed in the financial statements and in MD&A); and RSM US LLP.

[2204] *See, e.g.,* letters from BHP; Morningstar; and We Mean Business.

[2205] *See* letter from Morningstar.

business.[2206] Relatedly, one commenter requested that the Commission clarify that the disclosure of opportunities is optional because the interaction between proposed rules 14–02(b) and (j) could give the impression that disclosure of opportunities is required if the impact is greater than one percent.[2207]

A few commenters recommended revisions or clarifications to the definition of opportunities. For example, one commenter pointed out that financial statements typically include backward-looking financial results and therefore the use of the term opportunities in the financial statements should be clarified.[2208] Another commenter asserted that the definition of ''climate-related opportunities'' provided in proposed Item 1500(b) is confusing when applied to the disclosure of opportunities in the financial statements, which would be made on a line item basis, because the definition refers to the actual or potential positive impacts of climate-related conditions and events on a registrant's consolidated financial statements ''as a whole.'' [2209] Other commenters suggested that the definition of climate-related opportunities should be revised to include activities in the forestry and forest products sector [2210] and the positive impacts of a company's competitive positioning, brand strength, and reputation.[2211] One commenter asserted that the disclosure of opportunities should not impact the reporting relevant for the disclosure thresholds because it could potentially discourage companies from disclosing impacts from opportunities and triggering the threshold.[2212] One commenter requested that the Commission provide additional guidance around the definition of climate-related opportunities.[2213]

c. Final Rules

In light of the changes to other aspects of the final rules, we have decided not to adopt the proposed rules related to the disclosure of opportunities. First, as discussed above, we have decided not to adopt: (1) the proposed Financial Impact Metrics,[2214] (2) the proposed requirement to disclose costs and expenditures related to general transition activities in the financial statements (*e.g.,* a portion of the proposed Expenditure Metrics), and (3) the proposed requirement to disclose the impacts of any climate-related risks identified pursuant to proposed Item 1502(a) of Regulation S–K. The proposed rules would have permitted a registrant to disclose the impact of any opportunities with respect to each of these disclosure items.[2215] Because these disclosure items will not be included in the final rules, there is no reason to adopt final requirements regarding the disclosure of opportunities with respect to these items.

Second, as discussed above in section K.3.c, in a modification from the proposed rules, the final rules require the disclosure of capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events.[2216] Unlike the proposed rules, the final rules do not make a distinction between ''risks'' and ''opportunities'' in the financial statement disclosure requirements. Therefore, we do not think it is necessary to retain a provision related to the disclosure of opportunities. To the extent that a registrant incurs costs and expenditures as a result of a severe weather event (applying the final rules' attribution principle), the registrant would be required to disclose these costs and expenditures under the final rules regardless of the reason for the expenditure (assuming the disclosure threshold is met). However, we do not expect that registrants will commonly incur costs, expenditures, charges, and losses as a result of severe weather events or other natural conditions in furtherance of an opportunity. In this regard, our expectation is consistent with the Proposing Release, which did not provide any examples of opportunities associated with severe weather events and other natural conditions in the discussion of the proposed Expenditure Metrics.[2217] To the extent that a registrant identifies a cost or expenditure incurred as a result of severe weather events or other natural conditions that it believes was incurred in furtherance of an opportunity, disclosure of the cost or expenditure would be required (assuming the other requirements of the final rules are satisfied) as explained above. However, the registrant would not be required to identify any costs or expenditures disclosed under Article 14 as related to an ''opportunity'' as explained in greater detail below.[2218]

The same analysis applies to opportunities related to carbon offsets and RECs. The requirement in the final rules to disclose capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs was not included in the proposed rules because the proposed rules required the disclosure of costs and expenditures related to transition risks more generally, and therefore the proposed rules did not separately address opportunities related to carbon offsets and RECs. Under the final rules, a registrant is required to disclose capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs regardless of the reason for the expenditure (assuming the disclosure threshold is met) for the same reasons as discussed in the previous paragraph with respect to severe weather events. We expect that registrants will most commonly incur costs, expenditures, and losses in connection with the acquisition and use of carbon offsets and RECs as part of a strategy to mitigate transition *risk* as opposed to in furtherance of an *opportunity*. However, to the extent that a registrant incurs such costs, expenditures, and losses in furtherance of an opportunity, the registrant would not be required to identify any amounts disclosed under the final rules as related to an ''opportunity'' as explained in greater detail below.

Third, as discussed above in section K.4, we are adopting Rule 14–02(h),

[2206] *See* letter from We Mean Business.

[2207] *See* letter from Deloitte & Touche.

[2208] *See* letter from CFA Institute.

[2209] *See* letter from Chamber.

[2210] *See* letter from NAFO.

[2211] *See* letter from Moody's.

[2212] *See* letter from Morningstar.

[2213] *See* letter from PwC.

[2214] *See supra* note 1735 for an explanation regarding the overlap between the proposed Financial Impact Metrics and the proposed Expenditure Metrics.

[2215] *See* Proposing Release, sections II.F.2, 3, and 4.

[2216] *See* 17 CFR 210.14–02(c) and (d). The proposed rules would have required the disclosure of costs and expenditures to ''mitigate the risks from severe weather events and other natural conditions.'' *See* Proposing Release, section II.F.3.

[2217] *See* Proposing Release, section II.F.3 (stating, in the discussion of the proposed Expenditure Metrics, that a registrant may choose to disclose the impact of efforts to pursue climate-related opportunities associated with transition activities but remaining silent with respect to opportunities for costs and expenditures related to severe weather events and other natural conditions).

[2218] The same analysis applies to opportunities related to carbon offsets and RECs. The requirement in the final rules to disclose capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs was not included in the proposed rules because the proposed rules required the disclosure of costs and expenditures related to transition risks more generally, and therefore the proposed rules did not separately address opportunities related to carbon offsets and RECs. Under the final rules, a registrant is required to disclose capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs regardless of the reason for the expenditure (assuming the disclosure threshold is met) for the same reasons as discussed in this paragraph with respect to severe weather events. *See* 17 CFR 210.14–02(e).

which we have modified from the proposal, to require registrants to disclose whether the estimates and assumptions the registrant used to produce the consolidated financial statements were materially impacted by exposures to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions or any climate-related targets or transition plans disclosed by the registrant.[2219] After further consideration, we believe that including a provision regarding the disclosure of the impact of opportunities on the financial estimates and assumptions is also unnecessary. That is because Rule 14–02(h) requires a registrant to disclose the ''known impacts'' on its financial estimates and assumptions and ''impacts'' is not limited to negative impacts.[2220] Nor does ''known impacts'' draw a distinction between the impacts resulting from ''risks'' or ''opportunities.'' In other words, to the extent that a registrant's financial estimates and assumptions are materially impacted by severe weather events or other natural conditions or disclosed targets or transition plans, the registrant would be required to disclose this material impact under the final rules regardless of the reason for the impact.[2221] Therefore, we are not adopting the proposed rules related to the voluntary disclosure in the financial statements of the impact of any opportunities related to financial estimates and assumptions.

The approach we are taking in the final rules will mitigate many of the concerns that commenters raised about the disclosure of opportunities, while still providing investors with decision-useful information about a registrant's capitalized costs, expenditures expensed, charges, losses, and material impacts to estimates and assumptions. As discussed above, the final rules do not distinguish between ''risks'' and ''opportunities'' in requiring the disclosure of capitalized costs, expenditures expensed, charges, losses, and material impacts to estimates and assumptions, and registrants will not be required to identify any amounts disclosed under the final rules as related to a ''risk'' or ''opportunity.'' Furthermore, any capitalized costs, expenditures expensed, charges, losses, and material impacts to financial estimates and assumptions required to be disclosed under the final rules are limited to those that a registrant has actually incurred and recorded in its books and records. These aspects of the final rules should alleviate commenters' concerns about the potential for greenwashing,[2222] issues regarding auditability,[2223] and concerns that registrants could be required to disclose sensitive or competitive business information related to opportunities.[2224] Similarly, commenters' concerns about the definition of ''opportunities'' as applied to the financial statement disclosures [2225] are rendered moot because, as explained above, the final rules will not require registrants to identify particular capitalized costs, expenditures expensed, charges, losses, or material impacts to estimates and assumptions as derived from an opportunity, and furthermore the final rules no longer include a definition of opportunities.[2226]

6. Financial Statement Disclosure Requirements

a. Contextual Information (Rule 14–02(a)) and Basis of Calculation (Rule 14–01(c))

i. Proposed Rules

In the Proposing Release, the Commission explained that because the proposed financial statement metrics would involve estimation uncertainties driven by the application of judgments and assumptions, similar to other financial statement disclosures, registrants would be required to disclose contextual information to enable a reader to understand how it derived the financial statement metrics, including a description of significant inputs and assumptions used, and if applicable, policy decisions made by the registrant to calculate the metrics.[2227]

To avoid potential confusion, maintain consistency with the rest of the financial statements, and to aid comparability, the Commission proposed that registrants would be required to calculate the financial statement metrics using financial information that is consistent with the scope of the rest of the registrant's consolidated financial statements included in the filing.[2228] Therefore, registrants would have to include in any such calculation financial information from subsidiaries.[2229]

The Commission also proposed basis of calculation requirements providing that a registrant would be required to apply the same set of accounting principles that it is required to apply in preparation of the rest of its consolidated financial statements included in the filing, whenever applicable.[2230]

ii. Comments

Many of the commenters that specifically addressed the proposed requirement to provide contextual information supported it.[2231] Commenters who supported the proposal generally stated that contextual information would provide important information to investors and would help them understand the financial statement disclosures.[2232] One commenter stated that the requirement to provide contextual information would make comparisons easier across registrants.[2233] Another commenter confirmed that it would use contextual information in evaluating a registrant's securities.[2234]

A few commenters specifically disagreed with the proposal to require contextual information.[2235] One commenter expressed concern that a registrant would be required to make many assumptions and policy decisions in order to disclose contextual information and asserted that the proposed requirement could result in inconsistent and incomparable information that is not useful for

[2219] *See* 17 CFR 210.14–02(h).

[2220] *See id.*

[2221] *See id.*

[2222] *See supra* note 2197 and accompanying text.

[2223] *See supra* note 2202 and accompanying text.

[2224] *See supra* note 2193 and accompanying text.

[2225] *See supra* note 2208 and accompanying text.

[2226] *See supra* section II.C.1.c.

[2227] *See* Proposing Release, section II.F.1. In the Proposing Release, the Commission explained that inputs and assumptions may include the estimation methodology used to disaggregate the amount of impact on the financial statements between the climate-related events and activities and other factors. The Proposing Release also stated that policy decisions may include a registrant's election to disclose the impacts from climate-related opportunities. *See* Proposing Release, section II.F.1.

[2228] *See id.*

[2229] *See id.* (citing 17 CFR 210.3–01(a) (''There shall be filed, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years.'')).

[2230] *See id.* 17 CFR 210.4–01(a)(1) states that financial statements filed with the Commission that are not prepared in accordance with GAAP will be presumed misleading or inaccurate unless the Commission has otherwise provided. The Commission stated in the Proposing Release that, for the avoidance of doubt, it was clarifying the application of this concept to the proposed rules by requiring a registrant to apply the same set of accounting principles that it is required to apply in the preparation of the rest of its consolidated financial statements included in the filing, whenever applicable. *See* Proposing Release, section II.F.1 (citing 17 CFR 210.4–01(a)(2) (discussing the application of U.S. GAAP, IFRS, and the use of other comprehensive sets of accounting principles (with reconciliation to U.S. GAAP))).

[2231] *See, e.g.,* letters from CalPERS; CEMEX; CFA Institute; E. Ocampo; ICGN; KPMG; Mazars; Morningstar; PwC; Sarasin; SKY Harbor; and TotalEnergies.

[2232] *See, e.g.,* letters from Mazars; PwC; and SKY Harbor.

[2233] *See* letter from Amer. For Fin. Reform, Evergreen Action, *et al.*

[2234] *See* letter from SKY Harbor.

[2235] *See, e.g.,* letters Corteva; and Energy Transfer.

investors.[2236] Another commenter stated that the Proposing Release does not provide any guidance on the necessary level of detail required for contextual information and that contextual information will not help registrants distinguish between climate and non-climate related activities or help registrants determine how to allocate impacts to particular line items.[2237] One commenter stated that while it supported the need for transparency in definitions and methodologies used, it believed it would be possible to simplify the requirement to provide contextual information, in particular, by making the information required in the audited financial statements less prescriptive.[2238] Finally, in the Proposing Release, the Commission requested comment on whether providing additional examples or guidance would assist registrants in disclosing contextual information. Commenters had different views on whether additional examples or guidance would be helpful, but generally did not provide the Commission with any specific recommendations.[2239]

Commenters who addressed the issue generally agreed with the proposal to require registrants to calculate the financial statement metrics using financial information that is consistent with the scope of the rest of the registrant's consolidated financial statements and to use the same accounting principles that the registrant is required to apply in preparing the rest of its consolidated financial statements including in the filing.[2240] One commenter stated that applying the same set of accounting principles consistently throughout a registrant's consolidated financial statements is important and would aid comparability.[2241] Another commenter asked the Commission to clarify the phrase ''whenever applicable'' as used in proposed Rule 14–01(c)(2), which directs a registrant to, ''whenever applicable, apply the same accounting principles that it is required to apply in the preparation of the rest of its consolidated financial statements . . . .'' [2242] This commenter stated that the phrase ''whenever applicable'' is confusing because it is presumed that GAAP applies to the proposed financial statement metrics and therefore the Commission should clarify any circumstances it is aware of where the accounting principles would conflict with, or be inconsistent with, GAAP.[2243] With respect to the proposed requirement to use financial information that is consistent with the scope of the rest of the registrant's consolidated financial statements, one commenter stated that the proposed rule ''makes no allowance for wholly-owned subsidiaries, which may lead to duplication and double counting.'' [2244]

In addition, most commenters supported requiring the application of existing GAAP to the proposed financial statement metrics.[2245] However, a number of commenters raised concerns that certain of the proposed financial statement metrics would not necessarily comport with GAAP, including amounts for lost revenues, cost savings, or cost reductions.[2246] In addition, in response to a question in the Proposing Release, certain commenters stated that the proposed financial statement metrics should be calculated at a reportable segment level when a registrant has more than one reportable segment, as defined by FASB ASC Topic 280 *Segment Reporting,* or presented by geographic areas that are consistent with the registrant's reporting pursuant to FASB ASC Topic 280–10–50–41.[2247] On the other hand, some commenters stated that they did not support calculating and presenting the disclosures at a segment or geographic level because it would be too complex or would result in the disclosure of irrelevant information.[2248]

iii. Final Rules

After consideration of the comments, we are adopting the requirement (Rule 14–02(a)) to provide contextual information with certain clarifying modifications. We have decided to include in the text of the final rules two additional types of contextual information a registrant is required to disclose.[2249] In addition to the types of contextual information included in the proposed rules, registrants will also be required to disclose significant judgments made and other information that is important to an investor's understanding of the financial statement effect.[2250] Therefore, under the final rules, a registrant must ''[p]rovide contextual information, describing how each specified financial statement effect . . . was derived, including a description of significant inputs and assumptions used, significant judgments made, [and] other information that is important to understand the financial statement effect and, if applicable, policy decisions made by the registrant to calculate the specified disclosures.'' [2251] Similar to the Proposing Release, in the discussion of the financial statement disclosures above, we provided certain non-exclusive examples of the types of contextual information that registrants may be required to disclose depending on the particular facts and circumstances. We agree with the commenters who stated that contextual information will help investors understand the required financial statement effects.[2252] The financial statement disclosures we are adopting may involve estimation uncertainties that are driven by the application of judgments and assumptions, like certain other financial statement disclosures,[2253] and therefore disclosure of contextual information will facilitate investors' understanding of the financial statement effects and will be an integral part of the financial statements.

In response to certain commenters' requests for clarification or additional guidance,[2254] as noted above, we decided to include in the final rules two additional types of contextual information that will enhance investors' understanding of the financial statement disclosures. We have decided to include ''significant judgments'' as an additional type of contextual information in the final rules because registrants will need to exercise judgment when preparing their disclosures, and disclosing contextual information about those judgments will help investors understand and evaluate the reasonableness of the disclosures.[2255]

[2236] *See* letter from Energy Transfer.

[2237] *See* letter from Chamber.

[2238] *See* letter from BNP Paribas.

[2239] *See, e.g.,* letters from CFA Institute; E. Ocampo; Grant Thornton; and Third Coast.

[2240] *See, e.g.,* letters from BHP; CEMEX; CFA; Eur. Banking Fed.; Eni Spa; IAA; KPMG; Mazars; Morningstar; Nutrien; and Sarasin.

[2241] *See* letter from IAA.

[2242] *See* letter from Deloitte & Touche.

[2243] *See id.*

[2244] *See* letter from PPL.

[2245] *See, e.g.,* letters from Chamber; Eni Spa; KPMG; and Mazars.

[2246] *See* letter from Chamber. *See also, e.g.,* letters from KPMG; PwC; SIFMA; and Soc. Corp. Gov.

[2247] *See, e.g.,* letters from Eni Spa; ICGN; Mazars; Moody's; Morningstar; and Sarasin.

[2248] *See, e.g.,* letters from Abrasca; BHP; and SEC Professionals.

[2249] *See* 17 CFR 210.14–02(a).

[2250] *See id.*

[2251] *See id.*

[2252] *See supra* note 2232 and accompanying text.

[2253] For example, the application of FASB ASC Topic 606 *Revenue from Contracts with Customers* and ASC Topic 326 *Financial Instruments—Credit Losses* require the application of judgment when applying GAAP to the financial statements. FASB ASC 275–10–50–6 through 50–15A require the disclosure of information about certain significant estimates. In addition, FASB ASC 235–10–05–3, 05–4, and 50–1 require the disclosure of information about accounting policies.

[2254] *See supra* note 2239 and accompanying text.

[2255] *See* 17 CFR 210.14–02(a). Registrants are regularly required to exercise judgment when

Given the narrower scope of the disclosure requirements that we are adopting, we expect that the final rules require fewer inputs and assumptions than would have been required under the proposal; however, we are retaining the references to inputs and assumptions in the final rules because it is possible, though less likely, that preparation of the financial statement disclosures could involve estimation uncertainty and require the registrant to exercise judgment in the selection of inputs and assumptions.[2256] In addition, to enhance understanding of the financial statement disclosures, the final rules explicitly require disclosure of other information that is important to understand the financial statement effects.[2257] In section II.K.3.c.iv above, we have specified one instance where the final rules require registrants to disclose this type of contextual information because we think the information is important to understand the financial statement effects of the disclosed capitalized costs, expenditures expensed, charges, or losses.[2258] By requiring the disclosure of information that is important to understand the financial statement effects, the requirement to provide contextual information will also help registrants avoid having incomplete and potentially misleading disclosures.

We disagree with the commenters who stated that requiring disclosure of contextual information would result in inconsistent and incomparable information that is not useful for investors.[2259] On the contrary, the requirement to provide contextual information will improve the comparability of disclosures by enabling investors to understand how registrants have exercised judgment and made assumptions in determining the financial statement effect. This will enable investors to compare judgments and assumptions made by registrants, including across industries, which will provide investors with useful information for purposes of their investment and voting decisions. Furthermore, although we are clarifying aspects of the contextual information requirement, we disagree with the commenters who stated that the requirement to provide contextual information should be simplified and that more guidance is needed with respect to the level of detail required.[2260] The final rules intentionally provide flexibility to registrants to allow them to include contextual information that is tailored to their particular circumstances thereby improving the usefulness for investors of the disclosures. One commenter stated that a registrant would be required to make many assumptions and policy decisions to disclose contextual information.[2261] As noted above, the final rules focus on requiring the disclosure of capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions, which require fewer assumptions and policy decisions by the registrant than would have been required under the proposed rules. As a result, we expect the extent of contextual information provided under the final rules will be reduced as compared to the proposal.

We are also adopting the requirements (Rule 14–01(c)) for registrants to calculate the financial statement effects using financial information that is consistent with the scope of the rest of the registrant's consolidated financial statements and to apply the same set of accounting principles that a registrant is required to apply in preparation of the rest of its consolidated financial statements, consistent with the proposal.[2262] As the Commission explained in the Proposing Release, requiring registrants to calculate the financial statement disclosures using financial information that is consistent with the scope of the rest of the registrant's consolidated financial statements will avoid potential confusion, maintain consistency, and aid comparability.[2263] In addition, we agree with the commenter who stated that applying the same set of accounting principles to the financial statement disclosures will aid comparability.[2264] We are not aware of any circumstances where the final rules will require a registrant to deviate from GAAP, and therefore we are striking the words ''[w]henever applicable'' from the final rules, in response to the commenter who stated that this phrase was confusing because it could imply that the Commission is aware of circumstances where the applicable accounting principles would be inconsistent with GAAP.[2265] In addition, it is important for investors to be provided with information that is consistent across financial statements.

As discussed above, the Commission also received feedback about whether registrants should be required to calculate the proposed financial statement metrics at a reportable segment level or to present the metrics by geographic areas.[2266] The Commission did not propose such requirements and—although we do not necessarily agree with those commenters that stated requiring disclosure at a segment or geographic level would be too complex or result in the disclosure of irrelevant information [2267]—we think the approach to disclosure we are adopting strikes an appropriate balance between providing consistent, comparable, and decision-useful information to investors and the associated burdens to registrants.

Finally, several areas of commenter question or concern related to the requirements discussed above are addressed by our decision to not adopt the proposed Financial Impact Metrics and to focus on the disaggregation and disclosure of discrete transactions that are recorded in the financial statements. For example, concerns about the interaction between GAAP and the proposed Financial Impact Metrics will not apply to the final rules.[2268] For the sake of clarity, however, we reiterate that the rules the Commission is adopting require registrants to apply existing GAAP recognition and

applying GAAP to prepare their financial statements and therefore the fact that the final rules will require registrants to exercise judgment is not unusual. For example, FASB ASC Topic 606 *Revenue from Contracts with Customers* requires an entity to disclose significant judgments in the application of the guidance (ASC 606–10–50–17), FASB ASC Topic 820 *Fair Value Measurement* requires an entity to disclose judgments and assumptions about assets and liabilities measured at fair value in the financial statements, and FASB ASC Topic 842 *Leases* requires a lessees to disclose information about significant assumptions and judgments made in applying the requirements of Topic 842.

[2256] *See* 17 CFR 210.14–02(a).

[2257] *See id.*

[2258] *See id.*

[2259] *See supra* note 2236 and accompanying text.

[2260] *See supra* notes 2237 and 2238 and accompanying text.

[2261] *See supra* note 2236 and accompanying text.

[2262] *See* 17 CFR 210.14–01(c).

[2263] *See* Proposing Release, section II.F.1. As noted above, one commenter stated that the proposed rule ''makes no allowance for wholly-owned subsidiaries, which may lead to duplication and double counting.'' *See supra* note 2244 and accompanying text. Although the comment letter does not provide additional context for this statement, we think the commenter may have the misimpression that the proposed disclosure threshold would have been evaluated at the parent and subsidiary level separately. On the contrary, and as proposed, the final rules will require registrants to calculate the financial statement disclosure using financial information that is consistent with the scope of the rest of its *consolidated* financial statements included in the filing, which we do not believe would result in any double-counting or duplication.

[2264] *See supra* note 2241 and accompanying text.

[2265] *See supra* note 2242 and accompanying text.

[2266] *See supra* notes 2247 and 2248 and accompanying text.

[2267] *See supra* note 2248 and accompanying text.

[2268] *See supra* note 2246 and accompanying text.

measurement requirements to the financial statement disclosures.

b. Historical Periods (Rule 14–01(d))

i. Proposed Rules

The Commission proposed to require a registrant to provide disclosure for the registrant's most recently completed fiscal year and for the historical fiscal year(s) included in the registrant's consolidated financial statements in the applicable filing.[2269] The Proposing Release stated that a registrant would not need to provide a corresponding historical metric for a fiscal year preceding its current reporting fiscal year if it is eligible to take advantage of the accommodation in 17 CFR 230.409 (''Rule 409'') or 17 CFR 240.12b–21 (''Rule 12b–21'').[2270] The Commission explained that requiring disclosure of current and, when known or reasonably available to the registrant without unreasonable effort or expense, historical periods, should allow investors to analyze trends in relevant impacts on the consolidated financial statements and to better evaluate the narrative trend disclosure provided pursuant to proposed subpart 1500 of Regulation S–K.[2271]

ii. Comments

A few commenters supported the requirement as proposed.[2272] One commenter indicated that the accommodation in Rule 409 or Rule 12b–21 would be sufficient for issuers to rely upon when historical information subject to disclosure is unknown or not reasonably available.[2273] On the other hand, some commenters stated that it was not clear when a registrant could take advantage of the accommodations provided by these rules or that the requirements applicable to these rules made it difficult for registrants to rely upon them.[2274]

Most commenters that provided feedback on the proposed financial statement metrics did not support requiring registrants to provide disclosure for historical period(s) that occurred prior to the compliance date of the rule and instead recommended requiring disclosure on a prospective basis and phasing in disclosure for historical periods over time.[2275] These commenters generally observed that it would be challenging and burdensome for registrants to provide disclosure for historical periods that occurred prior to the compliance date because many registrants do not currently collect or report the information that would have been required under the proposal.[2276] One commenter stated that issuers would have to ''retroactively estimate their historical data,'' which would be ''burdensome and unlikely to produce reliable and consistent disclosures for investors.'' [2277] Other commenters pointed out that even if historical information is available, issuers may not be able to conclude that they had adequate controls in place prior to the compliance date for the rule.[2278] As an alternative, some commenters recommended that the Commission delay the effective date of the proposed rule to help facilitate the disclosure of information for historical periods.[2279]

Several commenters stated that disclosure of historical information on a prospective basis would be useful information for investors.[2280] These commenters generally observed that the disclosure of historical information would be valuable for illuminating material changes to estimates and assumptions and historical trends.[2281]

The Commission included a request for comment in the Proposing Release asking if information for all periods in the consolidated financial statements should be required for registrants that are filing an initial registration statement.[2282] A few commenters supported requiring a registrant to provide disclosure for all periods in the consolidated financial statements for registrants filing an initial registration statement.[2283] On the other hand, one commenter recommended that, for newly public companies on an ongoing basis, the Commission require disclosure only for the most recent fiscal year for which audited financial statements are included in the initial registration statement to ''reduce the barriers to market.'' [2284] In addition, one commenter asked whether the proposed financial statement metrics would need to be restated or adjusted for historical periods if climate-related impacts (both physical and transition events) are not identifiable and do not occur until after the metrics are first reported.[2285]

iii. Final Rules

After consideration of comments, we have decided to require a registrant to provide disclosure for historical fiscal year(s) included in a registrant's consolidated financial statements on a prospective basis only.[2286] Under the final rules (Rule 14–01(d)), disclosure must be provided for the registrant's most recently completed fiscal year, and to the extent previously disclosed or required to be disclosed, for the historical fiscal year(s), for which audited consolidated financial statements are included in the filing.[2287] Subject to the compliance date discussed below,[2288] registrants will be required to provide disclosure for the registrant's most recently completed fiscal year for which audited financial statements are included in the filing in any filings to which the final rules apply; however, registrants are not required to provide disclosure for historical fiscal year(s) included in that filing. For example, subject to the compliance date, a registrant that files its annual report will only be required to provide the applicable disclosure for the registrant's most recently completed fiscal year for which audited financial statements are included in the filing. For each subsequent fiscal year's annual report, the registrant will be required to provide the applicable disclosure for an additional fiscal year until the required disclosure is provided for the entire period covered by the registrant's financial statements.[2289] Initial

[2269] *See* Proposing Release, section II.F.1.

[2270] *See id.*

[2271] *See id.*

[2272] *See, e.g.,* letters from Center Amer. Progress; Morningstar; and Sarasin.

[2273] *See* letter from Center Amer. Progress.

[2274] *See, e.g.,* letters from BOA; CAQ; Cleary Gottlieb; INGAA; RSM US LLP; Soc. Corp. Gov.; TRC; and Western Midstream.

[2275] *See, e.g.,* letters from ABA; AEPC; AFPA; AFPM; Allstate; Alphabet *et al.;* API; Autodesk; Baker Tilly; BDO USA LLP; BHP; BOA; BP; CAQ; CCR; CEMEX; CFA Institute; Chamber; Corteva; Crowe; Dell; Deloitte & Touche; D. Hileman Consulting; E. Ocampo; Energy Infrastructure; Energy Transfer; Etsy; FHL Bank Des Moines; HP; Hydro One; IAA; IMA; INGAA; Marathon; McCormick; Microsoft; NAFO; NAM; Nareit; NMHC *et al.;* Northern Trust; PFG; PPL; PSC; PwC; RILA; Royal Gold; RSM US LLP; SEC Professionals; SIFMA; SouthState; Sullivan Cromwell; TotalEnergies; TRC; Walmart; Western Midstream; and WSP.

[2276] *See, e.g.,* letters from Abrasca; Alphabet *et al.;* API; BlackRock; Cal. Resources; Deloitte & Touche; Devon Energy; Nutrien; and TRC.

[2277] *See* letter from BlackRock.

[2278] *See, e.g.,* letters from Autodesk; CAQ; Dell; and Etsy.

[2279] *See, e.g.,* letters from Ernst & Young LLP; and NASBA.

[2280] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* Center Amer. Progress; and E. Ocampo.

[2281] *See id.*

[2282] *See* Proposing Release, section II.F.1.

[2283] *See, e.g.,* letters from Center Amer. Progress; and Sarasin.

[2284] *See* letter from KPMG.

[2285] *See* letter from Climate Risk Consortia.

[2286] *See* 17 CFR 210.14–01(d).

[2287] *See id.*

[2288] *See infra* section II.O for a discussion of the compliance date for the rules.

[2289] As discussed in more detail above in section II.K.3.c.ii, the final rules call for disclosure triggered off both the balance sheet and the income statement. A registrant that is required to include balance sheets as of the end of its two most recent fiscal years and income statements as of the end of its three most recent fiscal years would be required to disclose two years of the financial statement effects that correspond to the balance sheet and

registration statements are subject to the final rules to the same extent as the other Commission filings to which the rules apply.[2290] Specifically, a registrant engaged in an IPO that has a fiscal year that is subject to the final rules is required to provide disclosure for the registrant's most recently completed fiscal year for which audited financial statements are included in the filing. However, such registrant will not be required to provide disclosure for any preceding fiscal years included in the initial registration statement because as new entrants to the public markets such registrants would not have previously disclosed or been required to disclose the information required by the final rules.[2291]

We agree with those commenters who stated that the disclosure of historical information would be useful for investors because it would illuminate changes to the financial statement disclosures and trends.[2292] However, we recognize that it may be difficult for registrants to compile and produce the required disclosures for periods that occurred prior to the compliance date of the rules. Therefore, we are modifying the proposed rules to require registrants to provide disclosure for historical fiscal year(s) only on a prospective basis, which will further limit the burdens on reporting companies or companies considering an IPO without unduly compromising the intended benefit to investors. This modification, when combined with the phased in compliance dates for the final rules, will provide registrants with sufficient time to prepare their disclosures.

Finally, in response to a question raised by a commenter about whether the proposed financial statement disclosures would need to be restated or adjusted for historical periods if climate-related impacts are not identifiable until after the metrics are first reported,[2293] we are clarifying that registrants should apply the principles in FASB ASC Topic 250 *Accounting Changes and Error Corrections* or IFRS International Accounting Standard (''IAS'') 8 *Accounting Policies, Changes in Accounting Estimates and Errors,* as appropriate, in these circumstances.

7. Inclusion of Disclosures in the Financial Statements (Rule 14–01(a))

a. Proposed Rules

The Commission proposed to require registrants to include the proposed financial statement metrics in the financial statements, which would result in the metrics being (i) included in the scope of any required audit of the financial statements in the relevant disclosure filing, (ii) subject to audit by an independent registered public accounting firm, and (iii) within the scope of the registrant's ICFR.[2294] The proposed disclosures shared many characteristics with other financial statement disclosures, and the proposed financial statement metrics would reflect financial data that is derived from the registrant's consolidated balance sheets, income statements, and statements of cash flows, and would be presented in a similar way to existing financial statement disclosures.[2295] The Commission explained in the Proposing Release that requiring the proposed financial statement metrics to be included in a note to the financial statements, and therefore subject to audit and within the scope of ICFR, should enhance the reliability of the proposed financial statement metrics.[2296]

b. Comments

As discussed above, a number of commenters stated that the proposed financial statement metrics should be included in the financial statements and subject to audit.[2297] One commenter explained that subjecting the disclosures to audit would be important because ''[a]s investors, we look to auditors to provide robustly independent challenge to ensure the assumptions and estimates underpinning the financial statements are sound, and the statements themselves provide a fair representation of the entity's economic health.'' [2298] Another commenter stated that requiring the disclosures to be audited ''will result in more decision useful information because investors can presume it to be accurate, truthful, and complete.'' [2299] In response to a request for comment included in the Proposing Release, a few commenters stated that the proposed financial metrics should not be included in a separate or supplemental document instead of the financial statements.[2300] One of these commenters said that doing so ''could send a perverse message that climate impacts are not financial or material for corporate earnings and financial condition, which would, in our view, be misleading.'' [2301] One commenter suggested that the Commission apply the ICFR requirements set forth in Item 308 of Regulation S–K to the proposed financial statement metrics, if finalized.[2302]

Conversely, a number of commenters were opposed to including the financial impact of climate-related risks in the financial statements.[2303] As discussed above, many commenters asserted the disclosures should instead be included in the MD&A section of a registrant's periodic reports.[2304] Other commenters stated that the proposed disclosures should be included alongside the

three years of the financial statement effects that correspond to the income statement. *See* 17 CFR 210.3–01(a), 210.3–02(a). An EGC may, in a Securities Act registration statement for the IPO of its equity securities, ''provide audited statements of comprehensive income and cash flows for each of the two fiscal years preceding the date of the most recent audited balance sheet (or such shorter period as the registrant has been in existence).'' *See* 17 CFR 210.3–02(a). A smaller reporting company is required to ''file an audited balance sheet as of the end of each of the most recent two fiscal years, or as of a date within 135 days if the issuer has existed for a period of less than one fiscal year, and audited statements of comprehensive income, cash flows and changes in stockholders' equity for each of the two fiscal years preceding the date of the most recent audited balance sheet (or such shorter period as the registrant has been in business).'' *See* 17 CFR 210.8–02.

[2290] *See* 17 CFR 210.14–01(d). *See infra* section II.L.3 for further discussion of the decision not to provide an exemption or transitional relief for registrants engaged in an IPO.

[2291] *See* 17 CFR 210.14–01(d). *See, e.g.,* letter from KPMG (''[F]or initial public offerings of securities, we recommend that the Commission permit newly public companies on an ongoing basis to provide the proposed information only for the most recent fiscal year for which audited financial statements are included in the initial registration statement.'').

[2292] *See supra* note 2280.

[2293] *See supra* note 2285.

[2294] *See* Proposing Release, section II.F.5.

[2295] *See id.*

[2296] *See id.*

[2297] *See supra* note 1715 and accompanying text. *See also, e.g.,* letters from Anthesis; BC IM Corp.; Climate Accounting Audit Project; I. Millenaar; PwC (recommending that the Commission provide additional flexibility with respect to the placement of the disclosures within the notes to the financial statements because in some cases information may be more effectively presented together with other related disclosures instead of a climate-related footnote); and Third Coast.

[2298] *See* letter from Sarasin.

[2299] *See* letter from Sens. J. Reed, *et al.*

[2300] *See, e.g.,* letters from Center Amer. Progress; CFA Institute; Sarasin (''While we can support a separate climate report that brings together all the material climate-related financial impacts, this should not replace the disclosures within the financial statements (including in the Notes) that appropriately reflect the financial consequences of these climate factors.''); and TotalEnergies. *See also* letter from CalSTRS (''We prefer the information to be included in existing reports instead of additional reports; companies already publish sustainability-related reports or web pages with climate information that is disconnected from financial data.'').

[2301] *See* letter from Sarasin (noting that there could be an argument for companies to both include climate impacts in their existing financial statements as proposed and publish a stand-alone audited climate report, which aggregates climate impacts).

[2302] *See* letter from RSM US LLP.

[2303] *See, e.g.,* letters from ACLI; AFEP; APCIA; Cleveland Cliffs; Cohn Rez.; D. Burton, Heritage Fdn.; NAFO; Nutrien; and Western Midstream.

[2304] *See supra* note 1724 and accompanying text.

proposed amendments to Regulation S–K in the new climate-related discussion section.[2305] A few commenters stated that if the Commission adopts the proposed financial statement metrics, then they should be provided in supplemental information or a schedule outside of the financial statements,[2306] although some of these commenters had different views about whether disclosure in a supplemental schedule should be subject to audit and ICFR requirements.[2307] Some commenters stated that the Commission should consider including the proposed disclosures outside of Form 10–K in an alternative report.[2308]

Other commenters generally stated that if the Commission adopts the proposed financial statements metrics they should be exempted from the audit requirement.[2309] One of these commenters noted that ''[d]ata processes and controls over climate-related information are not as mature as financial reporting processes and controls'' and ''[t]o mature these processes and controls to a level of audit readiness will take significant time.'' [2310] A few commenters stated that the proposed disclosure requirements did not have to be included in an audited note to the financial statements to be ''valid and reliable.'' [2311] Similarly, one commenter stated that disclosures included in a Commission filing but outside of the audited financial statements would be subject to ''the existing level of oversight, regulation, and liability associated with [Commission] filings.'' [2312] One commenter stated that the Commission should exclude the proposed rules from ICFR requirements until the Commission has established appropriate guidelines for audit and assurance.[2313]

Other commenters suggested that the Commission defer making a determination about audit and ICFR requirements for the proposed financial statement disclosures. For example, one commenter suggested that the Commission defer making a determination until after issuers have had an opportunity to familiarize themselves with any new requirements.[2314] In addition, one commenter stated that the Commission should not impose any financial statement disclosure requirements or require certifications pursuant to the Sarbanes-Oxley Act until generally accepted accounting rules have been established by the FASB.[2315] A few commenters suggested including the proposed financial statement metrics outside of the financial statements initially with a transition to the financial statements.[2316]

A few commenters stated that PCAOB auditing standards would be applicable or should be applied to the proposed financial statement metrics.[2317] A number of commenters asserted that it would be necessary to develop additional guidance regarding the application of PCAOB auditing standards to the proposed financial statement metrics.[2318] One commenter stated that guidance would be helpful to registrants because it would ''better enable them to effectively obtain or prepare necessary data, information and analysis, and for auditors to obtain sufficient appropriate audit evidence related to these metrics.'' [2319] Some commenters suggested particular standards for which additional specific guidance would be needed for the proposed financial statement metrics.[2320] For example, one commenter asserted additional guidance was needed regarding PCAOB Auditing Standard (AS) 2105, *Consideration of Materiality in Planning and Performing an Audit,* because ''if the proposed one percent disclosure threshold for disclosure of climate-related impacts on the financial statement line items is not considered material, current PCAOB auditing standards may not require the auditor to perform audit procedures for those disclosures.'' [2321]

Some commenters agreed that additional guidance and auditing standards may be needed, but did not identify particular standards for which guidance is needed.[2322] More generally, one commenter stated that the PCAOB should provide guidance to auditors regarding what is expected and then should undertake reviews to ensure proper implementation.[2323] Another commenter suggested that the PCAOB should issue guidance confirming existing audit requirements regarding the consideration of material climate risk and should increase its focus on this issue during the auditor inspection process.[2324] Conversely, one commenter asserted that the proposed financial impact disclosures would leave auditors open to ''second guessing'' during the PCAOB inspection process.[2325]

Another commenter suggested that the audits of any expenditures and costs related to severe weather events and other natural conditions should be a separate assurance engagement outside of the scope of the current financial statement and internal controls audits and that these separate engagements should be governed by clearly defined weather-related cost accounting standards and an appropriately tailored PCAOB assurance standard that provides implementation examples.[2326] One commenter suggested that the Commission consider allowing

[2305] *See* letter from AFPA; Autodesk; D. Burton, Heritage Fdn.; NAFO; NAM; GPA Midstream; and Southwest Air.

[2306] *See, e.g.,* letters from AutoDesk; BIO; Eni Spa (noting that the financial assumptions impacted by climate-related events should nevertheless be included in the notes to the financial statements); McCormick; Nutrien; and Soros Fund.

[2307] *See* letters from CEMEX (disclosures should be subject to audit and ICFR requirements); Eni Spa (disclosures should not be subject to audit but should be subject to ICFR requirements); and BIO (disclosures should not be subject to audit or ICFR requirements).

[2308] *See* letters from AAFA; AHLA; Allstate; Eversource; FedEx; and NRF. *See also* letter from ICI (recommending that the Commission require a registrant to provide material climate-related disclosures in Commission filings and require a registrant to furnish any additional mandated information that the registrant determines is not material in a new climate report).

[2309] *See, e.g.,* letters from AFPA; AGCA; APCIA; Chamber; Cleco; Climate Risk Consortia; NAM; NMHC, *et al.;* and SIA.

[2310] *See* letter from SIA.

[2311] *See* letter from Cleco; and EEI & AGA.

[2312] *See* letter from Connor Grp.

[2313] *See* letter from BIO.

[2314] *See* letter from TIAA.

[2315] *See* letter from RILA. *See also* letter from Climate Risk Consortia (stating it would be premature to require an audit because the FASB ''has not yet developed climate accounting standards for GAAP'').

[2316] *See* letters from CFA Institute; and USGBC.

[2317] *See, e.g.,* letters from CAQ; CEMEX; and ERM CVS.

[2318] *See, e.g.,* letters from ABA; Baker Tilly; BOA; CalPERS (''The Commission would have to instruct the PCAOB to prioritize the development and adoption of standards for auditing such metrics.''); Climate Accounting Audit Project (noting that additional guidance may be required with respect to already existing auditor obligations as well); Eni Spa; ERM CVS; Mazars; RSM US LLP; Sarasin; and Williams Cos.

[2319] *See* letter from Mazars.

[2320] *See, e.g.,* letters from Baker Tilly (identifying PCAOB Auditing Standards (AS) 2105); ERM CVS (identifying AS 1200, AS 1201, AS 1205, AS 1210, AS 2100, AS 2101, AS 2105, AS 2200, AS 2400, and AS 2800); and RSM US LLP (identifying AS 2105).

[2321] *See* letter from RSM US LLP. *See also* letters from CAQ (noting that there could be a situation where the climate-related metrics are in scope for the audit, but the underlying financial statement line items ordinarily would not be because of the risk assessment judgments made by the auditor and therefore auditors may decide to scope in these lower risk accounts, which could create significant inefficiencies and increased audit costs with minimal benefits for investors); and Baker Tilly (stating that some of the items within the proposed financial statement metrics might not be part of significant, in-scope accounts subject to PCAOB auditing standards).

[2322] *See, e.g.,* letters from BOA; Climate Accounting Audit Project; Eni Spa; Mazars; Sarasin; and Williams Cos.

[2323] *See* letter from Sarasin.

[2324] *See* letter from Climate Accounting Auditing Project.

[2325] *See* letter from Chamber.

[2326] *See* letter from Cohn Rez.

sustainability consultants or experts outside of the traditional accounting sector to audit the proposed financial statement metrics.[2327] Another commenter stated that it may be necessary for an auditor to tailor its audit opinion to explain that the note to the financial statements was not prepared in accordance with IFRS disclosure requirements, but in accordance with Commission disclosure requirements and based upon financial statement information prepared in accordance with IFRS.[2328]

Alternatively, some commenters asserted that there are no clearly established auditing standards for registrants with respect to the proposed financial statement metrics.[2329] One commenter argued that ''[g]iven the subjectivity inherent in assigning the required quantitative financial impacts, it is unclear how auditors will evaluate and subsequently provide assurance with respect to these decisions and the associated disclosures.'' [2330] Another commenter suggested that it would be preferable to include the proposed financial statement metrics outside of the financial statements to avoid ''distracting'' the PCAOB from its ''core mission.'' [2331]

With respect to timing, one commenter stated that any changes to PCAOB standards would need to be implemented and effective before the proposed disclosures are required to be included in the audited financial statements.[2332] Another commenter stated that the Commission will have to instruct the PCAOB to prioritize the development and adoption of standards for auditing the proposed financial statement metrics.[2333] Another commenter asserted that the proposed timeline for adoption of final rules would not provide issuers with enough time to integrate a robust ICFR framework for the proposed financial impact metrics that would be auditable.[2334]

In the Proposing Release, the Commission solicited comment on whether it would be clear that the proposed climate-related financial statement metrics would be included in the scope of the audit when the registrant files financial statements prepared in accordance with IFRS as issued by the IASB, and whether it would be clear that the proposed rules would not alter the basis of presentation of financial statements as referred to in an auditor's report.[2335] The Commission also solicited comment on whether it should amend Form 20–F, or other forms, to clarify the scope of the audit or the basis of presentation.[2336] In response, one commenter asserted that disclosure of the basis of presentation is important for understanding and comparability, and noted that since the basis of presentation of climate-related financial metrics may be different from the basis of presentation of the financial statements due to boundary differences, there should be disclosure when these differ.[2337] One commenter stated that the Commission should amend Form 20–F and other forms to make it clear that the scope of the audit must include the proposed financial statement footnote.[2338] On the other hand, one commenter stated that the scope of the audit is clear, and therefore it did not believe it was necessary to amend Form 20–F.[2339] One commenter asserted that the proposed climate-related financial statement metrics and related audit requirements for foreign filers should align with those for domestic filers.[2340] Another commenter stated that foreign private issuers should be allowed to disclose the proposed financial statement metrics as unaudited supplemental financial information.[2341]

Some commenters stated that the audit and ICFR assessment required for the proposed financial statement metrics would result in significant costs for registrants [2342] or would result in an increase in audit fees for registrants.[2343] A few commenters stated that they expected the audit costs would be higher than the estimated amount included in the proposal.[2344] For example, a registrant stated that its auditors estimated the cost of the audit to be within the range of $70,000 to $225,000 per year.[2345] One commenter stated that registrants' audit fees would increase ''due to the significant level of assurance required based on the low thresholds applied.'' [2346] Another commenter stated that the costs of the audit will depend on the granularity and complexity of the information required.[2347] One commenter stated if specialists are needed this would increase the cost of the audit for companies.[2348] Another commenter stated that the costs would be out of proportion to the value of the information to investors.[2349] Other commenters stated that it is likely that the costs of auditing the proposed financial statement footnotes would decrease [2350] or stabilize [2351] over time like other areas of audit work.

Finally, some commenters observed that the safe harbor established by the Private Securities Litigation Reform Act (PSLRA) does not apply to forecasting information in the financial statements and urged the Commission to include a safe harbor for any forward-looking financial disclosures included in the financial statements and footnotes.[2352] Other commenters generally recommended including a safe harbor for the proposed financial statement metrics and did not appear to limit their recommendation to only forward-looking statements.[2353] Commenters generally claimed that a safe harbor was necessary to protect registrants from liability in light of the estimates, judgments, and assumptions that would be required to disclose the proposed financial statement metrics.[2354]

c. Final Rules

As explained above, we believe it is appropriate to require that the financial statement effects disclosure we are adopting be presented in a note to the financial statements (Rule 14–01(a)).[2355] Identifying a specific location for the disclosures—a note to the financial statements—will make the information more accessible for investors.[2356] In

[2327] *See* letter from I. Millenaar.

[2328] *See* letter from CFA Institute.

[2329] *See, e.g.,* letters from FedEx; G. Farris; Marathon; NAM; and Sullivan Cromwell.

[2330] *See* letter from NAM.

[2331] *See* letter from D. Burton, Heritage Fdn.

[2332] *See* letter from RSM US LLP.

[2333] *See* letter from CalPERS.

[2334] *See* letter from G. Farris.

[2335] *See* Proposing Release, section II.F.5.

[2336] *See id.*

[2337] *See* letter from ERM CVS.

[2338] *See* letter from Center Amer. Progress.

[2339] *See* letter from Eni Spa.

[2340] *See* letter from RSM US LLP.

[2341] *See* letter from Abrasca.

[2342] *See, e.g.,* letters from AAR; Airline for America; Autodesk; NAM; Occidental Petroleum; Reinsurance AA; and Williams Cos.

[2343] *See, e.g.,* letters from Alliance Resource; Crowe; Mazars; and Shell.

[2344] *See, e.g.,* letters from AAR; BDO USA LLP; Business Roundtable; Cohn Rez.; EEI & AGA; and Nutrien.

[2345] *See* letter from Nutrien.

[2346] *See* letter from Shell.

[2347] *See* letter from Eni Spa.

[2348] *See* letter from CEMEX.

[2349] *See* letter from Shearman Sterling.

[2350] *See, e.g.,* letters from Eni Spa; and Mazars.

[2351] *See* letter from CEMEX.

[2352] *See, e.g.,* letters from Cleary Gottlieb; IIB; NMA; and Soc. Corp. Gov.

[2353] *See, e.g.,* letters from APCIA; AAFA; BIO; BOA; Can. Bankers; Devon Energy; FedEx; IC; IIF; KPMG; LTSE; NAM; NMA; NMHC, *et al.;* Southside Bancshares; and TotalEnergies.

[2354] *See, e.g.,* letters from BOA; LTSE; NAM; Soc. Corp. Gov.; and TotalEnergies.

[2355] *See* 17 CFR 210.14–01(a).

[2356] *See, e.g.,* letters from PGIM; and UAW Retiree. *See also* IAC Recommendation (indicating its support for requiring the presentation of disclosures in the financial statements and stating ''[m]aking this information available in a predictable way that is consistent with the location of other important data helps achieve the goal of

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addition, we agree with the commenter that stated that including the disclosure of the financial statement effects in the financial statements will facilitate investor decision-making.[2357] As is true of any disclosures included in the financial statements, subjecting the required disclosures to a financial statement audit and registrants' ICFR will enhance the reliability of that information. The scope of the final rules is significantly narrower than the proposal and requires the disclosure of costs and expenditures for transactions that are currently recorded in registrants' books and records and materially impacted financial estimates and assumptions. These modifications will ease many of the burdens that registrants identified with respect to requiring the disclosures to be subject to audit and ICFR.

We considered the various alternatives suggested by commenters, including whether to require the disclosure of financial statement effects to be provided in supplemental information or a schedule outside of the financial statements.[2358] The financial statement disclosures we are adopting, however, present financial information that is derived from registrants' books and records and is already included in registrants' financial statements. Therefore, presenting this information in a note to the financial statements, consistent with other financial statement disclosures, will enhance its accessibility and usefulness for investors. We do not think it would be appropriate to exempt these financial statement disclosures from audit or ICFR requirements. Providing an exemption from audit or ICFR for the financial statement disclosure requirements in the final rules could confuse investors about which parts of the financial statements are covered by audit and ICFR. Nevertheless, the phase in periods provided for in the final rules should give registrants and their auditors time to familiarize themselves with the new requirements before the compliance date and should help to mitigate the concerns raised by commenters.

With respect to auditing standards, PCAOB standards can and will apply to the financial statement disclosures included in a note to the financial statements. We understand that a number of commenters raised concerns about applying PCAOB standards and stated that additional guidance would be needed.[2359] The modifications made to the final rules to narrow their scope to capitalized costs, expenditures expensed, charges, and losses derived from transactions and amounts recorded in registrant's books and records underlying the financial statements and materially impacted estimates and assumptions, along with the Commission's adoption of an attribution principle, will help to mitigate commenters' concerns about the auditability of the disclosures. In light of these modifications, we expect that including the financial statement note as part of the audited financial statements will allow the disclosures to be readily incorporated into the scope of the financial statement and ICFR audits that registrants currently obtain and that existing PCAOB auditing standards will readily apply.

Several commenters raised concerns about how auditors would address the one percent disclosure threshold when considering materiality in planning and performing an audit.[2360] Auditors should apply the concepts of materiality in PCAOB AS 2105, *Consideration of Materiality in Planning and Performing an Audit,* to the rules we are adopting. In applying the concept of materiality, auditors should remain alert for misstatements that could be material due to quantitative or qualitative factors and lesser amounts of misstatement could influence the judgment of a reasonable investor because of qualitative factors.[2361] Under PCAOB Auditing Standards, auditors should also evaluate whether, in light of particular circumstances, there are certain accounts or disclosures for which there is a substantial likelihood that misstatements of lesser amounts than the materiality level established for the financial statements as a whole would influence the judgment of a reasonable investor. If so, the Auditing Standards provide that the auditor should establish separate materiality levels for those accounts or disclosures to plan the nature, timing, and extent of audit procedures for those accounts or disclosures.[2362] Additionally, there are numerous rules in Regulation S–X as well as other disclosure requirements within GAAP that include a percentage disclosure threshold.[2363] Based on staff experience, we understand that auditors have developed procedures for auditing such disclosures and have not claimed an inability to audit that information. We expect auditors similarly will be able to apply the concepts of materiality and to audit the financial statement disclosures included in the final rules, particularly given the final rules' narrower scope. Therefore, there is no need to delay the requirement to obtain an audit or exclude the financial statement disclosures from the scope of the audit or the registrants' ICFR. The rules we are adopting will provide the suitable criteria necessary for the disclosures to be subject to audit. Nevertheless, the Commission will work with the PCAOB to address any issues that come to light regarding the auditing of this information and will consider issuing additional guidance to the extent needed and helpful.

Finally, we do not agree with the commenter who suggested that consultants or experts outside of the traditional accounting sector should be allowed to audit the proposed financial statement disclosures.[2364] The auditor's unqualified opinion contains an expression of opinion on the financial statements, taken as a whole, which refers to a complete set of financial statements, including the related financial statements notes and any related schedules.[2365] As stated above, we expect that the audit procedures applied to the financial statement note will be incorporated into the scope of registrants' current financial statement and internal controls audit and therefore PCAOB-registered public accounting firms will be able to apply sufficient,

consistent dissemination of this important information'').

[2357] *See* letter from Sarasin.

[2358] *See supra* notes 2306 and 2308 and accompanying text.

[2359] *See, e.g., supra* note 2318 and accompanying text.

[2360] *See supra* note 2321 and accompanying text.

[2361] *See* PCAOB AS 2105, paragraph .03.

[2362] *See id.,* paragraph .07.

[2363] *See, e.g., supra* note 2063 and accompanying text; FASB ASC 280–10–50–12 (requiring the reporting of separate information about an operating segment that meets certain quantitative thresholds), 280–10–50–14 (stating that if total of external revenue reported by operating segments constitutes less than 75% of total consolidated revenue, additional operating segments shall be identified as reportable segments (even if they do not meet the criteria in paragraph 280–10–50–12) until at least 75% of total consolidated revenue is included in reportable segments), 280–10–50–42 (stating, among other things, that if revenues from transactions with a single external customer amount to 10% or more of a public entity's revenues, the public entity shall disclose that fact, the total amount of revenues from each such customer, and the identity of the segment or segments reporting the revenues), and 323–10–50–3 (requiring, among other things, disclosure of the names of any significant investee entities in which the investor holds 20% or more of the voting stock, but the common stock is not accounted for on the equity method, together with the reasons why the equity method is not considered appropriate, and the names of any significant investee corporations in which the investor holds less than 20% of the voting stock and the common stock is accounted for on the equity method, together with the reasons why the equity method is considered appropriate).

[2364] *See supra* note 2327 and accompanying text.

[2365] See PCAOB AS 3101, paragraph .08, The Auditor's Report on an Audit of the Financial Statements When the Auditor Expresses an Unqualified Opinion.

appropriate audit procedures to these disclosures as required by law.[2366] Moreover, PCAOB-registered accounting firms are subject to periodic inspection by the PCAOB and are required to comply with PCAOB rules, including a requirement to establish a system of quality control that is implemented throughout the accounting firm, which will enhance investors' confidence in the accuracy of registrants' disclosures.

However, this does not mean that the auditor cannot use the work of an auditor specialist while performing its work if the auditor determines doing so would be appropriate in accordance with applicable auditing standards. PCAOB AS 2101, paragraph .16, *Audit Planning,* states that auditors should determine whether specialized skill or knowledge, such as an auditor specialist, is needed to perform the appropriate risk assessments, plan or perform audit procedures, or evaluate audit results. Auditors may use the work of auditors' specialists to assist in their evaluation of significant accounts and disclosures, including accounting estimates. In doing so, auditors consider the requirements within PCAOB AS 1201, *Supervision of the Audit Engagement,* when using the work of auditor-employed specialists, and AS 1210, *Using the Work of an Auditor-Engaged Specialists,* when using the work of an auditor engaged specialist, as appropriate.

The Commission received mixed feedback about whether it would be clear that: (i) the financial statement disclosure requirements would be included in the scope of the audit when a registrant files financial statements prepared in accordance with IFRS as issued by the IASB, and (ii) the proposed rules would not alter the basis of presentation of financial statements as referred to in an auditor's report.[2367] Therefore, we are clarifying that the financial statement disclosure requirements we are adopting in this release must be included in the scope of the audit when a registrant files financial statements in accordance with IFRS as issued by the IASB. We believe that these disclosures are important and should be required regardless of the GAAP followed. Furthermore, registrants that file financial statements prepared using IFRS as issued by the IASB are subject to the existing requirement to comply with Regulation S–X,[2368] and we are not aware of any policies that would prevent registrants from including the financial statement disclosures in a note in the financial statements prepared in accordance with IFRS as issued by the IASB. Further, the final rules will not alter the basis of presentation of financial statements referred to in an auditor's report. The instructions to Form 20–F make it clear that the issuer's financial statements must be audited in accordance with PCAOB standards.[2369] PCAOB AS 3101.08 states that the first section of the auditor's report must include a ''statement identifying each financial statement and any related schedule(s) that has been audited'' and a ''statement indicating that the financial statements, including the related notes and any related schedule(s), identified and collectively referred to in the report as the financial statements, were audited.'' [2370] As the disclosure requirements we are adopting will be included in a note to the foreign private issuer's financial statements and based on information that is recognized and measured in the foreign private issuer's financial statements in accordance with IFRS as issued by the IASB, they will be within the scope of the statement by the registrant's auditor that the financial statements ''including any related notes'' were audited.

A number of commenters provided feedback on the cost of the audit for the proposed financial statement metrics and some of these commenters suggested that the estimate included in the proposal was too low [2371] or that the proposed financial statement metrics would result in significant fees or an increase the cost of the audit.[2372] Given the narrower scope of the final rules and their focus on costs and expenditures for transactions that are currently recorded in registrants' books and records and material impacts to financial estimates and assumptions rather than the proposed Financial Impact Metrics, we expect any increases to the cost of the audit due to the financial statement disclosures will be relatively modest for most companies.[2373] In addition, we agree with those commenters that stated the costs of auditing the proposed note to the financial statements would likely decrease or stabilize over time like other areas of audit work.[2374] The financial statement disclosures we are adopting share many similarities with other disclosures in the financial statements, in particular because they are based in transactions currently recorded in registrants' books and records, and therefore the cost trajectory for auditing should be similar over time.

Finally, a number of commenters argued that the Commission should adopt a safe harbor for the financial statement metrics.[2375] Some of these commenters limited their request to forward-looking financial disclosures included in the financial statements, while other commenters did not appear to limit their request for a safe harbor to forward-looking financial disclosures. By narrowing the scope of financial statement disclosures and focusing on costs and expenditures for transactions that are currently recorded in registrants' books and records and material financial estimates and assumptions, the final rules avoid many of the complexities associated with the proposed rules and therefore we do not think it would be necessary or appropriate to adopt a safe harbor for the financial statement disclosures.

L. Registrants Subject to the Climate-Related Disclosure Rules and Affected Forms

1. Proposed Rules

The Commission proposed to apply the proposed climate-related disclosure rules to a registrant with Exchange Act reporting obligations pursuant to Exchange Act section 13(a) [2376] or section 15(d) [2377] and companies filing a Securities Act or Exchange Act registration statement.[2378] The Commission proposed to require such registrants to include climate-related disclosures, including the proposed financial statement metrics,[2379] in

[2366] *See* 15 U.S.C. 7212 (''It shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer, broker, or dealer.''). *See also* letter from CalPERS (''We expect that the regular auditor will do the audit.'').

[2367] *See supra* notes 2337–2339 and accompanying text.

[2368] See Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards Without Reconciliation to U.S. GAAP, Rel. No. 33–8879 (Dec. 21, 2007) [73 FR 986, 999 n.136 (Jan. 4, 2008)] (stating that ''Regulation S–X will continue to apply to the filings of all foreign private issuers, including those who file financial statements prepared using IFRS as issued by the IASB,'' but providing that such issuers ''will comply with IASB requirements for form and content within the financial statements, rather than with the specific presentation and disclosure provisions in Articles 4, 5, 6, 7, 9, and 10 of Regulation S–X'').

[2369] *See, e.g.,* General Instruction E(c)(2) and Instruction 2 to Item 8.A.2 of Form 20–F.

[2370] *See* PCAOB AS 3101, paragraph .08.

[2371] *See supra* note 2344 and accompanying text.

[2372] *See supra* notes 2343 and accompanying text.

[2373] *See infra* section IV.C.3.b.v.

[2374] *See supra* notes 2350–2351 and accompanying text.

[2375] *See supra* notes 2353 and accompanying text.

[2376] 15 U.S.C. 78m(a).

[2377] 15 U.S.C. 78o(d).

[2378] *See* Proposing Release, section II.J.

[2379] *See* Form 20–F, General Instruction B(d) (stating that Regulation S–X applies to the presentation of financial information in the form).

Continued

Securities Act or Exchange Act registration statements (Securities Act Forms S–1, F–1, S–3, F–3, S–4, F–4, and S–11, and Exchange Act Forms 10 and 20–F) [2380] and Exchange Act annual reports (Forms 10–K and 20–F). Similar to the treatment of other important business and financial information, the proposed rules also required registrants to disclose any material change to the climate-related disclosures provided in a registration statement or annual report in their Form 10–Q (or, in certain circumstances, Form 6–K for a registrant that is a foreign private issuer that does not report on domestic forms).[2381]

The Commission proposed to amend Form 20–F and the Securities Act forms that a foreign private issuer may use to register the offer and sale of securities under the Securities Act to require the same climate-related disclosures as proposed for a domestic registrant.[2382] The Commission explained that, because climate-related risks potentially impact both domestic and foreign private issuers regardless of the registrant's jurisdiction of origin or organization, requiring that foreign private issuers provide this disclosure is important to achieving the Commission's goal of more consistent, reliable, and comparable information across registrants.[2383] The Proposing Release further noted that Form 20–F imposes substantially similar disclosure requirements as those required for Form 10–K filers on matters that are similar and relevant to the proposed climate-related disclosures, such as risk factors and MD&A.[2384]

The Commission proposed to exempt SRCs from the proposed Scope 3 emissions disclosure requirement. SRCs would otherwise be subject to all of the proposed rules. The Commission did not propose to exempt EGCs from the proposed rules noting that, due to their broad impact across industries and jurisdictions, climate-related risks may pose a significant risk to the operations and financial condition of registrants, both large and small.[2385] The Commission did, however, solicit comment on whether the proposed rules should apply to EGCs or to other issuers, such as business development companies (''BDCs'').[2386]

The proposed climate-related disclosure rules would not have applied to asset-backed issuers. The proposed rules also would not have required the proposed disclosures on the following forms, although the Commission solicited comment regarding such application:

- Form 40–F, the Exchange Act form used by a Canadian issuer eligible to report under the Multijurisdictional Disclosure System (''MJDS'') to register securities or to file its annual report under the Exchange Act;
- Form S–8, the Securities Act form used to register securities pursuant to an employee benefit plan; and
- Form 11–K, the Exchange Act form used for annual reports with respect to employee stock purchase, savings, and similar plans.[2387]

The Commission also requested comment on whether the Commission should exclude Securities Act registration statements filed in connection with a registrant's IPO from the scope of the proposed climate-related disclosure rules instead of including them, as proposed.[2388] The Commission further solicited comment on whether to require climate-related disclosure on Forms S–4 and F–4, as proposed. Specifically, the Commission requested comment on whether it should provide transitional relief for recently acquired companies such that registrants would not be required to provide the climate-related disclosures for a company that is the target of a proposed acquisition under Form S–4 or F–4 until the fiscal year following the year of the acquisition if the target company is not an Exchange Act reporting company and is not the subject of foreign or alternative climate-related disclosure requirements that are substantially similar to the Commission's proposed requirements.

2. Comments

Many commenters supported the proposal to include the climate-related disclosures in Securities Act and Exchange Act registration statements and Exchange Act annual reports.[2389] One commenter stated that it supported the placement of the climate-related disclosures in a company's annual report or registration statement instead of in a separate report because of its belief in integrated reporting, which facilitates a better understanding of a business.[2390] Another commenter stated that inclusion of the proposed climate-related disclosures in registrants' annual reports and registration statements will dramatically improve the transparency of climate-related issues that affect registrants to the securities markets and drive consistency with which such data is prepared, presented, and audited.[2391]

Many other commenters opposed requiring the climate-related disclosures to be included in existing forms and recommended that some or all of the

Although Item 17 and 18 of Form 20–F, and the forms that refer to Form 20–F (including Forms F–1 and F–3) permit a foreign private issuer to file financial statements prepared in accordance with IFRS as issued by the IASB, proposed Article 14 disclosure was nevertheless required (similar to disclosure required by Article 12 of Regulation S–X). *See Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards Without Reconciliation to U.S. GAAP,* Rel. No. 33–8879 (Dec. 21, 2007) [73 FR 986 (Jan. 4, 2008)], 999, note 136 (stating that ''Regulation S–X will continue to apply to the filings of all foreign private issuers, including those who file financial statements prepared using IFRS as issued by the IASB,'' but providing that such issuers ''will comply with IASB requirements for form and content within the financial statements, rather than with the specific presentation and disclosure provisions in Articles 4, 5, 6, 7, 9, and 10 of Regulation S–X'').

[2380] Form 20–F is the Exchange Act form used by a foreign private issuer for its annual report or to register a class of securities under section 12 of the Exchange Act. We proposed to amend Part I of Form 20–F to require a foreign private issuer to provide the climate-related disclosures pursuant to the proposed rules either when registering a class of securities under the Exchange Act or when filing its Exchange Act annual report. The proposed rules further required a foreign private issuer to comply with the proposed rules when filing a Securities Act registration statement on Form F–1. Because Form F–1 requires a registrant to include the disclosures required by Part I of Form 20–F, the proposed amendment to Form 20–F rendered unnecessary a formal proposed amendment to Form F–1. We similarly did not propose to formally amend Forms S–3 and F–3 because the climate-related disclosure would be included in a registrant's Form 10–K or 20–F annual report that is incorporated by reference into those Securities Act registration statements.

[2381] Form 6–K is the form furnished by a foreign private issuer with an Exchange Act reporting obligation if the issuer: (i) makes or is required to make the information public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized, or (ii) files or is required to file the information with a stock exchange on which its securities are traded and which was made public by that exchange, or (iii) distributes or is required to distribute the information to its security holders. *See* General Instruction B to Form 6–K. That instruction currently lists certain types of information that are required to be furnished pursuant to subparagraphs (i), (ii), and (iii), above. While we proposed to amend Form 6–K to add climate-related disclosure to the list of the types of information to be provided on Form 6–K, we explained that a foreign private issuer would not be required to provide the climate-related disclosure if such disclosure is not required to be furnished pursuant to subparagraphs (i), (ii), or (iii) of General Instruction B.

[2382] *See* Proposing Release, section II.J.

[2383] *See id.*

[2384] *See id.*

[2385] *See* Proposing Release, section II.J.

[2386] A BDC is a closed-end investment company that has a class of its equity securities registered under, or has filed a registration statement pursuant to, section 12 of the Exchange Act, and elects to be regulated as a business development company. *See* section 54 of the Investment Company Act, 15 U.S.C. 80a–53. Like other section 12 registrants, BDCs are required to file Exchange Act annual reports.

[2387] *See* Proposing Release, section II.J.

[2388] *See id.*

[2389] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* Bloomberg; Boston Common Asset Mgmt.; CalPERS; CalSTRS; CEMEX; CFA; NY SIF; TotalEnergies; Unilever; and Xpansiv.

[2390] *See* letter from Unilever.

[2391] *See* letter from Xpansiv.

climate-related disclosures be included in a new and separately furnished form.[2392] Some commenters stated that GHG emissions disclosures should be furnished on a separate form, which would be due after the deadline for a registrant's Exchange Act annual report, among other reasons, to better align this disclosure with GHG emissions reporting pursuant to the EPA's Greenhouse Gas Reporting Program (''GHGRP'').[2393] Other commenters asserted that climate information that was ''beyond that traditionally required for other risk factors'' should be furnished supplementally on a new form.[2394] Still other commenters, pointing to what they characterized as the rules' novelty and complexity, stated that most of the required climate disclosures should be furnished on one or more separate forms.[2395]

One commenter opposed requiring climate-related disclosures in Securities Act registration statements unless the disclosures are incorporated by reference from another filing (*e.g.,* from Form 10–K or 20–F).[2396] This commenter stated that excluding climate disclosures from these registration statements would prevent the climate disclosure rules from acting as a barrier to entry to the capital markets or unnecessarily delaying a pending merger and/or acquisition (''M&A'') transaction.[2397]

Commenters offered varied input on the application of the proposed rules to SRCs. Some commenters supported exempting SRCs from all of the proposed climate-related disclosure requirements [2398] on the grounds that the compliance burden would be disproportionately greater for SRCs, as a proportion of overall revenue.[2399] One commenter suggested that SRCs should be allowed to opt-out of climate disclosures for a period of ten years following an evaluation of certain factors, including the proportion of public investors and other metrics related to the registrant's climate impact.[2400] Many commenters [2401] supported the proposed exemption for Scope 3 emissions included in the proposed rules, asserting that SRCs will face significant data collection and reporting costs [2402] and that SRCs need time to implement new technologies that will aid data collection and reporting.[2403] Other commenters further stated that the Commission was underestimating these compliance costs and the resultant burdens it would impose on SRCs.[2404] A number of commenters supported the proposed exemption for SRCs given the risk that the reporting burden would be passed to smaller downstream companies and urged the Commission to consider the impact of its climate disclosure requirements on those entities when considering exemptions for SRCs.[2405]

Some commenters stated that the proposed rules would discourage private companies from joining the public markets due to the high cost of complying with climate disclosures.[2406] Other commenters urged the Commission to ameliorate the compliance costs for newly public companies by implementing exemptions for EGCs [2407] and recommended that the Commission offer a phase in for newly public companies until the end of the first full fiscal year after going public.[2408] Others recommended scaling and delaying the compliance requirements for both EGCs and SRCs.[2409]

A number of commenters opposed providing exemptions for SRCs, in particular for some or all of the proposed GHG requirements.[2410] Some of these commenters instead favored longer compliance deadlines to ease the compliance burden for registrants, including SRCs,[2411] while other commenters asserted that it was important not to exempt SRCs indefinitely from the requirement to disclose GHG emissions, particularly because this class of registrants is a significant portion of public companies.[2412] Another commenter stated that SRCs have disproportionately higher exposure to climate-related risk, and indicated that while it may be appropriate to mitigate their compliance burden, disclosure would provide necessary transparency into the operations and financial condition of these registrants.[2413] A different commenter stated that the ability of large filers to disclose Scope 3 emissions depended in part on smaller registrants disclosing Scope 1 and 2 emissions.[2414] In addition, as discussed below,[2415] commenters weighed in on the phase in periods that should apply to SRCs.[2416]

Some commenters recommended that the Commission exempt EGCs from the proposed rules or at least provide them with the same accommodations as SRCs.[2417] Commenters stated that the large compliance costs of the proposed rules may deter many potential EGCs

[2392] *See, e.g.,* letters from Amer. Chem. Council; API; BlackRock; Chevron; D. Hileman Consulting; FedEx; NRF; and RILA.

[2393] *See, e.g.,* letters from Amer. Bankers; ConocoPhillips; GM; and PIMCO.

[2394] *See, e.g.,* letter from Amer. Chem. Council. *See also* BlackRock (recommending that certain GHG metrics and information on internal carbon pricing, scenario analyses, transition plans and climate-related targets or goals be furnished supplementally on a new form).

[2395] *See, e.g.,* letters from API; Chevron; D. Hileman Consulting (stating that GHG emissions disclosures should be reported on one separate form and disclosures pertaining to climate-related risks, impacts, governance, risk management, and targets and goals should be reported on another separate form.); FedEx; NRF; and RILA.

[2396] *See* letter from PwC.

[2397] *See id.*

[2398] *See, e.g.,* letters from Baker Tilly; BIO; BDO USA LLP; MD State Bar; Securities Law Comm.; and Volta.

[2399] *See, e.g.,* letters from OTC Markets; UPS; and Nasdaq.

[2400] *See, e.g.,* letter from Cohn Rez.

[2401] *See, e.g.,* letters from AIMA; Dechert; ICBA; Fidelity; and SIA.

[2402] *See, e.g.,* letter from Fortive (''Notwithstanding the proposed exemption for smaller reporting companies, the administrative and financial costs associated with collecting and measuring such data would be particularly burdensome for many registrants that currently do not report such information on a voluntary basis, especially small, medium-sized and newly reporting companies.''). *See also* letters from NAHB; and ICSWG.

[2403] *See, e.g.,* letter from AEM.

[2404] *See, e.g.,* letters from Baker Tilly US LLP (June 17, 2022) (''Baker Tilly''); BIO; and J. Herron.

[2405] *See, e.g.,* letters from ARA et al.; FPA; and HAAA.

[2406] *See, e.g.,* letters from OTC Markets; MD State Bar; Securities Law Comm.; and NAHB.

[2407] *See, e.g.,* letter from Connor Group.

[2408] *See, e.g.,* letter from Shearman Sterling.

[2409] *See* SBCFAC Recommendation; Small Business Forum Recommendation (2023).

[2410] *See, e.g.,* letters from Anthesis; CalSTRS; The Center for Biological Diversity (June 17, 2022) (''CBD''); CNX; ICI; ClientEarth; FFAC; OMERS; Prentiss; NCF; NY City Comptroller; WAP; and Essex Invest. Mgmt. (opposing exempting SRCs from providing Scope 3 disclosures); Terra Alpha; ClientEarth; and Defenders Wildlife (opposing any exemptions for SRCs).

[2411] *See, e.g.,* letter from Anthesis.

[2412] *See, e.g.,* letter from Essex Invest. Mgmt. (''As stated in the text to the proposed rule, SRCs make up approximately half of domestic filers in terms of numbers. By exempting SRCs from scope 3 reporting indefinitely, it will impair investors' ability to fully analyze the extent of the climate-related risks that SRCs face.'' *See also, e.g.,* letter from Ceres (stating that ''[w]e . . . do not object, in principle, to the proposed safe harbor and exemption for SRCs'' but indicating that ''we believe all of these measures should be temporary'').

[2413] *See, e.g.,* letter from ICI. *See also, e.g.,* letter from CalSTRS stating (''We need reliable numbers for small companies as well as for large companies; we have the same responsibility to vote proxies and monitor small companies as we do large companies.'')

[2414] *See, e.g.,* letter from J. McClellan.

[2415] *See infra* section II.O.2.

[2416] *See, e.g.,* letter from Morningstar.

[2417] *See, e.g.,* letters from BIO; Davis Polk; Grant Thornton; D. Burton, Heritage Fdn.; J. Herron; Nasdaq (recommending phase ins for EGCs similar to those proposed for SRCs); Shearman Sterling (recommending that EGCs be exempt from proposed attestation requirement for Scopes 1 and 2 emissions); and SBCFAC Recommendation (recommending scaled and delayed disclosure for SRCs and EGCs).

from going public.[2418] Other commenters opposed exempting EGCs from the proposed rules because such companies, like SRCs, may be exposed to climate-related risks.[2419] Some commenters recommended providing EGCs with a longer phase in period rather than exempting them from the proposed rules.[2420]

Several commenters recommended that the Commission exempt BDCs from the proposed rules.[2421] Commenters stated that subjecting BDCs to the proposed rules would be inappropriate because they are pooled investment vehicles that are more like registered investment companies than operating companies, which would also make the disclosure of GHG emissions difficult.[2422] Commenters further stated that BDCs would be subject to the Commission's proposed rules regarding ESG disclosures for certain investment advisers and investment companies,[2423] if adopted, which the commenters asserted is a more suitable regulation for BDCs than proposed subpart 1500.[2424] Some commenters similarly recommended the exemption of other registered collective investment vehicles, such as real estate investment trusts (''REITs''),[2425] and exchange-traded products (*i.e.,* pooled investment vehicles listed on securities exchanges that are not investment companies registered under the Investment Company Act),[2426] and issuers of non-variable insurance contracts[2427] because of their differences with registered operating companies.

Several commenters supported requiring foreign private issuers to provide the same climate disclosures as domestic registrants, as proposed.[2428] Commenters stated that because foreign private issuers are exposed to climate-related risks in much the same way as domestic registrants, they should be subject to the same disclosure requirements.[2429] Commenters also stated that applying the same climate-related disclosure requirements to domestic and foreign registrants would enhance the comparability of such disclosure.[2430]

Other commenters stated that the Commission should permit foreign private issuers to follow the climate disclosure requirements of their home jurisdiction or of an alternative reporting regime to which they are subject.[2431] Commenters stated that such treatment would alleviate the burden of having to comply with more than one set of climate disclosure requirements and would help prevent the Commission's climate disclosure rules from deterring foreign private issuers from becoming or remaining U.S. registrants.[2432] One commenter recommended that the Commission exempt foreign private issuers from the proposed climate disclosure rules in order to discourage foreign private issuers from delisting from U.S. securities exchanges.[2433]

Some commenters supported the rule proposal to require a registrant to disclose any material changes to the climate disclosures provided in its Exchange Act annual report in a subsequently filed Form 10–Q or furnished Form 6–K.[2434] In this regard, one commenter stated that because climate-related risks are financial risks, they should be subject to the same disclosure requirements as other financial risks.[2435] Another commenter stated that the proposed requirement should apply to any material change in a registrant's disclosure related to governance, strategy, risk management, and targets and goals, and not just to changes in previously reported quantitative information.[2436]

Other commenters, however, opposed the disclosure of climate-related information on a quarterly basis.[2437] One commenter stated that an interim updating requirement to report a material change in climate-related disclosures is not necessary because Form 10–Q already requires an update to risk factor disclosure provided by registrants other than SRCs and related material financial impacts disclosure would be required in an interim MD&A.[2438] This commenter further stated that intra-year updates on climate-related disclosures would create meaningful incremental costs for registrants but offer little additional value to investors.[2439] Another commenter that opposed quarterly updating stated that ''many, if not most, climate metrics, risks, opportunities, and strategies are long-term in nature and cannot meaningfully be assessed on a quarter-to-quarter basis.'' [2440] Other commenters asserted that requiring the disclosure of climate-related information in Form 10–Q, in addition to Form 10–K, would overwhelm investors with information of limited usefulness and, due to its novelty, should not be required to be disclosed in Commission periodic reports.[2441]

Many commenters supported not subjecting MJDS filers to the proposed climate disclosure rules, as proposed.[2442] Commenters stated that excluding MJDS filers from the Commission's climate disclosure rules would be consistent with the purpose of the MJDS, which is to enhance the efficiency of cross-border capital raising between the United States and Canada by in part permitting Canadian registrants to follow their home jurisdiction laws and rules when registering securities in the United States and satisfying their reporting obligations under the Exchange Act.[2443] Commenters also noted that in October 2021, the Canadian Securities Administrators proposed a specific climate-related disclosure framework

[2418] *See, e.g.,* letters from Davis Polk; Grant Thornton.

[2419] *See, e.g.,* letters from ICI; PwC; and Soros.

[2420] *See, e.g.,* letters from ICI; and Soros.

[2421] *See, e.g.,* letters from AIC; BlackRock; Dechert LLP (June 17, 2022) (''Dechert''); Fidelity; D. Burton, Heritage Fdn.; ICI; Northern Trust; Stradley Ronon Stevens and Young (June. 15, 2022) (''Stradley Ronon''); and TIAA.

[2422] *See, e.g.,* letters from AIC; Dechert; Fidelity; ICI; and Northern Trust.

[2423] See Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, Release No. 33–11068 (May 25, 2022) [87 FR 36654 (June 17, 2022)].

[2424] *See, e.g.,* letters from AIC; Dechert; ICI; and Stradley Ronon.

[2425] *See, e.g.,* letters from Fidelity; and TIAA.

[2426] *See, e.g.,* letters from AIC; BlackRock; ICI; and Northern Trust.

[2427] *See, e.g.,* letter from Committee of Annuity Insurers (June 17, 2022) (''CAI'').

[2428] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* CEMEX; Futurepast; SKY Harbor; and WBCSD.

[2429] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* and WBCSD.

[2430] *See, e.g.,* letters from CEMEX; and Futurepast.

[2431] *See, e.g.,* letters from AllianceBernstein; Davis Polk; Linklaters L; PGIM; PwC; and SAP SE (June 16, 2022) (''SAP'').

[2432] *See, e.g.,* letter from Davis Polk.

[2433] *See* letter from Soc. Corp. Gov.

[2434] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* CEMEX; D. Hileman Consulting; J. Herron; and TotalEnergies; *see also* letter from Morningstar (stating that any changes that would materially impact a company's GHG emissions disclosure should be reported at least in its Form 10–K, if not in its quarterly reports, as this information could significantly impact an investor's decision-making).

[2435] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[2436] *See* letter from D. Hileman Consulting.

[2437] *See, e.g.,* letters from Etsy; and Sullivan Cromwell.

[2438] *See* letter from Sullivan Cromwell.

[2439] *See id.*

[2440] Letter from Etsy.

[2441] *See, e.g.,* letters from API; and Chamber.

[2442] *See, e.g.,* letters from ACLI; Barrick Gold Corporation (June 17, 2022) (''Barrick Gold''); Business Council of Canada (June 16, 2022) (''BCC''); Can. Bankers; Davies Ward Phillips & Vineberg LLP (June 17, 2022) (''Davies Ward''); Dorsey Whitney (Oct. 31, 2022) (''Dorsey''); Enbridge; Enerplus; Hydro One; Nutrien (June 17, 2022); and Suncor Energy Inc. (June 17, 2022) (''Suncor'').

[2443] *See, e.g.,* letters from Can. Bankers; Davies Ward; and Dorsey.

(''CSA Proposed Instrument'') [2444] that is primarily modeled on the TCFD framework.[2445] According to commenters, once the CSA Proposed Instrument is adopted, MJDS filers will provide climate-related disclosures pursuant to the CSA Instrument that is similar to the disclosures required pursuant to the Commission's proposed rules.[2446] One commenter, however, opposed excluding MJDS filers from the Commission's disclosure rules at least until the CSA Proposed Instrument is finalized and the Commission has determined that the CSA final Instrument is substantially similar to the Commission's climate-related rules.[2447]

Many commenters supported excluding asset-backed issuers from the proposed rules, as proposed.[2448] One commenter stated that application of the proposed rules to asset-backed issuers would be inappropriate because of the unique market structure of asset-backed securities, regarding which the relevant disclosures for most investors relate to matters tied to credit quality and payment performance of the securitized pools, and not to commitments of the sponsoring company relating to climate.[2449] Another commenter stated that any climate-related disclosure requirements would need to be based on a framework that is particularly suited for asset-backed issuers, such as the ABS Climate Disclosure Framework that is being developed by the Structured Finance Association.[2450] Other commenters stated that, because asset-backed securitizations are essential for making home mortgages and car loans available to Americans, including those in low-income communities, and because application of the proposed rules to asset-backed issuers would motivate them to exclude such loans from their financed emissions, such application would result in disproportionate and negative impacts on low-income communities.[2451]

One commenter expressly opposed excluding asset-backed issuers from the proposed rules.[2452] This commenter stated that asset-backed issuers are subject to many of the same climate risks as other issuers and require similar disclosure. As an example of the need for such disclosure, this commenter stated that there are growing concerns that asset-backed issuers are not fully disclosing that properties within the asset pools that they securitize are located in areas particularly vulnerable to increased risk of sea-level rise and extreme flooding.[2453] Another commenter supported excluding asset-backed issuers from the Commission's climate disclosure rules at this time, but encouraged the Commission to consider, in due time, separate rules requiring climate-related disclosures from such issuers.[2454] This commenter stated that, while it believed that all financial and nonfinancial corporations should be expected to provide consistent climate-related disclosures with respect to their equity or debt (or debtlike) issuances, a more tailored, risk-based approach may be more appropriate for climate-related disclosures with respect to securitizations.[2455]

One commenter opposed applying the Commission's climate disclosure rules to Form S–8 filings without stating the reasons why.[2456] No commenter addressed whether the proposed rules should apply to Form 11–K filings.

Several commenters raised concerns about the application of the proposed disclosure requirements to newly public companies.[2457] For example, commenters stated that application of the proposed rules to IPOs could deter many companies from going public due to the increased compliance costs and litigation risks associated with providing the climate-related disclosures, which would run counter to the Commission's mission of facilitating capital formation.[2458] One commenter further stated that because private companies already face complex, lengthy, and costly processes to prepare for an IPO, the additional compliance burden imposed by the proposed climate disclosure rules would have a chilling effect on the use of the public securities markets to raise capital and on the broader U.S. economy.[2459]

Commenters raised similar concerns about the proposed rules in the context of M&A transactions. For example, one commenter stated that, given the scale of the disclosure and work necessary to comply with the proposed climate disclosure rules, having to prepare this disclosure for a private target on a stand-alone basis before the acquiring registrant can file its Form S–4 or F–4 to register the securities being issued in connection with the business combination would materially delay those filings and significantly extend the overall transaction timeline.[2460] According to this commenter, public companies could be placed at a competitive disadvantage when bidding to acquire a private target company under the proposal because it would be necessary to screen prospective acquisitions for the ability to produce climate-related disclosures.[2461] Another commenter stated that a private target may not have collected climate-related data prior to its acquisition, and it could be ''incredibly burdensome'' for the private company to go back in time and measure the impact of climate-related events during a period when it was not collecting such data.[2462] Commenters noted that integrating a recently acquired company takes considerable time and resources, and the Commission should allow for delayed reporting so that an acquiring company need not alter its acquisition schedule to account for the difficulties in assuming responsibility for climate-related disclosures.[2463] Because of the above concerns, commenters urged the Commission not to adopt compliance deadlines for the proposed climate disclosure requirements that would substantially influence the probability or timing of M&A transactions and IPOs.[2464]

Some commenters opposed excluding IPO registrants from the scope of the proposed climate disclosure rules.[2465] After stating that companies that are going public should be held to the same reporting and disclosure requirements of all other public companies, one commenter noted that the rule proposal already contains a number of accommodations for filers, which should not be expanded.[2466] Another commenter opposed exempting IPO registrants from the proposed rules because that would lower investor

[2444] *See* CSA Consultation, Climate-related Disclosure Update and CSA Notice and Request for Comment, Proposed National Instrument 51–107, *Disclosure of Climate-related Matters* (Oct. 2021).

[2445] *See, e.g.,* letters from BCC; Can. Bankers; and Davies Ward.

[2446] *See id.*

[2447] *See* letter from PwC.

[2448] *See, e.g.,* letters from American Financial Services Association (June 16, 2022) (''AFSA''); J. Herron; IECA; Structured Finance Association (June 17, 2022) (''SFA); and J. Weinstein.

[2449] *See* letter from AFSA.

[2450] *See* letter from SFA.

[2451] *See* letters from IECA; and J. Weinstein.

[2452] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[2453] *See id.*

[2454] *See* letter from Morningstar.

[2455] *See id.*

[2456] *See* letter from J. Herron.

[2457] *See, e.g.,* letters from AIC; Baker Tilly; BDO USA; Nasdaq; PwC; RILA; Shearman Sterling; SIFMA; Soros Fund; and Sullivan Cromwell.

[2458] *See, e.g.,* letters from AIC; and Nasdaq.

[2459] *See* letter from Nasdaq.

[2460] *See* letter from Shearman Sterling.

[2461] *See id.*

[2462] *See* letter from Nasdaq.

[2463] *See* letters from Etsy; and Sullivan Cromwell.

[2464] *See, e.g.,* letter from Shearman Sterling.

[2465] *See* letters from AGs of Cal. *et al.;* Amer. for Fin. Reform, Sunrise Project *et al.;* and CFA.

[2466] *See* letter from CFA (stating that the proposed rule ''includes a safe harbor with limited reach, phase in periods for compliance, and reasonable boundaries for disclosure, and the Commission should not expand or loosen these accommodations.'').

protections in the public markets, which is contrary to the Commission's mission and purpose.[2467] One other commenter stated that because investors need information about a registrant's climate-related risks at every stage of capital formation, it supported requiring a registrant to provide climate-related disclosures about a target company in its Form S–4 or F–4.[2468]

3. Final Rules

The final rules will apply to Exchange Act periodic reports [2469] and Securities Act and Exchange Act registration statements largely as proposed, with some modifications as described below. As we stated above when discussing our reasons for amending Regulations S–K and S–X,[2470] we are requiring climate-related disclosures in most Securities Act or Exchange Act registration statements and Exchange Act periodic reports. We believe disclosures about climate-related risks and their financial impacts should be treated like other business and financial information because they are necessary to understand a company's operating results and prospects and financial condition.[2471]

We are taking this approach instead of adopting a new form for climate-related disclosures as suggested by commenters because it is more consistent with the Commission's integrated disclosure system for business and financial reporting and will improve the transparency and comparability of climate-related disclosures for investors as they will be included and incorporated into forms with which registrants and investors alike are familiar, and alongside information regarding a registrant's business, results of operations, and financial condition, which will facilitate an understanding of the impacts of climate-related risks.[2472] While we understand the concern of commenters that recommended the creation of a new form for climate-related disclosures,[2473] revisions to the proposed rules [2474] and strengthened accommodations regarding certain types of disclosures [2475] and for certain issuers [2476] will address many of these concerns.

The final rules require registrants that file their Exchange Act annual reports on Forms 10–K, as well as their Exchange Act and Securities Act registration statements on Form 10 and Form S–1, S–4 (except as provided below), or S–11, as applicable, to include the climate-related disclosures required by the final rules in these forms.[2477] The final rules will also require foreign private issuers that file their Exchange Act annual reports or registration statements on Form 20–F and their Securities Act registration statements on Form F–1 or Form F–4 (except as provided below) to provide the same climate-related disclosures as domestic registrants.[2478] As commenters noted, because foreign private issuers are exposed to climate-related risks in the same way as domestic registrants, they should be subject to the same disclosure requirements.[2479] Applying the same climate-related disclosure requirements to domestic and foreign registrants will also help achieve the Commission's goal of providing more consistent, reliable, and comparable information across registrants for investors. While we acknowledge commenters who suggested that foreign private issuers be permitted to substitute compliance with the final rules through disclosures made in response to requirements of other jurisdictions, we are not adopting substituted compliance at this time. We believe it makes sense to observe how reporting under international climate-related reporting requirements and practices develop before making a determination whether such an approach would result in consistent, reliable, and comparable information for investors. The Commission may consider such accommodations in the future depending on developments in the international climate reporting practices and our experience with disclosures under the final rules.[2480]

In a change from the proposed rules, the final rules will not apply to private companies that are parties to business combination transactions, as defined by Securities Act Rule 165(f),[2481] involving a securities offering registered on Forms S–4 and F–4.[2482] We acknowledge the concerns of commenters about the difficulties and costs associated with private target companies complying with the proposed disclosure requirements in the business combination context in addition to complying with certain other disclosure requirements under Regulation S–K and Regulation S–X,[2483] as well as concerns that the application of those

[2467] *See* letter from AGs of Cal. *et al.*

[2468] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[2469] Although we generally refer to the final rules applying to Exchange Act periodic reports, the only time a registrant will disclose climate-related information responsive to the final rules in a Form 10–Q is when it elects to disclose its Scopes 1 and/or 2 emissions pursuant to Item 1505 of Regulation S–K. A foreign private issuer that is subject to the GHG emissions reporting requirement, however, is required to provide the GHG emissions disclosure in its annual report on Form 20–F, although it may provide such emissions disclosure on a delayed basis in an amendment to that filing. *See supra* section II.H. The other portions of the final rules are not applicable to Exchange Act periodic reports other than annual reports.

[2470] *See supra* section II.A.3.

[2471] *See id.*

[2472] *See, e.g., supra* notes 2390 and 2391 and accompanying text.

[2473] *See supra* notes 2392–2395 and accompanying text.

[2474] *See, e.g.,* the adoption of less prescriptive requirements and a materiality qualifier for several of the final rule provisions.

[2475] *See, e.g., supra* section II.J (discussing the adoption of an expanded safe harbor provision).

[2476] *See, e.g., supra* section II.H (discussing the exemption from Scopes 1 and 2 emissions reporting for both SRCs and EGCs); and *infra* section II.O (discussing the adoption of different compliance dates for different types of filers).

[2477] Registrants may incorporate by reference the climate-related disclosures required by the final rules to the extent they are permitted to do so under Forms S–1, S–4, and S–11. *See, e.g.,* Form S–1, General Instruction VII (setting forth the requirements a registrant must meet in order to incorporate by reference certain information required by Form S–1). If a registrant is eligible and elects to incorporate by reference certain information required by Forms S–1, S–4, and S–11, those forms also require the registrant to incorporate by reference its latest Form 10–K and all other Exchange Act reports filed since the end of the fiscal year covered by that Form 10–K. *See* Form S–1, Item 12; Form S–4, Items 11 and 13; Form S–11, Item 29. In addition to those filings that a registrant is required to incorporate by reference, a registrant may also incorporate by reference its required emissions disclosure, if applicable, from the prior filing that contained such disclosure to satisfy its Item 1505 disclosure obligations under Form S–1, S–4, or S–11 if (1) such Form S–1, S–4, or S–11 becomes effective after filing its Form 10–K for its latest fiscal year but before filing a Form 10–K/A or its Form 10–Q for the second quarter of its current fiscal year containing the prior year's emissions disclosure and (2) the registrant, pursuant to Item 1505(c)(1), discloses the information required by Item 1505 in either a Form 10–K/A or its second quarter Form 10–Q rather than in its Form 10–K (in both the prior and current fiscal year). *See also* 17 CFR 230.411 and 17 CFR 240.12b–23.

[2478] Forms S–3 and F–3 are not being amended to reference subpart 1500 because the required climate-related disclosures would be included in a registrant's Form 10–K or 20–F annual report that is incorporated by reference into those Securities Act registration statements. *See* Proposing Release, section J, note 690. However, as discussed in section II.H.3 above, we are amending these forms to clarify the date as of which disclosure required by Item 1505(a) must be incorporated.

[2479] *See supra* note 2429 and accompanying text.

[2480] *See also* discussion *infra* section IV.A.4 and IV.C.3.

[2481] *See* 17 CFR 230.165.

[2482] While Form S–1 may be used for business combination transactions, climate-related disclosure will also be required for reporting companies that are parties to the transaction.

[2483] *See, e.g.,* Form S–4, Part I.C, Item 17(b) (requiring, with respect to a company being acquired that is not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, a brief description of its business, disclosure pursuant to Item 2–01 of Regulation S–K (market price of and dividends on the company's equity), disclosure pursuant to Item 303 of Regulation S–K (MD&A), disclosure pursuant to Item 304 of Regulation S–K (changes in and disagreements with accountants), and, in certain circumstances, financial information).

requirements to private target companies could impact the timing of or discourage business combination activity in U.S. public markets.[2484] Disclosure pursuant to subpart 1500 of Regulation S–K and Article 14 of Regulation S–X will only be required for a registrant or company being acquired that is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act.[2485]

In another change from the proposed rules, the final rules will not require registrants to disclose any material change to the climate-related disclosures provided in a registration statement or annual report in its Form 10–Q or, in certain circumstances, Form 6–K for a registrant that is a foreign private issuer that does not report on domestic forms. This is consistent with the annual reporting requirement adopted by the Commission in other contexts.[2486] We are mindful of the concern expressed by many commenters about the potential compliance costs of the proposed rules, including the proposed interim updating requirement.[2487] This change will help to mitigate the compliance burden.[2488]

Also as proposed, the final rules will not apply to Canadian registrants that use the MJDS and file their Exchange Act registration statements and annual reports on Form 40–F. As many commenters stated, excluding MJDS filers from the Commission's climate disclosure rules is consistent with the purpose of the MJDS and will continue to allow MJDS registrants to follow their home jurisdiction laws and rules when registering securities in the United States and satisfying their reporting obligations under the Exchange Act.[2489]

The proposed rules would have required SRCs to comply with all of the proposed climate-related disclosure requirements, except for disclosure pertaining to Scope 3 emissions, from which they were proposed to be exempted.[2490] Similarly, most of the final rules will apply to SRCs, except for the disclosures requiring Scopes 1 and 2 emissions, from which SRCs will be exempted.[2491] Although some commenters asked the Commission to exclude SRCs from all of the Commission's climate disclosure rules,[2492] we do not believe that such a blanket exemption would be appropriate in light of the fact that, as some commenters noted, SRCs are exposed to climate-related risks to the same extent as other registrants.[2493] For similar reasons, the final rules will apply to EGCs, as proposed, except for the exemption regarding Scopes 1 and 2 emissions disclosure. However, we acknowledge that some aspects of the final rules could impose significant burdens on smaller and early growth stage registrants, particularly if the costs of compliance do not scale with the size of the firm and divert resources that are needed to expand the registrant's business. Because we expect the compliance burden and costs for the GHG emissions disclosure requirement to be proportionally greater for such registrants, not requiring SRCs and EGCs to disclose their Scopes 1 and/or 2 emissions will help address these concerns. For these reasons, we find that it is necessary and appropriate in the public interest and consistent with the protection of investors to not include SRCs and EGCs within the scope of the GHG emissions disclosure requirement,[2494] but to include them within the scope of the other aspects of the final rules.[2495] Moreover, the streamlined requirements and disclosure accommodations we are adopting, which will help limit the compliance burden of the final rules for all registrants, should further alleviate commenters' concerns about the impact of the proposed rules on SRCs and EGCs. In particular, adding materiality qualifiers and making several of the disclosure provisions less prescriptive should enable registrants, including SRCs and EGCs, to provide disclosure that better fit their particular facts and circumstances, which should lessen the need for scaled disclosure for SRCs and EGCs. Additionally, as discussed below, we are providing extended phase ins based on filer status, which will provide SRCs and EGCs with additional time to prepare for the final rules.

Similarly, we are not providing an exemption or transitional relief for registrants engaged in an IPO, as recommended by some commenters, because of these streamlined requirements and other accommodations.[2496] In addition, we note that exempting EGCs from the GHG emissions disclosure requirement will significantly reduce the compliance burden of the final rules for most new registrants, as historically EGCs have accounted for almost 90% of IPO companies.[2497] Moreover, providing a longer transition period before SRCs and EGCs must first comply with the final rules should help those entities that go public to develop the appropriate

[2484] *See, e.g.,* letters from Shearman Sterling (stating that private targets are ''unlikely to have the extensive climate change disclosure prepared in advance of entering into a business combination with a public company.''); and Sullivan Cromwell (stating that, ''in addition to having the resources necessary to collect emissions data from the target company, acquirors would need to expend significant resources to ensure that (1) it has appropriate controls and procedures in place to assess the quality of the information and (2) such information is being collected and measured on a basis consistent with the emissions calculations throughout its organization.'').

[2485] The discussion throughout this release regarding the application of the subpart 1500 disclosure requirements to business combination transactions involving a securities offering registered on Forms S–4 and F–4 also applies to certain business combination transactions for which a proxy statement on Schedule 14A or an information statement on Schedule 14C is required to be filed. *See* 17 CFR 240.14a-101, Item 14(c)(1) (requiring, for certain business combination transactions, disclosure of ''the information required by Part B (Registrant Information) of Form S–4 . . . or Form F–4 . . . , as applicable, for the acquiring company'') and Item 14 (c)(2) (requiring, for certain business combination transactions, disclosure of ''the information required by Part C (Information with Respect to the Company Being Acquired) of Form S–4 . . . or Form F–4 . . . , as applicable''); and 17 CFR 240.14c–101, Item 1 (''Furnish the information called for by all of the items of Schedule 14A . . . which would be applicable to any matter to be acted upon at the meeting if proxies were to be solicited in connection with the meeting.''). The information required by Parts B and C of Forms S–4 and F–4 includes the information required by General Instructions B.3 and C.3 to those forms. *See* Form S–4, General Instruction B.3 (''If the registrant is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, then . . . the information required by subpart 1500 of Regulation S–K . . . must be provided with respect to the registrant . . . ''); Form F–4, General Instruction B.3 (same); Form S–4, General Instruction C.3 (''If the company being acquired is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, then . . . the information required by subpart 1500 of Regulation S–K . . . must be provided with respect to the company being acquired . . . ''); Form F–4, General Instruction C.3 (same).

[2486] See, *e.g.,* Modernization of Property Disclosures for Mining Registrants, Release No. 33–10570 (Oct. 31, 2018) [83 FR 66344 (Dec. 26, 2018)]; and Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, Release No. 33–11216 (Jul. 26, 2023) [88 FR 51896 (Aug. 4, 2023)].

[2487] *See, e.g.,* letter from Sullivan Cromwell.

[2488] *See supra* note 2469.

[2489] *See supra* note 2443 and accompanying text.

[2490] *See* Proposing Release, section II.J.

[2491] As discussed in section II.H.3 above, the final rules will not require any registrant to disclose its Scope 3 emissions.

[2492] *See supra* notes 2398 and 2417 and accompanying text.

[2493] *See supra* notes 948 and 2419 and accompanying text.

[2494] All registrants subject to the final rules, including SRCs and EGCs, are not required to disclose GHG emissions metrics other than as required by Item 1505, including where GHG emissions are included as part of a transition plan, target or goal.

[2495] *See* 15 U.S.C. 77z–3 and 15 U.S.C. 78mm.

[2496] *See supra* note 2457 and accompanying text.

[2497] Wilmer Hale, *2023 IPO Report, 2* (Mar. 31, 2023), available at *https://www.wilmerhale.com/insights/publications/2023-ipo-report* (''IPOs by emerging growth companies (EGCs) accounted for 87% of the year's IPOs, a share modestly lower than the 93% in 2021 and the 89% average that has prevailed since enactment of the JOBS Act in 2012.'').

controls and procedures for providing the required climate-related disclosures. We further note that initial filings from registrants that are not SRCs or EGCs and that determine that they have material Scope 1 and/or Scope 2 emissions will only be required to provide emissions data for one year because they will not have previously provided such disclosure in a Commission filing.[2498]

The final rules also will not apply to asset-backed securities issuers, as proposed. Although we recognize that, as one commenter noted, climate-related risks may be relevant for some of the pooled assets that comprise certain asset-backed securities,[2499] we believe that adoption of climate-related disclosure requirements for certain types of securities, such as asset-backed securities, should consider the unique structure and characteristics of those securities, consistent with other Commission disclosure requirements applicable to asset-backed securities issuers.[2500] Accordingly, while the Commission may consider climate-related disclosure requirements for asset-backed securities issuers in a future rulemaking, we decline to adopt such requirements as part of this rulemaking.

We are not exempting other registrants, such as BDCs, REITs, or issuers of registered non-variable insurance contracts from the final rules. As with operating companies, these entities may face material climate-related risks that would impact an investment or voting decision and will have only limited disclosure obligations to the extent climate-related risks are not material in a given case. We acknowledge commenters that noted that certain registered collective investment vehicles have differences from operating companies, but, in our view, those differences are not significant enough in this context to warrant the differential treatment we are applying to asset-backed securities issuers. Further, because the final rules have been modified and streamlined from proposed, as described above, to the extent a climate-related risk is not material to such registrants the information required to be disclosed would be limited. Likewise, we are not exempting BDCs as suggested by other commenters. While we acknowledge that, if the Commission's proposed rules regarding ESG disclosures for certain investment advisers and investment companies were adopted, there may be some overlap in the required disclosures, we nonetheless believe that the climate-related information required to be disclosed by the final rules in a registrant's Securities Act registration statements and Exchange Act reports will be important to investors and should apply to BDCs and REITs. Finally, with respect to issuers of registered non-variable insurance contracts, if the final rules would otherwise apply solely as a result of a registrant's offerings of registered index-linked annuities, the final rules may not apply prior to required compliance.[2501] To the extent such a registrant is subject to the final rules in connection with offerings of other types of registered non-variable insurance contracts, as noted above, to the extent a climate-related risk is not material to such registrants the information required to be disclosed would be limited.

Finally, as proposed, the final rules will not apply to Forms S–8 and 11–K.

M. Structured Data Requirement (Item 1508)

1. Proposed Rules

The proposed rules would have required a registrant to tag the proposed climate-related disclosures in a structured, machine-readable data language. Specifically, the proposed rules would have required a registrant to tag climate-related disclosures in Inline eXtensible Business Reporting Language (''Inline XBRL'') in accordance with 17 CFR 232.405 (Rule 405 of Regulation S–T) and the EDGAR Filer Manual. The proposed requirements would include block text tagging and detail tagging of narrative and quantitative disclosures provided pursuant to subpart 1500 of Regulation S–K and Article 14 of Regulation S–X.

2. Comments

Commenters that addressed this aspect of the proposal largely supported requiring registrants to tag climate-related disclosures, including block text tagging and detail tagging of narrative and quantitative disclosures in Inline XBRL, as proposed.[2502] Commenters indicated that Inline XBRL is a functional tool familiar to most investors and that it would be a useful tool for climate-related disclosures.[2503] Some commenters questioned the utility of climate-related disclosures without digital tagging and asserted that the benefit to end users of this information far outweighed the costs to issuers, particularly given that issuers should already have established the necessary software, skills, and processes to comply with the proposed requirements.[2504]

One commenter questioned how many investors use this functionality and suggested that tagging should instead be voluntary.[2505] Another commenter stated that tagging of climate-related disclosures under subpart 1500 of Regulation S–K should not be required because currently registrants only tag their financial statements including any footnotes and schedules set forth in Article 12 of Regulation S–X.[2506] This commenter also asserted that, if the Commission

[2498] *See supra* section II.H.3.

[2499] *See supra* notes 2452 and 2453 and accompanying text.

[2500] *See supra* note2450 and accompanying text. *See also* 17 CFR 229.1100 through 229.1125 (Regulation AB).

[2501] *See* Division AA, Title I of the Consolidated Appropriations Act, 2023, Public Law 117–328; 136 Stat. 4459 (Dec. 29, 2022) and Registration for Index-Linked Annuities; Amendments to Form N–4 for Index-Linked and Variable Annuities (''RILA Act''), Release No. 33–11250 (Sept. 29, 2023) [17 FR 71088 (Oct. 13, 2023)]. If the Commission adopts this proposal substantially as proposed, or insurers are able to register offerings of registered index-linked annuities on Form N–4 pursuant to a provision in the RILA Act, the registration statement for a registered-index linked annuity would not be required to include the information required by the final rules adopted in this release. We also anticipate that in these circumstances insurance companies generally will rely on Exchange Act Rule 12h–7 if they would otherwise be subject to Exchange Act reporting obligations solely by reason of their offerings of registered index-linked annuities.

[2502] *See, e.g.,* letters from Impact Capital Managers, Inc.; ISS ESG; Crowe LLP; Eni SpA; CFA (noting that ''Even retail investors who do not have the same capacity to conduct that analysis directly would still benefit from tagging if, as we expect, independent third parties use the data to analyze companies' performance on climate-related criteria and communicate their findings broadly to the investing public''); Ceres; The Deep South Center for Environmental Justice (June 17, 2022) (''Deep South''); London Stock Exchange Group (June 17, 2022) (''LSEG'') Earthjustice; Data Foundation (June 17, 2022) (''Data Fnd''); TotalEnergies; John Turner, CEO, XBRL US (June 23, 2023) (''XBRL US''); Eric Pedersen, Head of Responsible Investments in Nordea Asset Management (June 17, 2022) (''Nordea Asset Mgmt''); Church Grp.; Bloomberg; BHP; CalPERS; Ethic; Harvard Mgmt.; Can. Coalition GG; Morningstar, Inc.; Patrick Callery, XBRL International, Inc.; Prime Buchholz, LLC; Treehouse Investments, LLC; Trakref, Xpansiv Ltd.; Seattle City ERS; Asia Investor Group on Climate Change, Asia Investor Group on Climate Change; Clara Miller; M. Hadick; R. Palacios. *But see* Alliance Resource (''Requiring XBRL tagging of information would increase costs and impose time constraints on registrants. Requiring the use of XBRL would be a departure from other areas of Securities and Exchange Act filings outside the financial statements and given the differences in the estimates and assumptions used to calculate Scope 1, 2, and 3 emissions, we believe the use of XBRL for these disclosures would not be meaningful to investors.'').

[2503] *See, e.g.,* letters from ISS ESG; Ceres.

[2504] *See, e.g.,* letters from XBRL International; Ceres.

[2505] *See, e.g.,* letters from Sky Harbor.

[2506] *See, e.g.,* letter from American Fuel & Petrochemical Manufacturers.

were to adopt an Inline XBRL tagging requirement as proposed, it should approve and update a taxonomy prior to compliance, otherwise registrants would create custom tags which would reduce the comparability and utility of the required disclosures. One supportive commenter stated that the Commission should consider developing guidance to help standardize climate-related custom tags ''to foster comparability and faster access across corporate disclosures.'' [2507] Yet another supportive commenter recommended that ''the Commission avoid custom tags within the Inline XBRL schema because they erode the comparability of the climate-related disclosures.'' [2508]

Commenters largely supported the proposal to require tagging of both quantitative climate-related metrics and qualitative climate-related disclosures, stating that tagging will maximize efficiency and make the information easier to consume.[2509] One of these commenters stated that detail and block text tagging ''of all disclosure, as opposed to only quantitative metrics, expedites aggregation, filtering, and synthesis of corporate reporting in addition to making the reporting more accessible and usable in the first place.'' [2510] Another commenter stated that tagging of both narrative and quantitative information is necessary to increase efficiencies in the capital markets as a new volume of information becomes available.[2511]

The Commission also solicited comment on whether there are any third-party taxonomies the Commission should consider in connection with the proposed tagging requirements.[2512] While one commenter [2513] suggested the registrant should have the ability to select the structured data language it wanted to use, most commenters stated that the Commission should require tagging in Inline XBRL, as proposed.[2514] One commenter noted the importance of interoperability with international regulators and organizations when considering alternatives.[2515] Another commenter emphasized that machine-readable data that are interoperable with international standards was necessary to ensure effective usage in the current international regulatory environment.[2516] A different commenter similarly stated that the ISSB has been refining the XBRL climate risk disclosure taxonomy since its inception and recommended that the Commission build its taxonomy based on this work, which would further facilitate global alignment of disclosure standards.[2517] Other commenters stated that the existing XBRL taxonomy is both familiar and available to issuers and consumers of financial data.[2518]

3. Final Rules

After considering comments, we are adopting the structured data requirements as proposed.[2519] For registrants that are LAFs, compliance with the structured data requirements for disclosures under subpart 1500 of Regulation S–K will be required for all disclosures beginning one year after initial compliance with the disclosure requirements.[2520] Other categories of filers will be required to comply with the tagging requirements upon their initial compliance with subpart 1500. Likewise, with respect to any specific provisions that have an extended compliance date that begins on or after the initial tagging compliance date for LAFs, filers will be required to tag such information at initial compliance.[2521] Because non-LAF registrants will have a later date than LAF registrants to comply overall with the final rules, we are not adopting a separate later compliance date regarding the structured data requirements for non-LAF registrants.

Since all issuers that will be subject to the final rules must currently tag disclosures in Inline XBRL,[2522] the requirement will not unduly add to companies' burden, and we believe any incremental costs are appropriate given the significant benefits to investors, as detailed by commenters, including improving the usefulness and comparability of disclosures, as well as making such disclosures easier to locate and review. With respect to the commenter that stated that registrants should not be required to tag climate-related disclosures because they currently only tag financial statement disclosures, we note that all issuers, including smaller reporting companies, must tag in Inline XBRL cover page disclosures and financial statement disclosures, which includes both detail and block text tagging. In addition, we note that the limited incremental additional cost associated with tagging additional disclosures results in a significant benefit to investors in terms of the ability to readily find and analyze disclosures. As the Commission stated in the Proposing Release and as confirmed by commenters, Inline XBRL tagging will enable automated extraction and analysis of the information required by the final rules, allowing investors and other market participants to more efficiently identify responsive disclosure, as well as perform large-scale aggregation, comparison, filtering, and other analysis of this information across registrants, as compared to requiring a non-machine readable data language such at HTML.[2523] The Inline XBRL requirement will also enable automatic comparison of tagged disclosures against prior periods. If we were not to adopt the Inline XBRL requirement as suggested by some commenters, some of these benefits would be diminished, in particular the enhanced comparability of the disclosures required under the final rules. We are not allowing for voluntary tagging, as suggested by one commenter, because to do so would likely negatively impact the completeness of the data, thereby diminishing the usefulness of the information.

With respect to the commenter that suggested registrants should have the ability to select a structured data language, we have concluded that leaving the particular structured data language unspecified could lead to

[2507] *See, e.g.,* letter from ISS ESG.

[2508] *See, e.g.,* letter from Morningstar.

[2509] *See, e.g.,* letters from CalPERS; ISS ESG; and Morningstar, Inc. *See also, e.g.,* XBRL US; and XBRL International, Inc.

[2510] *See, e.g.,* letter from ISS ESG.

[2511] *See, e.g.,* letter from Morningstar.

[2512] *See* Proposing Release, section II.L.

[2513] *See, e.g.,* letter from TotalEnergies.

[2514] *See, e.g.,* letters from ISS ESG; XBRL US, Morningstar US, XBRL International.

[2515] *See, e.g.,* letter from Eni Spa.

[2516] *See, e.g.,* letter from Data Fnd, urging the Commission to consider adopting international standards to ensure the highest possibility for data comparability across reporting regimes and international regulatory bodies.

[2517] *See, e.g.,* letter from Ceres (also noting that the ISSB released a Sustainability Disclosure Taxonomy for public comment on May 25, 2022).

[2518] *See, e.g.,* letter from ISS ESG.

[2519] Item 1508 of Regulation S–K and Rule 405(b)(4)(vii) of Regulation S–T (requiring disclosures filed pursuant to subpart 1500 of Regulation S–K to be submitted as an Interactive Data File). Because financial statements are already structured in Inline XBRL, no new regulatory text is necessary to structure the disclosures filed pursuant to Article 14 of Regulation S–X. See Rule 405(b)(1)(i) of Regulation S–T.

[2520] *See infra* at section II.O.3 for a more detailed discussion of compliance dates.

[2521] This includes Item 1502(d)(2), Item 1502(e)(2), Item 1504(c)(2), Item 1505, and Item 1506.

[2522] *See* Rules 405, 406, and 408 of Regulation S–T.

[2523] These considerations are generally consistent with objectives of the recently enacted Financial Data Transparency Act of 2022, which directs the establishment by the Commission and other financial regulators of data standards for collections of information, including with respect to periodic and current reports required to be filed or furnished under Exchange Act sections 13 and 15(d). Such data standards must meet specified criteria relating to openness and machine-readability and promote interoperability of financial regulatory data across members of the Financial Stability Oversight Council. *See* James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117–263, tit. LVIII, 136 Stat. 2395, 3421–39 (2022).

different issuers using different data languages for the same disclosure, thus hindering the interoperability and usability of the data. We agree with commenters that stated that the existing Inline XBRL data language is familiar to registrants and investors, and therefore continued use of this structured data language will ease registrants' cost of compliance and burdens on investors.

We acknowledge commenters that noted the importance of interoperability with international standards. The staff will keep this consideration in mind as it develops a draft taxonomy for the final rules and will seek to incorporate elements from third-party taxonomies whenever appropriate to do so. With respect to the commenter who called for the Commission to approve a taxonomy prior to compliance, consistent with the Commission's common practice, a draft taxonomy will be made available for public comment, and the Commission will incorporate a final taxonomy into an updated version of EDGAR before the tagging requirements take effect. We acknowledge commenters who expressed concerns about the potential for extensive custom tagging, and the possible resulting effect on data quality and usefulness. In order to address these concerns and provide sufficient time for the adoption of a final taxonomy that will take into consideration initial disclosures that will be provided in response to the final rules, we are delaying compliance with the structured data requirements for one year beyond initial compliance with the disclosure requirements for LAF registrants, which have the earliest compliance date regarding the final rules.[2524] This approach should both help lessen any compliance burden and improve data by reducing the need for extensive custom tagging.

N. Treatment for Purposes of the Securities Act and the Exchange Act

1. Proposed Rules

The Commission proposed to treat the proposed required climate-related disclosures as ''filed'' and therefore subject to potential liability under Exchange Act section 18,[2525] except for disclosures furnished on Form 6–K.[2526] The proposed filed climate-related disclosures would also be subject to potential section 11 liability [2527] if included in, or incorporated by reference into, a Securities Act registration statement. This treatment would apply both to the disclosures in response to proposed subpart 1500 of Regulation S–K and to proposed Article 14 of Regulation S–X.

The Commission proposed that Form 6–K disclosures would not be treated as ''filed'' because the form, by its own terms, states that ''information and documents furnished in this report shall not be deemed to be 'filed' for the purposes of section 18 of the Act or otherwise subject to the liabilities of that section.'' [2528] As the Commission explained when proposing the climate-related disclosure rules,[2529] the treatment of disclosures on Form 6–K as furnished is a long-standing part of the foreign private issuer disclosure system.[2530]

2. Comments

Commenters expressed differing views on whether we should treat Commission-mandated climate-related disclosures as filed or furnished. Several commenters supported the proposed treatment of disclosures required by both proposed subpart 1500 of Regulation S–K and proposed Article 14 of Regulation S–X as filed.[2531] One commenter stated that because climate-related disclosures will provide information that is important for investors in securities analysis and the management of investment risk, these disclosures should be treated the same as other critical information filed under Regulations S–X and S–K that is material and necessary for investors' assessment of registrants' financial performance and future prospects.[2532] Other commenters stated that the treatment of climate-related disclosures as filed, which would allow liability under section 18 to attach to false or misleading statements, will communicate to registrants the importance of these disclosures and deter them from greenwashing or otherwise making misleading statements.[2533] Still other commenters stated that the proposed treatment of climate-related disclosures as filed would help ensure that the disclosures are accurate and consistent.[2534] One such commenter stated that the treatment of climate-related disclosures as filed could substitute for the proposed requirement to provide assurance for certain GHG emissions disclosures, which the commenter opposed.[2535]

Several other commenters opposed the proposed treatment of climate-related disclosures as filed.[2536] Some of these commenters stated that the Commission should treat climate-related disclosures as furnished rather than filed because of the complexities and uncertainties involved in such disclosures, particularly regarding those pertaining to GHG emissions disclosures.[2537] In this regard one commenter stated that the ''evolving and uncertain nature of Scope 3 measurement and tracking capabilities (and, for some smaller companies, the novelty of Scope 1 and Scope 2 reporting) could make it difficult for [registrants] to reach the degree of certainty necessary to assume the liability burden associated with reports filed with the [Commission].'' [2538] Other commenters stated that the proposed treatment would deter registrants from providing expansive climate-related disclosures because of the potential liability under Exchange Act section 18 and Securities Act section 11.[2539]

Several commenters supported the proposed treatment of climate-related disclosures on a Form 6–K as furnished.[2540] One commenter stated that it saw no reason to disrupt the well-established treatment of information provided on a Form 6–K.[2541] Other commenters supported the proposed Form 6–K treatment because they believed that all climate-related disclosures should be treated as furnished.[2542]

3. Final Rules

As proposed, the climate-related disclosures provided pursuant to the

[2524] *See infra* at section II.O.3.

[2525] 15 U.S.C. 78r.

[2526] *See* Proposing Release, section II.L.

[2527] 15 U.S.C. 77k.

[2528] Form 6–K, General Instruction B.

[2529] *See* Proposing Release at section II.L.

[2530] *See Periodic Report of Foreign Issuer,* Release No. 34–8069 (Apr. 28, 1967) [32 FR 7853 (May 30, 1967)]. Form 6–K's treatment as furnished for purposes of section 18 has existed since the Commission adopted the form.

[2531] *See, e.g.,* letters from Amer. for Fin. Reform, Sunrise Project *et al.;* AGs of Cal. *et al.;* CalPERS; Ceres; CFA; Engine No. 1; Franklin Templeton; PwC; SKY Harbor; and TotalEnergies.

[2532] *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

[2533] *See* letters from AGs of Cal. *et al.;* and CFA.

[2534] *See, e.g.,* letters from Ceres; Franklin Templeton; PwC; and SKY Harbor.

[2535] *See* letter from SKY Harbor.

[2536] *See, e.g.,* letters from Amer. Chem.; AGC; BlackRock; Chevron; D. Burton, Heritage Fdn.; GPA Midstream; HP; MFA; Nareit; Nasdaq; NAM; RILA; Soc. Corp. Gov.; UPS; and Williams Cos.

[2537] *See, e.g.,* letters from Alphabet *et al.;* Chevron; D. Burton, Heritage Fdn.; GPA Midstream; HP; NAM; RILA; UPS; and Williams Cos.

[2538] *See* letter from NAM; *see also* letter from Alphabet *et al.*

[2539] *See, e.g.,* letters from BlackRock; J. Herron; and Nareit.

[2540] *See, e.g.,* letters from BHP; CEMEX; and J. Herron.

[2541] *See* letter from BHP.

[2542] *See, e.g.,* letters from CEMEX; and J. Herron; *see also* letter from Nasdaq (stating that the Commission should treat all climate-related disclosures as furnished while also stating that the Commission has ''not explained why it has discriminated between foreign and domestic companies in this regard'').

final rules will be treated as filed. Climate-related disclosures will therefore be subject to potential liability pursuant to Exchange Act section 18 and, if included or otherwise incorporated by reference into a Securities Act registration statement, Securities Act section 11 as well. Treating climate-related disclosures as filed will help promote the accuracy and consistency of such disclosures. In this regard, we believe climate-related disclosures should be subject to the same liability as other important business or financial information that the registrant includes in its registration statements and periodic reports. While we acknowledge commenters' concerns regarding the complexities and evolving nature of climate data methodologies, particularly with regard to GHG emissions metrics,[2543] the modifications we have made to the proposed rules should help to mitigate this concern. These modifications include: limiting the scope of the GHG emissions disclosure requirement; [2544] revising several provisions regarding the impacts of climate-related risks on strategy, targets and goals, and climate-related metrics so that registrants will only be required to provide the disclosures in certain circumstances, such as when material to the registrant; [2545] and providing an additional PSLRA safe harbor for several types of climate-related disclosures.[2546] We also are providing registrants with a transition period based on filer status and the content of the required information to afford registrants additional time to prepare to provide the climate-related disclosures.[2547] For these reasons, we are requiring the climate-related disclosures to be filed rather than furnished.

O. Compliance Date

1. Proposed Rules

The Commission proposed phase in dates for complying with the proposed rules that differed based on a registrant's filing status or status as an SRC.[2548] In proposing the different compliance dates, the Commission recognized that many registrants may require time to establish the necessary systems, controls, and procedures to comply with the proposed climate-related disclosure requirements. The Commission also indicated that it was appropriate to apply the rules first to LAFs because many LAFs are already collecting and disclosing climate-related information, have already devoted resources to these efforts, and have some levels of controls and processes in place for such disclosure.[2549] In addition, by providing AFs and NAFs with additional time, and SRCs with the greatest amount of time, to prepare for complying with the proposed rules, the Commission sought to provide registrants, especially smaller registrants, with additional time to prepare for the proposed climate-related disclosures.[2550]

The Commission summarized the proposed phase ins for compliance in the following table, which was included in the Proposing Release. The table assumed, for illustrative purposes, that the proposed rules would be adopted with an effective date in December 2022, and that the registrant has a December 31 fiscal year-end. The proposed compliance dates in the table applied to both annual reports and registration statements.

COMPLIANCE DATES UNDER PROPOSED RULES

Registrant type	Disclosure compliance date		Financial statement metrics audit compliance date
	All proposed disclosures, including GHG emissions metrics: Scope 1, Scope 2, and associated intensity metric, but excluding Scope 3	GHG emissions metrics: Scope 3 and associated intensity metric	
LAFs	Fiscal year 2023 (filed in 2024)	Fiscal year 2024 (filed in 2025)	Same as disclosure compliance date.
AFs and NAFs	Fiscal year 2024 (filed in 2025)	Fiscal year 2025 (filed in 2026).	
SRCs	Fiscal year 2025 (filed in 2026)	Exempted.	

2. Comments

Many responsive commenters supported different compliance dates based on a registrant's status as an LAF, AF, NAF, or SRC.[2551] Some commenters supported the phase in schedule, as proposed.[2552] One commenter stated that the proposed phase in periods would give sufficient lead time for registrants to prepare while also not unduly delaying the disclosures for investors.[2553]

Several commenters stated that the proposed phase in schedule would be challenging even for LAFs to meet and that additional time would be needed for registrants to develop the reporting controls and procedures necessary to prepare disclosures that are high quality and reliable for investors.[2554] Commenters recommended that the proposed compliance dates be extended by various periods, such as by: one year; [2555] two years; [2556] three years; [2557]

[2543] *See supra* notes 2537 and 2538 and accompanying text.

[2544] *See supra* section II.H.3.

[2545] *See supra* sections II.D., II.G.3, and II.H.3.

[2546] *See supra* section II.J.3.

[2547] *See infra* section II.O.3.

[2548] *See* Proposing Release, section II.M.

[2549] *See id.*

[2550] *See id.*

[2551] *See, e.g.,* letters from Alphabet *et al.;* CEMEX; CAQ (recommending phase in schedule by type of disclosure and filer status); Ceres; Franklin Templeton; J. Herron; IADC; ICI; Institutional Shareholder Services (June 22, 2022) (''ISS''); KPMG (recommending phase in schedule by type of disclosure in addition to filer status); Northern Trust; NRF; PwC; SKY Harbor; Soros Fund; TotalEnergies; US SIF; and XBRL.

[2552] *See, e.g.,* letters from ISS; SKY Harbor; and TotalEnergies.

[2553] *See* letter from SKY Harbor.

[2554] *See, e.g.,* letters from Alphabet et al; ConocoPhillips; HP; PwC; RILA; Shearman Sterling; SIFMA; and Williams Cos.

[2555] *See, e.g.,* letters by HP; ICI (recommending extending the compliance date for financial metrics disclosure by at least one year); Microsoft (requesting one-year extension of the compliance date for GHG emissions, financial metrics, and impact disclosures); Nikola; Northern Trust (recommending extending by one year the compliance date for GHG emissions); PwC (recommending a one year delayed effective date); and Shearman Sterling.

[2556] *See, e.g.,* letters from Alphabet *et al.;* AXPC; KPMG (recommending extending the phase in periods by two-three years); NRF; RILA; SIFMA (recommending two-year extension of the compliance date for Scope 3 emissions disclosure); and US TAG TC207.

[2557] *See, e.g.,* letters from CEMEX (recommending extending the compliance date for Scope 3 emissions disclosure by LAFs by three-five years); SIFMA (recommending three-four year extension for compliance with financial metrics disclosure); and Williams Cos. (recommending three-five year extension for all registrants, including LAFs).

or five years.[2558] Some commenters opposed the proposed compliance dates without specifying what dates would be appropriate.[2559] Other commenters recommended that the Commission shorten the proposed phase in periods.[2560]

3. Final Rules

Similar to the proposed rules, we are adopting delayed and staggered compliance dates for the final rules that vary according to the filing status of the registrant.[2561] We continue to believe that initially applying the disclosure requirements to LAFs is appropriate because many LAFs are already collecting and disclosing climate-related information,[2562] and therefore will have devoted resources to these efforts and have some levels of controls and processes in place for such disclosure. In comparison, registrants that are not LAFs may need more time to develop the systems, controls, and processes necessary to comply with the climate disclosure rules and may face proportionately higher costs. Accordingly, we are providing such registrants additional time to comply, with SRCs, EGCs, and NAFs receiving the longest phase in period. Although we recognize that some SRCs and EGCs may technically be classified as AFs, such registrants may face the same difficulties as other SRCs and EGCs in complying with the final rules, and accordingly, the extended compliance date applies to them based on their status as SRCs or EGCs.

To address the concerns of many commenters that the proposed compliance schedule was too challenging even for LAFs to meet, we are providing an extended and phased in compliance period for each type of registrant and for certain types of disclosures. For example, we are providing a further phased in compliance date for registrants that may be required to disclose their Scopes 1 and 2 emissions that differs from the proposed compliance schedule, which would have required registrants to provide those emissions disclosures by the same deadline as for the other climate disclosures. This will help address the concern of commenters that additional time is required for registrants, including many LAFs, to enhance or implement new policies, processes, controls, and system solutions in order to provide the GHG emissions disclosures if required. We are also providing a further phased-in compliance date for the requirements to provide quantitative and qualitative disclosures about material expenditures and material impacts to financial estimates and assumptions required by Item 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2) until the fiscal year immediately following the fiscal year of the registrant's initial compliance date for subpart 1500 disclosures based on its filer status, for the reasons discussed above.[2563]

The following table summarizes the phased in compliance dates of the final rules, both for subpart 1500 of Regulation S–K and Article 14 of Regulation S–X. The compliance dates in the table apply to both annual reports and registration statements; in the case of registration statements, compliance would be required beginning in any registration statement that is required to include financial information for the full fiscal year indicated in the table.

COMPLIANCE DATES UNDER THE FINAL RULES [1]

Registrant type	Disclosure and financial statement effects audit		GHG emissions/assurance			Electronic tagging
	All Reg. S–K and S–X disclosures, other than as noted in this table	*Item 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2)*	*Item 1505 (Scopes 1 and 2 GHG emissions)*	*Item 1506—Limited assurance*	*Item 1506—Reasonable assurance*	*Item 1508—Inline XBRL tagging for subpart 1500* [2]
LAFs	FYB 2025	FYB 2026	FYB 2026	FYB 2029	FYB 2033	FYB 2026.
AFs (other than SRCs and EGCs)	FYB 2026	FYB 2027	FYB 2028	FYB 2031	N/A	FYB 2026.
SRCs, EGCs, and NAFs	FYB 2027	FYB 2028	N/A	N/A	N/A	FYB 2027.

[1] As used in this chart, "FYB" refers to any fiscal year beginning in the calendar year listed.
[2] Financial statement disclosures under Article 14 will be required to be tagged in accordance with existing rules pertaining to the tagging of financial statements. *See* Rule 405(b)(1)(i) of Regulation S–T.

For example, an LAF with a January 1 fiscal-year start and a December 31 fiscal year-end date will not be required to comply with the climate disclosure rules (other than those pertaining to GHG emissions and those related to Item 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2), if applicable) until its Form 10–K for fiscal year ended December 31, 2025, due in March 2026. If required to disclose its Scopes 1 and/or 2 emissions, such a filer will not be required to disclose those emissions until its Form 10–K for fiscal year ended December 31, 2026, due in March 2027, or in a registration statement that is required to include financial information for fiscal year 2026. Such emissions disclosures would not be subject to the requirement to obtain limited assurance until its Form 10–K for fiscal year ended December 31, 2029, due in March 2030, or in a registration statement that is required to include financial information for fiscal year 2029. The registrant would be required to obtain reasonable assurance over such emissions disclosure beginning with its Form 10–K for fiscal year ended December 31, 2033, due in March 2034, or in a registration statement that is required to include financial information for fiscal year 2033. If required to make disclosures pursuant to Item 1502(d)(2), Item 1502(e)(2), or Item 1504(c)(2), such a filer will not be required to make such disclosures until its Form 10–K for fiscal year ended December 31, 2026, due in March 2027,

[2558] *See, e.g.,* letters from API; and ConocoPhillips (recommending extending the compliance date for Scopes 1 and 2 emissions disclosures to at least five years from date of adoption).

[2559] *See, e.g.,* letters from AGCA; Crowe LLP (June 16, 2022) ("Crowe") (recommending extending the phase in periods for GHG emissions and financial metrics disclosures); Eni SpA (recommending a phase in for financial metrics disclosure); IADC; and Nasdaq.

[2560] *See, e.g.,* letters from AGs of Cal. *et al.* (recommending shortening the phase in period for all registrants other than LAFs by one year); CalSTRS (recommending setting the phase in periods to the earliest possible dates); and Ceres (recommending moving up disclosure proposed to be required for fiscal year 2025 by one year).

[2561] For the avoidance of doubt, notwithstanding the fact that we generally use the term "registrant" in this section, the compliance dates discussed herein also apply to the information required to be provided pursuant to new General Instruction C.3 of Forms S–4 and F–4 with respect to a company being acquired.

[2562] *See infra* section IV.A.5. *See also, e.g.,* letters from Amazon; Dell; and Microsoft.

[2563] *See supra* sections II.D.1.c, II.D.2.c, and II.G.3.a.

or in a registration statement that is required to include financial information for fiscal year 2026.

As another example, an AF that is not an SRC or EGC with a January 1 fiscal-year start and December 31 fiscal year-end date will not be required to comply with the climate disclosure rules (other than those pertaining to GHG emissions and those related to Item 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2), if applicable) until its Form 10–K for the fiscal-year ending December 31, 2026, due in March 2027. If required to disclose its Scopes 1 and 2 emissions, such a filer will not be required to disclose those emissions until its Form 10–K for fiscal year ending December 31, 2028, due in March 2029, or in a registration statement that is required to include financial information for fiscal year 2028, and it would not be required to obtain limited assurance over such disclosure until its Form 10–K for fiscal year ending December 31, 2031, due in March 2032, or in a registration statement that is required to include financial information for fiscal year 2031. If required to make disclosures pursuant to Item 1502(d)(2), Item 1502(e)(2), or Item 1504(c)(2), such a filer will not be required to make such disclosures until its Form 10–K for fiscal year ended December 31, 2027, due in March 2028, or in a registration statement that is required to include financial information for fiscal year 2027.

We are adopting a separate compliance date for the structured data (electronic tagging) requirements of the final rules that is one year following the earliest compliance date (which applies to LAFs) under the final rules.[2564] We are adopting a later compliance date for the structured data requirements to improve the quality of the structured data, as discussed above.[2565] Accordingly, LAFs will not be required to comply with the structured data requirements when first complying with the climate disclosure rules in subpart 1500 required in 2025 but will be required to do so when complying with the climate disclosure rules in subpart 1500 for fiscal year 2026; tagging of disclosures provided in response to Item 1502(d)(2), Item 1502(e)(2), Item 1504(c)(2), Item 1505, and Item 1506 will be required at the time of initial compliance with these provisions. AFs (other than SRCS and EGCs) will be required to comply with the structured data requirements when first complying with the relevant provisions of subpart 1500 for the fiscal year that begins in 2026. Similarly, SRCs, EGCs, and NAFs will be required to comply with the structured data requirements when first complying with the climate disclosure rules for the fiscal year that begins in 2027. For these non-LAF registrants, we are not adopting a later compliance date for the structured data requirements because we are adopting later compliance dates regarding the final rules overall for these registrants, which will provide them with additional time to meet the final rules' structured data requirements.

III. Other Matters

The Commission considers the provisions of the final rules to be severable to the fullest extent permitted by law. ''If parts of a regulation are invalid and other parts are not,'' courts ''set aside only the invalid parts unless the remaining ones cannot operate by themselves or unless the agency manifests an intent for the entire package to rise or fall together.'' *Bd. of Cnty. Commissioners of Weld Cnty.* v. *EPA,* 72 F.4th 284, 296 (D.C. Cir. 2023); *see K Mart Corp.* v. *Cartier, Inc.,* 486 U.S. 281, 294 (1988). ''In such an inquiry, the presumption is always in favor of severability.'' *Cmty. for Creative Non-Violence* v. *Turner,* 893 F.2d 1387, 1394 (D.C. Cir. 1990). Consistent with these principles, while the Commission believes that all provisions of the final rules are fully consistent with governing law, if any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, the Commission intends that 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. For instance, but without limitation, each of the following portions of the final rules serves distinct but related purposes and is capable of operating independently: (1) climate-related risk disclosures, (2) targets and goals disclosures, (3) GHG emissions disclosures and assurance, and (4) Article 14 financial statement disclosures. Moreover, many of the required disclosure items in the final rules operate independently in that not all registrants are required to provide each of the required disclosures, and some disclosures will only be provided to the extent applicable. For example, disclosures related to a registrant's use of transition plans, scenario analysis, or internal carbon prices would depend upon a registrant's activities, if any, to mitigate or adapt to material climate-related risks. Similarly, governance disclosures would only be required to the extent that a registrant has information responsive to the disclosure requirements. In addition, the GHG emissions disclosure requirements will apply only with respect to LAFs and AFs (other than SRCs and EGCs). Thus, while the final rules are each intended to improve the overall consistency, comparability, and reliability of climate-related disclosures as discussed throughout this release, the invalidity of any particular disclosure requirement would not undermine the operability or usefulness of other aspects of the final rules.

Pursuant to the Congressional Review Act,[2566] the Office of Information and Regulatory Affairs has designated these rules a ''major rule,'' as defined by 5 U.S.C. 804(2).

IV. Economic Analysis

We are mindful of the economic effects that may result from the final rules, including the benefits, costs, and the effects on efficiency, competition, and capital formation.[2567] This section analyzes the expected economic effects of the final rules relative to the current baseline, which consists of the regulatory framework of disclosure requirements in existence today, the current disclosure practices of registrants, and the use of such disclosures by investors and other market participants. Where possible, we have attempted to quantify these economic effects. In many cases, however, we are unable to reliably quantify the potential benefits and costs of the final rules because we lack information necessary to provide a reasonable estimate. For example, existing empirical evidence does not allow us to reliably quantify how enhancements in climate-related disclosure may improve information processing by investors, or company

[2564] We note that the final rules do not alter the requirements for registrants to tag their financial statement disclosures in Inline XBRL. Accordingly, financial statement disclosures provided pursuant to new Article 14 of Regulation S–X will be required to be tagged in accordance with those requirements at the time they are first required. *See* Rule 405(b)(1)(i) of Regulation S–T.

[2565] *See* discussion *supra* at section II.M.3.

[2566] 5 U.S.C. 801 *et seq.*

[2567] Section 2(b) of the Securities Act, 15 U.S.C. 77b(b), and section 3(f) of the Exchange Act, 17 U.S.C. 78c(f), require the Commission, when engaging in rulemaking where it 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 will promote efficiency, competition, and capital formation. Further, section 23(a)(2) of the Exchange Act, 17 U.S.C. 78w(a)(2), requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition, and prohibits the Commission from adopting any rules that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.

monitoring of climate-related risks. Where quantification of the economic effects of the final rules is not practical or possible, we provide a qualitative assessment of the effects.

The final rules will provide investors with more consistent, comparable, and reliable disclosures with respect to registrants' climate-related risks that have materially impacted, or are reasonably likely to have a material impact on, the registrant's business strategy, results of operations, or financial condition, the governance and management of such risks, and the financial statement effects of severe weather events and other natural conditions, which will enable investors to make more informed investment and voting decisions.[2568] Many investors have expressed concern that the current landscape of primarily voluntary climate-related disclosures is inadequate.[2569] By requiring registrants to provide climate-related information in a more standardized format in Commission filings, the final rules will mitigate the challenges that investors currently confront in obtaining consistent, comparable, and reliable information, assessing the nature and extent of the climate-related risks faced by registrants and their impact on registrants' business operations and financial condition, and making comparisons across registrants. Further, a mandatory disclosure regime will generally provide investors with access to climate-related disclosures on a more timely and regular basis than a voluntary disclosure regime.[2570] As a result, the final rules will reduce information asymmetry between investors and registrants, which can reduce investors' uncertainty about estimated future cash flows. This effect contributes to a lowering of the risk premium that investors demand and therefore registrants' cost of capital. The final rules will also reduce information asymmetry among investors by narrowing the informational gap between informed and uninformed traders, which can reduce adverse selection problems and improve stock liquidity.[2571] Further, by enabling climate-related information to be more fully incorporated into securities prices, the final rules will allow climate-related investment risks to be borne by those investors who are most willing and able to bear them. Taken together, the final rules are expected to promote investor protection, the efficient allocation of capital, and, for some registrants, capital formation.[2572]

We recognize that the final rules will impose additional costs on registrants, investors, and other parties. Registrants will face increased compliance burdens, with the extent of these burdens varying based on a registrant's filer status, existing climate-related disclosure practices (if any), and other characteristics. For example, additional compliance burdens could be significant for registrants that are not already collecting climate-related information and providing climate-related disclosures. In other cases, the compliance burden could be more modest, such as for registrants that are already collecting climate-related information and providing information similar to what is required by the rules we are adopting. Additionally, the requirements will pose a comparatively smaller compliance burden for those registrants that do not have material climate-related risks. Other potential costs for registrants include increased litigation risk and the potential disclosure of proprietary information about a registrant's operations, business, and/or production processes.[2573] Beyond registrants, certain third parties, such as market participants, customers, and suppliers, could face reduced demand for their services or higher prices for their inputs as a result of the final rules' required disclosures.

A. Baseline and Affected Parties

The baseline against which the costs, benefits, and the effects on efficiency, competition, and capital formation of the final rules are measured consists of current requirements for climate-related disclosures and current market practice as it relates to such disclosures. The economic analysis considers existing regulatory requirements, including recently adopted rules, as part of its economic baseline against which the benefits and costs of the final rules are measured.[2574]

One commenter stated that our analysis should account for the ''[s]taggering aggregate costs and unprecedented operational challenges'' of recently proposed rules in three categories, including ''[c]orporate governance.'' [2575] Another commenter identified two specific rules with which these final amendments could ''interact in obvious or non-obvious ways that raise costs for businesses.'' [2576] Implementation of one of these, adopted in the Cybersecurity Disclosures Adopting Release,[2577] could involve the

[2568] *See infra* section IV.C.1.

[2569] *See infra* section IV.B.

[2570] As industry observers have noted, many companies do not disclose their climate and other sustainability data until more than 12 months after the end of their fiscal year. *See, e.g.,* Corporate Knights, *Measuring Sustainability Disclosure* (2019), available at *https://www.corporateknights.com/wp-content/uploads/2021/08/CK_StockExchangeRanking_2020.pdf. See* letter from Morningstar (stating that ''Currently, a lack of clear disclosure standards for the timing of 'sustainability reports,' which is the primary source for emissions data, greatly hinders investor knowledge. For example, some registrants released 2021 reports—detailing 2020 data—as late as November 2021.''); *see also* letters from Miller/Howard (stating that requiring disclosure in filings with the Commission will provide users with confidence that they are receiving the ''most recent'' climate-related information); and Calvert (stating that ''57% of 2,207 companies disclosed their Scope 1 and 2 emissions with a one or two year delay.''). Furthermore, a voluntary regime may allow registrants to provide disclosures at irregular or multi-year intervals. In contrast, the final rules will generally require disclosures on an annual basis, which will allow investors to make better comparisons across time.

[2571] *See* Corporate Knights, *supra* note 2570.

[2572] *See infra* section IV.D.

[2573] *See infra* section IV.C.2.

[2574] *See, e.g., Nasdaq* v. *SEC,* 34 F.4th 1105, 1111–15 (D.C. Cir. 2022). This approach also follows Commission staff guidance on economic analysis for rulemaking. *See* SEC Staff, *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* (''SEC Guidance on Economic Analysis (2012)'') (''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.''); *see id.* (''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 that would improperly assume the adoption of those proposed actions.

[2575] *See* letter from Member of the U.S. House of Representatives Patrick McHenry and 28 other House Members (Sept. 26, 2023). Although the commenter did not identify specific rules that should be considered as part of this analysis, we considered the ''corporate governance'' category noted by the commenter (because the final rules include disclosure provisions related to governance of climate-related risks) and identified *Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, supra* note 2486 (''Cybersecurity Disclosures Adopting Release'') as a rule with potentially overlapping implementation costs (discussed *infra* note 2577 and accompanying text).

[2576] *See* Overdahl exhibit to letter from Chamber (citing Mandel and Carew (2013)). In addition to the Cybersecurity Disclosures Adopting Release, discussed *infra,* this commenter identified *Share Repurchase Disclosure Modernization,* Release Nos. 34–97424, IC–34906 (May 3, 2023) [88 FR 36002 (June 1, 2023)]. That rule was vacated by the U.S. Court of Appeals for the Fifth Circuit in December 2023. *See* Chamber of Com. of the U.S. v. SEC, 88 F.4th 1115 (Dec. 19, 2023).

[2577] *See* Cybersecurity Disclosures Adopting Release. The Cybersecurity Disclosures Adopting Release requires current disclosure about material cybersecurity incidents, and periodic disclosures about a registrant's processes to assess, identify, and manage material cybersecurity risks, management's role in assessing and managing material cybersecurity risks, and the board of directors' oversight of cybersecurity risks. For a full discussion of compliance dates for these amendments, *see id.* at section II.I.

same staff and resources as implementation of the final climate disclosure rules. However, we expect minimal overlap in the implementation periods of the two rules because the only remaining compliance dates for the rules adopted in the Cybersecurity Disclosures Adopting Release are for cybersecurity incident disclosure by smaller reporting companies by June 15, 2024, structured data requirements for Form 8–K and Form 6–K disclosures by December 18, 2024, and structured data requirements for Item 106 of Regulation S–K and Item 16K of Form 20–F disclosures beginning with annual reports for fiscal years ending on or after December 15, 2024. By contrast, the earliest compliance date for these final rules covers activities occurring in fiscal year 2025.

This section describes the current regulatory and economic landscape with respect to climate-related disclosures. It discusses the parties likely to be affected by the final rules, current trends in registrants' voluntary reporting on climate risks, related assurance practices, and existing mandatory disclosure rules under state and other Federal laws as well as from other jurisdictions in which registrants may operate.

1. Affected Parties

The disclosure requirements being adopted in this release will apply to Securities Act and Exchange Act registration statements as well as Exchange Act annual and quarterly reports. Thus, the parties that are likely to be affected by the final rules include: registrants subject to the disclosure requirements imposed by these forms, as detailed below; consumers of the climate-related risk information, such as investors, analysts, and other market participants; and third-party service providers who may collect and process this information, including assurance providers and ratings providers.

The final rules will affect both domestic registrants and foreign private issuers, but will not apply to Canadian registrants that use the MJDS and file their Exchange Act registration statements and annual reports on Form 40–F.[2578] We estimate that during calendar year 2022, excluding registered investment companies, there were approximately 6,870 registrants that filed on domestic forms,[2579] and approximately 920 foreign private issuers that filed on Form 20–F. Among domestic registrants, approximately 34 percent were LAFs, 10 percent were AFs, and 56 percent were NAFs. In addition, we estimate that approximately 57 percent of domestic registrants and 37 percent of foreign private issuers were either SRCs, EGCs, or both.

The final rules will require disclosures in registered offerings, except with respect to business combination transactions involving a company not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act. In many cases, registrants will be able to meet these requirements by incorporating by reference from their periodic reports. Registrants that have not previously filed periodic reports, such as companies conducting IPOs, will not have previously filed such reports to incorporate by reference. In 2022, there were approximately 390 such companies that conducted registered offerings on Form S–1 or F–1.[2580]

2. Current Commission Disclosure Requirements

As discussed above and in the Proposing Release, existing disclosure requirements may, depending on circumstance, require the disclosure of climate-related risk.[2581] The 2010 Guidance describes how the Commission's existing disclosure requirements can encompass climate-related risk.[2582] The 2010 Guidance emphasized that certain existing disclosure requirements in Regulation S–K and Regulation S–X may require disclosure related to climate change. With respect to the most pertinent non-financial statement disclosure rules, the Commission noted that: Item 101 (Description of Business) expressly requires disclosure regarding certain costs of compliance with environmental laws;[2583] Item 103 (Legal Proceedings) requires disclosure regarding any material pending legal proceeding to which a registrant or any of its subsidiaries is a party; Item 105 (Risk Factors) requires disclosure regarding the most significant factors that would make an investment in the registrant speculative;[2584] and Item 303 (MD&A) of Regulation S–K requires material historical and prospective narrative disclosure enabling investors to assess the financial condition and results of

[2578] The number of domestic registrants and foreign private issuers affected by the final rules is estimated as the number of companies, identified by Central Index Key (''CIK''), that filed a unique Form 10–K or Form 20–F during calendar year 2022, excluding asset-backed securities issuers. For the purposes of this economic analysis, these estimates do not include registrants that did not file a unique annual report. This approach avoids including entities whose reporting obligation would be satisfied by a parent or other company, such as co-issuers of debt securities or guarantors, or who otherwise have a suspended reporting obligation. The estimates for the percentages of SRCs, EGCs, AFs, LAFs, and NAFs are based on data obtained by Commission staff using a computer program that analyzes SEC filings, with supplemental data from Ives Group Audit Analytics and manual review of filings by Commission staff. Because this manual review takes a substantial amount of time, the Commission staff performs this process at the end of each calendar year rather than at the end of each quarter. Data for the 2023 filings is not yet available and fully reviewed, so the release includes 2022 numbers. Additionally, there are no 2023 updates for several sections of the baseline (such as those that rely on data or reports from third parties that have not completed their reviews of 2023), so the release includes 2022 data to provide for comparability across the release.

[2579] This number includes approximately 50 foreign private issuers that filed on domestic forms in 2022, approximately 120 BDCs, and 300 REITs.

[2580] This estimate was calculated by searching EDGAR for all registrants who filed a Form S–1 or F–1 in the year 2022. If multiple registration statements were filed in 2022 by the same registrant, the earliest was used. This list of registrants was then compared to a list of periodic reports (Forms 10–K, 10–Q, 20–F, 8–K) in EDGAR dating back to 2015. Approximately 390 registrants filed registration statements in 2022 that had not previously filed a Form 10–K, 10–Q, 20–F, or 8–K. Of those, approximately 180 did not subsequently file a Form 10–K, 10–Q, 20–F, or 8–K in 2022 or 2023, for example by operation of 17 CFR 240.12h–5 or 12hndash;7, indicating that they may incur lower or no cost of ongoing compliance because they are exempt from ongoing Exchange Act reporting obligations.

[2581] *See* discussion *supra* section I.A; Proposing Release sections I.A, IV.A.2; *see also supra* section II.B. for discussion of the historical evolution of Commission rules requiring registrant disclosure. The Commission considers the current disclosure of climate risk-related information as part of the baseline against which the benefits and costs of the final rules are measured. We disagree with the commenter who said that the baseline discussion in the Proposing Release was ''in effect suggesting that anything climate-related should be presumed to be material.'' (Overdahl exhibit to letter from Chamber). The baseline includes both the required disclosure of material information under Commission regulation, as well as requirements under other laws that may apply to registrants, and current market practices which may include voluntary disclosures. *See also* section IV.F.1. discussing the benefits and costs of a principles-based approach.

[2582] For an overview of how climate change issues may be required to be disclosed under existing rules, primarily Regulation S–K and Regulation S–X, *see* 2010 Guidance, section III.

[2583] Item 101 of Regulation S–K was amended in 2019. *See* Release No. 33–10618. When the 2010 Guidance was issued, Item 101(c)(1)(xii) required disclosure ''as to the material effects that compliance with Federal, state and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. The registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal year and for such further periods as the registrant may deem material.''

[2584] Risk Factors disclosure was required by Item 503(c) of Regulation S–K at the time of the 2010 Guidance. It was moved to Item 105 of Regulation S–K in 2019. *See* Release No. 33–10618.

operations of a registrant.[2585] While these provisions elicit some decision-useful climate-related disclosure,[2586] they have not resulted in consistent and comparable information about the actual and potential material impacts of climate-related risks on a registrant's business or financial condition, which many investors have increasingly stated that they need in order to make informed investment and voting decisions.[2587]

3. Existing State and Other Federal Laws

Existing state and other Federal laws require certain climate-related disclosures or reporting. For instance, within the insurance industry there are requirements for mandatory climate risk disclosure for any domestic insurers that write more than $100 million in annual net written premium.[2588] As of 2022, 14 states [2589] and the District of Columbia require these domestic insurers to disclose their climate-related risk assessment and strategy via the NAIC Climate Risk Disclosure Survey, which the NAIC revised in 2022 to align with the TCFD framework.[2590] Survey question topics include climate risk governance, climate risk management, and modeling. For reporting year 2021, 62 registrants provided climate risk disclosures in response to the NAIC survey.[2591] For reporting year 2022, insurers were allowed to submit a completed TCFD report or a survey response: 96 registrants provided either a TCFD report or a survey response.[2592]

Federal and state reporting requirements related to GHG emissions also exist. At the Federal level, the GHGRP requires that each facility that directly emits more than 25,000 metric tons of CO_2e per year report these direct emissions to the EPA.[2593] Additionally, facilities that supply certain products that would result in over 25,000 metric tons of CO_2e per year if those products were released, combusted, or oxidized must similarly report these ''supplied'' emissions to the EPA.[2594] The resulting emissions data are then made public through the EPA's website. The EPA estimates that the reporting required under the GHGRP covers 85 to 90 percent of all GHG emissions from over 8,000 facilities in the United States,[2595] and we estimate that approximately 365 registrants had an ownership stake in facilities that reported to the GHGRP in 2022.[2596] Gases that must be reported under the GHGRP include all those referenced by the GHG Protocol, which are also included within these final rules' definition of ''greenhouse gases.'' [2597]

In light of the existence of the GHGRP, some commenters questioned the need for the proposed rules.[2598] One commenter stated ''[t]he natural question is why the SEC feels compelled to require its own GHG emissions disclosures when the EPA already has a public reporting program that covers 85 to 90 percent of all GHG emissions from over 8,000 facilities in the United States.'' [2599] While we acknowledge that the GHGRP and the final rules both address reporting of GHGs, there are distinct and significant differences between both the goals and requirements of the GHGRP and the final rules. As the EPA noted in its comment letter: ''[T]he GHGRP . . . informs the development of greenhouse gas policies and programs under the Clean Air Act, and serves as an important tool for the Agency and the public to understand greenhouse gas emissions from facilities covered by the GHGRP nationwide. This is distinct from the purposes of the SEC's Proposed

[2585] The 2010 Guidance also discusses corollary provisions applicable to foreign private issuers not filing on domestic forms and states that, in addition to the Regulation S–K items discussed therein, registrants must also consider any financial statement implications of climate-related matters in accordance with applicable accounting standards, including FASB ASC Topic 450, Contingencies, and FASB ASC Topic 275, Risks and Uncertainties. Finally, the 2010 Guidance noted the applicability of Securities Act Rule 408 and Exchange Act Rule 12b-20, which require a registrant to disclose, in addition to the information expressly required by Commission regulation, ''such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.''

[2586] *See, e.g.,* Jeong-Bon Kim, Chong Wang & Feng Wu, *The Real Effects of Risk Disclosures: Evidence from Climate Change Reporting in 10-Ks,* 28 Rev. Acct. Stud. 2271 (2023) (finding that the 2010 Guidance resulted in a large increase in the number of firms providing climate-related disclosures).

[2587] *See supra* section I.A.

[2588] ''Net written premium'' is defined as the premiums written by an insurance company, minus premiums paid to reinsurance companies, plus any reinsurance assumed.

[2589] The 14 states are California, Connecticut, Delaware, Maine, Maryland, Massachusetts, Minnesota, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington. Colorado enacted legislation requiring insurers to participate beginning in 2024. Co. Rev. Stat. 10–3–244 (enacted May 11, 2023).

[2590] NAIC News Release, *U.S. Insurance Commissioners Endorse Internationally Recognized Climate Risk Disclosure Standard for Insurance Companies* (Apr. 8, 2022), available at *https://content.naic.org/article/us-insurance-commissioners-endorse-internationally-recognized-climate-risk-disclosure-standard*; NAIC, *Redesigned State Climate Risk Disclosure Survey* (adopted Apr. 6, 2022), available at *https://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/ClimateSurvey/upload/2022RevisedStateClimateRiskSurvey.pdf.*

[2591] This estimate is based on 20–F and 10–K filings in calendar year 2021 and 2021 NAIC survey results available at *https://interactive.web.insurance.ca.gov/apex_extprd/f?p=201:1* (last visited Jan. 16, 2024). *See supra* note 2578 for more information on how the Commission staff estimated the number of registrants.

[2592] This estimate is based on 20–F and 10–K filings in calendar year 2022, and 2022 NAIC survey results, available at *https://interactive.web.insurance.ca.gov/apex_extprd/f?p=201:1* (last visited Jan. 16, 2024).

[2593] *See* 40 CFR part 98 (2022); *see also* EPA Fact Sheet. The EPA's emissions data does not include emissions from agriculture, land use, or direct emissions from sources that have annual emissions of less than 25,000 metric tons of CO2e per year. *See also* letter from EPA (describing differences between the GHGRP and the SEC's proposed rule and noting the ''Clean Air Act authority for reporting and the purpose of the GHGRP are distinct from those of the SEC's proposed rule.'').

[2594] *See* EPA Fact Sheet; *see also* EPA, *Learn About the Greenhouse Gas Reporting Program (GHGRP),* available at *https://www.epa.gov/ghgreporting/learn-about-greenhouse-gas-reporting-program-ghgrp* (Updated June 20, 2023). According to the EPA, ''direct emitters'' are facilities that combust fuels or otherwise put GHGs into the atmosphere directly from their facility. *See* EPA, *Greenhouse Gas Search User Guide,* available at *https://www.epa.gov/enviro/greenhouse-gas-search-user-guide* (Updated Jan. 17, 2024). An example of a direct emitter is a power plant that burns coal or natural gas and emits CO_2 directly into the atmosphere. *Id.* ''Suppliers'' are those entities that supply products into the economy which if combusted, released, or oxidized emit GHGs into the atmosphere. *Id.* An example of a supplier is a gasoline importer or distributer, which sells gasoline in the U.S. that is burned in cars throughout the country. *Id.* While the GHGRP does not represent the total GHG emissions in the U.S., it is the only dataset containing facility-level data for large sources of direct emissions, thus including the majority of U.S. GHG emissions. *See* EPA, *2022 GHGRP Overview Report,* available at *https://www.epa.gov/system/files/documents/2023–10/ghgrp-2022-overview-profile.pdf.* The EPA estimates that the GHGRP data reported by direct emitters covers about half of all U.S. emissions. *Id.* When including the greenhouse gas information reported by suppliers to the GHGRP, emissions coverage reaches approximately 85–90% of U.S. GHG emissions. *Id.*

[2595] *See* EPA Fact Sheet.

[2596] This estimate is based on parent company data provided by the EPA (*GHGRP Reported Data* (2022), *supra* note 2594), as well as registrant data gathered by Commission staff from Commission filings. Parent companies from the GHGRP reporting data were matched to registrants based on company name using Levenshtein Distance, as well as the reported city and state of the parent company. Matches were then manually reviewed by Commission staff.

[2597] The EPA also requires reporting on some gases (*e.g.,* fluorinated ethers, perfluoropolyether) that are considered optional under the GHG Protocol and that are not included within this final rules' definition of ''greenhouse gases.''

[2598] *See* letter from Andrew N. Vollmer (May 9, 2022); *see also* letters from D. Burton; Heritage Fdn. (''The very limited increase in actual information that will be achieved by the proposed rule will make virtually no difference. And, if it is thought that it will, by far the most efficient and effective means of increasing the information available would be to amend the EPA rules''); and ConocoPhillips (''We believe GHG disclosure regimes established by the EPA and regulators in other jurisdictions with broad existing GHG emissions coverage should form the basis of GHG emissions disclosure and do not believe additional and duplicative Scope 1 and 2 emissions disclosures will be useful or material to investors in many instances.'').

[2599] *See* letter from Andrew N. Vollmer (May 9, 2022).

Rules, which are intended to enhance and standardize climate-related disclosures to address investor needs and help issuers more efficiently and effectively disclose climate-related risks, benefitting both investors and issuers.'' [2600] In addition to the difference in goals, there are several significant differences in the requirements between the GHGRP and the final rules. First, the entities required to report under the EPA regime may differ from the entities required to report under the final rules.[2601] Second, the EPA requires emissions reporting only for U.S. facilities, while the final rules are not limited to U.S. facilities. Third, the EPA emissions data do not allow a precise disaggregation across the different scopes of emissions for a given registrant. In particular, the EPA requires reporting of facility-level direct emissions, which may be a subset of the relevant registrant's Scope 1 emissions. Finally, the EPA does not require reporting of Scope 2 emissions.[2602]

Many state laws also impose specific GHG emissions reporting requirements.[2603] States' rules vary with respect to reporting thresholds and emissions calculation methodologies, but most tend to focus on direct emissions, with certain exceptions. For example, in New York, any owner or operator of a facility that is a ''major source'' must report its annual actual emissions of certain air contaminants to the New York State Department of Environmental Conservation.[2604] Colorado requires GHG-emitting entities to report their emissions to the state in support of Colorado's GHG inventory and reduction efforts.[2605] California and Washington require annual reporting of GHG emissions by industrial sources that emit more than 10,000 metric tons of CO_2e, transportation and natural gas fuel suppliers, and electricity importers.[2606]

California also recently enacted two laws requiring additional climate-related disclosures and reporting for certain companies doing business in the state.[2607] The Climate Corporate Data Accountability Act (Senate Bill 253), which will require companies making over $1 billion in gross annual revenue to disclose their GHG emissions to the state on an annual basis and to obtain independent third-party assurance over such disclosures,[2608] is expected to apply to an estimated 5,300 companies doing business in the state.[2609] The Climate-Related Financial Risk Act (Senate Bill 261),[2610] which will require companies with total annual revenue above $500 million to publish a biennial report on the company's website disclosing such company's climate-related financial risk in accordance with the TCFD framework or a comparable disclosure regime,[2611] and describing what measures have been adopted to reduce and adapt to such risk, is expected to apply to an estimated 10,000 companies doing business in the state.[2612] Companies subject to the Climate Corporate Data Accountability Act will be required to disclose their Scope 1 and Scope 2 emissions beginning in 2026 and their Scope 3 emissions beginning in 2027.[2613] Companies subject to the Climate-Related Financial Risk Act will be required to begin reporting their climate-related financial risks and measures in 2026.[2614] We estimate that approximately 1,980 Commission registrants meet the $1 billion revenue threshold for Climate Corporate Data Accountability Act and approximately 2,520 Commission registrants meet the $500 million revenue threshold for the Climate-Related Financial Risk Act.[2615]

As a result of these Federal- and state-level climate-related disclosure and reporting requirements, some registrants subject to the final rules may already have in place, or may be developing, certain processes and systems to track and disclose aspects of their climate-related risks.

4. International Disclosure Requirements

Issuers that are listed or operate in jurisdictions outside the United States may also be subject to those jurisdictions' disclosure and reporting requirements. As discussed in section I.B. above, many jurisdictions' current or proposed requirements for climate-risk disclosure are aligned with the TCFD's framework for climate-related financial reporting.[2616] Several

[2600] *See* letter from EPA.

[2601] The EPA requirements apply to facility owners and operators, and suppliers, while these final rules apply to registrants.

[2602] ''The GHGRP does not include emissions from . . . reporting of data on electricity purchases or indirect emissions from energy consumption, which falls under Scope 2 emissions.'' (footnote omitted). EPA, *Greenhouse Gas Reporting Program (GHGRP)* (Updated June 20, 2023), available at *https://www.epa.gov/ghgreporting/learn-about-greenhouse-gas-reporting-program-ghgrp*.

[2603] *See, e.g.,* CA Health & Safety Code § 38530; CO Rev. Stat. § 25–7–140; HI Rev. Stat. § 342B–72; MA Gen. Laws ch. 21N, sec. 2; NJ Rev. Stat. § 26:2C–41; OR Rev. Stat. § 468A.050; *see also* NCSL, *Greenhouse Gas Emissions Reduction Targets and Market-Based Policies* (updated Sept. 5, 2023), available at *https://www.ncsl.org/research/energy/greenhouse-gas-emissions-reduction-targets-and-market-based-policies.aspx*.

[2604] *See* 6 NY Codes, Rules & Regs. 202–2.3(c).

[2605] 5 Code Colo. Regs. § 1001–26. *See also* Colo. Dep't of Pub. Health & Env't, *Greenhouse Gas Reporting,* available at *https://cdphe.colorado.gov/environment/air-pollution/climate-change#reporting* (last visited Sept. 13, 2023).

[2606] *See* 17 Cal. Code Regs. § 95100–95163; WAC 173–441–010–173–441–070; *see also* Cal. Air Res. Bd., Mandatory Greenhouse Gas Reporting 2020 Emissions Year Frequently Asked Questions (2021), available at *https://www.arb.ca.gov/cc/reporting/ghg-rep/reported-data/2020mrrfaqs.pdf; see also Was. Dept. of Ecology, Mandatory Greenhouse Gas Reports*, available at *https://ecology.wa.gov/Air-Climate/Reducing-Greenhouse-Gas-Emissions/Tracking-greenhouse-gases/Mandatory-greenhouse-gas-reports*.

[2607] The California Air Resources Board (''CARB'') will need to develop and adopt regulations by January 1, 2025 for the disclosure requirements under the Climate Corporate Data Accountability Act to become effective. *See supra* note 156. These regulations are expected to provide further details regarding the law's compliance requirements, including the content of the disclosure, the methodology for calculating emissions that are required to be disclosed and what qualifies as ''doing business'' in California. The requirements of the Climate-Related Financial Risk Act are self-effectuating, such that additional regulations are not required to implement the law's reporting requirements; however, the law requires the CARB to adopt regulations that authorize it to seek administrative penalties from covered entities for failing to make the required reports publicly available or publishing inadequate or insufficient information in the report. *See* SB–253, *supra* note 156.

[2608] *See* SB–253, *supra* note 156.

[2609] *See* Brent W. Thompson, California's Climate Disclosure Requirements: An Overview of Senate Bills 253 and 261, Ca. Lawyers Assoc. (Nov. 2023), available at *https://calawyers.org/business-law/californias-climate-disclosure-requirements-an-overview-of-senate-bills-253-and-261/*.

[2610] *See* SB–261, *supra note 155.*

[2611] A company will satisfy the requirements of the Climate-Related Financial Risk Act if it prepares a publicly accessible biennial report that includes climate-related financial risk disclosure information by any of the following methods: (1) pursuant to a law, regulation or listing requirement by any regulated exchange or government entity, incorporating the disclosure requirements that are consistent with the requirements of the- Climate-Related Financial Risk Act or (2) voluntarily using a framework that meets the requirements of the Climate-Related Financial Risk Act or is in compliance with ISSB standards. *See* SB–261, *supra note 155.*

[2612] *See* Thompson, *supra* note 2609; *see also* letter from Chamber (Dec. 6, 2023) (describing the California laws and highlighting differences in purpose, scope, and timing between the California laws and the proposed rules) (''letter from Chamber II''); *see also infra* note 3112 and accompanying text discussing this comment and the inclusion of California state law in the baseline.

[2613] *See* Thompson, *supra* note 2609.

[2614] *See id.*

[2615] Estimates are based on Compustat data for 2022 registrants. We do not have readily accessible data that could be used to reliably estimate the subset of these registrants doing business in California. One commenter estimated that 73% of Fortune 1000 companies would need to comply with both California laws. *See* letter from Amer. for Fin. Reform, Public Citizen and Sierra Club (Oct. 26, 2023) (using a list of companies registered with the California Secretary of State for their estimate, but describing in their methodology discussion why that does not directly correspond to ''doing business'' in the state).

[2616] *See* note 46 and accompanying text; *see also* TCFD, Task Force on Climate-Related Financial

Continued

jurisdictions also have announced plans or support for adopting climate disclosure requirements that are consistent with the TCFD recommendations, and some jurisdictions already require climate-related disclosures aligned with the TCFD recommendations.[2617] The UK, for example, has TCFD-aligned disclosure requirements for certain issuers.[2618] Insofar as Commission registrants are listed or have operations in these other jurisdictions, they may already be subject to these other jurisdictions' disclosure requirements, policies, and guidance on reporting certain information about climate-related financial risk.

Additionally, the ISSB released its climate-related disclosure standards in June 2023.[2619] These standards incorporate the TCFD recommendations, such that companies that apply the ISSB standards will satisfy the TCFD recommendations, although the ISSB standards include some additional disclosure requirements.[2620] The ISSB provisions relating to GHG emissions also align with the GHG Protocol.[2621] Several jurisdictions have announced plans or support for implementing the ISSB standards, or local standards based on ISSB standards.[2622]

In the EU, the CSRD will apply to approximately 50,000 companies when implemented.[2623] Companies required to report under the CSRD beginning on January 1, 2024, will report according to ESRS, adopted in July 2023,[2624] that are closely aligned with the TCFD framework[2625] and ISSB standards, although the CSRD includes some additional disclosure requirements.[2626] This first stage of CSRD implementation will primarily affect companies that have more than 500 employees and are listed on an EU-regulated market. Subsequent stages will encompass other large EU-based companies,[2627] and later, certain small to medium-sized companies and certain non-EU companies operating in the EU.[2628] Finally, in the last stage of CSRD implementation, certain non-EU companies operating in the EU would report sustainability impacts to the EU,[2629] but because the ESRS for that stage are not yet developed, we cannot assess the extent to which disclosures made under this last stage would overlap with either the TCFD framework or these final rules.

Disclosure: 2023 Status Report, Table D1 (Oct. 2023), available at *https://assets.bbhub.io/company/sites/60/2023/09/2023-Status-Report.pdf (''TCFD 2023 Status Report'').* For more detail on the TCFD recommendations, *see* Proposing Release, section I.D; *see also* TCFD, *Overview* (Mar. 2021), available at *https://assets.bbhub.io/company/sites/60/2020/10/TCFD_Booklet_FNL_Digital_March-2020.pdf.* Concurrent with the release of its 2023 status report, the TCFD fulfilled its remit and transferred to the ISSB its responsibility for tracking company activities on climate-related disclosure. Fin. Stability Bd., *supra* note 151. As discussed *infra*, the TCFD recommendations are incorporated into the ISSB standards. Although the TCFD has disbanded, in this release we continue to refer to ''TCFD recommendations'' as distinct from ISSB standards, both for clarity and because not all jurisdictions that implemented TCFD-aligned disclosure requirements have implemented the broader and more recent ISSB standards.

[2617] *See* Proposing Release, section IV.A.4 (discussing disclosure requirements implemented, for example in the United Kingdom, Japan, and New Zealand). Commission staff determined that in 2022, approximately 1,961 Commission registrants traded in the U.K., 52 in Japan, and 2 in New Zealand; however, individual requirements in each country determine whether these registrants are subject to the climate-related disclosure laws of that country. *See also* TCFD 2023 Status Report, *supra* note 2616, at Part D.

[2618] *See* Financial Conduct Authority, *Climate-related Reporting Requirements,* available at *https://www.fca.org.uk/firms/climate-change-sustainable-finance/reporting-requirements* (updated June 10, 2022); *see also* further discussion *infra* section IV.C.3.a.

[2619] *See supra* section II.A. describing the standards.

[2620] IFRS, *IFRS Foundation Publishes Comparison of IFRS S2 with the TCFD Recommendations* (July 24, 2023), available at *https://www.ifrs.org/news-and-events/news/2023/07/ifrs-foundation-publishes-comparison-of-ifrs-s2-with-the-tcfd-recommendations/.*

[2621] *See supra* section II.A. In the U.S. and other jurisdictions, GHG emissions quantification and reporting are generally based on the widely-used GHG Protocol, *see supra* notes 51 and 1011 and accompanying text. *See also* Patrick Bolton & Marcin Kacperczyk, *Global Pricing of Carbon-Transition Risk,* 78 J. of Fin. 3677 (Dec. 2023) (using the GHG Protocol to measure firm-level GHG emissions across 77 countries). However, we recognize that there exist other standards, *e.g.,* ISO standards, as noted *supra* note 1011 and in letters from ISO and Futurepast.

[2622] *See supra* section II.A.

[2623] European Parliament, *Sustainable Economy: Parliament Adopts New Reporting Rules for Multinationals* (Nov. 10, 2022), available at *https://www.europarl.europa.eu/news/en/press-room/20221107IPR49611/sustainable-economy-parliament-adopts-new-reporting-rules-for-multinationals; see also EU Commission's New Proposals Aim to Simplify Sustainability Reporting Rules,* FinTech Global (June 13, 2023), available at *https://fintech.global/2023/06/13/eu-commissions-new-proposals-aim-to-simplify-sustainability-reporting-rules/. See supra* section II.A.3, at note 154 and accompanying text for discussion of the CSRD.

[2624] EU Commission Delegated Regulation of July 31, 2023, supplementing Directive 2013/34/EU, and Annexes, available at *https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/corporate-sustainability-reporting-directive_en.* ESRS for later stages of the CSRD are not yet developed.

[2625] *See* EFRAG, *Draft European Sustainability Reporting Standards: Appendix IV—TCFD Recommendations and ESRS Reconciliation Table* (Nov. 2022), available at *https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FsiteAssets%2F21%2520Appendix%2520IV%2520-%2520TCFD-EFRAG%2520Comparative%2520analysis%2520final.pdf.*

[2626] European Commission, *Questions and Answers on the Adoption of European Sustainability Reporting Standards* (July 31, 2023), available at *https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_4043* (''CSRD Q&A''). *See also* EFRAG, *Interoperability Between ESRS and ISSB Standards,* Discussion Paper 04–02 (Aug. 23, 2023) (''Companies that are required to report in accordance with ESRS will to a very large extent report the same information as companies that use ISSB standards.'').

[2627] For purposes of the CSRD, a ''large'' company is one that meets at least two of the following criteria: balance sheet total greater than €25 million; net turnover greater than €50 million; or more than 250 employees. *See* Directive (EU) 2023/2775 amending Directive 2013/34/EU as regards the adjustments of the size criteria for micro, small, medium-sized and large undertakings or groups (Dec. 21, 2023), available at *https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32023L2775.*

[2628] *See* CSRD Q&A, *supra* note 2626.

[2629] *See id.*

We estimate that there are approximately 3,700 Commission registrants that are traded on a European exchange; however, we understand that most of these companies do not trade on an EU-regulated market, in which case they may not be impacted by the initial stage of CSRD implementation.[2630] We estimate that approximately 70 Commission registrants (fewer than 10 of which are U.S.-based) are listed on EU-regulated markets and could therefore be subject to reporting under the initial set of ESRS in fiscal year 2024.[2631] Additional registrants may have EU subsidiaries or operations that fall within the scope of the CSRD, including in later compliance years. Although the number of Commission registrants subject to CSRD reporting in 2024 may be relatively low, we expect that once the CSRD is fully implemented, it could apply to many of the 3,700 Commission registrants that trade on a European exchange, as well as other non-EU companies, provided that they meet the required turnover and presence thresholds.[2632] This assessment aligns with another estimate, which found that U.S. companies could make up 31 percent of an estimated 10,000 U.S., Canadian, and British companies required to begin complying with the CSRD between 2025 and 2029.[2633] However, the number of registrants affected cannot be determined with specificity because the CSRD implementing standards are not fully developed yet, and because the number will depend on factors such as, for example, how many Commission registrants trade on an exchange defined as an EU-regulated market.

Despite uncertainty as to the parameters of other jurisdictions' requirements, the information described above indicates that a meaningful number of Commission registrants may be subject to the climate-related disclosure and reporting requirements of one or more additional jurisdictions. As a result, some registrants subject to the final rules may already have in place, or may be developing, processes and systems to track and disclose aspects of their climate-related risks.

5. Current Market Practices

This section describes current market practices with regard to climate-related disclosure, including disclosures made in Commission filings and in other contexts. This section then describes the use of third-party frameworks in current disclosures; the disclosure of climate-related targets, goals, and transition plans; and the use of third-party assurance.

We recognize that some aspects of the final rules may overlap with existing disclosure requirements and practices. The incremental costs of the final rules to a specific registrant will depend on the extent to which its disclosures resulting from the final rules overlap with disclosures that would have occurred in the absence of the final rules, as discussed in further detail below.[2634]

a. Climate-Related Disclosures in SEC Filings

The Commission staff reviewed 52,778 annual reports (Forms 10–K and 20–F) submitted from January 1, 2016, until December 31, 2022, to determine how many contain any of the following keywords: ''climate change,'' ''climate risk,'' or ''global warming,'' collectively referred to as ''climate-related keywords'' throughout this section.[2635] The presence of any of the climate-related keywords in any part of the annual report is indicative of some form of climate-related disclosure.[2636] Table 1 shows the portion of climate-related keywords used in Form 10–Ks and 20–Fs from 2021 through 2022.

TABLE 1—FILINGS WITH CLIMATE-RELATED KEYWORDS BY FORM TYPE

Form	Has keyword	All filings	Percent
10–K	4,521	12,846	35
20–F	662	1,721	38
Total	5,183	14,567	36

This table presents the analysis of annual filings submitted to the Commission between Jan. 1, 2021, and Dec. 31, 2022. For each form type, the table indicates how many contain any of the climate-related keywords.

Figure 1 shows that the percentage of Form 10–K and Form 20–F filings with climate-related keywords[2637] has increased between 2016 and 2022. As reflected in Table 1, in more recent filings (*i.e.,* those submitted in calendar

[2630] ''European exchange'' refers to an exchange located in the EU. The first stage of CSRD implementation is specific to companies trading on an ''EU-regulated market,'' where ''regulated market'' is a defined term under EU securities law, distinct from an organized trading facility or multilateral trading facility. *See* Directive 2014/65/EU of the European Parliament and of the Council (May 15, 2014), available at *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065* (updated Mar. 23, 2023).

[2631] This analysis is based on listing status data from Refinitiv. We note that this figure may not reflect all registrants that would be subject to the CSRD rules, as listing status is just one of the conditions for required disclosure under the EU rules. Fiscal year 2024 reporting is required of companies already subject to another EU reporting directive known as the Non-Financial Reporting Directive, including large U.S. companies with more than 500 employees and listed on an EU-regulated market. Among the approximately 70 registrants listed on EU-regulated markets, we are unable to determine how many are ''large'' as defined in the CSRD, as many registrants do not provide geographic breakdowns of turnover or assets needed to identify turnover or assets attributable to the EU, so it is possible that the lower bound is fewer than 70 registrants. Even if not subject to CSRD reporting in fiscal year 2024, however, we anticipate that all or nearly all registrants listed on an EU-regulated exchange, and many not listed on such an exchange, will be required to report in subsequent compliance years as the CSRD phases in. We are not aware of any official analysis from European authorities regarding the number of Commission-registered issuers which will be subject to CSRD reporting.

[2632] *See generally* CSRD Q&A, *supra* note 2626; Thibault Meynier, *et al., EU Finalizes ESG Reporting Rules with International Impacts,* Harvard L. Sch. Forum on Corp. Gov. (Jan. 30, 2023), available at *https://corpgov.law.harvard.edu/2023/01/30/eu-finalizes-esg-reporting-rules-with-international-impacts/.*

[2633] Dieter Holger, *At Least 10,000 Foreign Companies to be Hit by EU Sustainability Rules,* Wall St. J. (Apr. 5, 2023), available at *https://www.wsj.com/articles/at-least-10–000-foreign-companies-to-be-hit-by-eu-sustainability-rules-307a1406* (retrieved from Factiva database).

[2634] *See* section IV.C.3.c, ''Factors that Influence Direct Costs.'' The same point applies similarly to the more general costs imposed by the final rules: those registrants that currently provide (or plan to provide) climate-related disclosures irrespective of the final rules will incur lower incremental costs to the extent that these disclosures overlap with the final rules' requirements.

[2635] We follow the approach used in the Proposing Release except we have excluded 40–F filers because they are not subject to the final rules.

[2636] One limitation of using this climate-related keyword search is that it is unable to discern the extent or decision-usefulness of climate-related disclosures, nor can it determine specific sub-topics within climate-related disclosures. For these reasons, the analysis was supplemented by natural language processing (''NLP'') analysis, as described later in this section.

[2637] *See supra* note 2636.

years 2021 and 2022) 36 percent of all annual reports contain some climate-related keywords, with a slightly greater proportion (38 percent) among foreign private issuers filing on Form 20–F.[2638] These figures are consistent with data from Bloomberg, which focuses on registrants listed on NYSE and NASDAQ, on ESG reporting. Specifically, using this data, we find that 39 percent of registrants include a discussion of climate related risks in their MD&A section.[2639]

Figure 1 shows that the percentage of Form 10–K and 20–F filings with climate-related keywords[2640] has been increasing between 2016 and 2022. We note that Table 1 reflects the averages of the last two years of the time-series shown in Figure 1.

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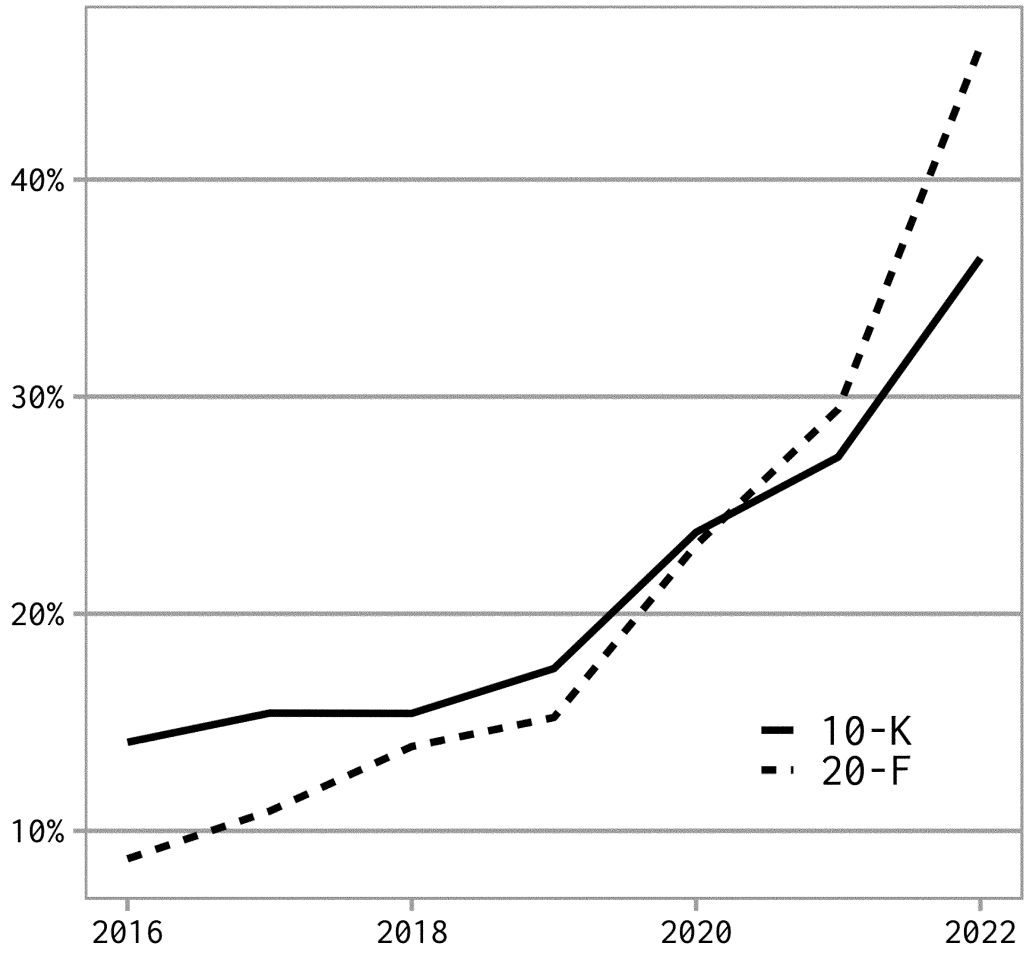
Figure 1. Percentage of Filings with Climate-related Keywords by Form Type



This figure presents the analysis of annual filings on Form 10-K and Form 20-F submitted to the Commission between Jan. 1, 2016, and Dec. 31, 2022. For each form type, the figure plots the percentage of filings containing climate-related keywords.

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Table 2 provides a breakdown of more recent filings by accelerated filer status. Among LAFs, 68 percent provided climate-related keywords in 2022, while only 50 percent did so in 2021. Discussions by AFs and NAFs also saw increases over the same period (from 40 to 49 percent and from 16 to 23 percent, respectively).

[2638] Some foreign private issuers may elect to file their annual report on Form 10–K and would thus be classified as ''domestic filers'' in the following analysis.

[2639] Bloomberg reports ''[w]hether the Management Discussion and Analysis (MD&A) or its equivalent risk section of registrant's annual report discusses business risks related to climate change.'' As with other summary statistics presented in this release, these figures may not be representative of all Commission registrants. For example, registrants that are not listed on NYSE or NASDAQ may be less likely to include discussions of climate related risks in their MD&A section.

[2640] *See supra* note 2636.

TABLE 2—FILINGS WITH CLIMATE-RELATED KEYWORDS BY ACCELERATED FILER STATUS

Year	Filer status	Has keyword	All filings	Percent
2021	LAF	1,063	2,126	50
	AF	373	936	40
	NAF	635	3,883	16
	All	2,071	6,945	30
2022	LAF	1,726	2,520	68
	AF	425	863	49
	NAF	961	4,241	23
	All	3,112	7,622	41

This table presents the analysis of annual filings submitted to the Commission between Jan. 1, 2021, and Dec. 31, 2022. For each filer status, the table indicates how many contain any of the climate-related keywords.

Similarly, Table 3 indicates that the inclusion of climate-related keywords by SRCs and EGCs also increased from 2021 to 2022, but that climate change discussions remain less common among these registrants than among registrants that are not SRCs or EGCs.

TABLE 3—FILINGS WITH CLIMATE-RELATED KEYWORDS BY SRC/EGC STATUS

Year	Filer status	Has keyword	All filings	Percent
2021	SRC & EGC	184	2,400	8
	SRC	744	4,142	18
	EGC	198	984	20
	Neither	3,016	6,364	47
2022	SRC & EGC	440	3,180	14
	SRC	912	3,724	24
	EGC	424	1,226	35
	Neither	4,448	7,114	63

This table presents the analysis of annual filings submitted to the Commission between Jan. 1, 2021, and Dec. 31, 2022. Filer status SRC, EGC, small emerging growth companies (“SRC & EGC”), and large non-EGC and non-SRC companies (“Neither”). For each filer status, the table indicates how many contain any of the climate-related keywords.

Table 4 (presented as a graph in Figure 2) provides a breakdown of the recent filings by industry and shows that the industries with the highest percentage of annual reports containing climate-related disclosure include electric services, maritime transportation, steel manufacturing, paper and forest products, and oil and gas, among others.

TABLE 4—FILINGS WITH CLIMATE-RELATED KEYWORDS BY INDUSTRY

Industry	Has keyword	All filings	Percent
Electric Services	144	157	92
Maritime Transportation	114	127	90
Steel Manufacturing	29	33	88
Paper and Forest Products	44	52	85
Oil and Gas	350	445	79
Rail Transportation	14	18	78
Passenger Air and Air Freight	50	66	76
Trucking Services	32	44	73
Insurance	189	272	69
Real-Estate Investment Trusts	292	483	60
Beverages, Packaged Foods and Meats	138	243	57
Construction Materials	128	234	55
Automotive	34	67	51
Capital Goods	123	243	51
Mining	154	332	46
Agriculture	32	72	44
Other	622	1,454	43
Textiles and Apparel	31	74	42
Banking	558	1,460	38
Technology Hardware and Equipment	618	1,725	36
Consumer Retailing	392	1,229	32
Total	5,188	14,593	36

This table presents the analysis of annual filings submitted to the Commission between Jan. 1, 2021, and Dec. 31, 2022. For each industry, the table indicates how many contain any of the climate-related keywords.

Figure 2 provides a breakdown by industry of use of climate-related keywords.

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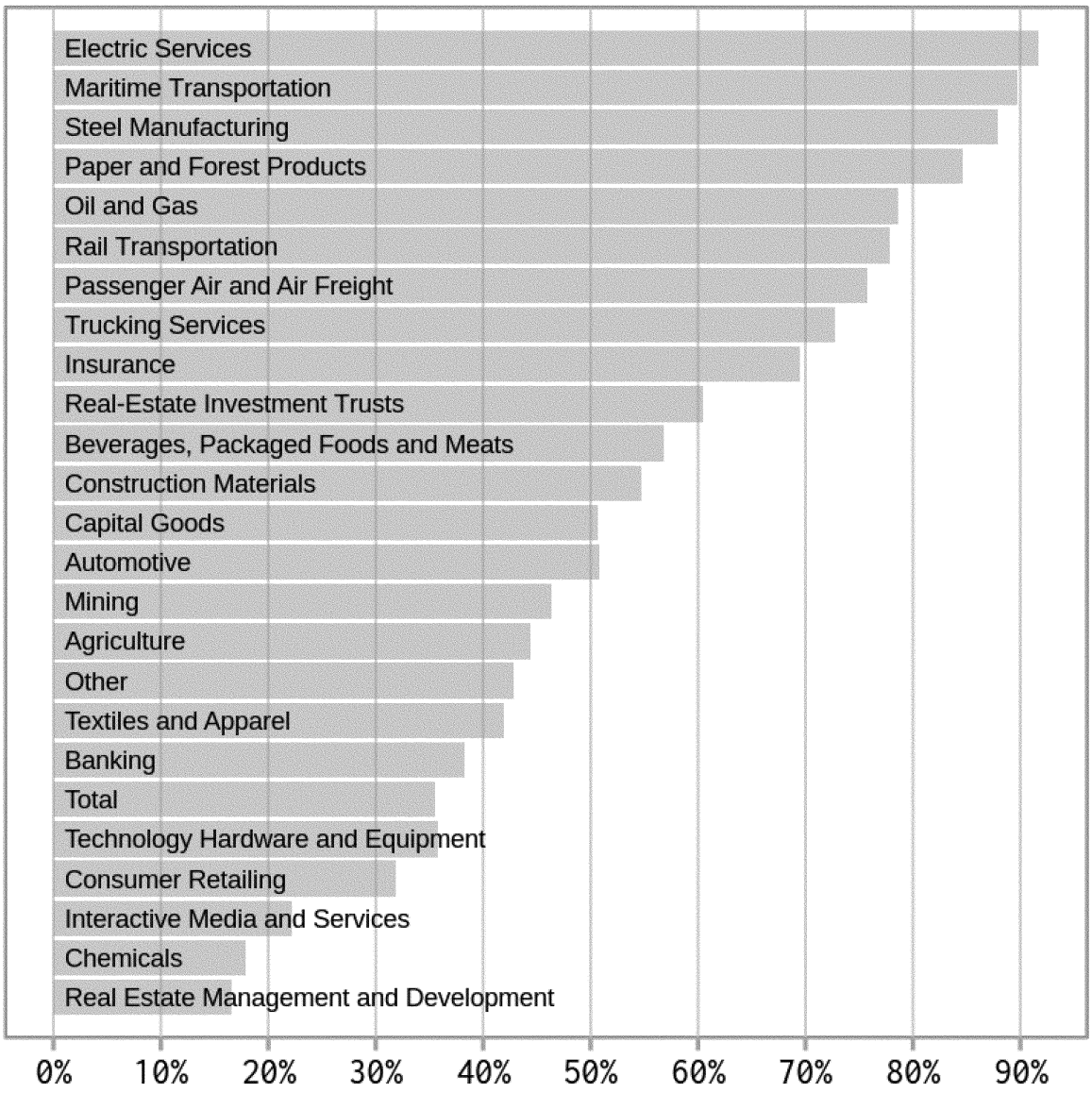
Figure 2. Percentage of Filings with Climate-related Keywords by Industry



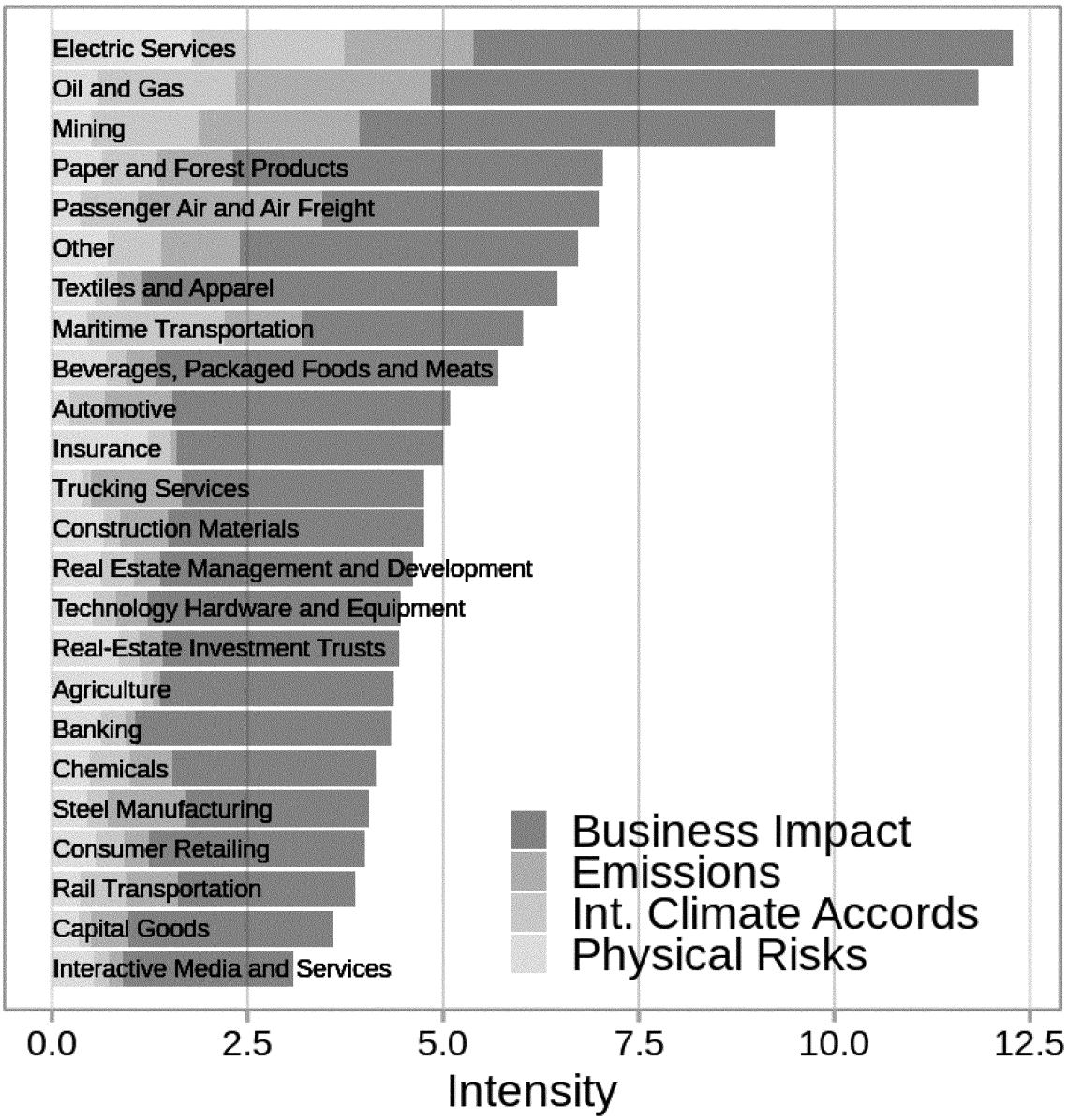
Using the same sample of recent annual reports, Commission staff conducted additional analysis using NLP, which can provide insight on the semantic meaning of individual sentences within registrants' climate-related disclosures and classify them into topics (*i.e.,* clusters).[2641] The NLP analysis suggests that climate-related disclosures can be broadly organized into four topics: business impact, emissions, international climate accords, and physical risks. The analysis finds significant variation, both within the quantity and content, of climate-related disclosures across industries, as shown in Figures 3 and 4.

Figure 3 presents the intensity of disclosure for domestic annual report filings (Form 10–K). The intensity refers to sentences per registrant, which is calculated by taking the aggregate number of sentences in an industry and dividing it by the total number of registrants within the industry (including those that do not include any climate-related keywords). Thus, the intensity represents a more comparable estimate across industries. Figure 3 shows that registrants in the following industries have the highest intensity of

[2641] The specific NLP method used in this analysis is word embedding, which utilizes Google's publicly available, pre-trained word vectors that are then applied to the text of climate-related disclosures within regulatory filings. While this NLP analysis can be used to identify the general topic and the extent of disclosures, it is limited in its ability to discern the decision-usefulness of disclosures from investors' perspective.

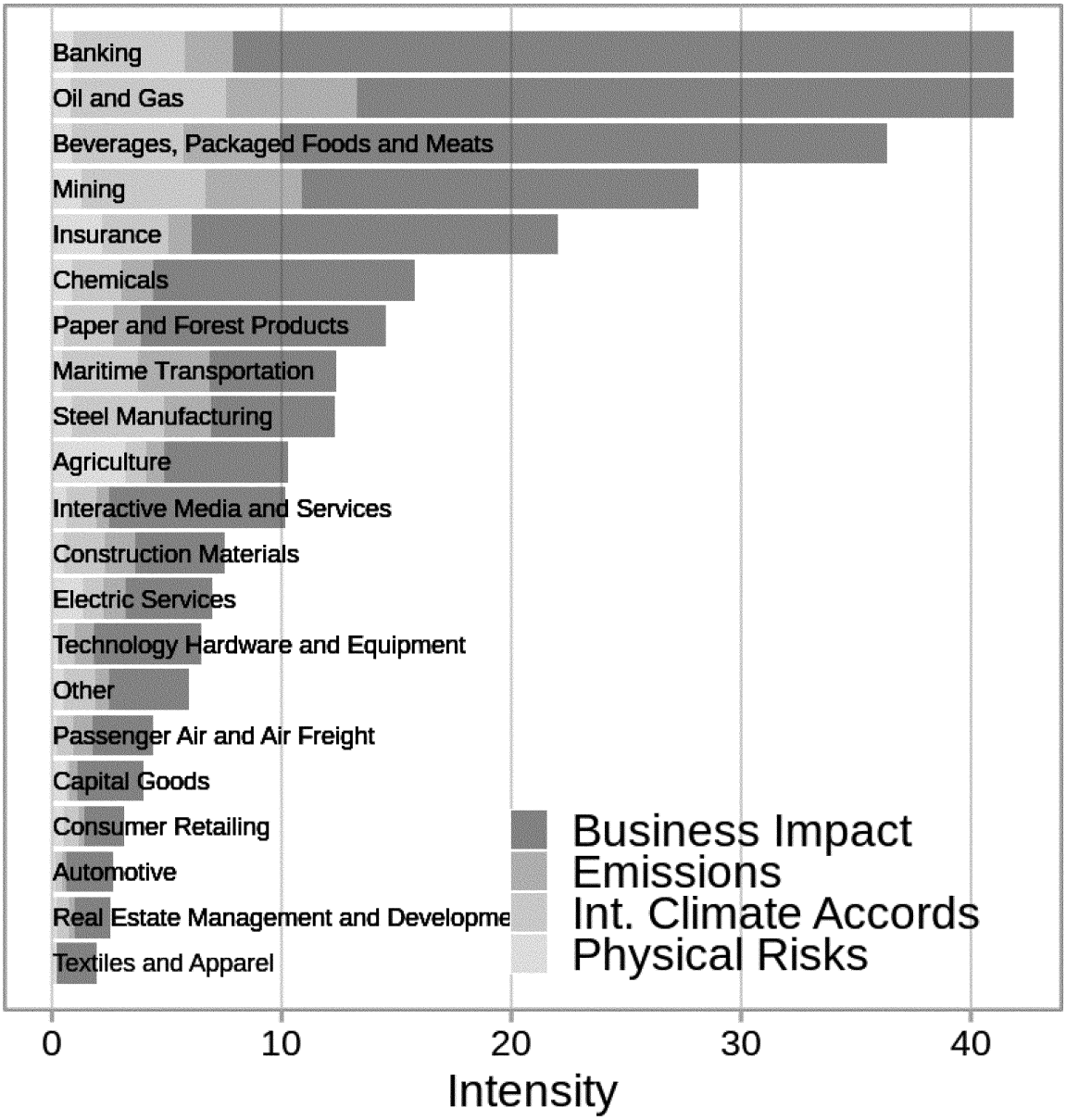
disclosures: oil and gas, electric services, and mining. The majority of these disclosures addressed business impact, followed by emissions, international climate accords, and physical risks. Figure 4 presents the corresponding information for foreign annual report filings (Form 20–F). The foreign filings contain considerably higher intensity of climate-related keywords. For example, Form 10–K filers in the oil and gas industry have approximately 12 sentences per filing containing climate-related keywords while foreign filers in the same industry devote approximately 75 sentences per filing containing climate-related keywords. Overall, the analysis indicates that the majority of the disclosure for both domestic and foreign filings is focused on transition risks, with comparatively fewer mentions of physical risk.

Figure 3. Clustered Intensity by Industry for Domestic Filings (Form 10-K)



This figure presents the analysis of Form 10-K annual filings submitted to the Commission between Jan. 1, 2021, and Dec. 31, 2022. NLP was used to analyze sentences contained within the annual filings and classify them into four broad topics (i.e., clusters): business impact, emissions, international climate accords, and physical risks. Intensity refers to the average number of sentences per registrant, which is calculated by taking the aggregate number of relevant sentences in an industry and dividing it by the total number of registrants within the industry.

Figure 4. Clustered Intensity by Industry for Foreign Filings (Form 20-F)



This figure presents the analysis of Form 20-F annual reports submitted to the Commission between Jan. 1, 2021, and Dec. 31, 2022. We exclude any Form 20-Fs that were not annual reports. NLP was used to analyze sentences contained within the annual filings and classify them into four broad topics (i.e., clusters): business impact, emissions, international climate accords, and physical risks. Intensity refers to the average number of relevant sentences per registrant, which is calculated by taking the aggregate number of sentences in an industry and dividing it by the total number of registrants within the industry.

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The Commission staff's findings are consistent with one academic study that looked at the extent of climate-related disclosures by Commission registrants.[2642] In this study, a review of Form 10–K filings from Russell 3000 companies over the last 12 years found that the majority of climate-related disclosure is focused on transition risks,[2643] consistent with the above Commission staff analysis that finds that annual filings contain more discussion on emissions and international climate accords relative to physical risks. This study further found that while 35 percent of Russell 3000 Index companies provided climate-related information in 2009, this figure grew to

[2642] *See* Parker Bolstad, Sadie Frank, Erick Gesick & David Victor, *Flying Blind: What Do Investors Really Know About Climate Change Risks in the U.S. Equity and Municipal Debt Markets* (Hutchins Center Working Paper 67, 2020) (''Hutchins Center Working Paper'').

[2643] *See id.*

60 percent in 2020.[2644] The study also found that the extent of disclosure for a given report has increased.[2645] In 2009, companies mentioned climate risks 8.4 times on average in their Form 10–K.[2646] This figure grew to 19.1 times in 2020.[2647]

The Proposing Release included a similar analysis of climate-related disclosures in Commission filings using data from earlier years.[2648] That analysis also found that filings by registrants in the electric services and oil and gas industries have the most robust climate-related discussions.[2649] In response to this finding, one commenter suggested that the current ''principles-based approach is working successfully, as these are industries where climate-related factors are more likely to have a material impact on the present value of future cash flows.'' [2650] We disagree. The Commission staff's analysis focuses on the incidence of climate-related discussion in annual reports (Forms 10–K and 20–F).[2651] The fact that the incidence of disclosures may be correlated with the likelihood that climate-related risks are material to a particular company does not demonstrate that registrants are fully disclosing their material climate-related risks to investors. For instance, registrants may strategically omit information that could be perceived as negative or adverse,[2652] and some studies point to the potential for substantial underreporting of material climate-related information within the current principles-based reporting regime.[2653]

In addition, one commenter suggested the Commission examine analyst reports and interactions involving analysts to assess ''the significance of ESG factors relative to other factors for determining the value of securities.'' [2654] There is academic research that considers analyst reports; this literature has found that, while very few analyst reports traditionally discuss topics related to climate, climate-related disclosures can offer useful predictive signals about future financial performance for firms whose industries are most exposed to climate-related risk and can influence analysts to revise their target prices for these firms.[2655] Other research has found that Form 10–K disclosures on material climate risks are associated with increased precision and lower dispersion in analysts' earnings forecasts.[2656] Similarly, in the context of earnings conference calls involving analysts, discussions concerning exposure to climate-related risks have been shown to contain important information that is priced in stocks and options.[2657] Relatedly, the same commenter suggested that the Commission conduct an event study to study price or volume responses to climate-related disclosures.[2658] We decline to follow the suggestion in light of the support in peer reviewed literature for the importance of climate-related disclosures to investors.[2659] Existing research finds an increase in stock price volatility around the day when GHG or carbon emissions are disclosed in a Form 8–K filing.[2660] This suggests that investors find such disclosures to be informative.

b. Additional Trends in Climate-Related Disclosures

As discussed below, a number of industry and advocacy groups have examined the scope of voluntary climate-related disclosures, and their findings are relevant to assess the economic impact of the final rules.

i. Prevalence and Scope of Climate-Related Disclosures

As discussed in the Proposing Release,[2661] one organization, in collaboration with several other organizations, conducted a survey of a sample of 436 U.S. public companies across 17 industries that range from small to large in terms of market capitalization.[2662] According to the survey, over half of the companies (52 percent) published a CSR, sustainability, or a similar report, the contents of which commonly include information regarding climate-related risks. The most frequently discussed topics in such reports were energy (74 percent), emissions (70 percent), environmental policy (69 percent), water (59 percent), climate mitigation strategy (57 percent), and supplier environmental policies (35 percent). Among the registrants that reported climate-related information to the public, the majority disclosed such information via external reports or company websites rather than through regulatory filings. Similar to the Commission staff's review, the survey found that about a third (34 percent) of the respondents disclosed information regarding ''risks related to climate change, greenhouse gas emissions, or energy sourcing'' in their Commission filings.[2663] Among these companies, 82

[2644] *See id.* The methodology uses a series of keywords to determine whether a company provides climate-related disclosures. Some keywords may occur in non-climate contexts, which the authors note may introduce some bias into the statistics.

[2645] *See id.*

[2646] *See id.*

[2647] *See id.*

[2648] *See* Proposing Release, section IV.A.5.a.

[2649] *See id.*

[2650] *See* Overdahl exhibit to letter from Chamber.

[2651] *See also* section IV.A.5 for an update of the analysis in the Proposing Release.

[2652] A recent analysis, for example, showed that absent mandatory requirements from regulators, voluntary disclosures following third-party frameworks were generally of poor quality and that companies making these disclosures cherry-picked to report primarily non-material climate risk information. *See* Julia Bingler, Mathias Kraus, Markus Leippold & Nicolas Webersinke, *Cheap Talk and Cherry-Picking: What ClimateBert Has to Say on Corporate Climate Risk Disclosures,* 47 Fin. Rsch. Letters, Article 102776 (June 2022) (''Bingler *et al.*'') (reviewing annual reports for fiscal years 2014–2019—*i.e.,* before and after the introduction of TCFD recommendations—for a sample of 818 TCFD-supporting firms).

[2653] Lee Reiners & Charlie Wowk, *Climate Risk Disclosures & Practices* (2021), available at *https://econ.duke.edu/sites/econ.duke.edu/files/documents/Climate-Risk-Disclosures-and-Practices.pdf;* Bingler *et al.;* Morningstar, *Corporate Sustainability Disclosures* (2021), available at *https://www.morningstar.com/en-uk/lp/corporate-sustainability-disclosures* (''Companies will disclose the good and hide the bad while disclosure remains voluntary.'').

[2654] *See* Overdahl exhibit to letter from Chamber.

[2655] *See* Jesse Yuen-Fu Chan, *Climate Change Information and Analyst Expectations* (July 29, 2022) (Ph.D. dissertation, University of Texas, Austin), available at *https://repositories.lib.utexas.edu/items/092f6e82-c4b1-4d61-a83b-207643cbb62d.*

[2656] *See* Walid Ben-Amar *et al., Do Climate Risk Disclosures Matter to Financial Analysts?,* J. of Bus. Fin. & Acct. (2023), available at *https://onlinelibrary.wiley.com/doi/10.1111/jbfa.12778* (using the Materiality Map provided by the Sustainability Accounting Standards Board (SASB) to show that the association between improvements to forecast precision and climate risk disclosure is present only when climate risk is deemed financially material at the industry level according to SASB).

[2657] *See* Zacharias Sautner, *et al., Firm-Level Climate Change Exposure,* 78 J. of Fin. 1449 (Feb. 2023) (''Sautner, *et al.* (2023)''); Qing Li, Hongyu Shan, Yuehua Tang & Vincent Yao, *Corporate Climate Risk: Measurement and Responses* (forthcoming Rev. Fin. Stud., 2020), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3508497* (retrieved from SSRN Elsevier database). Additionally, researchers have noted that, although the frequency of such climate-related discussions have historically been low, there has been an increase in recent years. *See* Michał Dzieliński, Florian Eugster, Emma Sjöström & Alexander F. Wagner, *Climate Talk in Corporate Earnings Calls* (Swiss Fin. Inst. Rsch. Paper Series 22–14, 2022), available at *https://ideas.repec.org/p/chf/rpseri/rp2214.html.*

[2658] *See* Overdahl exhibit to letter from Chamber.

[2659] *See also* discussions in sections IV.B.1 and IV.C.1.a.

[2660] *See* Paul A. Griffin, David H. Lont & Estelle Y. Sun, *The Relevance to Investors of Greenhouse Gas Emission Disclosures,* 34 Contemp. Acct. Rsch. 1265 (2017).

[2661] *See* Proposing Release, section IV.A.5.b.

[2662] *See* Center for Capital Markets, *2021 Survey Report: Climate Change & ESG Reporting from the Public Company Perspective,* available at *https://www.centerforcapitalmarkets.com/wp-content/uploads/2021/08/CCMC_ESG_Report_v4.pdf.* Sixty-seven percent of survey respondents have market capitalization below $5 billion, while 32% are below $700 million.

[2663] *See id.*

percent disclosed such information in Risk Factors, 26 percent in MD&A, 19 percent in the Description of Business, and 4 percent in Legal Proceedings.[2664]

One institute issues annual analyses of sustainability reports by the companies belonging to the Russell 1000 Index.[2665] The institute found that in calendar year 2022, a record high of 90 percent of these companies published sustainability reports, which commonly include climate-related information—up from 60 percent in 2018.[2666] In particular, sustainability reporting reached an all-time high of 98 percent for companies in the top half of the Russell 1000 Index (which roughly comprises the S&P 500 Index). However, the most significant change was among companies in the bottom half of the Russell 1000 Index, where sustainability reporting percentage increased to 82 percent, up from 34 percent in 2018. The percentage of companies from each Global Industry Classification Standard (''GICS'') sector [2667] that published a sustainability report in 2021 were: Communications (56 percent), Consumer Discretionary (81 percent), Consumer Staples (91 percent), Energy (94 percent), Financials (85 percent), Health Care (69 percent), Industrials (89 percent), Information Technology (71 percent), Materials (95 percent), Real Estate (90 percent), and Utilities (100 percent).

Notwithstanding these investor-led initiatives, disclosures currently vary considerably in terms of coverage, location, and presentation across companies,[2668] making it difficult for investors to navigate through different information sources and filings to identify, compare, and analyze climate-related information.[2669] For example, one commenter submitted a survey reporting that institutional investors spend an average of $257,000 and $357,000 on ''collecting climate data related to assets'' and ''internal climate-related investment analysis,'' respectively.[2670] An academic study similarly finds that ''there exists considerable heterogeneity in what and how firms report about their CSR activities . . . The heterogeneity in reported CSR topics makes it difficult for users to compare disclosures and to benchmark firms' underlying CSR performance.'' [2671] Some studies and commenters have asserted that current disclosures are often vague and boilerplate, creating challenges for investors.[2672] Industry observers and some commenters also report that many registrants that currently provide voluntary climate-related disclosures through sustainability reports often take longer than 12 months after their fiscal year end to disclose decision-relevant data, raising concerns about the timeliness of these reports for investors.[2673] As noted in section II.A.2, many commenters stated that the Commission's current reporting requirements do not yield adequate or sufficient information regarding climate-related risks.[2674]

ii. GHG Emissions Reporting

Commission staff also analyzed the number of registrants that recently reported Scope 1 and 2 emissions data. In this analysis, Commission staff utilized a database that compiles emissions data (among other ESG-related information) from companies' annual filings, sustainability reports, or other public disclosures.[2675] The number of registrants that are covered in this database is 5,535, which comprises the matched sample. From this matched sample, about 20 percent of registrants (1,125 out of 5,535) reported their Scope 1 and Scope 2 emissions in fiscal year 2021, with the highest disclosure rate found among LAFs (50 percent).[2676] In fiscal year 2022, about 18% of registrants (870 out of 5,535) reported their Scope 1 and 2 emissions, with the disclosure rate among LAFs at 42 percent. These and other statistics are presented in Table 5.

[2664] *See id.*

[2665] *See* G&A, *Sustainability Reporting Trends,* available at *https://www.ga-institute.com/research/ga-research-directory/sustainability-reporting-trends; see also* Proposing Release, section IV.A.5.b.

[2666] *See* G&A, *2023 Sustainability Reporting in Focus,* available at *https://www.ga-institute.com/research/ga-research-directory/sustainability-reporting-trends/2023-sustainability-reporting-in-focus.html; see also* past reports, available at *https://www.ga-institute.com/research/ga-research-directory/sustainability-reporting-trends.html.*

[2667] For more information on GICS sector categories, *see* MSCI, The Global Industry Classification Standard (GICS), available at *https://www.msci.com/our-solutions/indexes/gics* (last visited Feb. 28, 2024).

[2668] *See, e.g.,* TCFD Report, *supra* note 46, at 16; *see also* IOSCO Report, *supra* note 1089; GAO, *Climate-Related Risks* (2018), available at *https://www.gao.gov/assets/gao-18-188.pdf* (reporting that ''investors may find it difficult to navigate through the filings to identify, compare, and analyze the climate-related disclosures across filings''); letter from Bloomberg.

[2669] *See* letters from Calvert (''Calvert purchases third party vendor data to support our ability to assess companies on their ESG factors and that provide specific data related to climate change, where available. Often vendor information is estimated when a company has not disclosed information on its climate-related risks. Sometimes the estimates are made across industries, based on what other more proactive peers have disclosed. We are concerned about the lack of accuracy fostered by estimation methodologies, and also the trend for these methodologies to under-estimate actual emissions.''); Boston Trust Walden (''our analysts examine quantitative and qualitative climate-related corporate disclosure to enhance our understanding of the existing and potential financial outcomes associated, ranging from risks (*e.g.,* losing the license to operate) to opportunities (*e.g.,* generating new sources of revenue). In the absence of mandated disclosure requirements, we rely on the data of third-party research providers, which includes a mix of issuer provided data and estimates. Our analysts then seek to fill data gaps through additional research and analysis, outreach via written requests, meetings, and shareholder resolutions seeking the expanded disclosure we require. These processes for gathering necessary climate-related disclosures are inefficient and resource intensive.''); NY Office of the State Comptroller; and State of Vermont Pension Investment Commission.

[2670] *See* ERM survey attached to letter from ERM (June 16, 2022) (''ERM survey'').

[2671] *See* Hans B. Christensen, Luzi Hail & Christian Leuz, *Mandatory CSR and Sustainability Reporting: Economic Analysis and Literature Review,* 26 Rev. of Acct. Stud. 1176 (2021) (''Christensen *et al.* (2021)'') at 1194.

[2672] *See* SASB, The State of Disclosure: An Analysis of the Effectiveness of Sustainability Disclosure in SEC Filings (2017), available at *https://www.sasb.org/wp-content/uploads/2019/08/StateofDisclosure-Report-web112717.pdf* (reporting that about 50% of Commission registrants provide generic or boilerplate sustainability information in their regulatory filings); *see also* letter from The Institute for Policy Integrity at New York University School of Law, Environmental Defense Fund, and Professor Madison Condon (''Inst. Policy Integrity *et al.*'') (''Existing disclosure regulations and guidance have proved insufficient to address this asymmetry. In a 2020 study of climate risk disclosures in 10–K filings, the Brookings Institution concluded that though '[d]isclosure has risen sharply,' '[m]ore firms are disclosing more general information that is essentially of no utility to the marketplace.' '').

[2673] *See supra* note 2570; *see also* letter from Calvert (''Last year, when evaluating disclosure rates of companies in our equities portfolios, we found 57% of 2,207 companies disclosed their Scope 1 and 2 emissions with a one to two year delay . . . [B]y the time this data is gathered, there may be a long lag time to the point of disclosure—it is not uncommon that GHG emissions disclosure is already 12–18 months out of date once it is actually published.'').

[2674] *See supra* section II.A.2.

[2675] Commission staff used the Refinitiv ESG database, which covers over 88% of global market capitalization, across more than 700 different ESG metrics. The U.S. coverage broadly includes listed companies belonging to the Russell 3000 Index. The emissions data used in this analysis was extracted from Refinitiv on Feb 11, 2024. *See* Refinitiv, *Environmental, Social And Governance Scores From Refinitiv* (May 2022), available at *https://www.lseg.com/content/dam/marketing/en_us/documents/methodology/refinitiv-esg-scores-methodology.pdf.*

[2676] These percentages may be understated to the extent that Refinitiv may not be able to fully track all emissions disclosures made by Commission registrants. Conversely, compared to the full sample of Commission registrants, these figures may be overstated given that smaller firms outside of Refinitiv's coverage universe (*i.e.,* those outside of the Russell 3000) are less likely to report emissions.

TABLE 5—NUMBER OF REGISTRANTS THAT DISCLOSE SCOPE 1 AND 2 EMISSIONS USING THIRD-PARTY DATA [1]

Filer status	SEC registrants [2]	Registrants covered in third-party database [3]	Coverage rate [4] (%)	Scope 1 and 2 emissions disclosures			
				FY 2021		FY 2022 [6]	
				Disclosed	Disclosure rate [5] (%)	Disclosed	Disclosure rate [7] (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
LAF	2,528	2,059	81	1,026	50	870	42
AF	444	334	75	57	17	50	15
NAF	507	154	30	8	5	15	10
SRC/EGC	4,265	2,988	70	34	1	50	2
Total	7,744	5,535	71	1,125	20	985	18

[1] Commission staff used the Refinitiv ESG database. *See supra* note 2675.
[2] These statistics are based on SEC registrants filing annual reports in calendar year 2022. *See supra* note 2578. For LAF, AF, and NAF registrant counts, only those that are not SRCs or EGCs are included. We note that several non-SRC/EGC registrants did not disclose their filer status, thus the total registrant count in Table 5 is not the same as what is indicated in section IV.A.1.
[3] The matched sample consists of the number of registrants that are covered in the Refinitiv ESG database.
[4] Column (4) = (Column (3))/(Column (2)).
[5] Column (6) = (Column (5))/(Column (3)).
[6] Data collection of GHG emissions disclosure can lag by 18 months or longer. As a result, the number of disclosers for FY 2022 may not be complete and thus understated.
[7] Column (8) = (Column (7))/(Column (3)).

We note that the number of registrants providing disclosure in fiscal year 2022 may be understated given that data collection of GHG emissions can lag by up to 18 months.[2677] To estimate how this number could potentially increase upon the completion of data collection, we consider the following assumption: for those registrants that disclosed only in fiscal year 2021 (but not in fiscal year 2022), we assume that their fiscal year 2022 disclosures are forthcoming.[2678] Within the matched sample, there are 263 LAFs that disclosed in fiscal year 2021 but not in fiscal year 2022. The corresponding number for AFs is 17. If we assume that these registrants subsequently provide their fiscal year 2022 disclosures, the fiscal year 2022 disclosure rate for LAFs would increase from 42% to 55% [2679] and that of AFs would increase from 15% to 20%.[2680] We recognize, however, that the above assumption may not hold true for all of these registrants.

Commission staff also analyzed U.S. companies that voluntarily responded to CDP's questionnaire and publicly disclosed their responses.[2681] In 2022, 1,311 domestic companies provided responses to CDP's questionnaire. Approximately 610 of these were Commission registrants,[2682] suggesting that 10 percent of the approximately 5,860 domestic registrants that will be subject to the final rules provided responses to CDP's questionnaire in 2022. The response rate was higher among companies with higher market capitalizations. For example, CDP lists 351 respondents as included in its S&P 500 sample, suggesting that approximately 70 percent of S&P 500 companies provided responses. Of these 351 respondents, 95 percent provided Scope 1 and Scope 2 emissions data. In addition, a 2022 report examines Russell 1000 companies and finds that 57% disclose Scope 1 and 2 emissions.[2683]

c. Use of Third-Party Frameworks

Multiple third-party reporting frameworks and data providers have emerged over the years to facilitate and encourage the reporting of climate-related information by companies.[2684] Due to the voluntary nature of third-party frameworks, however, companies often disclose some but not all components of those frameworks, and the components that are disclosed may not be the same across companies,[2685] resulting in reporting fragmentation.

Some companies follow existing third-party reporting frameworks when developing climate-related disclosures

[2677] The Commission understands that data collection of GHG emissions for FY 2022 is ongoing. In addition, some industry observers have noted that ''many companies still take more than 12 months after their fiscal year to disclose their sustainability data,'' *see, e.g.,* Corporate Knights, *supra* note 2570; letter from Morningstar (''Currently, a lack of clear disclosure standards for the timing of 'sustainability reports,' which is the primary source for emissions data, greatly hinders investor knowledge. For example, some registrants released 2021 reports—detailing 2020 data—as late as November 2021.'')

[2678] These registrants have demonstrated that they have Scope 1 and 2 emissions measurement and disclosure processes in place. It is therefore plausible that they have forthcoming disclosures for FY 2022 that is not yet in the dataset.

[2679] (870 + 263)/2059 = 55%.

[2680] (50+17)/334 = 20%.

[2681] This analysis is based on data provided to the Commission from CDP, available at *https://www.sec.gov/comments/s7-10-22/s71022-206599-416182.xlsx*. CDP operates a global disclosure system that enables companies, cities, states and regions to measure and manage their environmental risks, opportunities and impacts. Despite not being a framework like GRI, SASB and TCFD, CDP's questionnaires gather both qualitative and quantitative information from across governance, strategy, risk, impact and performance. To aid comparability and ensure comprehensiveness, CDP includes sector-specific questions and data points. In 2018, CDP aligned its climate change questionnaire with the TCFD. Companies' participation in the CDP questionnaire is voluntary. If a company decides to respond to the questionnaire and disclose its information to the CDP, it then has the option to mark its response as either ''Public'' or ''Private.'' Importantly, responses marked as ''Private'' are available only to the signatory investors of the CDP (non-signatory investors and the general public cannot access this information). Responses marked as ''Public'' can be accessed by the general public at no cost. *See* CDP, available at *https://www.cdp.net/en/info/about-us*. In a meeting with CDP officials, the Commission staff was informed that the number of public companies that respond to the CDP questionnaire but do not publicly disclose their responses is negligible. *See* SEC Meeting Memorandum dated June 15, 2023, available at *https://www.sec.gov/comments/s7-10-22/s71022-206619-416182.pdf*.

[2682] This estimate is based on matching CDP survey respondents to registrants on ticker, company name, and industry. Five-hundred seventy matches were made on ticker. Approximately 40 more matches were made on company name using Levenshtein Distance. The matches were then manually reviewed by Commission staff to ensure the industry description provided by CDP aligned with the SIC code assigned to the matched registrant.

[2683] *See* Just Capital, The Current State of Environment Disclosure in Corporate America: Assessing What Data Russell 1000 Companies Publicly Share, available at *https://justcapital.com/wp-content/uploads/2022/04/JUST-Capital_Environment-State-of-Disclosure-Report_2022.pdf*.

[2684] The TCFD, the SASB, the GRI, the Principles for Responsible Investment, the PCAF, and the CDP (among others), have all developed standards and systems that aim to help firms and investors identify, measure, and communicate climate-related information and incorporate that information into their business practices. Multiple frameworks have emerged, in part, because each seeks to provide different information or fulfill different functions when it comes to disclosing information related to climate-related risks or other ESG factors that may be important to investors.

[2685] *See* Reiners *et al., supra* note 2653.

for Commission filings or to be included in CSR, sustainability, ESG, or similar reports. As described in the Proposing Release, for instance, one survey found that 59 percent of respondents follow one or more such frameworks.[2686] Among these respondents, 44 percent used SASB, 31 percent used the Global Reporting Initiative GRI, 29 percent used the TCFD, and 24 percent used the CDP.[2687] Broadly similar statistics on the usage of different reporting frameworks are also provided by other studies. For example, another report [2688] found that 78 percent of sustainability reports from Russell 1000 companies aligned with SASB reporting standards,[2689] 54 percent utilized GRI reporting standards,[2690] 50 percent aligned with the TCFD recommendations,[2691] and 53 percent responded to the CDP Climate Change questionnaire.[2692] A review of website sustainability disclosures by 80 small- and mid-cap companies across five different industries found comparable numbers.[2693]

While these various frameworks are distinct, they overlap in their alignment with the TCFD recommendations. According to one report,[2694] the GRI standards exhibit ''Reasonable'' alignment with the TCFD, while the SASB standards generally exhibit ''Moderate'' or ''Reasonable'' alignment with the majority of the TCFD disclosure items. Additionally, the CDP Climate Change questionnaire fully incorporates the TCFD framework and thus exhibits full alignment.[2695] Thus, companies that report following the GRI, SASB, or CDP frameworks are, to varying degrees, producing disclosures that are in line with the TCFD. However, because each framework takes different approaches (*e.g.,* different intended audience and/or reporting channel) and because certain differences exist in the scope and definitions of certain elements, investors may find it difficult to compare disclosures under each framework. One organization analyzed the rate of disclosure for each TCFD disclosure element for a sample of 659 U.S. companies in 2020 and 2021, presented in Table 6.[2696]

TABLE 6—THIRD-PARTY ANALYSIS OF TCFD DISCLOSURE RATES FROM A SAMPLE OF U.S. COMPANIES [1]

TCFD disclosure element	Rate of disclosure (%)
Governance:	
(a) Describe the board's oversight of climate-related risks and opportunities	17
(b) Describe management's role in assessing and managing climate-related risks and opportunities	10
Strategy:	
(a) Describe the climate-related risks and opportunities the organization has identified over the short, medium, and long term	45
(b) Describe the impact of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning	34
(c) Describe the resilience of the organization's strategy, taking into consideration different climate-related scenarios, including a 2 °C or lower scenario	5
Risk Management:	
(a) Describe the organization's processes for identifying and assessing climate-related risks	15
(b) Describe the organization's processes for managing climate-related risks	17
(c) Describe how processes for identifying, assessing, and managing climate-related risks are integrated into the organization's overall risk management	16
Metrics and Targets:	
(a) Describe the metrics used by the organization to assess climate-related risks and opportunities in line with its strategy and risk management process	21
(b) Disclose Scope 1, Scope 2, and, if appropriate, Scope 3 GHG emissions, and the related risks	19
(c) Describe the targets used by the organization to manage climate-related risks and opportunities and performance against targets	25

[1] The source of this table is Moody's Analytics. *See supra* note 2696.

[2686] *See supra* note 2662; *see also* Proposing Release, section IV.A.5.

[2687] *See* Proposing Release at nn.768–770 and accompanying text.

[2688] *See supra* note 2666.

[2689] *See id.* Sixty-seven percent of companies in the smaller half of the Russell 1000 index (by market capitalization) report according to SASB standards. The corresponding statistic for companies in the larger half is 88%.

[2690] *See id.* Forty percent of companies in the smaller half of the Russell 1000 index (by market capitalization) report according to GRI standards. The corresponding statistic for companies in the larger half is 66%.

[2691] *See id.* Thirty-two percent of companies in the smaller half of the Russell 1000 index (by market capitalization) report according to the TCFD recommendations. The corresponding statistic for companies in the larger half is 65%.

[2692] *See id.* Thirty-two percent of companies in the smaller half of the Russell 1000 index (by market capitalization) responded to the CDP Climate Change questionnaire. The corresponding statistic for companies in the larger half is 74%.

[2693] *See* White & Case and the Soc. Corp. Gov., *A Survey and In-Depth Review of Sustainability Disclosures by Small- and Mid-Cap Companies* (Feb. 18, 2021), available at *https://www.whitecase.com/publications/article/survey-and-depth-review-sustainability-disclosures-small-and-mid-cap-companies* (Among the companies reviewed, 41 companies (51%) provided some form of voluntary sustainability disclosure on their websites. Further, nine of those 41 companies indicated the reporting standards with which they aligned their reporting, with the majority of the nine companies not following any one set of standards completely. Additionally, six companies followed the GRI standards, while three companies stated that they follow both the TCFD recommendations and SASB standards).

[2694] The Corporate Reporting Dialogue is a platform, convened by the Value Reporting Foundation, to promote greater coherence, consistency, and comparability between corporate reporting frameworks, standards, and related requirements. *See Driving Alignment in Climate-related Reporting, Corporate Reporting Dialogue* (2019), available at *https://www.integratedreporting.org/wp-content/uploads/2019/09/CRD_BAP_Report_2019.pdf* (providing a detailed assessment of the various frameworks' degrees of alignment with each TCFD disclosure item, ranging from maximum to minimum alignment as follows: Full, Reasonable, Moderate, Very Limited, and None).

[2695] *See* CDP, *supra* note 52.

[2696] *See* Moody's Analytics, TCFD-Aligned Reporting by Major U.S. and European Corporations (Feb. 2022), available at *https://www.moodysanalytics.com/articles/pa/2022/tcfd_aligned_reporting_by_major_us_and_european_corporations.* The sample for analysis was provided to Moody's Analytics by the TCFD and includes 659 companies domiciled in the United States. To arrive at these statistics, Moody's conducted an artificial intelligence (''AI'') based review of all public filings, including financial filings, annual reports, integrated reports, sustainability reports, and other publicly available reports that were associated with companies' annual reporting on sustainability. Non-public disclosures, such as responses to the CDP questionnaire, were not included in the analysis.

The variety of disclosure frameworks in use, and their varying rates of overlap with the TCFD disclosure elements, demonstrates the low rate of consistency and comparability among existing climate disclosures.

d. Climate-Related Targets, Goals, and Transition Plan Disclosures

Carbon reduction targets or goals have become an increasing focus for both companies and countries.[2697] For example, 195 parties, including the United States, the EU, and the UK, have signed the Paris Climate Agreement as of December 2023.[2698] The agreement aims to strengthen the global response to climate change by keeping a rise in global temperatures to well below 2° Celsius above pre-industrial levels this century, as well as pursue efforts to limit the temperature increase even further to 1.5° Celsius.[2699] A 2022 report, which examined approximately 5,300 companies across the globe, found that over one-third of these companies announced plans to curb their Scope 1 or Scope 2 emissions.[2700] Of these 5,300 companies that also responded to the CDP climate survey, the same report found that about one-fourth of these companies had established a target to achieve net-zero carbon emissions.[2701] In addition, a growing number of companies and organizations have signed on to The Climate Pledge, indicating a commitment to achieve net-zero emissions by 2040.[2702] According to data from another source, as of August 2023, 5,728 companies had established climate targets.[2703] Of these companies, 710 were located in the United States, about half of which were Commission registrants.[2704] The trend in companies disclosing other climate-related targets has also been increasing over time.[2705]

An increasing number of companies are adopting transition plans, according to a 2023 report.[2706] This report finds that 4,100 organizations [2707] across the globe reported having transition plans aligned with reaching a temperature change of no more than 1.5° Celsius above pre-industrial levels.[2708] Approximately 43 percent of these transition plans are publicly available.[2709]

Commission staff compared these figures to data related to targets and goals on the Bloomberg ESG database, which is focused on registrants listed on NYSE and NASDAQ. The results are reported in Table 7 below. These results are generally consistent with data from the sources discussed above.

TABLE 7—REGISTRANTS WITH TARGETS OR GOALS ACCORDING TO BLOOMBERG ESG DATA

	Climate change policy [1] (%)	Emission reduction initiatives [2] (%)	Science-based targets [3] (%)	Net zero plans [4] (%)
All issuers	37	45	11	17
NAFs	10	11	1	2
AFs	23	29	2	7
LAFs	55	67	19	27
EGCs	8	9	0	1
Non EGCs	47	58	15	22
SRCs	13	12	0	3
Non SRCs	40	49	12	18

Sources: Bloomberg, SEC filings.

[1] Bloomberg defines this field as indicating: ''Whether the registrant has disclosed its intention to help reduce global GHG emissions through its ongoing operations and/or the use of its products and services in its annual report or CSR report. Examples might include efforts to reduce GHG emissions, efforts to improve energy efficiency, efforts to derive energy from cleaner fuel sources, investment in product development to reduce emissions generated or energy consumed in the use of the company's products etc.''

[2] Bloomberg defines this field as indicating: ''Whether the registrant has disclosed the implementation of any initiative to reduce its emissions, such as GHGs, SO_X, NO_X, or other air pollutants in its annual report or CSR report.''

[3] Bloomberg defines this field as indicating: ''Whether the registrant has disclosed its ambition and engagement related to setting science-based GHG emissions reduction targets. Emissions targets are considered science-based if they align with the goals of the Paris Climate Agreement to limit warming to well below 2 degrees Celsius above pre-industrial levels. That is, whether the company has explicitly disclosed that they have either committed to setting or have set science-based targets. This information is sourced from a company's CSR report.''

[4] Bloomberg defines this field as indicating: ''Whether the registrant has disclosed its ambition and engagement related to achieving Net Zero GHG emissions. Net Zero refers to a state in which GHG emissions released into the atmosphere are balanced by removal of emissions from the atmosphere. This information is sourced from a company's CSR report.''

[2697] *See, e.g.,* UNFCC COP28 Agreement, *supra* note 34; Press Release, United Nations Framework Convention on Climate Change, Commitments to Net Zero Double in Less Than a Year, (Sept. 21, 2020), available at *https://unfccc.int/news/commitments-to-net-zero-double-in-less-than-a-year.*

[2698] *See* United Nations, Multilateral Treaties Deposited with the Secretary General ch. XXVII, 7.d Paris Agreement (treaty status updated Feb. 2024), available at *https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en* treaty collection; *see also* EU Press Release, *Corporate Sustainability Due Diligence: Council and Parliament Strike a Deal to Protect Environment and Human Rights* (Dec. 14, 2023), available at *https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/corporate-sustainability-due-diligence-council-and-parliament-strike-deal-to-protect-environment-and-human-rights/* (announcing a provisional agreement to adopt the Corporate Sustainability Due Diligence Directive, which includes a requirement that companies ensure their business strategies are compatible with limiting global warming to 1.5° Celsius).

[2699] *See* section I.

[2700] *The Sustainability Yearbook 2022,* S&P Global (Feb. 2022), available at *https://www.spglobal.com/esg/csa/yearbook/2022/downloads/spglobal_sustainability_yearbook_2022.pdf.*

[2701] *Id.*

[2702] As of February 20, 2024, The Climate Pledge had acquired 468 signatories, 146 of which are from the United States. *See The Climate Pledge,* available at *https://www.theclimatepledge.com/us/en/Signatories* (last visited Feb. 20, 2024).

[2703] *See Target Dashboard,* available at *https://sciencebasedtargets.org/ (as visited Aug. 16, 2023).*

[2704] *See id.*

[2705] For example, the percentage of both global and U.S. companies with water reduction targets grew by 4% in 2019 on a year-over-year basis. This represented 28% of major global companies (*i.e.,* those listed on the S&P Global 1200 index) and 27% of major (*i.e.,* those listed in the S&P 500 index) U.S. companies publicly disclosing these targets. *See State of Green Business 2021,* S&P Global (Feb. 4, 2021), available at *https://www.spglobal.com/marketintelligence/en/news-insights/research/state-of-green-business-2021.*

[2706] CDP, Are Companies Developing Credible Climate Transition Plans? (Feb. 2023), available at *https://cdn.cdp.net/cdp-production/cms/reports/documents/000/006/785/original/Climate_transition_plan_report_2022_%2810%29.pdf.*

[2707] *See id.* According to the CDP's Transition Plan report, ''Nearly 20,000 organizations around the world disclosed data through CDP in 2022, including more than 18,700 companies worth 50% of global market capitalization, and over 1,100 cities, states and regions.''

[2708] *See id.*

[2709] *See id.*

The results suggest that smaller registrants (NAFs, EGCs, and SRCs) are much less likely to have developed climate-related targets and goals. For example, the portion of companies that have ''Net Zero Plans'' is approximately 1 percent for EGCs and approximately 22 percent for non-EGCs.

e. Third-Party Assurance of Climate-Related Disclosures

Among the companies that provide climate-related disclosures, a considerable portion include some form of third-party assurance of the accuracy of these disclosures. One report finds that 40 percent of Russell 1000 Index companies, nearly all of which are LAFs, obtained third-party assurance for their sustainability reports in 2022, up from 24 percent in 2019.[2710] Among the companies that obtained assurance, however, only three percent obtained assurance for the entire report, with 58 percent obtaining assurance only with respect to GHG emissions. Regarding the level of assurance, the overwhelming majority (92 percent) obtained limited assurance while only 5 percent obtained reasonable assurance. Regarding service providers, 17 percent of companies received assurance from an accounting firm, 15 percent from small consultancy/boutique firms, and 68 percent from engineering firms.[2711] Because these statistics are limited to Russell 1000 Index companies, corresponding figures for the full sample of U.S. registrants may differ depending on the extent to which the practice of obtaining third-party assurance is concentrated in large companies.[2712] Indeed, based on Commission staff's analysis of Bloomberg ESG data, which focuses on registrants listed on NYSE and NASDAQ, approximately 15 percent obtained some type of third-party assurance or verification [2713] on their environmental policies and data, nearly all of which are non-SRCs and non-EGCs.[2714] Based on analysis of S&P 500 companies from 2010 through 2020, a 2023 study finds that the most common form of assurance standard used for GHG emissions is the ISO 14064,[2715] which is the assurance standard typically applied by assurance providers who are not accountants.[2716] Specifically, across Scopes 1, 2, and 3 GHG emissions, approximately 40 percent of the assurance performed utilizes ISO 14064–3. Application of other assurance standards are reported to be also consistent across Scopes 1, 2, and 3 GHG emissions: around 10 percent for AICPA, around 10 percent for AccountAbility's AA1000, around 16 percent for IAASB ISAE, and around 30 percent for miscellaneous in-house assurance standards and protocols.[2717] An analysis of S&P 500 firms in 2021 reveals a similar finding with ISO 14064–3 being the most common assurance standard referenced in ESG reporting followed by the IAASB ISAE, which experienced an increase of 41 more references compared to the previous year (*i.e.,* 54 percent increase).[2718]

B. Broad Economic Considerations

1. Investor Demand for Additional Climate Information

Comments received in response to the Proposing Release, previously discussed in section II.A.2, indicate that there is broad support from investors for more reliable, consistent, and comparable information on how climate-related risks can impact companies' operations and financial conditions.[2719] The results of multiple recent surveys [2720] and evidence in academic studies [2721] also indicate strong demand from investors

[2710] *See supra* note 2666.

[2711] One study finds that assurance service providers that are not financial auditors are reported to be not applying the AICPA assurance standards. *See* Brandon Gipper, Samantha Ross & Shawn Shi, *ESG Assurance in the United States* (Aug. 14, 2023), Stanford Univ. Grad. Sch. of Bus. Rsch Paper No. 4263085, UC San Francisco Rsch. Paper No. Forthcoming, available at *https://ssrn.com/abstract=4263085* (retrieved from SSRN Elsevier database) (''Gipper *et al.* (2023)''); *see also supra* note 1363 (explaining that non-CPAs are unable to use AICPA or PCAOB attestation standards).

[2712] Other studies also report evidence of third-party assurance among smaller samples of companies analyzed. For example, according to a recent study by the International Federation of Accountants (''IFAC''), in 2019, 99 out of the 100 largest U.S. companies by market capitalization provided some form of sustainability disclosure, which may contain climate-related information among other sustainability-related topics. Seventy of those companies obtained some level of third-party assurance, with the vast majority being ''limited assurance'' according to the study. Of the 70 companies that obtained assurance, the study reports that 54 obtained ''limited assurance,'' eight obtained ''reasonable assurance,'' five obtained ''moderate assurance,'' and three did not disclose any assurance. Of the 81 unique assurance reports examined in the study, nine were found to be issued by an auditing firm, while 72 were issued by another service provider. *See* IFAC, *supra* note 1089. Among the sample of 436 companies included in the CCMC Survey, 28% disclosed that they engaged a third party to provide some form of auditing or assurance regarding their climate-related or ESG disclosure.

[2713] As discussed in section II.I.5.c, assurance services are services performed in accordance with professional standards that are designed to provide assurance, while in many cases verification services are not designed to provide assurance.

[2714] Consistent with rates of voluntary GHG emissions disclosures, the percentages become much smaller when the sample analyzed is expanded to include smaller registrants. The breakdown for LAF, AFs, and NAFs is as follows: 25%, 4%, and 1%, respectively.

[2715] *See* Gipper *et al.* (2023).

[2716] *See* Center for Audit Quality, *S&P 500 ESG Reporting and Assurance Analysis* (2023), available at *https://www.thecaq.org/sp-500-and-esg-reporting* (stating, in the context of the study, that the most common standard used by non-accountant providers was ISO 14064–3).

[2717] Percentages do not add up to 100% because assurance statements can sometimes reference multiple assurance standards.

[2718] Center for Audit Quality, *supra* note 2716.

[2719] This includes support for climate-related disclosure in the form of numerous letters from individuals as well as letters from investment managers and investment advisers. *See supra* section II.A.

[2720] *See, e.g.,* Morrow Sodali, *Institutional Investor Survey* (2021), available at *https://morrowsodali.com/uploads/INSTITUTIONAL-INVESTOR-SURVEY-2021.pdf* (''Morrow Sodali (2021)''). This survey solicited the views of 42 global institutional investors managing over $29 trillion in assets (more than a quarter of global assets under management). Results show that 85% of surveyed investors cited climate change as the leading issue driving their engagements with companies, and 61% indicated that they would benefit from disclosures that more clearly link climate-related risks to financial risks and opportunities. *See also, e,g.,* E. Ilhan, *et al., Climate Risk Disclosure and Institutional Investors,* 36 Rev. Fin. Stud. 2617 (2023) (''Ilhan *et al.* (2023)'') (''Through a survey and analyses of observational data, we provide systematic evidence that institutional investors value and demand climate risk disclosures''). The sample consists of 439 institutional investor respondents. Results show that 68% of respondents either agreed or strongly agreed that management discussions on climate risk are not sufficiently precise. Also, 74% either agreed or strongly agreed that investors should demand that portfolio companies disclose their exposure to climate risk, while 59% engaged (or planned to engage) portfolio companies to provide disclosures in line with the TCFD. Lastly, 73% of institutional investors surveyed either agreed or strongly agreed that standardized and mandatory reporting on climate risk is necessary. The authors state that ''respondents are likely biased toward investors with a high ESG awareness.''

[2721] *See also* Christensen *et al.* (2021), at 1–73; *see also* Shira Cohen, Igor Kadach & Gaizka Ormazabal, *Institutional Investors, Climate Disclosure, and Carbon Emissions,* 76 J. of Acct. & Econ., Article 101640 (2023); Juan Castillo, *et al., Does Talking the Climate Change Talk Affect Firm Value? Evidence from the Paris Agreement* (Apr. 6, 2023), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4411193* (retrieved from SSRN Elsevier database); Kölbel, *et al., Ask BERT: How Regulatory Disclosure of Transition and Physical Climate Risks Affects the CDS Term Structure,* 22 J. Fin. Econometrics 30 (2022); Philipp Baier, *et al., Environmental, Social and Governance Reporting in Annual Reports: A Textual Analysis,* 29 Fin. Markets, Insts. & Instruments 93 (2020); Dirk Black, *et al., Investor Commitment to Responsible Investing and Firm ESG Disclosure* (Oct. 12, 2022), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4205956* (retrieved from SSRN Elsevier database); Scott Robinson, *et al., Environmental Disclosures and ESG Fund Ownership* (Jan. 31, 2023), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4344219* (retrieved from SSRN Elsevier database); *see also infra* notes 2738 to 2745 and surrounding discussion.

for multiple types for disclosures of climate-related risks faced by companies.[2722] Commenters identified various channels by which climate risks can impact financial performance [2723] and why this information is important for their investment decisions. These commenters agreed with the Commission's assessment in the Proposing Release that the current set of voluntary disclosures are inadequate to meet investor needs. Accordingly, these commenters expressed support for new rules to enhance the consistency, comparability, and reliability of climate-related disclosures.

Other commenters questioned both the Commission's rationale for the proposed rules and the views of supportive commenters. Some of these commenters characterized the demand for climate-related information as being concentrated among a small set of institutional investors, who did not represent investors more broadly.[2724] Other commenters expressed the view that institutional investors are influenced by motives other than the desire to obtain the best financial return for their clients.[2725] Relatedly, one commenter expressed the view that climate-related information would not better inform investor decision-making beyond what is found in current financial disclosures, while also stating that the risks that it highlighted were too far in the future to matter for current valuation.[2726]

We disagree with the commenters who stated that the demand for climate-related information is concentrated among a small group of institutional investors. We received numerous comment letters from investors, both institutional and individual, expressing a need for more reliable, consistent, and comparable climate-related information.[2727] Furthermore, institutional managers' demand for climate-related disclosures likely reflects what they believe to be in the best interests of their investors and clients, including individuals.[2728] Institutional investors have strong incentives to earn financial returns on behalf of their clients.

Moreover, climate risk information can be informative about financial performance in a way that goes beyond current accounting numbers. As stock prices reflect profits potentially years in the future, even long-term climate-related risks can affect profitability, though not all climate risks are necessarily long-term. In any case, risks to cash flows, even those that are far in the future, can still be important for investors today.[2729]

2. Current Impediments to Climate Disclosures

In the Proposing Release, the Commission stated that, in practice, investors' demand for climate-related information is often met by inconsistent and incomplete disclosures due to the considerable variation in the coverage, specificity, location, and reliability of information related to climate risk.[2730] Furthermore, the Commission noted that multiple third-party reporting frameworks and data providers have emerged over the years but these resources lack mechanisms to ensure compliance and have contributed to reporting fragmentation.[2731] Many commenters supported these observations.[2732]

The Commission also described a set of conditions that could contribute to the market failing to achieve an optimal level of climate disclosure from the point of view of investors.[2733] Briefly put, these market failures stemmed from the existence of information externalities (implying that registrants may fully internalize the costs of disclosure but not the benefits, which may lead them to under-disclose relative to what is optimal from investors' perspective), from agency problems in that managers may not be motivated to disclose information due to agency concerns, and the fact that disclosures may not elicit uniform responses from investors. In articulating these market failures, the Commission drew on a long-standing literature in economics regarding insufficient private incentives for disclosure.[2734] Academic literature that focuses on climate disclosures acknowledges these to be applicable market failures, though there

[2722] *See* discussion *supra* sections I and II.A.; *see also* Christensen *et al.* (2021) (stating ''it is clear that capital-market participants have a demand for CSR information, not least because of the potential performance, risk or valuation implications''); Investor Agenda, 2021 Global Investor Statement to Governments on the Climate Crisis, available at *https://theinvestoragenda.org/wp-content/uploads/2021/09/2021-Global-Investor-Statement-to-Governments-on-the-Climate-Crisis.pdf* (statement signed in 2021 by 733 investors collectively managing over $52 trillion in assets).

[2723] *See infra* notes 2738–2745 and accompanying text.

[2724] *See, e.g.,* letter from Business Roundtable; Nasdaq, *The SEC's proposal on Climate Change Disclosure: a Survey of U.S. Companies* (2022) (letter and accompanying survey report), available at *https://nd.nasdaq.com/rs/303-QKM-463/images/1497-Q22_SEC-Climate-Change-Survey-Findings-Report-Listings-CP-v3.pdf*; and Overdahl exhibit to letter from Chamber (citing BCG Investor Perspectives Series Pulse Check #19 Mar. 18–22, 2022, available at *https://web-assets.bcg.com/7e/19/4b86c63541b78f1c9ffa82e42804/bcg-investor-pulse-check-series-19.pdf*). From that BCG study, the commenter cites a footnote (slide 17): ''However, most of the investors BCG recently surveyed indicated that ESG is not currently a primary consideration in day-to-day investment decisions and recommendations.'' Simply because a matter is not a *day-to-day* consideration does not imply that disclosure relating to it is unimportant to an investor.

[2725] *See, e.g.,* letters from Cunningham *et al.;* David R. Burton; Domestic Energy Producers' Alliance; National Fuel Corporation; Western Energy Alliance and U.S. Oil & Gas Association; and Competitive Enterprise Institute. *See also* letter from Boyden Gray (June 2022), citing Paul G. Mahoney & Julia D. Mahoney, *The New Separation of Ownership and Control: Institutional Investors and ESG,* 2 Colum. Bus. L. Rev. 840, 851 (2021), which discusses cases in which some institutional investors may act for purposes that are contrary to those of their investors but noting that such concerns may not apply to all institutional investors.

[2726] *See* Overdahl exhibit to letter from Chamber.

[2727] *See supra* section II.A.2.

[2728] *See, e.g.,* letters from PIMCO and ICI. For evidence on retail investors using ESG-related information in their decisions; *see also* Q. Li, E. Watts & C. Zhu, *Retail Investors and ESG News,* Jacobs Levy Equity Mgmt. Center for Quantitative Fin. Rsch. Paper (2023), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4384675* (retrieved from SSRN Elsevier database); A. Amel-Zadeh, R. Lustermans & M. Pieterse-Bloem, Do Sustainability Ratings Matter? Evidence from Private Wealth Investment Flows (Mar. 9, 2022).

[2729] *See* J. van Binsbergen, *Duration-Based Stock Valuation: Reassessing Stock Market Performance and Volatility* (2021), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3611428* (retrieved from SSRN Elsevier database); D. Greenwald, M. Leombroni, H. Lustig & S. van Nieuwerburgh, *Financial and Total Wealth Inequality with Declining Interest Rates* (2021), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3789220* (retrieved from SSRN Elsevier database). Both of these papers find that the Macauley duration of equity, the weighted average length of time which investors will receive the cash flows from the asset, is in excess of 35 years as of 2019. This indicates that changes in cash flows in the future can impact equity prices today. *See* E. Ilhan, Z. Sautner & G. Vilkov, *Carbon Tail Risk,* 34 Rev. of Fin. Studs. 1540 (2021), for evidence of the market reflecting expectations about future climate events, even the rarest ones. *See* Kölbel, *et al., supra* note 2721, for evidence of climate risks being priced in CDS contracts with distant maturities. *See also* David C. Ling, Spenser J. Robinson, Andrew Sanderford & Chongyu Wang, *Climate Change and Commercial Property Markets: The Role of Shocks, Retail Investors, and Media Attention* (Apr. 7, 2023), available at SSRN: *https://ssrn.com/abstract=4412550* (retrieved from SSRN Elsevier database).

[2730] Proposing Release, section IV.B.2.a.

[2731] *Id.*

[2732] *See supra* section II.A.

[2733] *See* Proposing Release, section IV.B.2.a.

[2734] *See id; see also* S.J. Grossman, The Informational Role of Warranties and Private Disclosure About Product Quality, 24 J. L. & Econ. 461 (1981); P. Milgrom, Good News and Bad News: Representation Theorems and Applications, 17 Bell J. Econ. 18 (1981); S.A. Ross, Disclosure Regulation in Financial Markets: Implications of Modern Finance Theory and Signaling Theory, Issues in Financial Regulation (McGraw Hill, F.K. Edwards Ed., 1979); Anne Beyer, *et al.,* The Financial Reporting Environment: Review of the Recent Literature, 50 J. Acct. & Econ. 296 (2010).

is a debate over whether these failures justify official sector action.[2735]

One commenter argued that the Commission must empirically establish the existence of a market failure and that the Proposing Release ''failed to demonstrate that a market failure exists with respect to the current principles-based approach.'' [2736] As discussed in section IV.B.1, however, investors have expressed a need for the information provided by these disclosures and have stated there is a lack of consistency in current disclosures. In addition, there are several conditions that inhibit an optimal level of climate-related disclosure in the current market, as described above. It is widely accepted that such conditions demonstrate barriers to voluntary disclosure, namely, a market failure in this context. These together establish the basis for Commission action.

C. Benefits and Costs

We begin with a general discussion of the final rules' benefits and costs (section IV.C.1). We then turn to the benefits and costs that are specific to particular provisions of the final rules (section IV.C.2). Finally, we discuss estimates of quantifiable direct costs of compliance with the final rules (section IV.C.3).

1. General Discussion of Benefits and Costs

a. Benefits

The final rules will require comprehensive and standardized climate-related disclosures, including disclosure on governance, business strategy, targets and goals, GHG emissions, risk management, and financial statement metrics. This information will enable investors to better assess material risks in climate-related reporting and facilitate comparisons across firms and over time.

Academic literature shows a well-established link between climate-related risks and firm fundamentals.[2737] In an international study of over 17,000 firms from 1995 to 2019, researchers found that increased exposure to higher temperatures, a form of physical climate risk, reduces firm revenues and operating income.[2738] Another study found that drought risk, another form of physical climate risk, predicts poor profit growth.[2739] A third study found that exposure to physical climate risk leads firms to choose capital structures with less debt due to higher expected distress costs and greater operating costs.[2740] Researchers have found that banks with financial exposure in their lending portfolios to extreme climate-related hazards (*e.g.,* hurricanes) experience higher loan losses and lower long-run profitability.[2741] Other studies document effects of climate-related transition risks on innovation, employment and investment policies.[2742]

Relatedly, research shows that publicly available climate-related information is reflected in asset prices, which is an indication that such information affects the prices at which investors are willing to buy or sell assets (*i.e.,* their investment decisions).[2743] For example, some studies document a carbon emissions premium: investors demand compensation (higher expected returns) for bearing exposure to firms with higher carbon emissions.[2744]

[2735] *See* Christensen *et al.* (2021); Richard M. Frankel, S.P. Kothari & Aneesh Raghunandan, *The Economics of ESG Disclosure Regulation* (Nov. 29, 2023), available at *https://ssrn.com/abstract=4647550* (retrieved from SSRN Elsevier database). *See also* Overdahl exhibit to letter from Chamber (critiquing a rules-based approach).

[2736] *See* Overdahl exhibit to letter from Chamber. This commenter also pointed to a statement from a set of economists that considered how the Commission should approach disclosures of environmental and social issues. The commenter cites to the groups' recommendation that, ''that the SEC should not mandate disclosure of the firm's impacts on environmental and social (E&S) outcomes.'' *See* Jonathan M. Karpoff, Robert Litan, Catherine Schrand & Roman L. Weil, *What ESG-Related Disclosures Should the SEC Mandate?,* 78 Fin. Analysts J. 8 (2022); Fin. Economists Roundtable, Statement on SEC Regulation of ESG Issues: SEC Should Mandate ESG Disclosure Limited to Matters that Directly Affect the Firm's Cash Flows, (2021) (''FER Statement''), available at *https://static1.squarespace.com/static/61a4492358cbd07dda5dd80f/t/61e8d6dd8c22c04330637bc9/1642649310539/2021.pdf.* Although the final rules require some disclosure of GHG emissions, contrary to the FER Statement's concerns, those disclosures are not intended to promote an ''understanding [of] how the firm's activities affect society.'' *Id.* Instead, consistent with the FER Statement's suggestion, the GHG emissions disclosure requirements are intended to help investors understand the risks to which registrants are subject so that they can make better-informed investment and voting decisions. Moreover, the commenter neglected to reference the group's recommendation that ''[t]he SEC should mandate disclosure of E&S-related cash flow effects, including investments that alter E&S outcomes.'' Overall, therefore, we believe our approach is broadly consistent with the FER Statement's recommendation to focus on ''understanding the impact of E&S activities on the firm's value through their effects on a firm's cash flows.''

[2737] One commenter said that the Commission did not explain ''why climate-related information would often be material to investors when other information, such as cash flows, profitability and industry, are likely to be much more relevant to an investment decision.'' *See* Overdahl exhibit to letter from Chamber (citing BCG Investor Perspectives Series Pulse Check #19, *supra* note 2724). We disagree with the premise underlying this comment. Indeed, as other commenters have expressed, understanding the impact of climate-related risks is important, for investors to assess current financial information such as cash flows and profitability and thus to make informed investment decisions. *See supra* section IV.B.1. Moreover, disclosure regarding the potentially likely material impacts of a registrant's climate-related risks may be more informative about future cash flows than disclosure regarding its current cash flows. This commenter cites as evidence an academic study, A. Moss, J.P. Naughton & C. Wang, *The Irrelevance of Environmental, Social, and Governance Disclosure to Retail Investors,* Mgmt. Sci. (2023) (also submitted to the comment file by the authors, *see* letter from James P. Naughton). This study suggests that the portfolios of retail investors on one trading platform are not different on days of ESG press releases. We received numerous comments speaking to difficulties in analyzing current climate disclosures, and this paper's findings are consistent with this feedback. We acknowledge, however, that this study is subject to certain limitations, such as the fact that its findings center around disclosures on social issues more generally (rather than specifically focusing on climate-related risks). Also, voluntary disclosures are analytically subject to a dual selection problem. *See* Christensen *et al.* (2021), at 1208. The dual selection problem refers to two concurrent issues that pose challenges in determining causality. The first stems from the fact that observable ESG disclosures are from companies that voluntarily choose to disclose, reflecting a selection bias. The second is the challenge of disentangling the effects of disclosure by itself from the effects of the underlying CSR activities.

[2738] *See* Nora Pankratz, Rob Bauer & Jeroen Derwall, *Climate Change, Firm Performance, and Investor Surprises,* 69 Mgmt Sci. 7352 (2023).

[2739] *See* Harrison Hong, Frank Weikai Li & Jiangmin Xu, *Climate Risks and Market Efficiency,* 208 J. of Econometrics 265 (Jan. 2019); Claudia Custodio, *et al., How Does Climate Change Affect Firm Sales? Identifying Supply Effects* (June 30, 2022), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3724940* (retrieved from SSRN Elsevier database) (describing decline in labor and sales due to extreme temperatures in manufacturing and other heat-sensitive industries).

[2740] *See* Edith Ginglinger & Quentin Moreau, *Climate Risk and Capital Structure,* 69 Mgmt Sci. 7492 (2023). Similar evidence also appears in the context of transition risk where researchers find that firms with higher carbon emissions exhibit lower leverage when their banks through commitments to decarbonize are found to supply less credit to these firms. *See* Marcin T. Kacperczyk & José-Luis Peydró, *Carbon Emissions and the Bank-lending Channel* (Aug. 2022), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3915486* (retrieved from SSRN Elsevier database).

[2741] *See* Yao Lu & Valeri V. Nikolaev, *The Impact of Climate Hazards on Banks' Long-Run Performance* (Sept. 2023), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4569935* (retrieved from SSRN Elsevier database).

[2742] *See* Sautner, *et al.* (2023); Li, *supra* note 2657.

[2743] Although the literature shows that financial motivations play a central role in driving investor interest in information regarding climate- and sustainability-related issues, we acknowledge that there coexist investors who exhibit nonpecuniary preferences involving this type of information. *See* S.M. Hartzmark & A.B. Sussman, *Do Investors Value Sustainability? A Natural Experiment Examining Ranking and Fund Flows,* 74 J. of Fin. 2789 (Aug. 2019); A. Riedl & P. Smeets, *Why Do Investors Hold Socially Responsible Mutual Funds?* 72 J. of Fin. 2505 (Aug. 2017); Ľ. Pástor, R.F. Stambaugh, & L.A. Taylor, *Sustainable Investing in Equilibrium,* 142 J. of Fin. Econ 550 (Nov. 2021).

[2744] *See* Patrick Bolton & Marcin T. Kacperczyk, *Do Investors Care about Carbon Risk?* 142 J. of Fin. Econ. 517 (2021). Similar evidence on the pricing of information regarding climate-related risks more generally, *see* Sautner, *et al.* (2023); Griffin, *et al.,*

Similar evidence is found in debt and financial derivatives markets where climate-related risks are found to be priced in corporate bonds, options, credit default swaps, and futures contracts.[2745] Recent academic research also concludes that climate disclosures can be used in constructing efficient ''climate-hedging'' portfolios, by allowing investors to better identify firms with positive or negative climate exposure and adjust their portfolios in response to that information.[2746] Collectively, this research indicates that disclosures about climate-related risks, when they are made, become priced into the value of a firm, thereby demonstrating that the disclosure provides relevant information to investors as they make investment decisions.

Given the usefulness of climate disclosures to investors in accurately valuing a company and assessing its risks, the use of a standardized disclosure framework will mitigate agency problems arising from registrants being able to selectively disclose (*i.e.,* ''cherry pick'') information, which reduces transparency and impairs investors' ability to effectively assess the potential financial impacts of a registrant's climate-related risks. Providing better information to investors will, in turn, reduce information asymmetries between managers and investors as well as amongst investors[2747] (*i.e.,* reduce any informational advantages), which will improve liquidity and reduce transaction costs for investors (*i.e.,* reduce adverse selection), and may lower firms' cost of capital.[2748]

The final rules will also integrate climate-related risk disclosures into the existing Regulation S–K and S–X disclosure frameworks. Investors will therefore find information about all the material risks that companies face—not just climate-related risks—within a centralized source (*i.e.,* Commission filings, as opposed to sustainability reports, brochures, or company websites), thereby reducing search costs, and will receive this information in a more timely manner and on a regular schedule.[2749] These benefits should be especially pronounced for financial institutions with significant exposure to climate-related risks through their portfolio companies since any enhancements in the portfolio companies' disclosures will better position the institutions to assess their portfolio-level risks.[2750]

Furthermore, by treating the climate-related disclosures as ''filed,'' these disclosures will be subject to potential liability under the Exchange Act and the Securities Act, which will incentivize registrants to take additional care to ensure the accuracy of the disclosures, thereby resulting in more reliable disclosures.[2751] Several commenters expressed support for treating climate-related disclosures as filed, noting that it would help improve investor confidence in the accuracy and completeness of such disclosures.[2752]

For disclosures other than financial statement disclosures, the final rules will provide registrants with the flexibility to determine the appropriate placement within their filing of climate-related disclosures. While this could affect investors' ability to easily locate and compare those disclosures, we believe that this concern is largely

supra note 2660; E.M. Matsumura, R. Prakash & S.C. Vera-Munoz, *Firm-value Effects of Carbon Emissions and Carbon Disclosures,* 89 Acct. Rev. 695 (March 2014); E.M. Matsumura, R. Prakash & S.C. Vera-Munoz, *Climate Risk Materiality and Firm Risk,* Rev. Acct. Stud. (Feb. 5, 2022) available at *https://ssrn.com/abstract=2983977* (retrieved from SSRN Elsevier database).

[2745] For evidence within the market for corporate bonds, *see, e.g.,* Thanh D. Huynh & Ying Xia, *Climate Change News Risk and Corporate Bond Returns,* 56 J. of Fin. & Quant. Analysis 1985 (Sept. 2021) (''Huynh & Xia (2021)''). For evidence within the market for options, *see, e.g.,* E. Ilhan, Z. Sautner, & G. Vilkov, *Carbon Tail Risk, supra* note 2729; Sautner *et al.* (2023). For evidence within the market for credit default swaps, *see* Kölbel *et al., supra* note 2721. For evidence within the market for futures contracts, *see* Wolfram Schlenker & Charles A. Taylor, *Market Expectations of a Warming Climate,* 142 J. of Fin. Econ. 627 (Nov. 2021). *But see* Hong, *supra* note 2739 (finding asset prices may not fully price in climate related risks); and evidence finding a lack of relation between climate-related risks and asset prices, J. Aswani, A. Raghunandan & S. Rajgopal, *Are Carbon Emissions Associated with Stock Returns?* 28 Rev. of Fin. 75 (Jan. 2024); R. Faccini, R. Matin & G. Skiadopoulos, *Dissecting Climate Risks: Are They Reflected in Stock Prices?* 155 J. of Banking & Fin., Article 106948 (Oct. 2023); J. Murfin & M. Spiegel, *Is the Risk of Sea Level Rise Capitalized in Residential Real Estate?,* 33 Rev. of Fin. Stud. 1217 (March 2020). For a discussion of seemingly contradictory empirical results found in studies involving stock returns and carbon emissions, *see* Patrick Bolton, Zachery Halem & Marcin T. Kacperczyk, *The Financial Cost of Carbon,* 34 J. of Applied Corp. Fin. 17 (June 2022). For further evidence in real estate and municipal bonds, *see* D.D. Nguyen, S. Ongena, S. Qi & V. Sila, *Climate Change Risk and the Cost of Mortgage Credit,* 26 Rev. of Fin. 1509 (2022); P. Goldsmith-Pinkham, M.T. Gustafson, R.C. Lewis & M. Schwert, *Sea-level Rise Exposure and Municipal Bond Yields,* 36 The Rev. of Fin. Studs. 4588 (2023); M. Painter, *An Inconvenient Cost: The Effects of Climate Change on Municipal Bonds,* 135 J. of Fin. Econ. 468 (2020).

[2746] *See, e.g.,* Robert F Engle, *et al., Hedging Climate Change News,* 33 Rev. Fin. Stud. 1184 (2020).

[2747] This information asymmetry can result from the fact that it currently requires considerable resources to infer a registrant's exposure to or management of climate-related risks using the existing publicly available information provided through voluntary disclosures. *See, e.g.,* letters from Vermont Pension Investment Commission; CalSTERS; and Wellington (describing how these commenters currently glean such information, incurring costs related to development of proprietary models, devoting considerable resources to reviews of public information, and subscribing to services from other data providers).

[2748] *See* section IV.E. for more information on capital market benefits; *see also* Christensen *et al.* (2021), at 1202, 1208; Yakov Amihud & Haim Mendelson, *Liquidity and Stock Returns,* 42 Fin. Analysts J. 43 (May-June 1986); Lawrence R. Glosten & Paul R. Milgrom, *Bid, Ask and Transaction Prices in a Specialist Market with Heterogeneously Informed Traders,* 14 J. of Fin. Econ. 71 (March 1985); R.E. Verrecchia, *Essays on Disclosure,* 32 J. of Acct. & Econ. 97 (Dec. 2001). More recently, researchers used international evidence to find that mandatory ESG disclosures improves stock liquidity, *see* P. Krueger, Z. Sautner, D.Y. Tang & R. Zhong, *The Effects of Mandatory ESG Disclosure Around the World,* Euro. Corp. Gov. Inst.—Finance Working Paper No. 754/2021 (Jan. 12, 2024). Asymmetric information occurs when one party to an economic transaction possesses greater material knowledge than the other party. Adverse selection occurs when the more knowledgeable party only chooses to transact in settings that, based on their private information, is advantageous for them. Less informed parties, aware of their informational disadvantage, might be less inclined to transact at all for fear of being taken advantage of. *See* George Akerlof, *The Market for Lemons, Quality Uncertainty and the Market Mechanism,* 84 Q. J. of Econ. 488 (Aug. 1970). One commenter claimed that the final rules could result in adverse selection if companies with the most exposure to climate risks choose to de-register or opt out of registration (*see* letter from Chamber). We disagree with this claim. We believe the benefits of being a public registered company are sufficiently strong such that it is unlikely many companies will choose to avoid becoming or continuing as a public registered company as a result of the final rules. *See* section IV.E.3 for more information.

[2749] *See supra* note 2570.

[2750] *See Report on Climate-Related Financial Risk 2021,* FSOC, available at *https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf* (''Demand for information about climate-related risks and opportunities has grown significantly, driven by investors and financial institutions that are interested in managing their exposure to climate risks . . . Further, it is important to note that to assess and quantify their own climate-related financial risks, particularly transition risks, financial institutions need access to climate-related risk information from the companies they are financing and investing in.''); CDP, CDP Non-Disclosure Campaign: 2021 Results (2021), available at *https://cdn.cdp.net/cdp-production/cms/reports/documents/000/006/069/original/CDP_2021_Non-Disclosure_Campaign_Report_10_01_22_%281%29.pdf; see also* letter from BNP Paribas (''Given the increasing awareness of corporates and the financial community about the need to accelerate the transition to a low carbon economy, establishing robust and comparable climate related disclosure standards is critical to providing investors decision-useful information. In particular, this information is essential for banks and asset managers to assess climate-related risks for lending purposes and making investment decisions, to define portfolio alignment strategies in the context of a registrant's net zero commitments . . .'').

[2751] However, we note that these benefits will be mitigated for certain forward-looking statements, including those related to transition plan disclosures, scenario analysis, internal carbon pricing, and climate-related targets and goals, as these statements will have the benefit of safe harbor protections if the safe harbor requirements are satisfied.

[2752] *See, e.g.,* letters from Amer. For Fin. Reform, Sunrise Project *et al.;* Ags of Cal. *et al.;* CalPERS; Ceres; CFA; Engine No. 1; Franklin Templeton; PwC; SKY Harbor; and TotalEnergies.

mitigated by the final rules' structured data requirement. The structured disclosure requirements we are adopting, including the requirement to tag such disclosures using XBRL, will enable search and retrieval of the disclosures on an automated and large-scale basis, allowing investors, and the market, to process information much more effectively and efficiently as compared to manual searches through unstructured formats. This will improve investors' assessment of companies' estimated future cash flows, leading to more accurate company valuations and lowering companies' cost of capital.[2753]

Additionally, having access to more reliable information could result in cost savings for those investors who collect or organize information about climate-related risks. Several commenters emphasized the scale of the resources required to render the currently available information on climate-related disclosures useful to their decisions.[2754]

Similarly, investors also may benefit from the final rules if the required disclosures change the nature and degree to which investors rely on third parties that provide ESG ratings or scores. To the extent there is overlap between the disclosures required by the final rules and the types of information considered by ESG ratings providers, the final rules may reduce reliance on these third parties, thereby reducing costs incurred by investors to obtain decision-useful information. ESG ratings are not necessarily standardized or transparent with respect to their underlying methodologies, and several studies have found that different ESG ratings providers often assign inconsistent ratings for the same registrant.[2755] To the extent the final rules reduce reliance on these ratings, registrants and investors could benefit by saving money that would otherwise be spent on obtaining third-party ESG ratings.[2756] Alternatively, the disclosures elicited by the final rules may increase the value of these third-party services to the extent that the third-party services are able to leverage the enhanced disclosures to provide investors with greater market insights. The disclosures may also allow registrants to better monitor ESG ratings, which could reduce the risk of greenwashing.

b. Costs

The final rules will impose direct costs of compliance on registrants. We use the term ''direct costs'' or ''compliance costs'' to include (1) any costs related to developing or maintaining systems for collecting information to comply with the final rules, (2) costs of preparing and presenting the resulting disclosures for Commission filings, which we refer to as ''reporting costs,''[2757] (3) costs associated with assuring the accuracy of the disclosures, such as audit and attestation costs, and (4) any legal or disclosure review costs incurred to support management's assertion that the disclosures comply with the final rules. These costs could be incurred internally (*e.g.,* through employee hours or hiring additional staff) or externally (*e.g.,* via third-party service providers, such as auditors or consultants). Numerous commenters expressed concerns over the direct costs of compliance on registrants of the proposed rules.[2758] As discussed in section II.A, the final rules include certain modifications relative to the proposed rules that reduce overall costs and help address commenters' concerns about the time and resources required to comply with the final rules' requirements.[2759] This concern could further be mitigated for certain registrants to the extent that the final rules generally align with the disclosure frameworks that they are already using for their voluntary disclosures or disclosures that are, or will be, required by state, Federal, or other laws.[2760] Many commenters submitted cost estimates for the proposed rules that varied considerably depending on a given company's size, industry, complexity of operations, and other characteristics. We review these comments and discuss cost estimates in detail in sections IV.C.2 and IV.C.3. The remainder of this section focuses on other costs that may result from the final rules.

The final rules may result in additional litigation risk for registrants.[2761] However, the final rules include several changes from the proposal to mitigate these concerns. For example, certain forward-looking statements, including those related to transition plan disclosures, scenario analysis, internal carbon pricing, and climate-related targets and goals, will have the benefit of certain liability protections if the adopted safe harbor requirements are satisfied. Another example is the inclusion of phase in periods after the effective date to provide registrants with additional time to become familiar with and meet the final rules' disclosure requirements. In addition, Scope 3 emissions disclosure is no longer required and the amendments to Regulation S–X have been modified to lessen the compliance requirements, among other examples.

[2753] *See* Christensen *et al.* (2021), at 1187; R. Lambert, C. Leuz & R.E. Verrecchia, *Accounting Information, Disclosure, and the Cost of Capital,* 45 J. of Acct. Rsch. 385 (May 2007); D. Easley & M. O'Hara, *Information and the Cost of Capital,* 59 J. of Fin 1553 (Aug. 2004); R. Lambert, C. Leuz & R.E. Verrecchia, *Information Asymmetry, Information Precision, and the Cost of Capital,* 16 Rev. of Fin. 1 (Jan. 2012).

[2754] *See, e.g.,* letter from CalSTRS (stating, ''The current reporting requirements are insufficient for investors to assess corporate climate risk and the related financial impacts to execute investment decisions. CalSTRS spends approximately $2,200,000 per year to access climate research, analyze available data, and develop methods to estimate climate risks and opportunities for assets in our portfolio. In addition to two full-time investment staff members, CalSTRS consults external advisors to learn how other global asset owners determine climate risk exposures to their portfolios given the lack of reliable, consistent, and comprehensive data. A conservative estimate of the variable cost of these combined human resources is $550,000 annually.'').

[2755] Florian Berg, Julian Kölbel & Roberto Rigobon, *Aggregate Confusion: The Divergence of ESG Ratings,* 26 Rev. Fin. 1315 (Nov. 2022). The authors found that the correlations between six different ESG ratings are on average 0.54, and range from 0.38 to 0.71, while the correlations between credit ratings were 0.99. *See also* Scott Robinson *et al., supra* note 2721; Dane Christensen, George Serafeim & Anywhere Sikochi, *Why is Corporate Virtue in the Eye of the Beholder? The Case of ESG Ratings,* Acct. Rev. (Feb. 26, 2021), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3793804* (retrieved from SSRN Elsevier database).

[2756] Because ESG ratings encompass information beyond climate-related matters, registrants and investors may still obtain ESG ratings for reasons unrelated to climate-related information.

[2757] Specifically, ''reporting costs'' refer to the costs of preparing information to be presented in Commission filings, separate from any prior costs or resources expended in obtaining or developing such information. For example, the final rules will require some registrants to disclose their Scope 1 and 2 emissions. For registrants that already disclose them, the incremental cost will only be the reporting cost, distinct from any costs they have previously voluntarily incurred related to developing emissions measurement/estimation systems and processes in order to quantify their emissions.

[2758] *See, e.g.,* letters from Chamber; Nutrien; Williams Companies; Energy Transfer LP; Hess; PPL; NRF; RILA; ConocoPhillips; NASDAQ; API; and SCG.

[2759] *See, e.g.,* letter from Chamber.

[2760] *See* section IV.A.3 for discussion of existing state and Federal laws.

[2761] *See* letter from NAM (expressing concern about treating climate-related disclosures as ''filed,'' noting the ''evolving and uncertain nature'' of GHG emissions disclosures could make it difficult for registrants to reach the degree of certainty necessary to assume the liability burden associated with reports filed with the Commission); *see also* letter from Chamber (noting that the complexity of the proposed rules could increase the likelihood of nuisance lawsuits that are intended to extract a settlement thereby increasing the cost of compliance with the rules). This commenter also pointed out that audit costs could increase if auditors were also subject to increased litigation risk. *See also* letter from Cunningham *et al.* (noting that ''The SEC recognizes that a major cost of the Proposal concerns litigation risk.''); Overdahl exhibit to letter from Chamber (noting the increase in litigation risk can also result in higher insurance costs for registrants and auditors).

Some commenters expressed concerns that the proposed disclosures would over-emphasize climate risks relative to other types of risks that investors might find important.[2762] A related concern that commenters raised is that potentially voluminous disclosures could obscure the information that investors deem most relevant to their investment or voting decisions.[2763] To mitigate such concerns (in addition to concerns related to the compliance costs) the final rules are less prescriptive in certain places relative to the proposed rules. The final rules also have additional materiality qualifiers such that registrants that determine climate risks to be immaterial will have fewer disclosure obligations relative to the proposal. These costs also are expected to be mitigated by the structured data requirements of the final rules, which will make it easier for investors to find and analyze relevant information in filings. These changes also address other commenters' concerns that mandatory climate disclosure requirements that are too prescriptive or granular may lead to inefficient changes in business strategies and limit or halt innovation in the market for voluntary climate disclosures.[2764]

We also acknowledge the concerns expressed by several commenters that the proposed rules would have required the disclosure of confidential or proprietary information,[2765] which can put affected registrants at a competitive disadvantage. This consequence could alter registrants' incentives to develop strategies to manage climate-related risks where it would otherwise be beneficial to do so.[2766] The final rules have been narrowed relative to the proposed rules to provide additional flexibility to limit costs associated with the disclosure of competitively sensitive information, while retaining disclosures that will help investors understand registrants' climate-related risks. In particular, we have eliminated certain prescriptive requirements from the proposal that commenters identified as potentially revealing competitively sensitive information and for which the benefits to investors were less apparent.[2767] For example, by providing registrants with flexibility to determine how best to describe their strategy towards managing climate-related risks, the final rules may enable them to avoid disclosure of competitively sensitive information.[2768] Furthermore, while we have eliminated the requirement to disclose ZIP code level information, the final rules continue to require location disclosures sufficient to understand a registrants' exposure to physical risks. We also have eliminated the requirement to disclose interim targets or goals. At the same time, we acknowledge that, in some instances, a more flexible approach may also result in less comparable disclosures. While this has the possibility of reducing the value of the disclosures to investors, we believe this approach appropriately balances investor protection with concerns raised by commenters.

Relatedly, the final rules may have indirect cost implications for third-party service providers, such as ESG ratings providers. For example, the increased disclosures may reduce institutional investors' reliance on ESG ratings providers, which could negatively impact these providers.[2769] Conversely, more comprehensive disclosures could reduce the cost of producing ESG ratings or may improve the informational content of the ratings, thereby increasing demand. This could benefit not only the ratings providers, but also investors that rely on ESG ratings.

Many commenters raised concerns about costs to third parties from the proposed rules,[2770] with one commenter stating that ''measuring and reporting of GHG emissions would be a prerequisite for doing business with registrants and most retailers under this proposal.''[2771] Compared to the proposed rules, the final rules do not impose such costs because they do not include Scope 3 disclosure requirements. Other disclosure items under the final rules may continue to result in registrants seeking input from third parties, such as those disclosure items requiring disclosure of material impacts from climate-related risks on purchasers, suppliers, or other counterparties to material contracts with registrants. However, the final rules limit the compliance burden of this requirement by limiting information that should be disclosed to that which is ''known or reasonably available,'' thereby eliminating any potential need for registrants to undertake unreasonable searches or requests for information from such third parties. Given the more flexible and tailored approach in the final rules, such consultations will pertain only to parties whose relationship with the registrant is most likely to materially impact the registrant's strategy, business model and outlook, as well as parties from whom the registrant may be best positioned to request information, thus lowering these costs.

Some commenters asserted that a registrant's compliance costs could be passed on to other parties such as consumers (via higher prices), workers (through reduced wages or benefits), or shareholders (in the form of lower earnings).[2772] Other commenters stated that compliance costs could vary across industries.[2773] We acknowledge that third parties could bear some of the increased costs of compliance arising from the final rules and that this effect may be more pronounced in certain industries than in others. The final rules include significant changes from the proposal that lower the burdens on registrants. To the extent that these changes result in lower compliance costs, they also will help mitigate any adverse effects on other parties.

There is some existing academic literature on costs related to mandatory climate-related disclosures in other

[2762] *See, e.g.,* Overdahl exhibit to letter from Chamber, stating, ''because climate-related information is just one factor among many other (potentially more relevant) factors, climate-related information is often not material;'' *see also* letters from API; Western Energy Alliance and the U.S. Oil & Gas Association; Matthew Winden; American Council of Engineering Companies; Chamber; and Wisconsin Manufacturers & Commerce.

[2763] *See, e.g.,* letters from Chamber; Soc. Corp. Gov.; and ConocoPhillips. For example, investors may be unable to review all potentially relevant information, resulting in suboptimal decisions. *See, e.g.,* H.A. Simon, *A Behavioral Model of Rational Choice,* 69 Q. J. of Econ. 99 (Feb. 1955); H.A. Simon, *Rationality As Process and As Product of Thought,* 68 a.m. Econ. Rev. 1 (May 1978); K.L. Chapman, N. Reiter & H.D. White, *et al., Information Overload and Disclosure Smoothing,* 24 Rev Acct. Stud. 1486 (Dec. 2019).

[2764] *See, e.g.,* letters from API; Matthew Winden; Footwear Distributors & Retailers of America; Petrol. OK.; and Chamber.

[2765] *See, e.g., supra* notes 479, 596, and surrounding text. Proprietary costs are generally relevant for reporting that involves information about a companies' business operations or production processes and disclosures that are specific, detailed and process-oriented. *See, e.g.,* C. Leuz, A. Triantis & T.Y. Wang, *Why Do Firms Go Dark? Causes and Economic Consequences of Voluntary SEC Deregistrations,* 45 J. of Acct. & Econ. 181 (Aug. 2008); D.A. Bens, P.G. Berger & S.J. Monahan, *Discretionary Disclosure in Financial Reporting: An Examination Comparing Internal Firm Data to Externally Reported Segment Data,* 86 Acct. Rev. 417 (March 2011).

[2766] *See* section IV.D.

[2767] *See, e.g.,* letter from Business Roundtable (June 17, 2022).

[2768] *See, e.g.,* discussion in section II.C.1.c.

[2769] We note that this ''cost'' is from the perspective of the ratings providers and could be offset by the efficiency gain that renders their intermediation less necessary; as such, it reflects more of a transfer than a net economic ''cost.''

[2770] *See* letter from the Heritage Foundation, which estimates compliance costs of the proposed rules on non-registrants would total $14 billion.

[2771] *See* letter from International Dairy Foods Association.

[2772] *See, e.g.,* letters from National Fuel Corporation; Petrol. OK; Footwear Distributors & Retails of America; Truth in Energy and Climate; ASA; and David R. Burton.

[2773] *See* letters from API; and Matthew Winden.

jurisdictions.[2774] Some studies report lower profitability and costly operational adjustments for firms affected by mandatory CSR disclosure and GHG emissions reporting in China and the United Kingdom, respectively.[2775] However, other studies do not find an impact on financial operating performance from mandating climate-related disclosures.[2776] Another study showed aggregate stock price movement associated with mandatory climate-related disclosure; while the study found, on average, a negative market reaction, the negative stock returns were concentrated in firms with weak ESG performance and disclosure, while firms with above-median ESG performance and disclosure exhibited a positive abnormal return.[2777] We note that differences between the final rules and these other mandates (*e.g.,* materiality qualifiers) suggest that similar costs associated with the final rules may be lower.

As discussed in sections IV.C.2.f and IV.C.3.c, the final rules may have implications for assurance providers or, more generally, for third parties with climate-related expertise. In the short run, the rules may increase demand (and accordingly, the cost) for climate-related expertise and/or assurance of emissions disclosures. Over time, we expect the supply of third parties with climate-related expertise will adjust to correspond with the increased demand, leading to reduced costs.

Finally, the modifications made in the final rules to reduce overall costs will help address, to an extent, some commenters' concerns that costs associated with the proposed rules could factor into a company's decision to become or remain a public reporting company.[2778] In response to other commenters' concerns,[2779] the final rules also provide EGCs and SRCs with a longer phase in period for climate-related disclosures (including financial statement disclosures under Regulation S–X) and exempt EGCs and SRCs from GHG emissions disclosure requirements. And, while climate-related disclosures will be required in registration statements for firms conducting IPOs, we are not applying the subpart 1500 and Article 14 disclosure requirements to a private company that is a party to a business combination transaction, as defined by Securities Act Rule 165(f), involving a securities offering registered on Form S–4 or F–4.[2780]

2. Analysis of Specific Provisions

The costs incurred by any particular registrant may vary significantly depending upon which, if any, of the disclosures required under the final rules are applicable to that registrant's operations and circumstances. We discuss the costs of specific components of the rules below.

a. Disclosure of Climate-Related Risks

The final rules require registrants to identify any climate-related risks that have materially impacted or are reasonably likely to have a material impact on the registrant, including on its strategy, results of operations, or financial condition.[2781] For any risks identified, registrants are required to provide information necessary to an understanding of the nature of the risk presented and whether the risk is a physical or transition risk. Registrants are also required to classify whether these risks are reasonably likely to manifest in the short-term and in the long-term. For both physical and transition risks, registrants are required, as applicable, to provide detailed information on these risks (*e.g.,* the particular type of transition risk as well as the geographic location and nature of the properties, processes, or operations subject to the physical risk).

This aspect of the final rules will improve investors' understanding of what a registrant considers to be the relevant short-term and long-term climate-related risks that have materially impacted or are reasonably likely to have a material impact on its business. As a number of commenters have noted, climate-related risks often translate into material financial risks with implications for firm growth and profitability, and therefore investors would benefit from a disclosure regime that requires registrants to provide information on climate-related risks that is accurate and more comparable to each other.[2782]

Academic research has found that retail investors as well as institutional investors value and utilize information on climate-related risks in decision-making.[2783] As numerous commenters stated,[2784] climate-related risks and

[2774] Commenters stated that there is limited evidence on the overall economic impact of mandatory climate-related disclosure regimes in other jurisdictions. *See* letter from Committee on Capital Markets Regulation (June 16, 2022) (''CCMR''); and Overdahl exhibit to letter from Chamber; *see also* Christensen *et al.* (2021).

[2775] *See* Y. Chen, M. Hung & Y. Wang, *The Effect of Mandatory CSR Disclosure on Firm Profitability and Social Externalities: Evidence from China,* 65 J. of Acct. & Econ. 169 (2018); *see also* letter from CCMR (citing, as evidence of negative effects to firm financial performance from mandatory climate-related disclosures, Jouvenot & P. Krueger, *Mandatory Corporate Carbon Disclosure: Evidence from a Natural Experiment* (Aug. 8, 2019), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3434490* (retrieved from SSRN Elsevier database)).

[2776] *See* B. Downar, J. Ernstberger, S. Reichelstein, S. Schwenen & A. Zaklan, *The Impact of Carbon Disclosure Mandates on Emissions and Financial Operating Performance,* 26 Rev. of Acct. Stud. 1137 (2021).

[2777] *See* letter from CCMR. *See also* Proposing Release, section IV.C.1., at n. 848, citing Jody Grewal, Edward J. Riedl & George Serafeim, *Market Reaction to Mandatory Nonfinancial Disclosure,* 65 Mgmt Sci. 3061 (2019). We note that the study's findings are based on the assumption that the only news disproportionately affecting the treated companies was the policy at issue, as opposed to some other event(s) impacting the treated companies.

[2778] *See, e.g.,* letter from Chamber and section II.L.2. For example, private companies might decide to defer a public offering, and existing public companies might decide to deregister from U.S. securities markets or not pursue mergers that would subject the merged company to reporting requirements. Other provisions that will reduce costs for conducting an IPO include (i) registrants will only have to provide Article 14 disclosure for historical fiscal years on a prospective basis, and (ii) the PSLRA statutory safe harbor for forward-looking statements (with respect to transition plans, scenario analysis, targets and goals) will apply to registration statements in IPOs.

[2779] *See* sections II.H.2 and II.O.2 for a discussion of commenters' concerns on GHG emissions disclosures and phase in periods, respectively.

[2780] *See supra* section II.L.3. While this approach avoids imposing additional costs on companies engaged in business combination transactions involving a private company, we note that investors will not have the benefit of the disclosures required by the final rules with respect to such private company.

[2781] *See* 17 CFR 229.1502(a).

[2782] *See, e.g.,* letters from PIMCO (''[W]e believe climate risks often pose a material financial risk, and therefore, investors need disclosure of climate risks that is complete, reliable, and consistent in order to analyze how climate-related risks may affect a company's business or overall financial performance.''); Wellington (''Accurate and comparable information about climate risk is critical to Wellington Management's ability to make informed investment decisions on behalf of our clients. Because climate change will continue to profoundly impact society, economies and markets, investors need more information to better price these risks and fully assess the value of an issuer's securities.''); and AllianceBernstein (''[M]aterial risks and opportunities associated with climate change as fundamental financial factors that impact company cash flows and the valuation investors attribute to those cash flows. Regulatory changes, physical risks, and changing consumer decision criteria and preferences are all factors that asset managers need to understand and integrate into their investment processes to make optimal investment decisions on behalf of their clients.'')

[2783] *See supra* section IV.B.1. One commenter suggested that institutional investors and retail investors may have different preferences for climate-related information, especially when the former consider investment portfolios and the latter consider individual companies. *See* letter from Society for Corp. Gov. The commenter further argued that retail investors are unlikely to care about climate-related information given their investment horizon. Because of the documented impact of climate-related risks, including distant ones, on asset prices, we disagree with these assertions.

[2784] *See* section IV.B; *see also, e.g.,* letters from BlackRock (''Compared to the existing voluntary framework, the Commission's detailed analytical and disclosure roadmap . . . is more likely to increase the comparability and consistency of

their impacts on businesses are often not reported in a way that is useful to investors. Commenters noted that with the limitations to the currently available climate-related disclosures, extensive costs in the form of data gathering, research and analysis are needed to process them and to fill data gaps where possible in forming investment decisions.[2785] We expect the final rules to reduce these information processing costs for investors.[2786]

We expect the final rules will help investors gain a more accurate and complete understanding of the climate-related risks that a registrant determines have materially impacted or are reasonably likely to materially impact its strategy, results of operations, or financial condition. By distinguishing between climate-related risks that manifest in the short-term and long-term, the final rules will help inform investors about which risks are salient to their investment decision-making and which are not, depending on the time horizon investors are focused on. For instance, longer term risks may be less certain and are less likely to have impacts on cash flows in the short-term. As such, some investors may choose to focus more on short-term risks. Conversely, an investor with a long investment horizon may choose to focus on the risks that match its investment horizon.[2787] This temporal standard is consistent with an existing MD&A disclosure requirement and therefore should provide a degree of familiarity to registrants and investors as they prepare and analyze these disclosures.[2788] This aspect of the final rules will impose additional costs on registrants (*e.g.,* direct compliance costs and indirect costs resulting from, for example, increased litigation risk). These costs are discussed in greater detail in sections IV.C.1 and IV.C.3.

b. Disclosure Regarding Impacts of Climate-Related Risks on Strategy, Business Model, and Outlook

The final rules require registrants to describe the actual and potential material impacts of any climate-related risks identified in response to Item 1502(a) on the registrant's strategy, business model, and outlook.[2789] With respect to their strategy, business model, and outlook, the final rules specify that registrants are required to assess, as applicable, any material impacts on a non-exclusive list of items: business operations; products or services; suppliers, purchasers, or counterparties to material contracts (to the extent known or reasonably available); activities to mitigate or adapt to climate-related risks; and expenditure for research and development. Registrants are also required to discuss whether and how the registrant considers these impacts as part of its strategy, financial planning, and capital allocation.

We expect the resulting disclosures to provide investors with a better understanding of how climate-related risks have materially impacted or are reasonably likely to have a material impact on the registrant. Such disclosures will directly benefit investors who use this information to evaluate the financial prospects of the firms in which they are looking to invest.[2790] Discussions of material impacts on strategy, business model, or outlook will help investors determine whether and how registrants are addressing identified material climate-related risks. This type of disclosure could be particularly useful when comparing the approaches taken by similarly situated registrants. For example, one registrant may disclose that it is actively shifting assets away from exposure to flood zones, while another might disclose that it is investing in such assets as they are considered currently undervalued. These disclosures will allow an investor to choose to invest in the company with climate-related risk strategies that best align with the investor's investment objectives.

Under the final rules, if a registrant has adopted a transition plan to manage a material transition risk, it must describe the plan. The registrant must also provide an annual update about any actions taken during the year under the plan, including how these expenditures have impacted the registrant's financial condition, or results of operations, along with quantitative and qualitative disclosure of material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the transition plan. We expect these disclosures to provide investors with more complete and reliable information about how registrants plan to address material transition risks. A number of commenters indicated that these disclosures would help investors assess the registrant's approach to managing climate-related risks and achieving its climate-related targets and goals.[2791] This benefit could be reduced if these disclosures provide opportunities for greenwashing. However, we expect this risk to be reduced given that these disclosures will include quantitative and qualitative information on expenditures that are filed with the Commission and are subject to the

issuers' climate-related disclosures.''); Calvert (''Currently, climate change disclosures are largely voluntary, unverified, and idiosyncratic.''); CFA (''The current voluntary climate-related disclosure regime has resulted in inadequate and inconsistent information which falls short of investor demands and prevents market participants from reasonably assessing the risks of climate change.''); and Wellington (''Currently, our evaluation of the positive and negative impacts of climate change on issuers is limited by inadequate information and the absence of a standardized framework for disclosure.'' and that ''For a significant number of issuers, information is not sufficient to support equivalent analysis.'').

[2785] *See* letter from Wellington (''We were able to make these and other determinations based on available information (including internal and external estimates), and only after extensive research and analysis. For a significant number of issuers, information is not sufficient to support equivalent analysis.''); Boston Trust Walden (''Evaluation of climate risk across investment portfolios represents a cost to investors and results in the gathering of data that is often incomplete and not comparable. At Boston Trust Walden, our analysts examine quantitative and qualitative climate-related corporate disclosure to enhance our understanding of the existing and potential financial outcomes associated, ranging from risks (*e.g.,* losing the license to operate) to opportunities (*e.g.,* generating new sources of revenue). In the absence of mandated disclosure requirements, we rely on the data of third-party research providers, which includes a mix of issuer provided data and estimates. Our analysts then seek to fill data gaps through additional research and analysis, outreach via written requests, meetings, and shareholder resolutions seeking the expanded disclosure we require. These processes for gathering necessary climate-related disclosures are inefficient and resource intensive.'').

[2786] The final rules may also lead to a lower cost of capital for some registrants, as we discuss below.

[2787] *See* letter from Vanguard (''climate risks to be material and fundamental risks for investors and the management of those risks is important for price discovery and long-term shareholder returns.'').

[2788] *See, e.g.,* letter from ABA (''We believe that climate-related matters should be addressed within the same time short- and long-term time frames used in MD&A.''); 17 CFR 229.303(b)(1) (''Analyze the registrant's ability to generate and obtain adequate amounts of cash to meet its requirements and its plans for cash in the short-term (*i.e.,* the next 12 months from the most recent fiscal period end required to be presented) and separately in the long-term (*i.e.,* beyond the next 12 months).''); *see also* section II.C.2.

[2789] *See* 17 CFR 1502(b)–(g).

[2790] *See* P. Krueger, Z. Sautner & L.T. Starks, *The Importance of Climate Risks for Institutional Investors,* 33 Rev. of Fin. Stud. 1067 (March 2020); Ilhan *et al.* (2023).

[2791] *See, e.g.,* letters from CalPERS; Morningstar; Change Finance; *see also* letter from ICI (''We support [transition plan] disclosure as it would inform investors of the nature of the risks and the company's actions or plans to mitigate or adapt to them.''); and the CFA Institute (''We support the Proposed Rule's requirement that a registrant disclose, if it has adopted a transition plan (*i.e.,* a strategy and implementation plan to reduce climate-related risks) as part of its climate-related risk management strategy. We agree with the view that it will facilitate investor understanding of whether the company has a plan and whether it may be effective in the short, medium, and long term in achieving such a transition. Presently, many companies have made net-zero commitments by 2050 but have made little if any disclosures regarding how they plan to get there. This requirement would necessitate that they do so.'')

applicable liability provisions under the Securities Act and Exchange Act. The requirement to provide annual updates should further mitigate these concerns. The updating requirement will be particularly beneficial to investors as it will allow them to analyze the impacts of transition plans on a registrant's operations and financial condition over time.

The requirement to describe quantitatively and qualitatively the material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the transition plan will help investors better understand a registrant's approach to managing climate-related risks so they have information necessary to assess how those actions have impacted the registrant. Including a quantitative description of material expenditures incurred will discourage boilerplate disclosures and, to some extent, facilitate comparisons across registrants. However, we acknowledge commenters who raised concerns about the difficulties of attributing expenditures to these types of activities.[2792] We recognize that similarly situated registrants may take different approaches in their determination of which expenditures to include and whether to quantitatively or qualitatively identify portions of expenditures specifically tied to these activities. To the extent that registrants take different approaches to identifying such expenditures, the comparability benefits of the disclosure will be diminished. Nevertheless, the qualitative discussion accompanying the disclosures should provide the context necessary for investors to understand the registrant's approach to these activities and provide an assessment of the impact of these activities on the registrant's financial condition.

If a registrant uses scenario analysis to assess the impact of climate-related risks on its business, results of operations, or financial condition, and if, based on the results of such scenario analysis, the registrant determines that a climate-related risk is reasonably likely to have a material impact on its business, results of operations, or financial condition, the registrant must describe each such scenario. This description must include a brief description of the parameters, assumptions, and analytical choices used, as well as the expected material impacts on the registrant under each such scenario. Disclosures about the use of scenario analysis to stress test businesses across a range of possible future climate and climate policy scenarios can vary significantly.[2793] As such, the final rules will inform investors about whether a registrant is using scenario analysis to manage a material climate risk, and for those investors who view scenario analysis as an important tool for climate risk management, allow them to factor this information into their investment decisions.[2794] The required disclosures around parameters, assumptions, and analytical choices used by a registrant when conducting scenario analysis will allow investors to better understand the methodology underlying the scenario analysis and thereby improve investors' assessment of the appropriateness of a registrant's strategy and business model in light of foreseeable climate-related risks.[2795]

If a registrant's use of an internal carbon price is material to how it evaluates and manages climate-related risks disclosed in response to Item 1502(a), then the registrant must disclose in units of the registrant's reporting currency information about the price per metric ton of CO_2e, and the total price, including how the total price is estimated to change over the short-term and long-term, as applicable. For registrants that use more than one internal carbon price to evaluate and manage a material climate-related risk, these disclosures apply to each internal carbon price and the registrant must disclose reasons for using different prices. If the scope of entities and operations involved in the use of an internal carbon price described is materially different from the organizational boundaries used for the purpose of calculating GHG emissions pursuant to Item 1505, the final rules require registrants to describe the difference. We expect this disclosure will provide investors with more standardized and decision-useful information regarding whether a registrant's use of an internal carbon price is material and, if so, how it impacts its strategy, results of operations, and financial condition. This is important to address issues with increased voluntary corporate disclosures of internal carbon pricing.[2796] By mandating that registrants disclose any material differences in their boundaries used for internal carbon pricing and GHG emissions measurement, the final rules will help clarify for investors the scope of entities and operations included in a registrant's application of internal carbon pricing and improve the transparency about the methodology underlying the use of internal carbon pricing so that investors may better compare such use across registrants.

In addition to the general cost considerations discussed in section IV.C.1.b, these provisions may have certain unintended effects on registrants and investors. In particular, as some commenters noted, it is possible that requiring registrants to disclose specific facts about their use of transition plans, scenario analysis, and internal carbon prices to address climate-related risks could deter registrants from utilizing these methods or cause them to abandon them, for example because of perceived litigation risk or because of the direct costs of preparing such disclosure.[2797] This could have negative consequences for investors if the use of these methods would have helped registrants better manage climate-related risks and therefore make value-maximizing decisions in light of those risks. However, if registrants' use of these methods becomes a common practice,[2798] due to investor demand or otherwise, this deterrence effect is likely to be limited.

There are potential costs that could result from scenario analysis disclosures under the final rules. First, commenters expressed concern that the disclosure of the scenario analysis results could confuse investors to the extent they inadvertently suggest that the chance of a loss occurring due to a rare event is more likely.[2799] The commenters' concern could materialize if, for

[2792] *See supra* notes 1891 and 1892, and accompanying text.

[2793] *See Using Scenarios to Assess and Report Climate-Related C2ES 20 Financial Risk,* C2ES (Aug. 2018), *https://www.c2es.org/document/using-scenarios-to-assess-and-report-climate-related-financial-risk/*; FRB of New York, *Climate Stress Testing,* Staff Report No. 1059 (2023).

[2794] *See, e.g.,* Council of Institutional Investors; Boston Common Asset Management; Boston Walden Trust; Domini; University Network for Investor Engagement; AllianceBernstein.

[2795] *See, e.g.,* letter from Bloomberg (stating ''scenario analysis is a useful tool to describe the resilience of a company's strategy to the risks and opportunities of climate change and to develop a more informed view of implications for enterprise value and value chains''); *see also supra* notes 540–542 and accompanying text; *see also* letter from Wellington (''[i]nformation concerning scenario analysis would also help investors evaluate the resilience of the registrant's business strategy in the face of various climate scenarios that could impose potentially different climate-related risks.'').

[2796] *See* CDP, *supra* note 608.

[2797] *See, e.g.,* letters from OMERS; Cemex; and NAM.

[2798] *See, e.g.,* Climate Action 100+, *Progress Update 2022* (2022), available at *https://www.climateaction100.org/wp-content/uploads/2023/01/CA-100-Progress-Update-2022-FINAL-2.pdf* (stating that ''91% of focus companies have now aligned with TCFD recommendations, either by supporting the TCFD principles or by employing climate scenario planning'').

[2799] *See, e.g.,* letter from the BPI.

instance, a scenario analysis suggests a heightened risk of a once-in-a-hundred-year flood over the next 30 years, and disclosure of this causes certain investors, particularly those not familiar with such analysis, not to invest in the registrant despite the fact that the registrant actually has the same risk profile as other companies that have not made this disclosure. However, we expect any potential investor confusion in such a case will be mitigated because, under the final rules, the registrant would not be required to disclose this information if it determines that this scenario, like other very remote scenarios, are not likely to have a material impact on its business or financial condition. In addition, when disclosure is required, information accompanying the scenario analysis results—such as the assumptions and parameters underlying the analysis—should help provide investors the necessary context for understanding the import of the disclosed analysis.[2800] Second, in disclosing scenario analysis assumptions and inputs as well as information about internal carbon prices, a registrant may face competitive harm to the extent that the disclosures reveal competitively sensitive information, such as asset allocation decisions. However, we expect that the degree of flexibility offered by the disclosure requirements in the final rules will help avoid the exposure of confidential or proprietary information, though they may make the disclosures less comparable.

Overall, by focusing on climate-related risks that are material to the registrant's business, the final rules seek to avoid imposing costs associated with disclosing large amounts of detailed information that may be less relevant to investors. Finally, some of the required disclosures (*e.g.,* forward-looking statements concerning transition plans, scenario analysis, and internal carbon pricing) will be subject to PSLRA safe harbors, which may reduce litigation costs where the safe harbors are applicable.[2801]

c. Governance Disclosure

The final rules require a registrant to disclose information concerning the board's oversight of climate-related risks as well as management's role in assessing and managing the registrant's material climate-related risks.[2802] The final rules require a registrant to identify, if applicable, any board committee or subcommittee responsible for the oversight of climate-related risks and to describe the processes by which the board or such committee or subcommittee is informed about such risks. Additionally, if there is a disclosed climate-related target or goal or transition plan, the registrant must describe whether and how the board oversees progress against the target or goal or transition plan. In describing management's role in assessing and managing the registrant's material climate-related risks, the registrant should address, as applicable, the following non-exclusive list of disclosure items: (1) whether and which management positions or committees are responsible for assessing and managing climate-related risks and the relevant expertise of the position holders or committee members; (2) the processes by which such positions or committees assess and manage climate-related risks; and (3) whether such positions or committees report information about such climate-related risks to the board of directors or a committee or subcommittee of the board of directors. Like other parts of the final rules, these provisions provide some flexibility for registrants to tailor their disclosures to suit their particular facts and circumstances while helping to ensure that investors receive information regarding the board's and management's role in addressing and managing climate-related risks.[2803]

The disclosures required by the final rules will enable investors to better understand how the company's leadership (*i.e.,* its board of directors and management) is informed about climate-related risks and how the company's leadership considers such factors as part of its business strategy, risk management, and financial oversight. Managers and directors typically play a key role in identifying and addressing these risks.[2804] Commenters stated that governance-focused information on how such risks are being overseen by the board is ''fundamental'' for investors, and supported ''full disclosure with respect to how and to whom within the company's organization accountability for climate-related risks is assigned'' so that investors may assess a registrant's risk management systems in this context.[2805] The disclosures required by the final rules will inform investors about whether the organization has assigned climate-related responsibilities to management-level positions and/or to the board and, if so, whether those responsibilities include assessing and/or managing climate-related risks. As a result, investors will be better able to understand and evaluate the processes, if any, by which the registrant assesses and manages material climate-related risks.

Information regarding whether and how the board oversees progress on material climate-related targets or goals or transition plans will provide useful context for the final rules' other targets or goals or transition plan disclosure requirements. Researchers have found that oversight systems at the board level can provide an important signal about how directors of the registrants recognize and address relevant climate-related risks.[2806]

The final rules require disclosure of board-level governance, if any, of climate-related risks irrespective of the materiality of those risks. This disclosure will allow investors to understand whether climate-risks are among those that are significant enough to be considered at the board level and how management and the board collectively oversee such risks. Regardless of the potential impact of such risks to the company, the decision to oversee climate-related risks at the board level as opposed to delegating

[2800] We note that other disclosure requirements, such as those relating to market risk disclosures, convey to investors complex information about uncertain future risks that registrants face.

[2801] *See supra* section II.J.3 for a discussion of the disclosures required under the final rules that will be subject to PSLRA safe harbors. *See also* 17 CFR 229.1507.

[2802] *See* 17 CFR 229.1501.

[2803] *See, e.g.,* letters from Wellington (''The proposed enhancements to disclosure on governance would help investors assess whether the issuer is appropriately considering risks and provide investors with valuable information about how the issuer plans to address these risks. This disclosure, in turn, gives investors insight into potential future capital allocation, expansion plans, and potential vulnerabilities associated with the issuer's business model (*e.g.,* significant exposure to the impact of a carbon price).''); and Institute of Internal Auditors (''The board is accountable for the success of the organization and needs assurance from an independent source to fulfill its duties. . . . Effective governance inspires stakeholders' confidence and trust that a company's decisions, actions, and outcomes can address priorities and achieve the organization's desired purpose.'').

[2804] *See* Henry He Huang, Joseph Kerstein, Chong Wang & Feng Wu, *Firm Climate Risk, Risk Management, and Bank Loan Financing,* 43 Strategic Management Journal 2849 ((June 2022); *see also* Walid Ben-Amar & Philip McIlkenny, *Board Effectiveness and the Voluntary Disclosure of Climate Change Information,* 24 Business Strategy and the Environment 704 (2015).

[2805] *See, e.g.,* letter from Canadian Coalition for Good Governance (noting that ''If a company cannot articulate how material climate-related risks are identified and clearly integrated into its governance philosophy and approach, this is a significant red flag for investors.''); *see also* GHGSAT who state that ''A challenge to the implementation of the TCFD framework has been a lack of education on the topic at the board level and a shortage of time for boards to consider the issues.''

[2806] V. Ramani & B. Ward, How Board Oversight Can Drive Climate and Sustainability Performance, 31 J. of Applied Corp. Fin. 80 (2019).

entirely to management can provide useful information for understanding the company's overall approach to risk management and how climate-related risks factor into such processes.

Commenters asserted that the proposed rules may disproportionally burden small registrants that may not have the internal management organizations and processes in place to assess and manage climate-related risks.[2807] This provision of the final rules does not require registrants to disclose any information when such internal management organizations and processes are absent. In these cases, registrants will not incur any direct costs associated with producing these disclosures. As with any other disclosure requirement, smaller registrants that are required to disclose governance information under the final rules may be disproportionally affected in terms of costs relative to larger registrants because of the direct fixed costs associated with producing disclosure.

Finally, we recognize that the disclosure requirements may either prompt or deter companies from overseeing climate-related risks at the board or management level. To the extent that the final rules lead companies to alter their governance structures in ways that are less efficient (*e.g.,* by diverting board or management attention from other pressing corporate matters or devoting internal resources and expertise to climate-related risks at the expense of other concerns), investors could incur costs in the form of diminished shareholder value. One commenter noted that the adverse effects could be particularly pronounced for smaller registrants that may be less likely to have internal management organizations and processes in place to assess and manage climate-related risks.[2808] We acknowledge these potential costs but also note that several changes from the proposal help to mitigate such effects. For example, by adopting less prescriptive disclosure requirements compared to the those in the proposal and only requiring disclosure of management's role in overseeing material climate related risks, the final rules are less likely to have such unintended effects on the registrant's governance structure and processes. Finally, we reiterate that the final rules are focused on disclosure and do not require registrants to change their governance or other business practices.

Other commenters expressed concern that the proposed requirement to disclose board members' climate expertise would impose costs by placing pressure on registrants to fill limited numbers of board seats with individuals with a narrow skillset, rather than those with wide ranging expertise or skillsets that may be better suited to the company's needs.[2809] Some commenters also noted the limited number of climate-risk experts compared to the demand for such individuals for board seats, which could increase costs for registrants that feel pressured to appoint climate-risk experts to the board as a result of the final rules.[2810] Similar concerns were raised with respect to the proposed requirement to disclose management's relevant expertise.[2811] In light of the comments, the Commission is not requiring the disclosure of board expertise. We are, however, adopting the requirement to disclose the relevant expertise of management to provide investors with useful information about the expertise of those responsible for identifying material climate risks and communicating those risks to the board.[2812] We acknowledge the incremental cost of making this disclosure and the potential for indirect costs if registrants decide to hire climate experts in response to the disclosure requirement. While acknowledging these costs, we reiterate that the Commission remains agnostic about whether and/or how registrants govern climate-related risks. Registrants remain free to establish or retain the procedures and practices that they determine best fit their business. Overall, we agree with commenters that stated that investors will benefit from this disclosure given the direct role that management plays in overseeing any material climate-related risks.[2813]

d. Targets and Goals Disclosure

The final rules will require a registrant to disclose any climate-related target or goal if such target or goal has materially affected or is reasonably likely to materially affect the registrant's business, results of operations, or financial condition.[2814] Under the final rules, a registrant must provide any additional information or explanation necessary to an understanding of the material impact or reasonably likely material impact of the target or goal, including, as applicable, a description of: (1) the scope of activities included in the target; (2) the unit of measurement; (3) the defined time horizon by which the target is intended to be achieved and whether the time horizon is based on goals established by a climate-related treaty, law, regulation, policy, or organization; (4) if the registrant has established a baseline for the target or goal, the defined baseline time period and the means by which progress will be tracked; and (5) a qualitative description of how the registrant intends to meet these climate-related targets or goals. Registrants are also required to provide certain information if carbon offsets or RECs have been used as a material component of a registrant's plan to achieve climate-related targets or goals. Furthermore, registrants must disclose any progress made toward meeting the target or goal, how any such progress has been achieved, any material impacts to the registrant's business, results of operations, or financial condition as a direct result of the target or goal (or actions taken to make progress toward meeting the target or goal), and include quantitative and qualitative disclosure of any material expenditures and material impacts on financial estimates and assumptions as a direct result of the target or goal (or actions taken to make progress toward meeting the target or goal). This disclosure must be updated each fiscal year by describing the actions taken during the year to achieve its targets or goals.[2815]

The final rules will help investors to understand how a registrant's target or goal impacts its business and financial condition. Such disclosure will enable investors to better understand the costs associated with pursuing these objectives as well as the benefits associated with achieving them. While some registrants may currently provide disclosure about their climate-related targets or goals, those voluntary disclosures generally do not provide investors with an understanding of whether and how the climate-related targets or goals materially impact or are reasonably likely to materially impact the registrant's business, results of operations, or financial condition. In addition, without a requirement to disclose material targets or goals, investors have no way of knowing if there are nonpublic targets or goals that could be relevant to their investment decisions, or if the registrant has simply not set any such targets or goals. Furthermore, voluntary disclosures

[2808] *See* letter from Chamber.

[2809] *See supra* note 637 and accompanying text.

[2810] *See, e.g., supra* note 650.

[2811] *See, e.g., supra* note 695 and accompanying text.

[2812] *See supra* section II.E.2.c.

[2813] *See* section II.E.2.ii.

[2814] *See* 17 CFR 229.1504.

[2815] As with forward-looking statements concerning transition plans, scenario analysis, and internal carbon pricing, forward-looking statements related to targets and goals will be covered by the PSLRA safe harbor, which may reduce litigation costs.

about climate-related targets or goals are often missing key pieces of information that investors need to understand them, such as the plan for achieving them.[2816] The final rules will address these knowledge gaps by supplementing the existing publicly available information.

The final rules will allow for greater comparability across registrants. However, we recognize that the requirement to disclose targets and goals may prompt registrants to forgo establishing targets or goals that may be or may become material in order to avoid the disclosure requirements. This effect may be mitigated to the extent that registrants also consider other factors (*e.g.,* investor demand) for having or not having climate-related targets and goals when making such decisions.

The greater transparency from the required disclosure of specific details related to these targets and goals in Commission filings may help alleviate concerns regarding the issue of greenwashing in existing voluntary disclosures, as noted by commenters.[2817] Academic studies have found that existing information about climate-related targets and goals can suffer from considerable imprecision and inaccuracy despite efforts by certain organizations to create more accountability and transparency.[2818] As a result, under the current voluntary framework, investors may not be able to distinguish between targets and goals that are material and those that are more akin to puffery and are unlikely to be material to a registrant. For example, disclosures that explicitly link a target to a material impact on a registrant's financial condition will both inform investors about the potential costs and benefits of the target, while also lending credibility towards the registrant's efforts to achieve the target. Thus, by requiring disclosures about material targets and goals in Commission filings, the final rules should enhance the reliability and utility of such information for investors.[2819] In addition, since any greenwashing under the current voluntary disclosure regime could lead investors to over- or under-estimate the potential impact of targets or goals on a registrant's business strategy, results of operations, or financial conditions, the disclosures required by the final rules will further enable investors to draw more informed conclusions about how targets and goals may impact the business.

We are not adopting the proposed requirement to disclose metrics quantifying a registrant's progress towards its target or goal. By not requiring registrants to provide quantification of its targets and goals metrics, we avoid some of the cost concerns raised by comments associated with such disclosure, including Scope 3 emissions disclosures and other potentially difficult-to-calculate metrics.[2820] Nevertheless, we expect the final rules to result in some costs associated with developing systems for measuring progress made on targets or goals because registrants may still have to track their progress for purposes of providing the required disclosures, if they do not already have those processes in place. Further, the final rules' more flexible approach may limit the usefulness of targets and goals disclosures relative to the proposed rules. In particular, if a registrant provides boilerplate qualitative disclosures, then it would be harder for investors to assess the disclosures' credibility. However, the final rules requirement to provide quantitative and qualitative disclosures of material expenditures and material impacts on financial estimates and assumptions related to targets and goals will mitigate this concern to some extent. This disclosure will also inform investors about the financial implications of pursuing these targets and goals. For instance, investment in achieving targets could be value-enhancing in the long run but reduce cash flow in the short run. By facilitating a better understanding of these impacts, investors will be better positioned to value companies and make investment and voting decisions.

Quantitative disclosures of expenditures and impacts may facilitate comparisons across registrants; although, as noted in section IV.C.2.b above, the comparability benefits of this quantitative disclosure depend on the degree of variation in management determinations of which portion of their expenditures can be directly attributable to targets and goals. In addition, as discussed above, these disclosures may lead some registrants to report figures that overstate the impact of targets and goals (if, for example, the registrant determines not to deduct the portion of expenditures that are unrelated to pursuit of the target or goal). However, we expect that accompanying qualitative discussion should provide investors the context necessary to draw informed conclusions.

In a change from the proposal, the final rules do not require disclosure of interim targets set by the registrant. Rather, registrants have flexibility to determine whether to disclose their interim targets, if any, in describing their plans to achieve their targets and goals or in the context of describing their progress towards such targets or goals.

If carbon offsets or RECs have been used as a material component of a registrant's plan to achieve climate-related targets or goals, the final rules require registrants to separately disclose the amount of carbon avoidance, reduction, or removal represented by the offsets or the amount of generated renewable energy represented by the RECs, the nature and source of the offsets or RECs, a description and location of the underlying projects, any registries or other authentication of the offsets or RECs, and the costs of the offsets or RECs. Describing the features of RECs will help investors understand how registrants are managing their climate-related risks.[2821] For example, one commenter said that ''not all offsets or RECs are equal'' and that information on RECs would ''allow investors to better assess the use of capital, the integrity and validity of such offsets or RECs, and the degree that the registrants emissions profile and offsets or RECs could be at risk due to policy or regulation changes.'' [2822] These disclosures also will provide context for any required disclosures of Scope 1 or Scope 2 GHG emissions (*i.e.,* if such emissions are material for an LAF or an AF). In addition, more complete disclosures about carbon offsets and RECs may help deter potential greenwashing that results from a lack of reliable basic information. Because these disclosures comprise basic facts associated with the registrant's purchased carbon offsets and RECs, we do not expect that collecting and reporting this information will constitute a significant burden.

[2816] *See, e.g.,* Kenji Watanabe, Antonios Panagiotopoulos & Siyao He, *Assessing Science-Based Corporate Climate Target-Setting,* (June 9, 2023), at Appendix 4, available at *https://www.msci.com/www/research-report/assessing-science-based/03881548607.*

[2817] *See, e.g.,* letters from D. Hileman Consulting; and Sen. Schatz *et al.*

[2818] *See, e.g.,* Bingler *et al.; see also* Memorandum Concerning Staff Meeting with Representatives of South Pole (Jan. 14, 2022) (''South Pole Memo'').

[2819] *See, e.g.,* letter from Center Amer. Progress (''Disclosures around management's plans to address climate risks, including how management is meeting or not meeting the targets or goals in those plans, are essential for investors and other market participants.'').

[2820] *See* section II.H.2. As noted above, the final rules will not require disclosure of Scope 3 emissions information, including in the context of a registrant's targets or goals.

[2821] *See, e.g.,* letters from AllianceBernstein; Carbon Direct; CarbonPlan; and Ceres.

[2822] *See* letter from CalPERS.

e. GHG Emissions Metrics

The final rules will require LAFs and AFs (that are not SRCs or EGCs) to disclose Scope 1 and/or Scope 2 emissions, if such emissions are material, for their most recently completed fiscal year and, to the extent previously disclosed in a Commission filing, for the historical fiscal year(s) included in the consolidated financial statements in the filing.[2823] By specifying that these registrants must provide information on material GHG emissions, the final rules will give investors access to a more comprehensive set of emissions data than under the baseline. Investors can use this data to assess exposures to certain types of climate-related risks and provide quantitative contextual data to supplement a registrant's description of the material climate-related risks it faces, as well as progress on the management of those risks, as a part of assessing the registrant's overall business and financial condition. Because the value of a company's equity is derived from expected future cash flows, disclosure of GHG emissions can help investors understand whether those emissions are likely to subject the registrant to a transition risk that will materially impact its business, results of operations, or financial condition in the short- or long-term and incorporate risks associated with such future cash flows into asset values today. Indeed, academic literature shows that risks both in the near term and far into the future are priced into current asset valuations.[2824] Thus, for many registrants, GHG emissions can be helpful to assess the registrants' exposure to climate-related risks, particularly to material transition risks.[2825]

As noted in section IV.A, many registrants currently do not provide quantitative disclosures on their Scope 1 and 2 emissions. This lack of information on emissions makes it more difficult for investors to assess the degree of risk in individual companies, to compare those risks across companies, and to value securities. By requiring disclosure of GHG emissions for specified registrants for the same historical periods as those included in the financial statements in the relevant filing, the final rules will help investors develop a more accurate assessment of those registrants' exposure and approach to climate-related risks over time. For example, Scope 1 and Scope 2 emissions disclosure may be relevant to investors' assessment of a registrant's progress made on targets or goals or towards its transition plan.[2826]

The final rules will provide informational benefits beyond those associated with the voluntary disclosure of emissions that may be found in sustainability reports or other places, such as company websites. In particular, the overall mix of information disclosed to the market can be distorted when only a certain subset of companies (*e.g.,* those with lower emissions or those that face lower costs of emissions measurement) have stronger incentives to make voluntary disclosures. The final rules may offset this distortion because disclosure is only required if a registrant determines that its Scope 1 and Scope 2 emissions are material. The materiality qualifier will allow registrants that determine that their emissions are immaterial to avoid the full costs of emissions measurement and disclosure. It will also mitigate the risk that investors could be burdened with large amounts of information that is less relevant for their investment and voting decisions. In addition, mandatory disclosure of Scope 1 and Scope 2 emissions data in Commission filings may deter potential greenwashing that could occur with voluntary disclosures.[2827]

Some commenters questioned the value of GHG disclosures in light of existing requirements for some registrants to report emissions pursuant to the GHGRP.[2828] As previously discussed,[2829] the data available from the GHGRP is generally not suited to help investors understand how a registrant's exposure and approach to managing climate-related risks may impact its future cash flows and profitability for several reasons. First, the GHGRP requires that emissions are reported at the facility-level rather than the registrant-level. Second, suppliers of certain products must report their ''supplied emissions,'' conditional on these emissions exceeding a specified threshold.[2830] Third, GHGRP reporting is limited to U.S. facilities. Some commenters asserted that the GHGRP could not be substituted for the proposed rules given the different disclosure requirements and the different objectives of the two reporting regimes.[2831]

While there are differences between the EPA's GHGRP and the Scope 1 and 2 emissions disclosures in the final rules, we expect that registrants subject to both reporting regimes would face reduced costs of compliance with the final rules to the extent there is overlap between the reporting requirements of the GHGRP and the final rules. As discussed in section IV.A, the GHGRP covers 85 to 90 percent of all GHG emissions in the U.S. and includes those emissions referenced by the GHG Protocol and included in the final rules' definition of ''greenhouse gasses.'' [2832] As such, we expect that entities subject to the GHGRP disclosure and reporting requirements may consequently have lower incremental information gathering costs under the final rules for those emissions already required to be calculated and reported by a registrant pursuant to the GHGRP. For example, because both the GHGRP and the final rules require companies to collect information to report and disclose their Scope 1 emissions, to the extent that the information and reporting activities overlap, registrants subject to both the

[2823] *See* 17 CFR 229.1505.

[2824] For evidence that points to the pricing of short-term climate-related risks, *see* R. Faccini, R. Matin & G. Skiadopoulos, *Dissecting Climate Risks: Are They Reflected in Stock Prices?* 155 J. of Banking & Fin., Article 106948 (Oct. 2023); Huynh & Xia (2021). For evidence that points to the pricing of long-term climate-related risks, *see* M. Painter, *An Inconvenient Cost: The Effects of Climate Change on Municipal Bonds,* 135 J. of Fin. Econ. 468 (2020); D.D. Nguyen, S. Ongena, S. Qi & V. Sila, *Climate Change Risk and the Cost of Mortgage Credit,* 26 Rev. of Fin. 1509 (2022); Huynh & Xia (2021).

[2825] *See* letters from CALSTRS; Vanguard; Fidelity; BlackRock; CALPERS; and State of NY Office of the Comptroller.

[2826] Research has shown that issuers tend to ''cherry-pick'' the baseline year (*i.e.,* pick the year with highest emissions within the past few years) when forming an emissions target so that any progress appears in the most favorable light. *See* P. Bolton & M. Kacperczyk, *Firm Commitments,* National Bureau of Economic Research, No. w31244 (May 2023). The final rules will thus benefit investors by helping them identify when such cherry-picking occurs so as to arrive at a more informed assessment about the registrant's progress towards meeting its targets or goals.

[2827] R. Yang, *What Do We Learn from Ratings About Corporate Social Responsibility? New Evidence of Uninformative Ratings,* 52 J. of Fin. Intermediation, Article 100994 (Oct. 2022); Soh Young In & Kim Schumacher, *Carbonwashing: A New Type of Carbon Data-related ESG Greenwashing* (2021), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3901278* (retrieved from SSRN Elsevier database); V. Kalesnik, M. Wilkens & J. Zink, *Do Corporate Carbon Emissions Data Enable Investors to Mitigate Climate Change?,* 48 J. of Portfolio Mgmt. 119 (2022) (''Kalesnik *et al.*'').

[2828] *See supra* section IV.A.3 and letters from Chamber; Elaine Henry; BOK Financial; David R. Burton; Permian Basin; and Petroleum Association.

[2829] *See supra* section IV.A.3.

[2830] In addition, as previously discussed, the EPA emissions data only reflects a portion of emissions. *See supra* section IV.A.3. The EPA's emissions data therefore presents challenges for investors to use, especially as the data are made public by facility and not by company. While each facility is matched to its parent company, this company may not be the entity registered with the SEC and thus the reported information may be less relevant to investors. *See also* letter from EPA (containing a tabular comparison of the EPA disclosures to the proposed disclosures).

[2831] *See, e.g.,* letters from EPA; and Marathon Oil.

[2832] *See supra* section IV.A.3.

final rules and the GHGRP may face lower incremental information gathering costs. However, as one commenter noted, ''[t]he Commission-proposed regulation is not completely in alignment with the US EPA regulation. Thus, an assessment, plan of action, and implementation of changes will be needed for many companies to be compliant with the requirements of both agencies.'' [2833] In addition as noted above, this lower incremental cost would only apply to direct emissions from U.S.-based facilities, not registrants' international facilities or operations.

Limiting the disclosure requirement to larger companies (*i.e.,* those with greater resources that tend to be already calculating emissions, as noted in section IV.A) will help to balance the concerns of commenters who stated that the evolving nature of current emissions measurement technologies could impose significant compliance costs on registrants, especially those not currently familiar with reporting this information.[2834]

Although the final rules limit disclosures to circumstances in which emissions are material for registrants, we expect most, if not all, LAFs and AFs that are not EGCs or SRCs will need to assess or estimate their Scope 1 and 2 emissions to reach a materiality determination. As a result, we expect these registrants will, to some extent, need to adopt controls and procedures to assess the materiality of their Scope 1 and 2 emissions and determine whether disclosure is required if they do not already have them in place. Registrants that determine that their Scope 1 and 2 emissions are material may likewise need to adopt further controls and procedures, including measurement technologies and other tools to track and report the information to the extent they do not already do so. The final rules may also affect registrants that currently track and/or report this information.[2835] For example, some registrants may only be measuring some Scope 1 or Scope 2 emissions.[2836] Any investments in systems or technologies to better measure Scope 1 and Scope 2 emissions will improve the quality of available data [2837] on emissions but will also contribute to the direct costs of compliance.[2838]

The benefits of this component of the final rules depend on the extent to which Scope 1 and 2 emissions disclosures are accurate and thus provide reliable reflections of registrants' exposure to material climate-related risks, their management of that risk, and their progress on transition plans and/or targets and goals (to the extent they have them). Several commenters noted that many registrants have had more experience measuring and disclosing Scope 1 and 2 emissions than Scope 3 emissions, and that those methodologies, from their experiences, are well-established and are considered fairly robust.[2839] Nevertheless, according to studies as well as commenter feedback, there may be issues with errors and inconsistencies in voluntary Scope 1 and 2 emissions disclosures.[2840] The final rules will benefit investors by improving the accuracy and reliability of this information—first through requiring registrants to subject GHG emissions disclosures, to the extent they are required to make them, to disclosure controls and procedures; and second, by requiring assurance. The final rules also permit the disclosure of reasonable estimates for Scope 1 and 2 emissions provided that such estimates are accompanied by disclosure of underlying assumptions and reasons for using estimates, which will help investors better understand the metrics that registrants are disclosing.

Scope 1 and 2 emissions may not fully reflect a registrant's exposure to transition risks because some of those risks would only be captured through other metrics such as Scope 3 emissions.[2841] For example, registrants facing similar exposure to emissions-related climate risks may report different Scope 2 emissions levels depending on, for example, whether they pay directly for their utilities (counted as Scope 2) or their leases provide for utilities expenses (counted as Scope 3), or, as another example, whether they have employees who work from home and therefore who do not contribute directly to utilities expenses. Recognizing these limitations, the final rules also require disclosures on methodology, significant inputs, significant assumptions, organizational boundaries, operational boundaries, and reporting standard used with respect to Scope 1 and 2 emissions. These disclosures will provide additional context to help investors understand the disclosures and will enable investors to draw more reliable comparisons across registrants. For example, disclosure of operational boundaries will help distinguish registrants that rely on utilities provided by third parties from those that pay directly for their utilities, which will assist investors in accounting for this difference when comparing reported emissions and thus climate-related risk across registrants.

In a change from the proposal, we are exempting SRCs and EGCs from the GHG emissions disclosure requirements in order to limit the costs of this disclosure requirement for such registrants. This exemption should also mitigate the risk of deterring prospective EGCs or SRCs from conducting IPOs or inducing EGCs or SRCs to deregister under the Exchange Act as a result of the costs associated with compliance with the requirements to disclose material Scopes 1 and 2 emissions. Registrants that already measure their GHG emissions tend to be larger companies (with greater exposure to various climate-related transition risks by virtue of their size and economic footprint) as observed in our own baseline analysis (see Table 5) and in the assessments of commenters, many of whom supported exemptions for SRCs and EGCs as they would be disproportionately impacted by the requirement.[2842] While these

[2833] Letter from Marathon Oil.

[2834] *See* letters from Blackrock; Business Roundtable; and Chevron. *See also* Kalesnik, *et al., supra* note 2827.

[2835] As we discuss below, the costs for existing registrants who track and disclose emissions will be limited because the final rules enable registrants to continue to use the operational and organizational boundaries they already use to track emissions.

[2836] *See* Kalesnik, *et al., supra* note 2827 (noting that many registrants do not fully measure their Scope 1 emissions).

[2837] A number of studies have raised concerns about the quality of existing emissions data. For example, one study found that third-party estimates of emissions, which represent a significant fraction of the emissions data available in several existing databases, are materially less accurate than self-reported emissions data by issuers. *See* Kalesnik *et al., supra* note 2827. Another study examined emissions data reported to CDP between 2010 and 2019 and found that 38.9% of the reports exhibited disparities between the reported total emissions and sum of reported emissions by various sub-categories. *See* S. Garcia-Vega, A.G. Hoepner, J. Rogelj & F. Schiemann, *Abominable Greenhouse Gas Bookkeeping Casts Serious Doubts On Climate Intentions of Oil and Gas Companies* (working paper, Mar. 2023), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4451926 (retrieved from SSRN Elsevier database).*

[2838] *See* sections IV.C.1.b and IV.C.3 for additional information on the associated compliance costs.

[2839] *See* letters from National Retail Federation; AHLA; and Aerospace Industries Association.

[2840] *See* Kalesnik *et al., supra* note 2827; Garcia-Vega *et al., supra* note 2837; *see also* letter from Calvert (''Research demonstrates about 30% of companies that disclose such information in their own reporting make errors on a regular to periodic basis, despite the well-established rules and systems that already exist to ensure proper reporting of such emissions. In many cases, this appears to stem from a lack of effective internal controls or well-functioning monitoring systems.'').

[2841] *See* letters from Wellington; and Calvert.

[2842] *See, e.g.,* letters from U.S. SBA (''Small entities will need to allocate larger shares of their

Continued

exemptions may limit the benefit of achieving greater consistency and comparability across registrants, exempting SRCs and EGCs from this disclosure requirement at this time is appropriate given the relatively larger burden GHG emissions reporting requirements could have on these firms [2843] and the differences in the existing levels of climate-related disclosure between larger companies and smaller companies.

Commenters raised concerns about the costs of providing GHG emissions on a disaggregated basis.[2844] However, many commenters also explained that disaggregated disclosures could be decision useful, as emissions from specific constituent gases could have differential effects on a company's cash flows or business operations.[2845] For example, a registrant may be subject to methane fees by the EPA, in which case information about the registrant's methane emissions could factor into investors' decision making. To balance these views, some commenters suggested that the final rules should require constituent gases to be disclosed on a disaggregated basis only when individually material.[2846] We agree with those commenters and believe that this approach will provide investors with decision-useful information about GHG emissions without imposing undue compliance costs on registrants to produce disaggregated data in circumstances in which the disaggregation may not be particularly useful for investors.[2847]

The final rules also permit registrants to calculate and disclose GHG emissions according to the methodology that best matches their particular facts and circumstances. The benefit of this flexible approach is that registrants will have the opportunity to provide investors with information about their GHG emissions using the latest and most suitable methodology as measurement technologies and standards continue to develop. For example, while many companies calculate their GHG emissions pursuant to the GHG Protocol, others utilize different approaches, such as certain ISO standards.[2848] This flexibility, which may include registrants' ability to round as appropriate, will serve to limit costs.[2849] Conversely, it could also make comparisons less straightforward, which may attenuate some of the expected benefits of the final rules. However, there are several reasons to believe that this reduction in comparability will not significantly undermine the utility of the required disclosures. First, the required disclosures will expand upon and enhance the quality of the existing set of GHG emissions disclosures that investors already find useful despite the variation in methodologies that produce existing emission disclosures.[2850] Second, the contextual disclosures (*e.g.,* operational boundaries) will enable investors to better understand the quantitative disclosures and make adjustments to facilitate comparisons with other registrants that are otherwise not possible under the baseline. Third, to the extent that industry-specific approaches to disclosing emissions continue to develop and evolve, the final rules will permit registrants within those industries to adopt those approaches, which will help investors to compare peer companies within an industry. Finally, as we discuss in the next subsection, obtaining assurance over GHG emissions disclosure provides investors with an additional degree of reliability regarding not only the figures that are disclosed, but also the key assumptions, methodologies, and data sources the registrant used to arrive at those figures.

These disclosures complement the other required disclosures about the organizational boundaries (used to calculate emissions versus those used in their financial statements) as well as carbon offsets and RECs, which offer important context for facilitating comparisons between companies as discussed above. In fact, by not requiring organizational boundaries to necessarily conform to those used in the company's consolidated financial statements, the final rules permit the development of a standardized framework (*e.g.,* control approach) for measuring emissions across registrants. Commenters supported this approach as it would allow registrants to continue to measure emissions using their current approach and procedures.[2851] That is, by not imposing a prescriptive methodology for GHG emissions disclosures, the final rules provide space for the continued development of a shared reporting framework for issuers to disclose information that ultimately may enhance the degree of comparability of registrant-level GHG emissions data, to the benefit of investors, registrants and the market (relative to the baseline).[2852]

Finally, as discussed in section II.I above, we are following the suggestions of many commenters and allowing registrants more time to report emissions given the inherent challenges with reporting sooner that commenters highlighted.[2853] By delaying the requirement to disclose GHG emissions until later in the year, the final rules will provide additional time to prepare the information for filing (more consistent with current voluntary reporting practices),[2854] which should improve its accuracy and reduce costs for registrants but may result in delayed disclosure in some instances. The delay in annual reporting may also allow registrants to leverage disclosures they may have already prepared for other reporting regimes. Nonetheless, even with the extended filing deadline for

technological, financial, and staff resources to comply with the proposed rules. Representatives from the biotechnology, plastics, and equipment manufacturing industries have reported to Advocacy that small businesses in their industries have not traditionally tracked GHG emissions or other climate-related metrics. These businesses would either need to develop modeling software to track climate metrics in-house or hire third-party consultants to do so . . . Small private companies have also voiced that the costs of collecting and analyzing GHG emissions data could be prohibitive.''); Soros Fund (suggesting that EGCs and SRCs should be allowed additional time to adjust to climate disclosure requirements, be afforded an additional safe harbor and be exempt from financial statement metrics disclosure); and SBCFAC Recommendation (recommending ''scaling and delaying the compliance requirement for emerging growth companies, along with smaller reporting companies.'').

[2843] Even for SRCs and EGCs that are currently calculating GHG emissions, there could be certain fixed costs associated with preparing this information for disclosure in Commission filings that would not scale with the size of the registrant and would therefore be more burdensome to these entities. We expect benefits to scale with the size of the firm.

[2844] *See, e.g.,* letters from ABA; ERM CVS; Sullivan Cromwell; and T. Rowe Price.

[2845] *See, e.g.,* letters from PwC; and WRI.

[2846] *See, e.g.,* letter from Deloitte & Touche (''Many emissions category calculation methods are estimate-based and rely on proxy data; the potential variance in actual can be significant and is largely unknown in many instances. Especially given these challenges, the Commission may consider whether the disaggregated data by each constituent greenhouse gas should only be required to be disclosed when individually material.'').

[2847] *Id.*

[2848] *See* letters from Futurepast (referencing ISO 14064–1, Specification with Guidance at the Organization Level for Quantification and Reporting of Greenhouse Gas Statements; and ISO 14067, Carbon Footprint of Products—Requirements and Guidelines for Quantification); and ISO Comm. GHG; *see also, e.g.,* letters from Alphabet *et al.;* As You Sow; Beller *et al.;* CalSTRS; CFA; Dell; Deloitte & Touche; Engine No. 1; ERM CVS; KPMG; Morningstar; Soc. Corp. Gov.; and WRI.

[2849] *See* letter from AGs of TX *et al.*

[2850] *See, e.g.,* letters from Vanguard; Fidelity; BlackRock; CALSTRS; and CALPERS for investors who derive utility from existing emissions disclosures.

[2851] *See, e.g.,* letters from API; ACORE; AHLA; and Chevron.

[2852] *See, e.g.,* letters from Alphabet *et al.;* and Alliance-Bernstein.

[2853] *See, e.g.,* letters from Morningstar; and American Banker.

[2854] *See, e.g., supra* note 2570 (stating ''many companies still take more than 12 months after their fiscal year to disclose their sustainability data'').

registrants, investors will still benefit from receiving this information in a more timely and predictable manner than they currently do.[2855]

f. Attestation Over GHG Emissions Disclosure

The proposed rules would have required LAFs and AFs to provide an attestation report covering the disclosure of its Scope 1 and Scope 2 emissions at the limited assurance level for the second and third fiscal years after the Scopes 1 and 2 emissions disclosure compliance date, and at the reasonable assurance level beginning in fiscal year four. In a change from the proposal, the final rules require LAFs and AFs to provide an attestation report at the limited assurance level for Scope 1 and/or Scope 2 emissions disclosures beginning the third fiscal year after the compliance date for GHG emissions reporting and require an LAF to provide an attestation report at the reasonable assurance level for Scope 1 and/or Scope 2 emissions disclosures beginning the seventh fiscal year after the compliance date for GHG emissions reporting.[2856]

Many commenters stated that the proposed assurance requirements would be too costly.[2857] In response to these commenters' concerns, and in a shift from the proposal, the final rules will exempt SRCs and EGCs from the requirement to obtain assurance, since SRCs and EGCs will not be required to disclose GHG emissions. In addition, the final rules do not require AFs to provide attestation reports at the reasonable assurance level. We have determined that it is appropriate to apply the reasonable assurance requirement to a more limited pool of registrants—LAFs—at this time because a number of LAFs are already collecting and disclosing climate-related information, including GHG emissions data and larger issuers generally bear proportionately lower compliance costs than smaller issuers due to the fixed cost components of such compliance.

For both LAFs and AFs, the extended phased in compliance dates will further address concerns about the immediate costs of compliance under the final rules.[2858] Specifically, the final rules provide registrants with two phased in compliance periods—one phased in compliance period before GHG emissions disclosures are required, and another, later phased in compliance period before assurance over GHG emissions disclosures is required. These phased in compliance periods will give registrants time to develop and implement processes and controls to produce high quality GHG emissions data and disclosures. In addition, the phased in compliance periods will provide existing GHG emissions assurance providers with time to train additional staff and undertake other preparations for these engagements as necessary, as well as facilitate the entry of new GHG emissions attestation providers into the market to meet demand.[2859] As the availability of assurance providers increases and the quality of registrants' reporting improves, we expect the costs of assurance will decrease.

Many commenters also pointed out the benefits of attestation reports covering the disclosure of registrants' Scope 1 and Scope 2 emissions, including increased investor protection [2860] and mitigation against the risk of potential greenwashing.[2861] Academic research shows that voluntary assurance improves the quality of GHG emissions disclosures and CSR disclosures more generally,[2862] and that investors perceive CSR disclosures to be more credible when they are accompanied by the assurance reports, regardless of the assurance level.[2863] Broadly, academic research also suggests that the market values voluntary audits [2864] and due to this demand firms voluntarily submit to audits.[2865] Furthermore, practitioner evidence suggests that the demand for voluntary ESG assurance is increasing.[2866] And while some registrants may meet this demand by obtaining voluntary assurance; others may not. Indeed, research shows that many firms do not obtain voluntary assurance,[2867] and that assurance provided on a voluntary basis may vary widely in form and content.[2868] Hence, we expect there to be benefits from requiring LAFs and AFs to provide the attestation reports covering their Scope 1 and/or Scope 2 emission

[2855] *See, e.g.,* letter from Morningstar (''Currently, a lack of clear disclosure standards for the timing of 'sustainability reports,' which is the primary source for emissions data, greatly hinders investor knowledge. For example, some registrants released 2021 reports—detailing 2020 data—as late as November 2021.'').

[2856] *See* 17 CFR 229.1506.

[2857] *See, e.g.,* letters from AFPM; AHLA; Amer. Chem.; Bipartisan Policy (''While emissions data is no doubt important for companies to evaluate, especially those that are large emitters, attesting or certifying this data as accurate is far more costly than with financial data because the market for emissions is not at all well-developed.''); Eversource; Business Roundtable; Chamber; ConocoPhillips (''the availability of assurance providers is currently insufficient to meet demand and will likely trigger a surge in costs''); McCormick (''While unknown at this time, due to the fact that these types of disclosures have never been required by the SEC in the past and in this form, these added costs must be well understood and measured against the benefit.''); NOIA; PPL; SBCFAC Recommendation; SIFMA; Soc. Corp. Gov.; Sullivan Cromwell; and Travelers.

[2858] *See* letter from BOA (stating that a delay in the compliance date ''would give additional time to attestation providers to obtain the necessary staff and resources to meet future demand and could help to reduce costs for registrants''); *see also* letter from Corteva (stating that a minimum one-year extension to the implementation deadlines set forth in the proposal ''would reduce the risk of reporting delays, give registrants further opportunities to improve data quality and internal control processes, and work with assurance providers to ensure a more productive assurance process'').

[2859] There can be barriers to entry due to consolidation around a few major assurance providers. *See* Gipper *et al.* (2023); *see also* discussion of similar concerns raised in the context of recent California laws, discussed *infra* note 3118 and accompanying text.

[2860] *See, e.g.,* letters from Better Markets; CAQ; and SFERS.

[2861] *See, e.g.,* letters from BNP Paribas; and UAW Retiree. In response to one commenter who asserted a lack of factual evidence on the extensiveness of greenwashing (*see* Overdahl exhibit to letter from Chamber), we note that recent analysis shows greenwashing risk has accelerated. *See* RepRisk, *On the Rise: Navigating the Wave of Greenwashing and Social Washing* (Oct. 2023), available at *https://www.reprisk.com/news-research/reports/on-the-rise-navigating-the-wave-of-greenwashing-and-social-washing.*

[2862] *See, e.g.,* letter from F. Berg; Brandon Gipper, *et al., Carbon Accounting Quality: Measurement and the Role of Assurance, supra* note 1243; B. Ballou, P.C. Chen, J.H. Grenier & D.L. Heitger (2018); L. Luo, Q. Tang, H. Fan & J. Ayers, *Corporate Carbon Assurance and the Quality of Carbon Disclosure,* 63 Acct. & Fin. 657 (2023); W. Maroun, *Does External Assurance Contribute to Higher Quality Integrated Reports?,* 38 J. of Acct. and Public Policy 106670 (2019); *Corporate Social Responsibility Assurance and Reporting Quality: Evidence from Restatements,* 37 J. of Acct. and Public Policy 167 (2018).

[2863] H. Hoang & K.T. Trotman, The Effect of CSR Assurance and Explicit Assessment on Investor Valuation Judgments, 40 Auditing: A J. of Practice & Theory 19 (2021).

[2864] See, *e.g.,* C.S. Lennox & J.A. Pittman, Voluntary Audits Versus Mandatory Audits, 86 Acct. Rev. 1655 (2011); T. Bourveau, J. Brendel & J. Schoenfeld, Decentralized Finance (DeFi) Assurance: Audit Adoption and Capital Markets Effects (2023), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4457936* (retrieved from SSRN Elsevier database).

[2865] *See, e.g.,* T. Bourveau, M. Breuer, J. Koenraadt & R. Stoumbos, *Public Company Auditing Around the Securities Exchange Act,* Columbia Bus. School Rsch. Paper (revised Feb. 2023), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3837593.*

[2866] *See* Center for Audit Quality, *supra* note 2716.

[2867] As of 2020, the voluntary assurance rate of ESG reports in the U.S. was 46%. Gipper *et al.* (2023).

[2868] For example, there was significant heterogeneity in the content of voluntary assurance reports over financial statements provided in the U.S. prior to the adoption of the mandatory audit requirements of the Exchange Act. *See* Bourveau, *et al., supra* note 2865; Gipper *et al.* (2023) also document that there is a heterogeneity of the types of metrics being voluntarily assured, depending on the type of the assuror. For example, financial auditors tend to assure slightly more metrics (93%) than non-financial assurers (89%). *See* Gipper *et al.* (2023), at Table IA–2.

disclosures.[2869] The assurance requirement in the final rules will require an independent third-party to provide a check on the accuracy and completeness of a registrant's GHG emissions disclosures before the information is provided to investors, which as explained above, will likely contribute to lowering the cost of capital and analyst forecast errors.[2870] While the academic accounting literature, as one commenter has noted, has traditionally found that ''auditing assurance for corporate social responsibility in the US has not led to positive market effects,'' [2871] more recent evidence on specifically carbon emissions assurance has revealed a positive link between external assurance of carbon emissions and market value.[2872]

Other commenters stated that there is a lack of expertise to meet the demand for required attestation services.[2873] These commenters raised concerns that this lack of expertise, coupled with the proposed rules' requirements for assurance providers, would increase costs of obtaining assurance. Other commenters stated that they were opposed to the proposed assurance requirements because the requirements would preclude assurance providers from applying the ISO 14064–3 standards, which is the most common standard used by non-accountant assurance providers.[2874] As discussed in the baseline, most companies that currently obtain some type of third-party verification or assurance do not obtain these services from accounting firms.[2875] The proposed requirements would not have limited the scope of providers to accounting firms. However, the proposed requirements regarding the attestation standards would have prevented providers from using certain attestation standards widely used by non-accounting firm providers, such as ISO 14064–3, which could have resulted in providers needing to become familiar with different standards or registrants needing to change assurance providers, which would have increased the costs of obtaining assurance. The final rules address these concerns by modifying the requirements for the attestation standards such that an attestation report pursuant to the ISO 14064–3 standards will satisfy the requirements in the final rule.

Commenters also asserted that assurance standards and methodologies are still evolving.[2876] Consistent with these commenters' assertions, prior research shows that the field of sustainability assurance—which presumably encompasses the assurance over emissions disclosures—is fairly new and thus may not provide the same benefits as decades of financial audit practice.[2877] While we acknowledge that the field of GHG emission assurance is still maturing, as discussed elsewhere, a number of registrants currently obtain voluntary assurance over their GHG emissions disclosures, which presumably they would not do if existing assurance standards were unworkable or did not meaningfully enhance the reliability of those disclosures. The final rules permit registrants to follow any attestation standards that are publicly available at no cost or that are widely used for GHG emissions assurance and that are established by a body or group that has followed due process procedures including the broad distribution of the framework for public comment. These conditions will help ensure that any standards used for GHG assurance services under the final rules are sufficiently developed to provide meaningful investor protection benefits, while still providing a degree of flexibility to registrants given the emerging nature of GHG assurance services. In addition, the final rules include a longer phase in period before LAFs and AFs are required to comply with the assurance requirements, which also provides additional time for standards and methodologies to further develop.

The final amendments also require the GHG emissions attestation report be prepared and signed by a GHG emissions attestation provider who is an expert in GHG emissions by virtue of having significant experience in measuring, analyzing, reporting, or attesting to GHG emissions. This provider must be independent with respect to the registrant, and any of its affiliates, for whom it is providing the attestation report, during the attestation and professional engagement period.

The final rule's expertise requirement for attestation providers should enhance the overall benefits of obtaining GHG emissions assurance, consistent with academic research showing that industry specialist auditors deliver higher quality financial statement audits than non-specialist auditors [2878] and that audit clients are willing to pay more for audit services of more experienced audit partners.[2879]

[2869] *See, e.g.,* Cohen, *et al., supra* note 2721; Ilhan *et al.* (2023).

[2870] *See, e.g.,* Casey, *et al., supra* note 1207 (finding that corporate social responsibility (''CSR'') assurance results in lower cost-of-capital along with lower analyst forecast errors and dispersion, and that financial analysts find related CSR reports to be more credible when independently assured).

[2871] *See* Overdahl exhibit to letter from Chamber; *see also* Charles H. Cho, Giovanna Michelon, Dennis M. Patten & Robin W. Roberts, *CSR Report Assurance in the USA: An Empirical Investigation of Determinants and Effects,* 5 Sustainability Acct., Mgmt. and Policy J. 130 (2014).

[2872] Y. Shen, Z.W. Su, G. Huang, F. Khalid, M.B. Farooq & R. Akram, Firm Market Value Relevance of Carbon Reduction Targets, External Carbon Assurance and Carbon Communication, 11 Carbon Mgmt. 549 (2020).

[2873] *See, e.g.,* letters from ABA; Amer. Chem.; Eversource; PPL; Soc. Corp. Gov.; Soros Fund (''Financial audits are different than climate disclosure audits and auditors do not have specific expertise to ensure the best outcomes.''); SouthState; and Sullivan Cromwell (''The number of qualified providers would likely be insufficient to meet the demand for their services prompted by the Proposed Rules, at least in the near term.'').

[2874] *See, e.g.,* letter from Futurepast; *see also* section IV.A.5.e.

[2875] While this is true in the U.S., we note that in Europe and other parts of the world, accountants are the primary service provider. *See* IFAC, *supra* note 1089 (approximately 57% of engagements assurance reports were conducted by audit firms in 2021).

[2876] *See, e.g.,* letters from ABA (''As the reporting and attestation standards develop further, a single standards-setting body emerges as the clear leader, and third parties begin to become qualified under these standards, the Commission can then assess whether an attestation standard is appropriate.''); Mid-Size Bank; Nasdaq (''To encourage disclosures while the attestation industry continues to mature, the Commission should eliminate the attestation requirement for Scope 1 and 2 emissions, and permit all issuers to disclose a voluntary attestation in accordance with proposed Item 1505(e)(1–3) of Regulation S–K.''); SIFMA; and Tata Consultancy Services (June 17, 2022) (''We do not subscribe to the view that an attestation of reported emissions would be appropriate at such a nascent stage of adoption of climate-related disclosure standards and practices.'')

[2877] See K. Hummel, C. Schlick & M. Fifka, The Role of Sustainability Performance and Accounting Assurors in Sustainability Assurance Engagements, 154 J. of Bus. Ethics 733 (2019); M.B. Farooq & C. De Villiers, Sustainability Assurance: Who Are The Assurance Providers and What Do They Do?, Challenges in Managing Sustainable Business: Reporting, Taxation, Ethics, & Governance (S. Arvidsson, ed., 2019) (''Farooq and Villiers (2019)''); C. Larrinaga, *et al.,* Institutionalization of the Contents of Sustainability Assurance Services: A Comparison Between Italy and United States, 163 J. of Bus. Ethics 67 (2020). Academic evidence also suggests that sustainability report restatements are positively associated with the presence of sustainability assurance reports. See G. Michelon, D.M. Patten & A.M. Romi, *Creating Legitimacy for Sustainability Assurance Practices: Evidence from Sustainability Restatements,* 28 European Acct. Rev. 395 (2019). This finding is more pronounced ''for error restatements than for restatements due to methodological updates.'' *See also* R. Hoitash & U. Hoitash, *Measuring Accounting Reporting Complexity with XBRL,* 93 Acct. Rev. 259 (2018) (finding misstatements are more likely in areas of reporting complexity).

[2878] See, *e.g.,* K.J. Reichelt & D. Wang, National and Office-specific Measures of Auditor Industry Expertise and Effects on Audit Quality, 48 J. of Acct. Rsch. 647 (2010); W.R. Knechel, *et al.,* The Demand Attributes of Assurance Services Providers and the Role of Independent Accountants, 10 Int'l J. of Auditing 143 (2006).

[2879] D. Aobdia, S. Siddiqui & A. Vinelli, Heterogeneity in Expertise in a Credence Goods Setting: Evidence from Audit Partners, 26 Rev. of Acct. Stud. 693 (2021).

Similarly, the final rules' independence requirement for attestation providers is consistent with the similar requirement that has long existed for financial statement auditors and will enhance the perceived credibility of the GHG emissions assurance.[2880] Attestation providers that are not accountants may incur additional costs to familiarize themselves with these requirements.

The final rules also require LAFs and AFs to disclose, after requesting relevant information from any GHG emissions attestation provider as necessary, whether the GHG emissions attestation provider is subject to any oversight inspection program, and if so, which program (or programs) and whether the GHG emissions attestation engagement is included within the scope of authority of such oversight inspection program. While the final rules do not require that the GHG emissions attestation provider be subjected to mandatory oversight and inspection processes, disclosure of whether this is the case will provide investors with a better understanding of the qualifications of the GHG emissions attestation provider, which in turn will help them determine whether the assurance services have enhanced the reliability of the GHG emissions disclosure. For example, academic research shows that oversight inspections of financial statement audits by the PCAOB have significantly increased the credibility of the financial statement audits.[2881] Similarly, in the context of inspections of PCAOB-registered public accounting firms, academic literature suggests that engagement-specific PCAOB inspections may have spillover effects on non-inspected engagements.[2882]

Furthermore, the final rules require AFs and LAFs subject to Item 1506(a) to disclose whether any GHG emissions attestation provider that was previously engaged to provide attestation over the registrant's GHG emissions disclosure for the fiscal year covered by the attestation report resigned (or indicated that it declined to stand for re-appointment after the completion of the attestation engagement) or was dismissed. If so, the registrant is required to disclose certain information about whether there were any disagreements with the former GHG emissions attestation provider and to describe the disagreement. The registrant also must disclose whether it has authorized the former GHG emissions attestation provider to respond fully to the inquiries of the successor GHG emissions attestation provider concerning the subject matter of the disagreement. Due to the readily available nature of this information for registrants, we do not expect that it would be costly for registrants to include these disclosures in the filing that contains the GHG emissions disclosures and attestation report, when applicable. The disclosure of the existence of a disagreement in the event of the resignation or dismissal of the GHG emissions attestation provider will enable investors to assess the possible effects of such disagreement and whether it could have impacted the reliability of the GHG emissions disclosure, which, as discussed in Section II.H above, provides investors with information about a registrant's business, results of operations, and financial condition. This disclosure requirement also may limit a registrant's incentive to dismiss attestation providers that it views as unfavorable.[2883]

In addition, the final rules require any registrant that is not required to include a GHG emissions attestation report pursuant to Item 1506(a) to disclose certain information if the registrant's GHG emissions disclosure were voluntarily subjected to third-party assurance, which is consistent with the proposed rules and with the feedback provided by several commenters.[2884] There is some academic evidence suggesting that the assurance approaches of accountants and non-accountants differ (thus potentially reducing comparability across what is being assured),[2885] that firms choose accountants vs. non-accountants as their GHG emissions assurance providers depending on their internal objectives,[2886] and that market participants draw inferences from the attributes of the assurance providers.[2887] We expect that greater disclosures about the nature of voluntarily obtained Scope 1 and Scope 2 emissions attestation reports will help investors determine whether the assurance services have enhanced the reliability of the GHG emissions disclosure.[2888] However, the liability and accompanying litigation risk associated with including these disclosures in Commission filings could disincentivize some registrants from voluntarily obtaining assurance, particularly if they have lower confidence in the quality of the services performed. These concerns are mitigated to some extent with respect to liability under section 11 of the Securities Act by the final rules' amendment to Rule 436, which provides that any description of assurance regarding a registrant's GHG emissions disclosures provided in accordance with Item 1506(e) (*i.e.,* assurance voluntarily obtained over GHG emissions disclosures) shall not be considered part of the registration statement prepared or certified by a person within the meaning of sections 7 and 11 of the Securities Act.[2889]

[2880] *See, e.g.,* M. DeFond & J. Zhang, *A Review of Archival Auditing Research,* 38 J. of Acct. & Econ. 275 (2014); W.R. Knechel *et al., supra* note 1206.

[2881] *See, e.g.,* B. Gipper, C. Leuz & M. Maffett, *Public Oversight and Reporting Credibility: Evidence from the PCAOB Audit Inspection Regime,* 33 Rev. of Fin. Stud. 4532 (2020); P.T. Lamoreaux, *Does PCAOB Inspection Access Improve Audit Quality? An Examination of Foreign Firms Listed in the United States,* 61 J. of Acct. & Econ. 313 (2016).

[2882] *See, e.g.,* Aobdia, *Impact, supra* note 1555 (concluding that ''engagement-specific PCAOB inspections influence non-inspected engagements, with spillover effects detected at both partner and office levels'' and that ''the information communicated by the PCAOB to audit firms is applicable to non-inspected engagements''); Aobdia, *Economic Consequences, supra* note 1555 (concluding that ''common issues identified in PCAOB inspections of individual engagements can be generalized to the entire firm, despite the PCAOB claiming its engagement selection process targets higher risk clients'' and that ''[PCAOB quality control] remediation also appears to positively influence audit quality'').

[2883] Registrants may have incentives to search for a favorable assurance conclusion or opinion, similar to those previously documented in the market for credit ratings. *See* P. Bolton, X. Freixas, & J. Shapiro, *The Credit Ratings Game,* 67 J. of Fin. 85 (2012).

[2884] *See, e.g.,* letters from Amer. for Fin. Reform; Sunrise Project *et al.;* CEMEX; and C. Howard; *see also* letter from Chamber (opposing any mandatory assurance requirements but stating ''to the extent companies are obtaining assurances, the SEC's alternative that registrants disclose what types of assurance, if any, they are obtaining may be appropriate'').

[2885] Farooq and Villiers (2019), *supra* note 2877.

[2886] R. Datt, L. Luo & Q. Tang, *Corporate Choice of Providers of Voluntary Carbon Assurance,* 24 Int'l J. of Auditing 145 (2020).

[2887] G. Pflugrath, P. Roebuck & R. Simnett, Impact of Assurance and Assu'er's Professional Affiliation on Financial Analy'ts' Assessment of Credibility of Corporate Social Responsibility Information, 30 Auditing: A J. of Practice & Theory 239 (2011). However, another study did not find that the investors cared whether a sustainability assurance provider was affiliated with the audit profession or not (see, *e.g.,* R. Simnett, A. Vanstraelen & W.F. Chua, Assurance on Sustainability Reports: An International Comparison, 84 Acct. Rev. 937 (2009).

[2888] Academic research shows that the market trusts more voluntary disclosures by managers with established reputations for better accuracy or ''forthcomingness'' of such past disclosures. *See, e.g.,* H.I. Yang, *Capital Market Consequences of Managers' Voluntary Disclosure Styles,* 53 J. of Acct. and Econ. 167 (2012); A. Beyer & R.A. Dye, *Reputation Management and the Disclosure of Earnings Forecasts,* 17 Rev. of Acct. Stud. 877 (2012); P.C. Stocken, *Credibility of Voluntary Disclosure,* RAND J. of Econ. 359 (2000).

[2889] *See* 17 CFR 230.436(i)(2); *supra* section II.I.5.c; *see also supra* section II.I.2.c. *But see supra* note 1397 (noting that amending Rule 436 to eliminate potential section 11 liability could ''reduce the incentives for GHG emissions attestation providers to perform a thorough analysis and ensure that their attestation report . . . is true

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g. Risk Management Disclosure

The final rules require a registrant to describe any processes it has for identifying, assessing, and managing material climate-related risks.[2890] A registrant with such a process should address, as applicable, the following non-exclusive list of disclosure items: (1) how it identifies whether it has incurred or is reasonably likely to incur a material physical or transition risk; (2) how it decides whether to mitigate, accept, or adapt to the particular risk; and (3) how it prioritizes whether to address the climate-related risk. Furthermore, the final rules specify that registrants who manage a material climate-related risk must disclose whether and how their processes for identifying, assessing, and managing climate-related risks have been integrated into their overall risk management system or processes.

These disclosures will allow investors to better assess the risk management processes registrants use to evaluate and address material climate-related risks that may have or are reasonably likely to have an impact on companies' operations and financial conditions. Climate-related risks could impact companies' financial performance in a number of ways. For example, physical risks could result in asset impairments and business interruptions. Regulatory changes could render certain business plans less or unprofitable. Shifts in consumer preferences could increase or decrease demand for certain types of products. While some of these risks may be relatively straightforward to evaluate, others may require expertise and detailed knowledge about a company's business partners and operations. The risk management disclosures in the final rules will provide investors with a more detailed understanding of how a registrants' risk management systems identify, evaluate, and address climate-related risks, which could contribute to better-informed investment and voting decisions.[2891]

As one example of how investors could use risk management disclosure, one commenter explained:''[we] identified a semi-conductor manufacturer as a more attractive investment when we learned it was diversifying its manufacturing locations to diversify its water sourcing.'' [2892] However, a commenter also noted that ''[f]or a significant number of issuers, information is not sufficient to support equivalent analysis.'' [2893] In this respect, requiring a registrant to describe its process for identifying, assessing, and managing material climate-related risks, such as water sourcing risks, will allow investors to more fully evaluate the drivers and outcomes of the registrant's risk management decisions. These disclosures will also benefit investors by providing context for the other disclosures required by the final rules. For example, investors can use these disclosures to better understand the steps a registrant took to identify material climate-related risks in the context of the registrant's disclosures about the types of material climate-related risks it faces.

The requirement to disclose the extent to which a registrant's processes for identifying, assessing, and managing climate-related risks have been integrated into its overall risk management system or processes provision will help investors understand and assess the effectiveness of those climate risk management processes.

There are many climate risk management approaches available to firm managers, ranging from divestment from certain suppliers to engagement with their business partners to hedging to incorporating climate risk into their financial planning.[2894] To the extent that there is variation in risk management practices across registrants or such practices change over time, the final rules will allow investors to compare those risk management practices when making investment decisions.

As discussed in section IV.C.3, we expect registrants to incur some additional compliance costs as a result of these disclosures; however, to limit the costs associated with these disclosures, we are not requiring several of the prescriptive elements found in the proposed rules, including a separate disclosure item on how a registrant determines how to mitigate any high priority risks.[2895] While these disclosures may have been low cost to produce for some registrants that already create TCFD-compliant sustainability reports, we opted for a more flexible approach for the reasons discussed above. In providing that registrants only need to describe the process for identifying, assessing, and managing material climate-related risks, the final rules further limit the compliance costs for registrants. Nonetheless, registrants may still choose to include the details set forth in the proposed rules if they are relevant to their risk management practices.

Under the approach taken in the final rules, investors will benefit from a discussion tailored to the registrant's facts and circumstances. For example, registrants will be able to exclude information that they deem to be less relevant or useful to understanding the registrant's approach to managing material climate-related risks. However, this flexibility could potentially result in disclosures that are not fully comparable across registrants, which could reduce the benefits of this provision. The more flexible approach we are adopting could also reduce the risk that a registrant would have to disclose confidential information, a concern raised by some commenters.[2896]

The benefits of the final rules will be lessened to the extent that this existing voluntary reporting overlaps in content with the required disclosures.[2897] However, even in these cases, investors will benefit from having this

and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading'').

[2890] *See* 17 CFR 229.1503.

[2891] *See* letters from the Investment Company Institute (''We also support companies being required to disclose whether and how climate-related risks are integrated into the company's overall risk management system or processes. This disclosure should help investors assess how the company handles climate-related risk as compared to other risks.''); Vanguard (''We consider climate risks to be material and fundamental risks for investors and the management of those risks is important for price discovery and long-term shareholder returns.''); and Calvert (''We support the SEC's mandated approach for registrants to describe processes for identifying, assessing and managing climate-related risks, including both physical and transition risks. In order for us to evaluate issuer risks properly, we need transparent disclosure that allows us to assess how companies are determining the materiality of climate-related risks, including how they measure the potential scope and impact of an identified climate-related risk and how the risks identified in the disclosures relate back to that issuer's strategy, business model and outlook.'').

[2892] *See* letter from Wellington.

[2893] *Id.*

[2894] *See, e.g.,* Keely Bosn, Amelia Brinkerhoff, Katherine Cunningham & Shirui Li, *Climate Risk Management: Strategies for Building Resilience to Climate Change in the Private Sector* (2020), available at *https://deepblue.lib.umich.edu/bitstream/handle/2027.42/154987/370%20Climate%20Risk%20Management_%20Zurich.pdf* (documenting various divestment and planning strategies in managing climate-related risk among companies in the insurance and financial services industries).

[2895] For instance a registrant will not be required to disclose, as applicable, how it: (1) determines the relative significance of climate-related risks compared to other risks; (2) considers existing or likely regulatory requirements or policies, such as GHG emissions limits, when identifying climate-related risks; (3) considers shifts in customer or counterparty preferences, technological changes, or changes in market prices in assessing potential transition risks; or (4) determines the materiality of climate-related risks.

[2896] *See, e.g.,* letters from Cemex; Chief Execs. (noting that registrants may simply start making generic disclosures); AFPA; American AALA *et al.;* IADC; and Sullivan Cromwell.

[2897] *See supra* section IV.A., particularly IV.A.5., for a discussion of existing trends in voluntary disclosure.

information set forth in a Commission filing, which will improve its reliability of this information and reduce search costs for investors. We also expect the final rules to address concerns expressed by commenters that existing voluntary disclosures are often deficient in terms of understandability, transparency, and detail.[2898] Therefore, we expect the final rules will result in more consistent, comparable, and reliable information about registrants' risk management processes as compared to the baseline.

h. Financial Statement Disclosures

i. Expenditure Disclosures

The final rules require an issuer to disclose the following categories of expenditures: (1) expenditures expensed as incurred and losses resulting from severe weather events and other natural conditions; (2), capitalized costs and charges resulting from severe weather events and other natural conditions; and (3) if carbon offsets or RECs or certificates have been used as a material component of a registrant's plans to achieve its disclosed climate-related targets or goals, the aggregate amount of carbon offsets and RECs expensed, the aggregate amount of capitalized carbon offsets and RECs recognized, and the aggregate amount of losses incurred on the capitalized carbon offsets and RECs.[2899] Under the final rules, a capitalized cost, expenditure expensed, charge, loss, or recovery results from a severe weather event or other natural condition when the event or condition is a ''significant contributing factor'' in incurring the capitalized costs, expenditure expensed, charge, loss, or recovery.[2900]

The final rules require financial statement disclosures only if the capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions exceed certain thresholds.[2901] Specifically, a registrant will be required to disclose capitalized costs and charges incurred as a result of severe weather events or other natural conditions if the aggregate amount of the absolute value of capitalized costs and charges incurred is one percent or more of the absolute value of shareholders' equity or deficit, but no disclosure will be required if such amount is less than $500,000 for the relevant fiscal year.[2902] Similarly, a registrant will be required to disclose expenditures expensed and losses incurred as a result of severe weather events and other natural conditions if the aggregate amount of such expenditures expensed and losses is one percent or more of the absolute value of income or loss before income tax expense (''pretax income''), but no disclosure will be required if such amount is less than $100,000 for the relevant fiscal year.[2903] If the disclosure threshold is triggered, registrants will be required to disclose the aggregate amount of the capitalized costs, expenditures expensed, charges, and losses and identify where the amounts are presented in the income statement and the balance sheet.

We expect that disclosure of capitalized costs, expenditures expensed, charges, and losses incurred resulting from severe weather events and other natural conditions will enable investors to better assess the effects of these events and conditions (*i.e.,* types of physical risks) on a registrant's financial position and financial performance. Better disclosures of physical risks can provide decision-useful information to investors.[2904] For example, one study found that a one standard deviation increase in exposure to heat stress is associated with a 40 basis point increase in yields on corporate bonds.[2905] Another study found that stock price reactions to climate-related risk disclosures in earnings calls are more negative for companies that have experienced a severe weather event in the quarter.[2906]

We anticipate that these financial statement disclosures will result in increased consistency and comparability relative to registrants' current disclosure practices. In particular, our decision to use a bright-line threshold will ensure that investors have access to decision-useful information for all registrants that have been meaningfully impacted by severe weather-related events and other natural conditions. Comparisons across registrants may enable investors to assess how different registrants manage and respond to severe weather events and other natural conditions, while comparisons over time will enable investors to evaluate how registrants are adapting to these types of events and conditions.

A better understanding of registrants' exposure to severe weather events and other natural conditions will help individual investors manage their portfolio-level exposure to climate-related physical risks. Whereas some climate-related risks may be company-specific, others may be correlated across different registrants and across time.[2907] The financial statement disclosures required by the final rules will provide investors with information to help assess which types of climate-related physical risks are company-specific, and therefore diversifiable, and which are not. This will better equip investors to limit their portfolio-level exposure to non-diversifiable climate-related physical risks by selecting companies less sensitive to any non-diversifiable risks related to severe weather events and other natural conditions.

The value of this financial statement information to assessing risk exposure depends in part on the extent to which past exposure to severe weather events or other natural conditions predicts future exposure to those events or conditions.[2908] For example, commenters questioned the benefits of disclosures related to physical risks given their view that there is inherent uncertainty of trends in exposure.[2909] However, other commenters indicated that a better understanding of the impact of past severe weather events would help them assess a registrant's exposure to physical risks going forward, and some commenters highlighted the value of having quantitative estimates of impacts.[2910]

[2898] *See* letters from Bloomberg; and PRI.

[2899] *See* 17 CFR 210.14–02(b), (c), (d) and (e).

[2900] *See* 17 CFR 210.14–02(g).

[2901] *See* 17 CFR 210.14–02(b).

[2902] *See* 17 CFR 210.14–02(b)(2).

[2903] *See* 17 CFR 210.14–02(b)(1).

[2904] H. Hong, *et al., supra* note 2739.

[2905] Viral V. Acharya, Timothy Johnson, Suresh Sundaresan & Tuomas Tomunen, *Is Physical Climate Risk Priced? Evidence From Regional Variation in Exposure to Heat Stress,* Nat'l Bureau of Econ. Rsch., No. w304452022 (2022).

[2906] Brian Bratten & Sung-Yuan (Mark) Cheng, *The Information Content of Managers' Climate Risk Disclosure* (Sept. 2023), available at *https://ssrn.com/abstract=4068992* (retrieved from SSRN Elsevier database).

[2907] *See* Acharya, *et al., supra* note 2905 (finding ''evidence that other dimensions of physical climate risk—estimated damages due to droughts, floods, hurricanes and sea level rise—have systematic asset pricing effects in these three asset classes. This is consistent with these risks being smaller economically and more idiosyncratic (*i.e.,* diversifiable and/or insurable) compared to heat stress.'').

[2908] *See, e.g.,* Harrison Hong, Neng Wang & Jinqiang Yang, *Mitigating Disaster Risks in the Age of Climate Change,* Nat'l Bur. of Econ. Rsch. Working Paper No. w27066 (2020) (concluding that past exposure predicts future exposure); letter from AEI (expressing the opposite view); *see also,* Michael Barnett *et al., Pricing Uncertainty Induced by Climate Change,* 33 *Rev. of Fin. Stud.* 1024 (2020).

[2909] *See, e.g.,* letter from AEI.

[2910] *See, e.g.,* letters from RMI (''Especially for physical risks, losses incurred may be indicative of chronic risk exposure (*e.g.,* assets in areas that are drought-prone or exposed to sea level rise), or they may stem from acute climate impacts . . . it will be important for investors to have the information necessary to assess forward-looking risk exposures.''); Amer. Academy Actuaries (''Identification of material risks without sufficient quantitative disclosure of financial impact would

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We agree that discussion of past impacts could be informative. The required expenditure disclosures will help investors identify the relative magnitude of different risk trends in various types of risk over time. Moreover, historical data may help investors assess a company's response to severe weather events or other natural conditions. This will help investors assess a registrant's risk management and risk mitigation. This information will allow investors to better tailor their decisions to their own risk-tolerance.

In the context of the proposal, commenters expressed concern that these benefits will be lessened if reporting companies choose to apply the final rules in different ways.[2911] For example, investors may mistakenly conclude that a registrant has a very high level of exposure to climate-related physical risks simply because the registrant takes a very inclusive approach to identifying ''severe weather events or other natural conditions.'' Different interpretations of which ''capitalized costs,'' ''expenditures expensed,'' ''charges,'' or ''losses'' are required to be disclosed by the final rules could similarly reduce the comparability benefits.[2912] The final rules address this concern by narrowing the scope of the disclosures (as discussed below). Any differences in application may be relatively benign or they may be used strategically to highlight or downplay certain aspects of the effects on the registrant's financial statements. We expect the inclusion of these disclosures in the financial statements to mitigate these types of concerns, as the disclosures will be subject to ICFR and an audit by an independent registered public accounting firm. Moreover, we believe the final rules' requirement to disclose contextual information, such as a description of significant inputs and assumptions used, significant judgments made, and if applicable, policy decisions made by the registrant to calculate the specified disclosures, alongside the expenditures disclosures should help to mitigate the concerns discussed above by providing additional transparency and facilitating comparability,[2913] although we note that some commenters were skeptical about the added value of contextual information in this respect.[2914]

Several commenters highlighted comparability concerns resulting from ambiguities and uncertainty related to the definition of transition activities and the proposal's approach to attribution. For example, one commenter asked whether replacing a light bulb with an LED bulb would constitute a transition expense.[2915] Another commenter asked how a registrant should identify the portion of a cost that could be attributable to drought.[2916] These hypotheticals, and many others raised by commenters, are addressed by limiting the financial statement disclosures to the capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions and the capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs (instead of requiring the disclosure of expenditures related to transition activities generally in the financial statements) [2917] and by the revised approach to attribution. However, we recognize that some issuers will apply the final rules differently than others. For example, several commenters pointed out that some registrants might consider a hurricane to be a severe weather event regardless of whether hurricanes are common to the area while others might base this assessment on whether a weather event is uncharacteristic or more severe than usual.[2918] Although a more prescriptive requirement could increase comparability, it may do so at the expense of disclosure that is more decision-useful for investors for the reasons stated above.[2919] We also expect comparability of the disclosures to improve over time as registrants gain more experience applying the disclosure thresholds and attribution standards and consensus emerges among registrants regarding best practices for compliance with the final rules.

In addition to reducing information asymmetry about the impact of severe weather events and other natural conditions, these disclosures will improve consistency and comparability relative to registrants' current disclosure practices. We are unable to quantify these benefits, and we are cognizant that registrants will exercise discretion in making their disclosures. Nevertheless, we expect comparability of the disclosures to improve over time as consensus emerges among registrants on best practices for compliance with the final rules.

The benefits of the disclosures will also be reduced if the final rules result in disclosures that are not decision-useful to investors, for example if they represent a small portion of capitalized costs, expenditures expensed, charges, and/or losses. We believe that the final rules mitigate this risk by not requiring disclosure if the aggregate amount of the absolute value of the effects of severe weather events or other natural conditions is less than one percent of pretax income for income statement effects or of shareholders' equity for balance sheet effects.[2920] However, we recognize the possibility that these thresholds may nonetheless result in some disclosure of information that is not decision-useful for investors, depending upon the facts and circumstances of the particular company, especially for companies with limited pretax income or shareholders' equity. Some commenters took issue with the use of absolute values for determining whether the disclosure threshold is triggered, explaining that if the net effect of an event is not material, it is not clear why the positive and negative components would be material.[2921] Others had a contrary view and thought it was important to delineate the positive and negative effects to help protect against greenwashing.[2922] Many commenters viewed a one percent threshold in the context of the financial statement disclosure to be too low.[2923] The de minimis thresholds partially address this concern. For example, we estimate that in 2022, the de minimis value of $100,000 exceeded one percent of the absolute value of pretax income for approximately 17 percent of companies

not benefit investors, so investors want to understand the relative magnitude of various climate risks, track the size of various climate risks over time, and compare the climate risk of different registrants.'').

[2911] *See, e.g.,* letter from ACLI.

[2912] *See, e.g.,* letter from Grant Thornton LLP (''The Final Rule should explain whether (a) capitalized costs consist only of costs associated with purchases of property, plant, and equipment, or (b) the definition is broader, including any costs initially recognized as a debit on the registrant's balance sheet, such as prepaid expenses.'').

[2913] *See* 17 CFR 210.14–02(a).

[2914] *See, e.g.,* letter from ABA, Securities Law Comm.

[2915] *See* letter from Amazon.

[2916] *See* letter from ABA, Securities Law Comm.

[2917] Although we are requiring disclosure of material expenditures incurred and material impacts on financial estimates and assumptions that (i) ''in management's assessment, directly result from activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes'' (*See* 17 CFR 229.1502(d)(2)); or (ii) ''occur as a direct result of the target or goal or the actions taken to make progress toward meeting the target or goal.'' (*See* 17 CFR 229.1504(c)(2)).

[2918] *See, e.g.,* letter from PwC.

[2919] *See id.*

[2920] The choice of a 1% threshold is consistent with what the Commission currently uses in other contexts for disclosure of certain items within the financial statements (*e.g.,* §§ 210.5–03.1(a) and 210.12–13).

[2921] *See, e.g.,* letter from Cemex.

[2922] *See, e.g.,* letter from ClientEarth.

[2923] *See, e.g.,* letter from Moody's.

and the de minimis value of $500,000 exceeded one percent of the absolute value of shareholders' equity for approximately 24 percent of companies.[2924] Conversely, it is also possible that some disclosures that would have been decision-useful to investors may not meet the disclosure thresholds and therefore will not be required to be included in the note to the financial statements under the final rules.

The disclosure thresholds may also result in partial disclosures of the financial effects of severe weather events and other natural conditions. For example, if a registrant exceeds the income statement threshold, but not the balance sheet threshold, it is only required to disclose expenditures expensed as incurred and losses on the income statement and it need not disclose the effects on the balance sheet, if any. Some registrants may find it simplest to disclose how the severe weather event or natural condition affected both the income statement and balance sheet while others might limit their disclosure to the rules' requirements. If so, the disclosures could lead to confusion about, for example, how and whether the severe weather event affected the financial statements for which disclosure is not required. We acknowledge that in some circumstances this may result in investors only receiving a partial picture of the financial statement effects of a particular event or condition; however, we think that applying the disclosure threshold separately to the income statement and the balance sheet will be more straightforward for registrants to implement and therefore will help to limit the overall burden of the final rules. To the extent this is a concern for an issuer, there is nothing in the final rules that would prevent a registrant from disclosing how the severe weather event or other natural condition affected both the income statement and balance sheet, even if the disclosure threshold for one of the financial statements is not triggered.

Some commenters raised the possibility that the financial statement disclosures could confuse or distract investors from other factors that contribute meaningfully to the financial statements.[2925] We believe our decision to limit the scope of disclosure to expenditures resulting from severe weather events and other natural conditions should mitigate these concerns.[2926] Furthermore, the fact that the information is tagged in Inline XBRL will facilitate an investor's ability to extract and sort the information that the investor deems more useful.[2927]

Many commenters raised concerns about registrants' ability to isolate or attribute particular costs or expenses to severe weather events and other natural conditions or to transition activities, explaining it would be complicated and costly.[2928] We believe that this cost is largely mitigated by the attribution principle included in the final rules, which requires registrants to disclose the entire capitalized cost, expenditure expensed, charge, or loss, provided that a severe weather event or other natural condition was a ''significant contributing factor'' to incurring the expense.

The requirement in the final rules to disclose where in the income statement or the balance sheet the disclosed expenditures expensed, capitalized costs, charges, and losses are presented could result in some incremental compliance costs. However, the expenditures expensed, capitalized costs, charges, and losses subject to disclosure are all captured in the books and records of the registrant and are measured and recognized in accordance with GAAP, such that concerns commenters raised about needing to develop and test new systems to track line-item impacts of climate-related expenses should be substantially mitigated under the final rules, relative to the proposed rules.[2929]

Many commenters expressed concerns with the proposed one percent disclosure thresholds as discussed in detail in section II.K.2.b.ii. Some of these commenters specifically highlighted that registrants would have challenges estimating or determining one percent of the individual line items before period end, which would require the tracking of all financial impacts and expenditures throughout the reporting period.[2930] In response to these commenters' feedback,[2931] the final rules do not require the disclosure of the proposed Financial Impact Metrics, which would have required the disclosure of financial impacts (and the determination of whether the disclosure threshold was met) on a line-by-line basis. Instead, the final rules focus on the disclosure of discrete expenditures and require the disclosure threshold to be calculated once for impacts to the income statement and once for impacts to the balance sheet using as the denominator income or loss before income tax expense or benefit and shareholders' equity or deficit, respectively. In addition to reducing the number of calculations that are necessary to determine whether disclosure is required as compared to the proposal, as discussed above in section II.K.3.c.ii, we believe that simplifying the threshold in this manner will give registrants the ability to estimate the amount or magnitude of these denominators earlier in the fiscal year, as compared to the proposed rules. As a result, the burdens on registrants associated with the final rules will be much less than they would have been under the proposed disclosure thresholds. That said, we recognize that registrants may need to track their expenditures expensed, capitalized costs, charges, and losses incurred as a result of severe weather events throughout the year to comply with the final rules.

Any differences in application of the rules that are not fully addressed by subjecting the disclosures to third-party audits could also introduce some incremental legal and compliance costs. For example, registrants may face some litigation risk stemming from their classification of expenditures. As above, we expect some of these costs to decrease over time as registrants gain experience applying the final rules and best practices emerge for application of the final rules.

The final rules also require that a registrant disclose, as part of the required contextual information, recoveries resulting from severe weather events and natural conditions, if they are required to disclose capitalized costs, expenditures expensed, charges, or losses incurred resulting from the same severe weather events or natural conditions. This provision will allow investors to better understand the net impact of severe weather events.

[2924] Estimates are based on 2022 registrants (*supra* note 2578) and data from Compustat.

[2925] *See, e.g.,* letter from API stating (''The flood of information and the presumed importance that would attach to it by virtue of the SEC's mandate could easily distract investors from equally important or more topically relevant material information that a registrant discloses.'').

[2926] The final rules are not the only place where disaggregated disclosure is required. We note that U.S. GAAP and IFRS require the disaggregation of certain information on the face of the financial statements or in the notes to the financial statements. For example, FASB ASC Topic 220 *Income Statement—Reporting Comprehensive Income* requires the nature and financial effects of each event or transaction that is unusual in nature or occurs infrequently to be presented separately in the income statement or in the notes to the financial statements. *See* ASC 220–20–50–1.

[2927] *See infra* section IV.C.2.ix.

[2928] *See, e.g.,* letter from BOA.

[2929] *See, e.g.,* letter from Amer. Bankers.

[2930] *See, e.g.,* letter from ABA, Securities Law Comm.

[2931] *See* section II.K.c.2.

Finally, the rules also require disclosure of expenditures expensed, capitalized costs, and losses resulting from the purchase and use of carbon offsets and RECs if carbon offsets or RECs have been used as a material component of a registrant's plans to achieve its disclosed climate-related targets or goals. As discussed in more detail in section IV.C.2.d, providing investors with disclosure regarding expenditures resulting from a registrant's purchase and use of carbon offsets and RECs will allow investors to better understand the registrant's approach to meeting its targets or goals and any applicable requirements set by other regulators.[2932] These disclosures could introduce some incremental compliance and audit costs, but we expect these costs to be relatively small as these expenditures expensed, capitalized costs, and losses are discrete and easily identifiable.

ii. Contextual Information, Historical Periods, and Other Requirements

The final rules require registrants to provide contextual information, to accompany the financial statement disclosures of expenditures expensed as incurred losses and resulting from severe weather events and other natural conditions, capitalized costs and charges resulting from severe weather events and other natural conditions, and, if carbon offsets or renewable energy credits or certificates have been used as a material component of a registrant's plants to achieve its disclosed targets or goals, the aggregate among of carbon offsets and renewable energy credits or certificates expensed, the aggregate amount of capitalized carbon offsets and renewable energy credits or certificates recognized, and the aggregate amount of losses incurred on the capitalized carbon offsets and renewable energy certificates or credits.[2933] This information will explain the basis for the financial statement disclosures, including a description of any significant inputs and assumptions used, significant judgments made to calculate the disclosures, and other information that is important to an investor's understanding of the financial statement effects. The rules further require that a registrant use financial information that is consistent with the scope of its consolidated financial statements and apply the same accounting principles that it is required to apply in the preparation of its consolidated financial statements.

Collectively, the inclusion of contextual information and the presentation of financial statement disclosures that are consistent with the rest of the financial statements should improve investors' ability to understand and compare registrants' financial statement effects. Several commenters agreed with this rationale for providing contextual information.[2934]

It is possible that some disclosures of contextual information may be of limited usefulness to investors in understanding the financial statement effects. Likewise, some registrants may provide disclosures with a level of detail that investors deem immaterial. Ultimately, the level of detail important to understand a particular registrant's disclosure of the financial statement effects and thus necessary for compliance with the final rules will depend on the specific facts and circumstances faced by that registrant. We therefore believe that the flexibility provided in the final rules achieves the benefits of eliciting disclosures that are both comparable and most likely to be relevant to investors' understanding of the registrant's financial statement disclosures, without imposing significant additional costs on registrants and the investors who use the disclosures. This conclusion is supported by commenters' reactions to the proposal, which were generally supportive of the requirement to provide contextual information.[2935]

In a change from the proposal, the final rules require the presentation of the financial statement disclosures on a prospective basis only. That is, the final rules require registrants to provide disclosure for the registrant's most recently completed fiscal year, and to the extent previously disclosed or required to be disclosed, for the historical fiscal year(s) included in the consolidated financial statements in the filing. This approach will lower the initial compliance costs of the rule, although investors will not immediately benefit from the ability to make year-over-year comparisons of the financial statement effects.

iii. Financial Estimates and Assumptions

The final rules require registrants to disclose whether the estimates and assumptions the registrant used to produce the consolidated financial statements were materially impacted by exposures to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise, or any climate-related targets or transition plans disclosed by the registrant.[2936]

These disclosures will provide investors with information as to the sensitivity of the financial information to climate-related risks, as explained by some commenters.[2937] Consider, for example, a registrant that recently disclosed a net-zero emissions target. Investors could benefit from understanding how that target impacted the assumptions and estimates that went into the preparation of the registrant's financial statements. This benefit, as well as any costs of the provision, will be lessened if registrants would have disclosed the impact of these events, conditions, targets, or plans on their financial estimates and assumptions regardless of the adoption of the final rules.[2938]

iv. Inclusion of Climate-Related Disclosures in the Financial Statements

The required disclosures must be included in a note to the financial statements and thus audited by an independent registered public accounting firm in accordance with existing Commission rules and PCAOB auditing standards.[2939] Subjecting these financial statement disclosures to reasonable assurance pursuant to an audit will subject these disclosures to the same financial statement audit and ICFR as similar financial disclosures, which will alleviate possible concerns about the consistency, quality, and reliability of the financial statement disclosures and thereby provide an important benefit to investors.[2940] Assurance can increase the relevance and reliability of disclosures.[2941] In addition, by including the required disclosures in the financial statements,

[2932] *See, e.g.,* letters from Amer. For Fin. Reform; and Sunrise Project *et al.*

[2933] *See* 17 CFR 210.14–02(a).

[2934] *See, e.g.,* letters from Airlines for America; and IATA.

[2935] *See* section II.K.6.a

[2936] *See* 17 CFR 210.14–02(b)(h).

[2937] *See, e.g.,* letter from IAA.

[2938] *See, e.g.,* letter from TotalEnergies.

[2939] *See* 17 CFR 210.14–01(a).

[2940] *See* section II.K.1.

[2941] *See* DeFond *et al., supra* note 2880; V.K. Krishnan, *The Association Between Big 6 Auditor Industry Expertise and the Asymmetric Timeliness of Earnings,* 20 J. of Acct., Auditing and Fin. 209 (2005); W. Kinney & R. Martin, *Does Auditing Reduce Bias in Financial Reporting? A Review of Audit-Related Adjustment Studies,* 13 Auditing: A J. of Practice & Theory 149 (1994); K.B. Behn, J.H. Choi & T. Kang, *Audit Quality and Properties of Analyst Earnings Forecasts,* 83 Acct. Rev. 327 (2008). Some commenters expressed similar views. *See, e.g.,* letters from CAQ; Ceres; Impax Asset Mgmt.; San Francisco Employees' Retirement System; and UNEP–FI.

they will be subject to a registrant's ICFR and the requirement for management to establish and maintain an adequate control structure and provide an annual assessment of the effectiveness of ICFR.[2942] Furthermore, for AFs and LAFs, the registrant's independent auditor must attest to, and report on, management's assessment of the effectiveness of the registrant's ICFR.[2943] Effective ICFR can reduce the risk of material misstatements to the financial statements and thereby enhance the reliability and improve investor confidence in the disclosure.

Inclusion of these disclosures in the financial statements will increase the compliance costs of the final rules as audit firms will need to apply sufficient appropriate audit procedures to the application of the rules to each registrant's circumstances. However, we believe these increased costs will be limited because the final rules will require disclosure of capitalized costs, expenditures expensed, charges, and losses that are already required to be recorded in a registrant's financial statements. The incremental compliance costs will be due to the requirement to separately disaggregate and disclose these costs, expenditures, charges, and losses in the notes to the financial statements.[2944] Over time, we expect audits of these disclosures will become more streamlined and therefore the costs associated with these disclosures should also decrease. We discuss these costs in detail in section IV.C.3.

i. Structured Data Requirement

Under the final rules, the new climate-related disclosures will be required to be tagged in the Inline XBRL structured data language on a phased in basis.[2945] The provision requiring Inline XBRL tagging of climate-related disclosures will benefit investors by making those disclosures more readily available for aggregation, comparison, filtering, and other enhanced analytical methods.[2946] These benefits are expected to reduce search costs and substantially improve investors' information-processing efficiency.[2947] Structured data requirements for public company financial statement disclosures have been observed to reduce information-processing costs, thereby decreasing information asymmetry and increasing transparency by incorporating more company-specific information into the financial markets.[2948] In addition, the Inline XBRL requirement for the climate-related disclosures will further limit agency problems, as requirements for financial statement tagging have been observed to facilitate external monitoring of registrants through the aforementioned reduction of information processing costs.[2949]

Investors with access to XBRL analysis software may directly benefit from the availability of the climate-related disclosures in Inline XBRL, whereas other investors may indirectly benefit from the processing of Inline XBRL disclosures by asset managers and by information intermediaries such as financial analysts.[2950] In that regard, XBRL requirements for public company financial statement disclosures have been observed to increase the number of companies followed by analysts, decrease analyst forecast dispersion, and, in some cases, improve analyst forecast accuracy.[2951] Should similar impacts on the analysts' informational environment arise from climate-related disclosure tagging requirements, this will likely benefit retail investors, who have generally been observed to rely on analysts' interpretation of financial disclosures rather than directly

[2942] *See* 17 CFR 210.13a–15, 210.15d–15.

[2943] *See* 15 U.S.C. 7262.

[2944] The incremental costs include the disclosure of financial statement estimates and assumptions materially impacted by severe weather events and other conditions or disclosed targets or transition plans; however, we believe these incremental costs will be minimal.

[2945] *See* 17 CFR 229.1508; 17 CFR 232.405. LAFs must begin complying with the disclosure requirements in filings covering fiscal year 2025 and must comply with the tagging requirements in filings covering fiscal year 2026. Other categories of filers must comply with the tagging requirements upon their initial compliance with the climate disclosure rules. For example, AFs must comply with tagging requirements when they first provide climate disclosures in filings covering fiscal year 2026. *See* section II.N.

[2946] *See* Darren Bernard, Elizabeth Blankespoor, Ties de Kok & Sara Toynbee, *Confused Readers: A Modular Measure of Business Complexity* (June 15, 2023), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4480309* (retrieved from SSRN Elsevier database) (developing an algorithm mimicking a sophisticated general user of financial statements by training it on a random sample of sentences with inline XBRL tags to understand a large corpus of numerical concepts based on surrounding text).

[2947] The findings on XBRL cited in the following paragraphs are not necessarily focused on climate-related disclosures and metrics, but we expect the findings to be generally applicable and to result in similar benefits for investors.

[2948] *See, e.g.,* Y. Cong, J. Hao & L. Zou, *The Impact of XBRL Reporting on Market Efficiency,* 28 J. Info. Sys. 181 (2014) (finding support for the hypothesis that ''XBRL reporting facilitates the generation and infusion of idiosyncratic information into the market and thus improves market efficiency''); Y. Huang, J.T. Parwada, Y.G. Shan & J. Yang, *Insider Profitability and Public Information: Evidence From the XBRL Mandate* (working paper, 2019) (finding XBRL adoption levels the informational playing field between insiders and non-insiders); J. Efendi, J.D. Park & C. Subramaniam, *Does the XBRL Reporting Format Provide Incremental Information Value? A Study Using XBRL Disclosures During the Voluntary Filing Program,* 52 Abacus 259 (2016) (finding XBRL filings have larger relative informational value than HTML filings); J. Birt, K. Muthusamy & P. Bir, *XBRL and the Qualitative Characteristics of Useful Financial Information,* 30 Acct. Res. J. 107 (2017) (finding ''financial information presented with XBRL tagging is significantly more relevant, understandable and comparable to non-professional investors''); S.F. Cahan, S. Chang, W.Z. Siqueira & K. Tam, *The Roles of XBRL and Processed XBRL in 10–K Readability,* J. Bus. Fin. Acct. (2021) (finding Form 10–K file size reduces readability before XBRL's adoption since 2012, but increases readability after XBRL adoption, indicating ''more XBRL data improves users' understanding of the financial statements'').

[2949] *See, e.g.,* P.A. Griffin, H.A. Hong, J.B. Kim & J.H. Lim, *The SEC's XBRL Mandate and Credit Risk: Evidence on a Link Between Credit Default Swap Pricing and XBRL Disclosure,* 2014 American Accounting Association Annual Meeting (2014) (attributing the negative association between XBRL information and credit default swap spreads to ''(i) a reduction in firm default risk from better outside monitoring and (ii) an increase in the quality of information about firm default risk from lower information cost''); J.Z. Chen, H.A. Hong, J.B. Kim & J.W. Ryou, *Information Processing Costs and Corporate Tax Avoidance: Evidence from the SEC's XBRL Mandate,* 40 J. Acct. Pub. Pol. (2021) (finding XBRL reporting decreases likelihood of company tax avoidance, because ''XBRL reporting reduces the cost of IRS monitoring in terms of information processing, which dampens managerial incentives to engage in tax avoidance behavior'').

[2950] Additional information intermediaries that have used XBRL disclosures may include financial media, data aggregators and academic researchers. *See, e.g.,* Nina Trentmann, *Companies Adjust Earnings for Covid-19 Costs, But Are They Still a One-Time Expense?,* The Wall Street Journal (2020), available at *https://www.wsj.com/articles/companies-adjust-earnings-for-covid-19-costs-but-are-they-still-a-one-time-expense-11600939813 (retrieved from Factiva database)* (citing XBRL research software provider Calcbench as data source); *Bloomberg Lists BSE XBRL Data,* XBRL (2018), available at *https://www.xbrl.org/news/bloomberg-lists-bse-xbrl-data/*; R. Hoitash & U. Hoitash, *supra* note 2877. *See 2019 Pension Review First Take: Flat to Down,* Goldman Sachs Asset Management (2020) (an example of asset manager use of XBRL data), available at *https://www.gsam.com/content/dam/gsam/pdfs/common/en/public/articles/2020/2019_Pension_First_Take.pdf* (citing XBRL research software provider Idaciti as a data source).

[2951] See, *e.g.,* A.J. Felo, J.W. Kim & J. Lim, Can XBRL Detailed Tagging of Footnotes Improve Financial Analy'ts' Information Environment?, 28 Int'l J. Acct. Info. Sys. 45 (2018); Y. Huang, Y.G. Shan & J.W. Yang, Information Processing Costs and Stock Price Informativeness: Evidence from the XBRL Mandate, 46 Aust. J. Mgmt. 110 (2020) (finding ''a significant increase of analyst forecast accuracy post-XBRL''); M. Kirk, J. Vincent & D. Williams, From Print to Practice: XBRL Extension Use and Analyst Forecast Properties (working paper, 2016) (finding ''the general trend in forecast accuracy post-XBRL adoption is positive''); C. Liu, T. Wang & L.J. Yao, XBRL's Impact on Analyst Forecast Behavior: An Empirical Study, 33 J. Acct. Pub. Pol. 69 (2014) (finding ''mandatory XBRL adoption has led to a significant improvement in both the quantity and quality of information, as measured by analyst following and forecast accuracy''). But see S.L. Lambert, K. Krieger & N. Mauck, Analysts' Forecasts Timeliness and Accuracy Post-XBRL, 27 Int'l. J. Acct. Info. Mgmt. 151 (2019) (finding significant increases in frequency and speed of analyst forecast announcements, but no significant increase in analyst forecast accuracy post-XBRL).

analyzing those disclosures themselves.[2952]

With respect to the Inline XBRL tagging requirements, various preparation solutions have been developed and used by operating companies to fulfill their structuring requirements, and some evidence suggests that, for smaller companies, XBRL compliance costs have decreased over time.[2953] One commenter, in opposing the proposed Inline XBRL requirements, stated that the requirements would increase costs for registrants.[2954] While we acknowledge that costs for registrants will increase as a result of the tagging requirements, this increase should be mitigated by the fact that filers subject to the final rules are already subject to Inline XBRL requirements for other disclosures in Commission filings, including financial statement disclosures and disclosures outside the financial statements.[2955] As such, the final rules do not impose Inline XBRL compliance requirements on filers that would otherwise not be subject to such requirements, and filers may be able to leverage existing Inline XBRL preparation processes and/or expertise in complying with the climate-related disclosure tagging requirements.

Many commenters agreed that the proposed structuring requirement would enable more efficient data processing and more informed investment decisions.[2956] One commenter noted that tagging the new disclosures in Inline XBRL would, by allowing the disclosed information to be more readily incorporated into investors' analyses, promote the efficiency of the U.S. capital markets.[2957] Another commenter stated that tagging the new disclosures would offer significant benefits to both institutional and retail investors.[2958] A different commenter indicated that the tagging requirement should enable investors to compare the adequacy of risk analysis and mitigation planning among registrants in the same economic sector.[2959]

One commenter questioned the benefits of requiring the new disclosures to be structured by asserting that investors and market participants who need to extract and analyze the disclosures required under subpart 1500 of Regulation S–K can perform the same search manually by using the appropriate Item reference as is done for current searches.[2960] However, the availability of such disclosures in a machine-readable form will allow for search and retrieval of disclosures on an automated, large-scale basis, greatly increasing the efficiency of information acquisition as compared to manual searches through unstructured formats.[2961]

Other commenters expressed concern that the potential for excessive use of extensions (*i.e.,* custom tags) would detract from the aforementioned benefits of structured data.[2962] We agree that the inappropriate use of custom tags hinders the benefits of tagging. However, we do not believe the final rules will result in an excessive use of custom tags, because filers will be prohibited from using custom tags unless there is no suitable standard tag for their disclosure in the related climate taxonomy, which the Commission will publish before the tagging compliance date.[2963] The climate taxonomy will contain standard tags that cover each new disclosure provision, so we do not expect custom tagging for climate disclosures will be excessive. Also, as discussed above, the one-year transition period for tagging requirements will enable the climate taxonomy development process to leverage samples of climate disclosures in Commission filings to further build out the list of standard tags and adapt to common disclosure practices. This should further reduce the likelihood of excessive custom tags and thus improve data quality.[2964] Such improvement in data quality will come at the cost of data users having one less year of tagged climate disclosures, making the climate disclosures filed during that year more difficult to analyze efficiently.

3. Quantifiable Direct Costs on Registrants

In this section, we attempt to quantify the direct costs of compliance for registrants that will be impacted by the final rules.[2965] These costs could be incurred internally (*e.g.,* through employee hours or hiring additional staff) or externally (*e.g.,* via third-party service providers, such as auditors or consultants).

Our estimates are informed, in part, by feedback we received from public comment letters. As discussed below, however, commenters offered a wide range of cost estimates, suggesting that there is significant heterogeneity when it comes to expected compliance costs among registrants, and such estimates may not provide a representative view of the costs of compliance for all affected registrants.

The cost estimates submitted by commenters varied considerably depending on a given company's size,

[2952] *See, e.g.,* A. Lawrence, J. Ryans & E. Sun, *Investor Demand for Sell-Side Research,* 92 Acct. Rev. 123 (2017) (finding the ''average retail investor appears to rely on analysts to interpret financial reporting information rather than read the actual filing''); D. Bradley, J. Clarke, S. Lee & C. Ornthanalai, *Are Analyts' Recommendations Informative? Intraday Evidence on the Impact of Time Stamp Delays,* 69 J. Fin. 645 (2014) (concluding ''analyst recommendation revisions are the most important and influential information disclosure channel examined'').

[2953] An AICPA survey of 1,032 reporting companies with $75 million or less in market capitalization in 2018 found an average cost of $5,476 per year, a median cost of $2,500 per year, and a maximum cost of $51,500 per year for fully outsourced XBRL creation and filing, representing a 45% decline in average cost and a 69% decline in median cost since 2014. *See* AICPA, *XBRL Costs for Small Reporting Companies Have Declined 45% Since 2014* (2018), available at *https://us.aicpa.org/content/dam/aicpa/interestareas/frc/accountingfinancialreporting/xbrl/downloadabledocuments/xbrl-costs-for-small-companies.pdf*; *see also* letter from Nasdaq; Request for Comment on Earnings Releases and Quarterly Reports, Release No. 33–10588 (Dec. 18, 2018) [83 FR 65601 (Dec. 21, 2018)] (stating that a 2018 Nasdaq survey of 151 listed registrants found an average XBRL compliance cost of $20,000 per quarter, a median XBRL compliance cost of $7,500 per quarter, and a maximum, XBRL compliance cost of $350,000 per quarter in XBRL costs).

[2954] *See* letter from Alliance Resource.

[2955] *See* 17 CFR 229.601(b)(101); 17 CFR 232.405; *see also* 17 CFR 229.601(b)(104); 17 CFR 232.406 for requirements related to tagging cover page disclosures in Inline XBRL. Beginning in July 2024, filers of most fee-bearing forms will also be required to structure filing fee information in Inline XBRL. The Commission will provide an optional web tool that will allow filers to provide those tagged disclosures without the use of Inline XBRL compliance services or software; *see* 17 CFR 229.601(b)(107); 17 CFR 232.408; Filing Fee Disclosure and Payment Methods Modernization, Release No. 33–10997 (Oct. 13, 2021) [86 FR 70166 (Dec. 9, 2021)].

[2956] *See* letters from Crowe LLP; Institute of Internal Auditors; Data Foundation; Arcadia Power, Climate & Company; MovingWorlds; Rho Impact; Trakref; Bloomberg; London Stock Exchange Group; Morningstar; MSCI; AIMCo *et al.;* CalPERS; Can. Coalition GG; Church Investment Group; CII; PRI; SCERS; Treehouse Invest.; Research Affiliates; Cedar Street Asset Management; Ceres; Corbel Capital Partners; Decatur Capital Management; Nordea Asset Management; Ethic; First Eagle; Impact Capital Managers; ICI; ICSWG; Liontrust; Nipun Capital; and Prime Buchholz.

[2957] *See* letter from Climate Advisers.

[2958] *See* letter from CFA.

[2959] *See* letter from IATP.

[2960] *See* letter from AFPM.

[2961] *See, e.g.,* Joung W. Kim & Jee Hae Lim, *The Impact of XBRL-tagged Financial Notes on Information Environment,* The 2015 Annual Summer/International Conference-Korean Accounting Association (2015) (finding block and detail tagging of financial statement footnotes in XBRL filings improve the readability of 10–K filings and the explanatory power of certain accounting figures like net income and book value of equity on stock price).

[2962] *See* letters from BHP; Morningstar; and Ethic.

[2963] *See* 17 CFR 232.405(c)(1)(iii)(B). Studies have found informational benefits resulting from the proper use of custom tags. *See, e.g.,* Joseph Johnston, *Extended XBRL Tags and Financial Analysts' Forecast Error and Dispersion,* 34 J. of Info. Sys. 105 (Sept. 2020) (finding custom tags to be ''robustly negatively related to analysts' forecast error and dispersion'').

[2964] *See supra* section II.O.

[2965] *See supra* section IV.C.1.b.

industry, complexity of operations, and other characteristics. This variability adds to the challenges in estimating compliance costs. Additionally, many commenters provided aggregate cost estimates that did not include certain elements required by the final rules, or included other elements that are not required in the final rules,[2966] without providing a breakdown of the component costs. Without a breakdown of component costs, it is difficult to use these cost estimates to quantify the direct cost of the final rules. Furthermore, changes from the proposal, often in response to commenter concerns about costs, will result in corresponding differences in the anticipated cost of the final rules as compared to the proposal.[2967] Nonetheless, we have endeavored below to factor these comments into our analysis to determine registrants' approximate cost of compliance with the final rules.

a. Comments and Data on Direct Cost Estimates of the Proposed Rules

In the Proposing Release, the Commission requested comment on all aspects of its economic analysis, including the potential costs and benefits of the proposed rules and alternatives, and whether the proposed rules, if adopted, will promote efficiency, competition, and capital formation or have an impact on investor protection.[2968] The Commission specifically requested empirical data, estimation methodologies, and other factual support for commenters' views, in particular, on costs and benefits estimates.[2969]

We received many comments asserting that the direct costs imposed by the proposed rules would be much greater than the Commission estimated.[2970] Many letters from individual companies and industry groups provided quantitative estimates of the cost to comply with the proposed rules that were considerably higher than the estimates included in the Proposing Release.[2971] One commenter conducted a survey of 263 public companies between April and June 2022.[2972] Seventy-nine percent of non-SRC respondents in this survey asserted that the Commission under-estimated the costs of compliance with the proposed rules. Seventy-three percent of survey participants responded that their compliance costs under the proposed rules would exceed the Commission's estimates in the Proposing Release, with 41 percent of respondents stating that the compliance costs would exceed $1 million on an ongoing basis.[2973] Another commenter, a biotechnology trade association, surveyed its members and found that 56 percent of respondents expected that the proposed rules would be more expensive than the Commission's estimates, with 40 percent indicating it would cost between $0.5 and $1.0 million.[2974] Additionally, a survey of corporate executives indicated that 61 percent of respondents expect that the proposed rules would impose $750,000 or more in first year compliance costs.[2975] Some commenters specifically identified the GHG emissions reporting and Regulation S–X provisions of the proposed rules as likely to impose large cost burdens on both registrants and potentially on non-registrants.[2976]

To help assess the direct costs of the final rules, we conducted a detailed review of compliance cost estimates from commenters and other public sources. The nature of the cost information ranged from survey results, estimates directly from identifiable companies, estimates of anonymous companies, and general estimates, either based on industry experience, fees for related services, or derived as part of similar rulemaking processes in other jurisdictions. We describe below the cost estimates provided in these letters and other sources.

One commenter provided cost information from seven large-cap companies in various industries on their current voluntary climate-reporting practices, which vary in their degrees of alignment with the proposed or final rules.[2977] The responses varied considerably regarding the reporting activities, disclosure elements, and costs. The number of staff required to produce the voluntary disclosures ranged from two to 20 full-time equivalents (''FTEs''). Reported employee hours for climate reporting (including TCFD reporting) ranged from 7,500 to 10,000 hours annually. One company reported spending 9 months to prepare its TCFD report and 4 months responding to the CDP questionnaire. Commonly cited external advisory services include environmental engineering consultants; emissions, climate science, and modeling consultants; outside counsel; and sustainability or sustainability reporting consultants, with costs ranging from $50,000 to $1.35 million annually. Third-party assurance costs ranged from $10,000 to $600,000. One company reported that it incurred initial costs of approximately $1.3 million to establish a baseline for SASB and TCFD reporting, while another company estimated that new or enhanced systems, controls, audit, and other costs associated with any additional disclosure requirements would be over $1 million.

The same commenter submitted another letter presenting detailed annual cost estimates from 13 companies (11 large-cap, 1 mid-cap, and 1 small-cap).[2978] Similar to their first comment, the responses displayed considerable variation with respect to

[2966] Commenters' estimates that include the cost of voluntarily undertaking a specific activity (*e.g.,* the costs of setting targets or goals, formulating transition plans, or conducting scenario analysis) may not be indicative of the compliance costs of the final rules since the final rules do not necessarily require the undertaking of such activities, but rather require only the attendant disclosures in certain cases.

[2967] For example, as compared to the proposed rules, the final rules include a number of changes intended to reduce the burden of the Regulation S–X disclosure requirements and do not require Scope 3 emissions reporting.

[2968] *See* Proposing Release, section IV.G.

[2969] *See id.*

[2970] *See, e.g.,* letters from Soc. Corp. Gov. (June 17, 2022); Chamber; Business Roundtable; S.P. Kothari, *et al.;* Biotechnology Innovation Organization; Committee on Corporate Reporting; American Automotive Leasing Association (AALA); America Car Rental Association; Truck Renting and Leasing Association (TRALA); AEPC. Some commenters also critiqued our PRA analysis, asserting that it used the wrong cost of labor and did not include the costs to non-registrants. *See* letter from the Heritage Foundation.

[2971] *See, e.g.,* letters from Soc. Corp. Gov. (June 17, 2022); RILA; NRF; ConocoPhillips; API; PPL Corporation; Nutrien; and Chamber.

[2972] *See* letter from Nasdaq.

[2973] *Id.* Twelve percent of the participants in the survey were SRCs.

[2974] *See* letter from Biotechnology Innovation Organization.

[2975] PwC, *Change in the Climate: How US business leaders are preparing for the SEC's climate disclosure rule* (2023), available at *https://www.pwc.com/us/en/services/esg/library/sec-climate-disclosure-survey.html* (discussing survey, conducted between Dec. 2022 and Jan. 2023, that solicits the views of 300 executives at U.S.-based public companies with at least $500 million in annual revenue with respect to the proposed rules).

[2976] *See, e.g.,* letter from Chamber. Concerns about burdens for non-registrants were mostly focused on the proposed rules' Scope 3 GHG emissions disclosure requirements. The final rules do not require disclosures of Scope 3 emissions.

[2977] *See* letter from Soc. Corp. Gov (June 11, 2022), referencing a comment it submitted in response to Acting Chair Allison Herren Lee's request for public input on climate disclosures. *See* Acting Chair Allison Herren Lee Public Statement, *Public Input Welcomed on Climate Change Disclosures,* available at *https://www.sec.gov/news/public-statement/lee-climate-change-disclosures.* Comment letters in response to this request are available at *https://www.sec.gov/comments/climate-disclosure/cll12.htm.*

[2978] *See* letter from Soc. Corp. Gov (June 17, 2022). The commenter acknowledges that these companies are ''not the norm. They represent a discrete subset of predominantly larger companies that have undertaken these reporting efforts voluntarily and generally reflect a much greater level of maturity in climate-related reporting than the average company.''

current disclosure scope, granularity, and reported costs. Specific estimates of initial costs to comply with the proposed rules included $5 to $10 million,[2979] $6 million (with $4 to $5 million in ongoing costs),[2980] $10 million (with ''much of it recurring''),[2981] and $650,000 to $1.5 million (with $650,000 in ongoing costs).[2982] In many cases, the reported costs in this comment letter aggregated several different disclosure items and related activities without providing a cost breakdown. In other cases, costs were much more specific. For example, some companies reported their costs of measuring emissions. One small-cap company estimated $300,000 annually in internal staff time for its Scope 1 emissions data collection and reporting. This letter also included the aggregate ongoing costs of measuring Scope 1, Scope 2, and some Scope 3 emissions [2983] from three different companies. These companies' respective estimates are $200,000,[2984] $75,000,[2985] and 188 internal hours.[2986] Other specific cost estimates included assurance (ranging from $10,000 to $550,000, depending on the scope and level of assurance), external consultants (ranging from $55,000 to $990,000), and other activities related to sustainability reporting.

A public report presents detailed climate-related reporting cost estimates from three anonymous companies.[2987] One company, a large-cap financial institution, reported that the cost of issuing their first TCFD report was less than $100,000 and that annual ongoing costs for responding to the CDP questionnaire is likewise less than $100,000. Another company, a mid-cap waste management company, stated that the cost of producing their first TCFD and SASB report were both less than $10,000. This company reported that its total annual employee costs associated with climate disclosure are approximately $12,600. It also reported incurring annual third-party costs between $60,000 to $160,000 to ''develop [its] corporate sustainability report and microsite, both of which contain GHG climate-related information.'' This company estimates the cost of producing voluntary climate-related disclosures to be less than 5 percent of its total SEC compliance-related costs. The remaining company, a large-cap industrial manufacturing company, reported that the combined cost of producing its first TCFD, SASB, and GRI disclosures amounted to between $250,000 and $350,000 (without providing a breakdown of component costs), while the cost of responding to its first CDP questionnaire was less than $50,000. This company reported that it also spent $400,000 annually for third-party auditors and consultants that provide support in the company's climate disclosure efforts.

Another commenter provided the results of a survey, conducted from February to March 2022, of corporate issuers and institutional investors (''ERM survey'').[2988] The results reflect the responses of 39 issuers, of which 29 were LAFs.[2989] The ERM survey presents issuers' average annual costs in seven categories: GHG analysis and/or disclosures ($237,000); [2990] climate scenario analysis and/or disclosures ($154,000); [2991] additional climate-related analysis and/or disclosures ($130,000); [2992] internal climate risk management controls ($148,000); [2993] proxy responses to climate related proposals ($80,000); assurance/audits related to climate ($82,000); and other climate-related disclosure costs not covered by the previous six categories ($76,000).

We also reviewed annual cost estimates associated with existing climate-related disclosure policies in the U.K. In 2021, the U.K. Financial Conduct Authority (''FCA'') adopted a comply-or-explain disclosure rule (''FCA rule''), which originally applied only to commercial companies with a U.K. premium listing [2994] but, effective 2022, was subsequently expanded to include issuers of standard listed shares.[2995] The U.K. Department for Business, Energy, and Industrial Strategy (''BEIS'') adopted a similar—albeit mandatory—disclosure rule (''BEIS rule''), also effective 2022,[2996]

[2979] *Id. See* Company 1 (large-cap company).

[2980] *Id. See* Company 2 (large-cap company). Throughout this release, ''ongoing costs'' refer to recurring costs on an annual basis.

[2981] *Id. See* Company 3 (large-cap company).

[2982] *Id. See* Company 4 (small-cap company).

[2983] Disclosing ''some Scope 3 emissions'' generally means that the commenter discloses some—but not all—categories of Scope 3 emissions. For example, one company ''discloses Scope 1 and Scope 2 and some Scope 3 (fuel and energy-related activities, business travel, and use of sold products) GHG emissions . . .'' *See* letter from Soc. Corp. Gov (June 17, 2022).

[2984] *Id. See* Company 9 (large-cap company).

[2985] *Id. See* Company 11 (large-cap company).

[2986] *Id. See* Company 10 (large-cap company).

[2987] *See* L. Reiners & K. Torrent, *The Cost of Climate Disclosure: Three Case Studies on the Cost of Voluntary Climate-Related Disclosure,* Climate Risk Disclosure Lab (2021), available at *https://econ.duke.edu/sites/econ.duke.edu/files/documents/The%20Cost%20of%20Climate%20Disclosure.pdf. This source was also reviewed as part of the proposed rules. See* Proposing Release, section IV.C.2.a.

[2988] *See* ERM survey, *supra* note 2670. The 39 issuers included the following industries: healthcare and pharmaceuticals; financials, insurance, and professional services; consumer discretionary products; communication services; transportation, construction, and industrials; consumer staples; oil, gas, and energy; utilities; real estate; metals, plastics, and other raw material; and information technology.

[2989] *See id.* Respondent market capitalizations ranged from less than $300 million to more than $200 billion, with the highest proportion of respondents (34%) having a market capitalization between $10 billion and $50 billion.

[2990] This survey category includes all costs relating to the development of GHG inventories with analysis and disclosure of Scope 1, Scope 2, and/or Scope 3 emissions.

[2991] This survey category includes all costs to issuers related to conducting assessments of the impact of climate risks in the short-, medium-, or long-term using scenario analysis as well as TCFD/CDP disclosure of risks and opportunities. Respondents were asked to exclude from this category any costs that they included in their costs of GHG emissions analysis and disclosures.

[2992] This survey category includes additional voluntary climate-related analyses and disclosures for processes largely disconnected from current and proposed climate-related disclosures such as outreach, engagement, and management.

[2993] This survey category includes costs for internal climate risk management controls, namely the costs related to integrating climate risk into enterprise risk management, oversight at the board level, strategic planning, internal audit, and other fundamental business processes. In addition, this category includes issuer costs related to climate-related data collection and aggregation, including IT costs and staff time; internal review of climate-related data collection by management, board committees, and the board; in-house counsel drafting; and review by outside counsel.

[2994] *See* FCA, Policy Statement PS20/17, *Proposals to Enhance Climate-related Disclosures by Listed Issuers and Clarification of Existing Disclosure Obligations* (Dec. 2020), available at *https://www.fca.org.uk/publication/policy/ps20-17.pdf.* This document states that the rule would apply to 480 companies that have a premium listing. A premium listed company is a company listed on the London Stock Exchange that is subject to more stringent compliance and disclosure requirements in addition to the minimum standards outlined in the UK provisions that implemented the EU Consolidated Admissions and Reporting Directive (CARD) and the EU Transparency Directive.

[2995] *See* FCA, Consultation Paper CP21/18, *Enhancing Climate-related Disclosures by Standard Listed Companies and Seeking Views on ESG Topics in Capital Markets* (June 2021), available at *https://www.fca.org.uk/publication/consultation/cp21-18.pdf.* Cost estimates of the FCA rule are sourced from this document. *See also* FCA, Policy Statement PS21/23, *Enhancing Climate-related Disclosures by Standard Listed Companies* (Dec. 2021). This rule applies to 244 issuers: 148 issuers of standard listed equity shares as well as 96 additional issuers (*i.e.,* standard listed issuers of Global Depository Receipts and standard listed issuers of shares other than equity shares, excluding standard listed investment entities and shell companies). A standard listed company is a company listed on the London Stock Exchange that is subject to the minimum standards outlined in the UK provisions that implemented the EU Consolidated Admissions and Reporting Directive (CARD) and the EU Transparency Directive.

[2996] U.K. Final Stage Impact Assessment, Mandating Climate-related Financial Disclosures By Publicly Quoted Companies, Large Private Companies and Limited Liability Partnerships (LLPs) (2021), available at *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1055931/tcfd-final-*

that was previously used to inform the Commission's cost estimates of the proposed rules.[2997] The BEIS rule generally applies to companies that have over 500 employees and/or a turnover of more than £500 million.[2998] Both rules exhibit significant overlap as they are both largely based on the TCFD framework's major components, including disclosure on governance, strategy, and risk management, all of which have similar counterparts in the final rules. Both UK rules also include scenario analysis and metrics and targets; however, because undertaking these activities is not required under the final rules (only their disclosure in specific circumstances), we focus on the cost estimates of the other components that are more relevant to the final rules.[2999]

One-time implementation costs—which consist of ''familiarization costs'' and ''legal review''—are estimated to be $19,543 [3000] by the BEIS and $15,147 by the FCA. The BEIS rule presents first-year cost estimates of complying with climate-related disclosures associated with Governance ($11,256),[3001] Strategy ($16,080),[3002] and Risk Management ($13,359),[3003] for a combined total of $40,694, which is assumed to remain the same in subsequent years. This contrasts with the FCA's corresponding first-year costs of $183,028 and ongoing costs of $86,270 for larger issuers.[3004] The FCA rule also estimates costs for small and medium-sized issuers, with corresponding costs of $137,271 in the first year and $64,702 in subsequent years.

These estimates from the FCA and BEIS rules help to inform our assessment of the compliance costs of similar provisions of the final rules amending Regulation S–K, as our approach for these provisions is based, in part, on the TCFD recommendations. However, it is important to note that these estimates are intended to reflect compliance costs of the typical company within the designated sample of affected entities and are conditional upon several assumptions regarding the number of required staff, the rank or title of the staff, the required labor hours, and local wage data. Actual costs can vary significantly depending on company characteristics, such as company size, industry, business model, the complexity of the company's corporate structure, existing climate-related disclosure practices, and internal expertise, etc.

Another commenter provided cost estimates reported by an anonymous company, referred to as a ''Well-known seasoned issuer.'' [3005] This company, which has made TCFD-aligned disclosures public on its website (including Scope 1, Scope 2, and Scope 3 emissions disclosures) estimated that, combined with the amounts the company currently spends on voluntary climate disclosure, the company would need to spend a total of approximately $35 million over five years to implement climate-related reporting in order to comply with the proposed rules, if adopted as proposed. Within this amount, the company estimates one-time expenses of $19 million and recurring expenses averaging $3.1 million per year. The primary categories of expenses are audit fees, professional services, subscriptions, labor, licenses, and training. The company estimates that compliance with the provisions amending Regulation S–X, as proposed, would have initial costs of $1.5 million to $2.0 million and subsequent ongoing costs of $1.0 million to $2.0 million annually. The company also estimated compliance costs for the proposed Scope 3 emissions disclosure to be $15.6 million over five years, with a significant part of this cost attributable to attestation requirements and with ''filing'' Scope 3 information.[3006]

Several letters from professional trade or industry organization also provided cost estimates. One commenter stated that the ''cost of registrants trying to report in alignment with just certain aspects of TCFD for their first time on a voluntarily basis can be around $500,000. . . . The actual cost for complete alignment to TCFD could be up to $1,000,000 per registrant over several years,'' which does not include the annual cost associated with preparing for and conducting attestation.[3007] Another commenter said that based on member feedback, the ''true initial set up and ongoing compliance costs for a typical retailer will be more than 35 times the amount that the SEC has estimated . . . . Members estimate that the initial costs of implementing the proposed rules would be somewhere in the $5 million to $15 million range.'' [3008] Other commenters estimated the initial cost of complying with the proposed amendments to Regulation S–X would exceed $100 million.[3009] One commenter estimated that the combined costs of ''complying with the reporting requirements under S–X and S–K would

stage-ia.pdf (''BEIS Final Stage Impact Assessment''). Cost estimates of the BEIS rule (with the exception of familiarization costs) are sourced from this document.

[2997] *See* Proposing Release, section IV.C.2.a, which also reviews the BEIS rule (referred to as the ''UK Impact Assessment'' in the Proposing Release). The estimated costs of the BEIS rule, as outlined in the following paragraphs, are the same as those presented in the proposed rules, with the exception of applying an updated exchange rate to convert the costs from GBP to USD.

[2998] Specifically, the BEIS rule applies to relevant Public Interest Entities (''PIEs''), including UK Premium and Standard listed companies with over 500 employees, UK registered companies with securities admitted to the Alternative Investment Market with more than 500 employees, limited liability partnerships with over 500 employees and a turnover of over £500 million, and UK registered companies that are not included in the categories above and that have over 500 employees and a turnover of over £500 million.

[2999] The following cost estimates from the BEIS and FCA reflect internal labor costs with the assumption that affected entities have no pre-existing climate-related disclosure practices that fulfill the stated requirements. The costs are converted from GBP to USD using the 2022 average exchange rate of $1.2369 USD/GBP.

[3000] The familiarization cost component is sourced from the BEIS Consultation Stage Impact Assessment (as opposed to Final Stage), which assumes that scenario analysis requirements are not part of the familiarization process, and thus may be a relatively better representation of the corresponding cost with respect to the final rules. The familiarization cost is estimated to be £12,600. *See* BEIS Final Stage Impact Assessment2996. The other initial cost related to legal review (£3,200), as outlined in the BEIS Final Stage Impact Assessment, is added to obtain £15,800 ($19,543). *See supra* note 2996.

[3001] Governance costs include the ongoing cost to those in scope to implement, document and disclose governance of their climate related risks and opportunities and to coordinate across internal business functions.

[3002] Strategy costs include the ongoing reporting costs to those entities in scope of internally coordinating, documenting and disclosing climate-related risks and opportunities the company has identified, as well as reporting the impact of these risks on the company's business, strategy, and financial planning. This estimate does not include scenario analysis, which is discussed separately in a later paragraph.

[3003] Risk management costs are the ongoing annual costs to those entities in scope to disclose the company's management of climate-related risks, including the coordination across functions internally, identification and assessment of risks and their integration into the company's overarching risk-management strategy. This also includes the time taken to identify and analyze major risk exposures in the context of the company's business strategy.

[3004] The FCA presents aggregated costs for governance, strategy, and risk management disclosure instead of individual costs for each of the aforementioned disclosure categories. The cost discrepancy relative to the BEIS rule is primarily driven by significantly different assumptions of internal labor requirements, such as the number of employees, salaries, and required hours.

[3005] *See* letter from Chamber.

[3006] *See* letter by API. We note that the proposed rules would not have imposed any attestation requirements with respect to Scope 3 emissions disclosure.

[3007] *See* letter from AEPC.

[3008] *See* letter from RILA.

[3009] *See* letters from Western Energy Alliance (suggesting initial compliance costs to be ''over $100 million for large companies when considering not just the new systems but the staff training required'') and API (without specifying whether the $100 million figure reflects implementation costs or ongoing annual costs).

cost companies $3 to $7 million annually.'' [3010]

One commenter included cost estimates provided by members of its trade association with respect to their on-going efforts, prior to the proposed rules, in measuring GHG emissions.[3011] One member reported that an average automated GHG measuring system would cost $250,000 to purchase and set up, with ongoing annual costs of approximately $100,000. Another member reported that ''completing questionnaires and conducting emissions measurements through an automated GHG measuring program with applicable audits costs the company about $15,000 per year to maintain.'' Another member company's mature Scope 1 and 2 emissions reporting programs resulted in 100 to 200 resource hours per year.

Several individual registrants also provided cost estimates of either their own current climate-reporting practices or expected practices if the proposed rules were adopted as proposed. One multinational registrant that engages in hydrocarbon exploration and production estimated that initial compliance costs with respect to the proposed rules would range from $100 to $500 million.[3012] This registrant expressed concerns about the burden of complying with the proposed rules, particularly with the proposed amendments to Regulation S–X. This registrant estimated ongoing costs to be $10 to $25 million annually. One energy company noted that it expected compliance costs to be at least four to five times the estimates provided in the Proposing Release, primarily due to the necessary increases in staff and the added costs in auditing and attestation fees.[3013] Other energy companies estimated that compliance with the proposed amendments to Regulation S–X and reporting Scope 3 emissions would likely exceed $100 million [3014] and $1 million,[3015] respectively.

Another commenter, a multinational energy company, estimated its internal burden hours for Scope 3 emissions reporting to be 650 hours in the first year and 100 hours annually in subsequent years.[3016] A different commenter reported that it allocates one full-time consultant and 20 employees working part time each year from November to March as part of its process to measure Scope 1, Scope 2, and some Scope 3 emissions, collect and validate data, estimate and review emissions, and obtain third-party limited assurance for GHG-related data in its sustainability report.[3017] Another commenter that already tracks some Scope 1 emissions estimated that it may incur an additional cost of $10,556,800 or more to track and report Scope 1 emissions from additional facilities as a result of the proposed rules.[3018] A multinational fertilizer company estimated that the direct and indirect costs of compliance with the proposed rules would be between $35 million and $55 million, with assurance costs related to financial statement metrics estimated to be $70,000 to $225,000 annually.[3019]

We also reviewed memoranda of staff meetings with external parties that further inform our assessment of the final rules' compliance costs.[3020] One organization presented pricing information for the following relevant services provided: TCFD reporting, excluding measuring emissions and establishing targets ($100,000 average); assessing Scopes 1, 2, and 3 emissions ($75,000 to $125,000); and target setting ($20,000 to $30,000).[3021] A different organization indicated fees would range from $11,000 to $105,000 for services related to GHG accounting (Scopes 1, 2, and 3 emissions).[3022] Another organization estimated that costs for assessing Scopes 1 and 2 emissions would range between $25,000 and $45,000 and assessing Scopes 1, 2, and 3 emissions would cost between $50,000 and $125,000, depending on whether a given company already has emissions-measuring systems and processes in place.[3023]

The cost information in the above sources indicates the variance and the scale of compliance costs the proposed rules would have imposed on registrants. We note, however, that many of the estimates combine the costs of multiple components without providing a breakdown of component costs, which makes it difficult to isolate only the components that are applicable to the proposed or final rules. Furthermore, these voluntary cost estimates may reflect some selection bias such that they may be skewed toward a certain demographic (*e.g.,* large-cap companies) and thus may not be representative of the broad sample of affected registrants. Finally, to the extent that the cost estimates are specific to the proposed rules, they do not account for the changes made to the final rules. For example, the final rules' requirements with respect to financial statements have been narrowed relative to the proposed rules.[3024] In addition, the final rules do not require the disclosure of Scope 3 emissions. Nevertheless, we use this cost information to the extent possible to inform our assessment of the expected compliance costs of the final rules, as outlined in the following subsection.

b. Direct Cost Estimates for the Final Rules

The final rules will impose a number of new disclosure requirements on registrants. These requirements will result in additional compliance costs for registrants, and, depending on the nature of the registrant's operations and its existing disclosure practices, these additional compliance costs could be significant. Using comment letters and other sources, we take a conservative approach (*i.e.,* erring on the side of overstating costs rather than understating them) to estimate approximate compliance costs for the final rules, which are discussed in

[3010] *See* letter from National Retail Federation.

[3011] *See* letter from IDFA.

[3012] *See* letter from ConocoPhillips.

[3013] *See* letter from PPL Corporation.

[3014] *See* letter from Western Energy Alliance.

[3015] *See* letter from Williams, Inc.

[3016] *See* letter from Ørsted.

[3017] *See* letter from Air Products and Chemicals, Inc.

[3018] *See* letter from Energy Transfer LP. This commenter derived this cost based on estimates from the EPA's mandatory GHG reporting rule. *See Mandatory Reporting of Greenhouse Gases,* 74 FR 56, 260, 363 tbl. VII–2 (Oct. 30, 2009). This commenter estimated this cost to be $7,000,000 in 2006 dollars, which was adjusted for inflation to obtain $10,556,800 in 2023 dollars.

[3019] *See* letter from Nutrien. This estimate includes costs associated with conducting scenario analysis and including the related information in public disclosures; measuring and reporting Scope 1 and 2 emissions by each GHG, obtaining reasonable assurance on Scope 1 and 2 emissions by each GHG; measuring and reporting Scope 3 emissions by each GHG for public disclosure subject to DCP; and disclosure of the proposed Financial Impact Metrics within the audited financial statements, among other proposed disclosures. These costs include internal costs, external professional service fees, and additional systems and internal control processes that the commenter indicated would need to be designed and operating effectively for public disclosure of high-quality information.

[3020] The meeting memoranda are available at the same location as the comment letters in response to the Proposing Release. *See supra* note 19. Some of these meetings occurred prior to the Proposing Release and thus any data included in the memoranda do not reflect specific details of the proposed rules; however, we have considered these memoranda as part of this assessment as they contain relevant cost information.

[3021] *See* Memorandum Concerning Staff Meeting With Representatives of S&P Global (Feb. 4, 2022); *see also* Proposing Release, *supra* note 1027.

[3022] *See* South Pole Memo; *see also* Proposing Release, note 1037. These numbers have been converted from EUR based on the 2022 average exchange rate of $1.0538 USD/EUR, rounded to the nearest $100.

[3023] *See* Memorandum Concerning Staff Meeting with Representatives of Persefoni (Nov. 30, 2021); *see also* Proposing Release, at n. 1036.

[3024] *See, e.g., supra* sections II.K.2.c and II.K.3.c.

subsequent sections and summarized immediately below.

With respect to the Regulation S–K amendments pertaining to governance disclosure (Item 1501); disclosure regarding the impacts of climate-related risks on strategy, business model, and outlook (Items 1502(a) through (e) and (g)); and risk management disclosure (Item 1503), we estimate that compliance costs will be $327,000 in the first year of compliance and $183,000 annually in subsequent years.[3025] For those registrants that conduct scenario analysis and are required to provide attendant disclosures (Item 1502(f)), we estimate the reporting costs will be $12,000 in the first year and $6,000 in subsequent years.[3026] Some registrants will be required to disclose Scope 1 and 2 GHG emissions (Item 1505) after a specified phase in period. We estimate that the compliance costs for these disclosures will be $151,000 in the first year of compliance and $67,000 annually in subsequent years.[3027] After an additional phase in period, applicable registrants will be required to obtain assurance for their emissions disclosures (Item 1506). Limited assurance for emissions disclosures is estimated to cost $50,000 while reasonable assurance is estimated to cost $150,000.[3028] For registrants that voluntarily establish targets or goals and are required to provide attendant disclosures (Item 1504), we estimate the reporting costs will be $10,000 in the first year of establishing the target and $5,000 in subsequent years.[3029] With respect to amendments to Regulation S–X, we estimate an upper bound of $500,000 in the first year of compliance, while the annual cost in subsequent years is estimated to have an upper bound of $375,000.[3030] Incremental audit fees are estimated to have an upper bound of $23,000 for all years.[3031]

We emphasize that there could be a considerable range in actual compliance costs given that not all costs listed above will apply to all registrants or during all measurement periods. Depending on the registrant, annual compliance costs (averaged over the first ten years of compliance) could range from less than $197,000 to over $739,000.[3032] A registrant's compliance costs may be at the lower end of the cost range if, for example, it does not conduct scenario analysis, does not have material Scope 1 and 2 emissions, has no climate-related target or goal, and has no applicable expenditures or financial statement impacts that require disclosure, thereby avoiding the corresponding costs of the aforementioned disclosure items. However, this registrant may have exposures to material climate risks that necessitate governance disclosure; disclosure regarding climate-related risks that have material impacts on strategy, business model, and outlook; and risk management disclosure. In this case, the cost of these required disclosures—estimated to be $327,000 in the first year of compliance and $183,000 annually in subsequent years [3033]—would comprise the full compliance cost of the final rules. This corresponds with an average annual compliance cost of $197,000 (rounded to the nearest $1,000) over the first ten years of compliance.[3034] Incremental compliance costs would be even lower for registrants that already provide these disclosures (either voluntarily or as required by other laws or jurisdictions).[3035]

At the upper end of the cost range, for example, there may be other registrants for which all estimated compliance costs apply. In this example, these registrants could incur an estimated $872,000 [3036] in the first year of compliance and lower annual costs in subsequent years. After the respective phase in periods, these registrants would incur additional costs for GHG emissions disclosure, limited assurance, and subsequently reasonable assurance (assuming the registrant is an LAF). This registrant would incur an average annual compliance cost of $739,000 (rounded to the nearest $1,000) over the first ten years of compliance.[3037] These examples highlight the potential range in compliance costs depending on a given registrant's circumstances, including (but not limited to) industry, size, existing climate-related disclosure practices, and whether the registrant's climate-risk exposure exceeds applicable materiality thresholds for disclosure.

Regarding assessing materiality to determine whether disclosure is required under the final rules, we acknowledge that some registrants may need to expend resources to first determine whether particular disclosure items are material, even in cases where registrants ultimately determine they do not need to make disclosure. While commenters provided estimates of the overall costs of measuring and assessing GHG emissions and making disclosure under TCFD disclosure frameworks, they did not provide a level of detail that would enable us to reliably disaggregate the materiality determination from the costs of disclosure more broadly. We also note that the cost of such a determination could vary depending on the registrant's facts and circumstances and may in some cases be de minimis. While we have not provided a standalone cost estimate of making such materiality determinations, our estimates of the costs of governance disclosure, disclosure regarding the impacts of climate-related risks on strategy, business model, and outlook, and risk management disclosure begin with TCFD disclosure as a starting point.[3038] Thus, to the extent that a materiality or similar assessment is included in TCFD disclosure, this cost is reflected in the Commission's compliance cost estimates with respect to the above disclosure items.

Moreover, the above estimates are conditional upon several factors. First, they depend on the sample of sources and commenters that voluntarily provided relevant cost information.[3039] To the extent that this sample is not representative of the broad set of affected registrants, the resulting estimates may similarly be less representative. In addition to company size and industry, another relevant factor may be the decision to engage third-party advisory services. Some registrants may determine that engaging such advisory services will better position them to comply with the final rules, while others may decide to use in-

[3025] *See* section IV.C.3.b.i.

[3026] *See* section IV.C.3.b.iv.

[3027] *See* section IV.C.3.b.ii.

[3028] *See* section IV.C.3.b.iii.

[3029] *See* section IV.C.3.b.iv.

[3030] *See* section IV.C.3.b.v.

[3031] *Id.*

[3032] Registrants will incur compliance costs for different disclosure items at different times due to applicable phase in periods. For ease of comprehension and comparability, these estimates are presented as the average annual compliance cost over the first ten years of compliance. *See infra* notes 3034 and 3036 for additional details.

[3033] *See* section IV.C.3.b.i.

[3034] ($327,000 + $183,000*(9 years))/10 = $197,400.

[3035] *See supra* section IV.A for a discussion on existing laws (domestic and foreign) that elicit similar disclosures and current market practices with respect to climate-related disclosures. *See also infra* section IV.C.3.c.

[3036] $327,000 (governance disclosure; disclosure regarding climate-related risks that have material impacts on strategy, business model, and outlook; and risk management disclosure) + $12,000 (reporting cost of scenario analysis) + $10,000 (reporting cost of target or goal) + $500,000 (disclosures related to amendments to Regulation S–X, upper bound) + $23,000 (audit fees, upper bound) = $872,000.

[3037] Total compliance costs are calculated each year for the first ten years of compliance, taking into account the various disclosure items and their respective phase in periods. The average of these annual costs is $738,700.

[3038] See section IV.C.3.b.i.

[3039] *See supra* section IV.C.3.a.

house resources.[3040] The above estimates incorporate information on both internal costs (*e.g.,* employee hours) and external costs (*e.g.,* hiring third parties or consultants), as provided by comment letters and other sources.[3041] Second, several analytical assumptions were incorporated in the estimation process. While we endeavored to apply them consistently and in a conservative manner throughout the analysis, actual compliance costs may differ to the extent that these assumptions do not reflect a given registrant's specific circumstances.

The above compliance cost estimates exhibit certain features that may make them conservative. First, the cost estimates from comment letters and other sources, which serve as inputs in our cost estimation process, are almost all from large-cap companies. To the extent that compliance costs increase with company size, smaller registrants can expect lower costs.[3042] Furthermore, there are numerous instances in which analytical assumptions were required due to insufficient information from the source material. Wherever possible, assumptions that tend to overstate actual costs were chosen over those that would tend to understate them. Certain registrants may nonetheless incur costs that exceed our estimates. However, we believe that due to the nature of our cost estimation process, the majority of registrants will incur costs that do not exceed our estimates. Furthermore, our estimates assume registrants have no pre-existing climate-related disclosure practices. As a result, those that already provide disclosures that meet some of the final rules' requirements will face lower incremental costs.[3043]

We recognize that some comment letters in response to the proposed rules contained compliance cost estimates that significantly exceed the Commission's estimates of the final rules.[3044] We reiterate that this discrepancy is likely attributable to a number of changes from the proposed rules that reduce compliance costs. For example, the final rules do not require Scope 3 emissions reporting and have less burdensome requirements with respect to the amendments to Regulation S–X, thereby resulting in reduced compliance costs.

Our compliance cost estimation process consists of five elements. First, we estimate the aggregate costs of complying with three specific provisions that have similar counterparts within the TCFD framework: governance disclosure; disclosure regarding climate-related risks that have material impacts on strategy, business model, and outlook; and risk management disclosure. Second, we estimate the cost of assessing and disclosing Scope 1 and 2 emissions. Third, we estimate the cost of obtaining third-party assurance for GHG emissions disclosures. Fourth, we estimate the reporting costs of scenario analysis and targets and goals. Fifth, we estimate the costs associated with complying with the amendments to Regulation S–X and incremental audit costs. We proceed with a review of each element that describes how we arrived at the above compliance cost estimates.

i. Cost Estimates of Governance Disclosure; Disclosure Regarding Impacts of Climate-Related Risks on Strategy, Business Model, and Outlook; and Risk Management Disclosure

We begin by reviewing estimates from commenters and other sources with respect to the costs of TCFD disclosure with the objective of informing our assessment on the costs of similar provisions of the final rules. Specifically, these provisions of interest include governance disclosure; disclosure regarding climate-related risks that have material impacts on strategy, business model, and outlook; and risk management disclosure. We begin by focusing on these specific provisions separate from other components (*e.g.,* GHG emissions measurement or targets and goals) because these other components are not necessarily required in all circumstances or by all registrants.

In many cases, however, commenters provided one aggregate cost for their TCFD disclosure that also included the costs of GHG emissions measurement or target and goals-related activities. Without a breakdown of component costs, we face challenges in isolating the costs of the relevant provisions. Moreover, some commenters provided only a single aggregate cost that, in addition to their TCFD disclosure, includes several other components not required by the final rules,[3045] which poses similar challenges in separately estimating the component costs.

To account for these challenges, we used an approach that takes these aggregate cost estimates and applies adjustments derived from specific estimates from other sources, allowing us to obtain a more targeted ''adjusted cost.'' For example, some commenters provided their cost estimates specifically for measuring emissions, from which we can determine the median reported emissions-measurement cost. Thus, if a given commenter provided an aggregate cost of TCFD disclosure that includes the measuring of emissions, we applied an adjustment (*i.e.,* subtracted the median reported emissions-measurement cost), which results in an adjusted cost estimate for the remaining portion of TCFD disclosures (*i.e.,* the provisions of interest). We applied similar adjustments throughout the analysis, as described in detail below.

While this approach can help us arrive at more granular cost estimates, we also recognize its limitations. Primarily, the median reported cost of a given component may be different from the actual cost incurred by a specific registrant (due to differences in company size, industry, climate reporting practices, or other factors) such that applying the adjustment may not yield a true representation of that registrant's cost breakdown. However, we believe this issue is mitigated to some extent because almost all estimates used in this analysis are from large cap companies and thus of relatively comparable size. Furthermore, while a given cost adjustment may be overstated for some registrants and understated for others, these discrepancies should partially offset each other when we subsequently take

[3040] For example, registrants that are required to disclose emissions may be more likely to rely on external services. Registrants facing climate-related risks that are complex or a myriad may also be more likely to engage third party services. We emphasize that the final rules impose no requirement with respect to the use of third-party services and that registrants are free to decide how best to meet compliance based on their specific circumstances.

[3041] Some commenters provided TCFD disclosure costs and separate costs for sustainability consultants. *See, e.g.,* letters from Soc. Corp Gov (June 11, 2021, and June 17, 2022). However, the latter were often not explicitly tied to TCFD, but rather associated with sustainability reports or other disclosures and activities not necessarily required by the final rules. In these cases, we only used the TCFD disclosure costs due to their direct relevance while omitting the cost of sustainability consultants as we could not reliably determine what portion were directly attributable to the TCFD and the provisions of interest. For GHG emissions, some companies' estimates included both internal and external costs, some mentioned the use of external costs but did not provide dollar estimates, while others did not engage external services at all. We have incorporated all available information to the extent possible in our estimation process.

[3042] Nevertheless, we recognize that in some cases, certain components of compliance costs may not vary with size and may be higher in proportional terms for smaller registrants.

[3043] *See* section IV.C.3.c.

[3044] *See* section IV.C.3.c.

[3045] For example, an anonymous large-cap company ''noted that combined costs for producing its first TCFD, SASB, and GRI disclosures were between $200,00 and $350,000.'' *See supra* note 2987.

the median [3046] of the resulting adjusted costs.

Table 8 presents an overview of the cost estimation methodology with respect to the provisions of interest. Column (1) specifies the commenter or other public source that contains cost estimates specific to TCFD disclosures. Some sources contained costs for multiple, anonymous companies. Where applicable, these company descriptions are provided in Column (2). Column (3) shows the ongoing costs of TCFD disclosures before cost adjustments are applied. Some costs are taken directly from the source, whereas in other cases, specific assumptions and calculations are applied to obtain an estimate (see table footnotes for details). For example, if a source provided estimates in the form of FTEs or burden hours, we converted them to dollars according to hourly cost estimates consistent with the PRA.[3047] Some sources only provided an initial cost (*i.e.,* first-year startup cost) without providing ongoing, annual costs. In these cases, we estimate the ongoing cost by applying a percentage reduction derived from other sources. Furthermore, because the CDP questionnaire exhibits full alignment with the TCFD recommendations,[3048] we also included estimates for responding to the CDP questionnaire, from which we estimated the equivalent cost for TCFD disclosures by applying a conversion factor.[3049]

We determined that some of the costs in Column (3) include the costs of setting targets and goals or measuring GHG emissions, as indicated in Columns (4) and (5), respectively. Where applicable, these costs are subtracted from Column (3) to obtain the adjusted cost in Column (6), which represents the aggregate, annual ongoing cost estimate for provisions of interest: governance disclosure; disclosure regarding climate-related risks that have material impacts on strategy, business model, and outlook; and risk management disclosure.

TABLE 8—COST ESTIMATES OF GOVERNANCE DISCLOSURE; DISCLOSURE REGARDING CLIMATE-RELATED RISKS THAT HAVE MATERIAL IMPACTS ON STRATEGY, BUSINESS MODEL, AND OUTLOOK; AND RISK MANAGEMENT DISCLOSURE

Commenter or source	Type of company (if specified)	Ongoing cost of TCFD disclosures (pre-adjustment)	Adjustment: setting targets and goals ($54,015) [1]	Adjustment: Scope 1, Scope 2, and some Scope 3 emissions ($79,236) [2]	Adjusted cost [3]
(1)	(2)	(3)	(4)	(5)	(6)
Society for Corporate Governance (June 11, 2021).	Financial Services company	[4] $1,918,080	Included	Included	$1,784,829
	Energy company	[5] 8,524,800		Included	8,445,564
	Comm. Services company	[6] 865,385	Included	Included	506,862
Society for Corporate Governance (June 17, 2022).	Company 5	[7] 360,000		Included	280,764
	Company 6	[8] 2,237,760	Included.	Included	2,104,509
FCA rule		[9] 86,270			86,270
BEIS rule		[10] 40,694			40,694
The Climate Risk Disclosure Lab	Large-cap financial institution.	[11] 56,000			56,000
	Mid-cap company	[12] 5,600			$5,600
	Large-cap company	[13] 63,000			63,000
American Exploration and Production Council.		[14] 280,000			280,000
S&P Global		[15] 56,000			56,000
Median					[16] 183,135

[1] The adjustment factor for setting targets and goals is $54,015, which is determined by relevant cost estimates presented in Table 9.

[2] The adjustment factor for assessing Scope 1, Scope 2, and some Scope 3 emissions is $79,236, which is determined by relevant cost estimates presented in Table 10.

[3] The adjusted cost is calculated as Column (3) minus adjustment factors where applicable, as indicated by Columns (4) and (5). If Column (4) indicates ''Included,'' then $54,015 is subtracted from Column (3). Similarly, if Column (5) indicates ''Included,'' then $79,236 is subtracted from Column (3). The net result is the ''adjusted cost,'' presented in Column (6).

[4] *See* letter from Soc. Corp. Gov (June 11, 2021). This company reported that three FTEs ''plus others'' spend nine months for TCFD reporting. (3 FTEs)*(40 hrs/wk)*(36 wks)*($444/hr) = $1,918,080. The source does not specify how many hours are contributed by the ''others,'' thus the estimated cost may be understated.

[5] *See id.* This company reported TCFD-aligned reporting process involved 40 people from the company and took six months of nearly full-time participation by 20 core team members. (20 FTEs)*(40 hrs/wk)*(24 wks)*($444/hr) = $8,524,800. The source does not specify how many hours are contributed by those outside of the 20 core members, thus the estimated cost may be understated.

[6] *See id.* This company reported spending $1.25 million on both CDP and TCFD disclosures, in addition to several other components. We first estimate the TCFD component by applying the 4-to-9 ratio. ($1.25 million)*(9/13) = $865,385.

[7] *See* letter from Soc. Corp. Gov (June 17, 2022). This company reported spending ''$160,000 for CDP and other climate-related surveys, including supply chain surveys.'' To be conservative, we assume that the $160,000 is the cost for CDP only, then apply the 4-to-9 ratio. $160,000*(9/4) = $360,000.

[8] *See id.* This company reported that ''two employees focus on climate change, including disclosure, and 1.5 employees focus on sustainability reporting overall,'' spending nine months on its TCFD report. (3.5 FTEs)*(40 hrs/wk)*(36 wks)*($444/hr) = $2,237,760.

[9] *See supra* note 2995. This is the ongoing cost of ''coordination of disclosure inputs across functions'' (£69,747 for larger issuers), which is in line with the TCFD disclosure categories of Governance, Strategy, and Risk Management. This cost is converted to USD based on the 2022 average exchange rate. (£69,747)*(1.2369 USD/GBP) = $86,270. This reflects a 56% reduction from initial to ongoing costs, which we consider in determining the appropriate percentage reduction in subsequent calculations.

[3046] Throughout the cost estimation process, we use medians instead of means since the former is less sensitive to outliers.

[3047] The PRA assumes that internal burden hours cost $444/hour, while external burden hours cost $600/hour. *See* section V.

[3048] For information on how the CDP questionnaire is fully aligned with the TCFD, *see* CDP, How CDP is aligned to the TCFD, *supra* note 52.

[3049] Two companies referenced in comment letters noted that it takes a designated number of staff four months to complete the CDP questionnaire and nine months to complete TCFD disclosures. Based on these estimates, we incorporate the assumption that the CDP-to-TCFD cost ratio is 4 to 9 (''4-to-9 ratio''). *See* letters from Soc. Corp. Gov. (June 11, 2021 and June 17, 2022).

[10] *See supra* note 2996. This figure adds the ongoing costs of disclosure associated with Governance (£9,100), Strategy (£13,000), and Risk Management (£10,800). The total (£32,900) is converted to USD based on the 2022 average exchange rate. (£32,900)*(1.2369 USD/GBP) = $40,694. This reflects a 32% reduction from initial to ongoing costs, which we consider in determining the appropriate percentage reduction in subsequent calculations.

[11] *See supra* note 2987. This company reported that the cost of issuing its first TCFD report was less than $100,000. To be conservative, we assume $100,000 is the initial cost. To estimate ongoing costs, we refer to the percentage reduction from initial to ongoing costs as reflected by the FCA rule (56%) and the BEIS rule (32%), of which the median is 44%. ($100,000)*(1 − 0.44) = $56,000.

[12] *See id.* This company reported that the cost of producing its first TCFD report was less than $10,000. To be conservative, we assume $10,000 is the initial cost. In estimating ongoing costs, we refer to the percentage reduction from initial to ongoing costs as reflected by the FCA rule (56%) and the BEIS rule (32%), of which the median is 44%. $10,000*(1 − 0.44) = $5,600.

[13] *See id.* This company reported that the combined cost for producing their first TCFD, SASB, and GRI disclosures was between $200,000 and $350,000 but did not provide the cost for TCFD only. However, it noted that the cost of preparing its first CDP questionnaire did not exceed $50,000. To be conservative, we assume the initial CDP-related cost is $50,000. We apply the 4-to-9 ratio to convert this to the initial costs of TCFD disclosure and then apply a 44% reduction to estimate the ongoing cost. $50,000*(9/4)*(1 − 0.44) = $63,000.

[14] *See* letter from AEPC. This commenter stated that initial costs to report in alignment with certain aspects of the TCFD can be around $500,000. To estimate ongoing costs, we refer to the percentage reduction from initial to ongoing costs as reflected by the FCA rule (56%) and the BEIS rule (32%), of which the median is 44%. $500,000*(1 − 0.44) = $280,000.

[15] *See supra* note 3021. This source, which provided indicative fees for TCFD reporting services, noted that the average cost would be around $100,000. To estimate ongoing costs, we refer to the percentage reduction from initial to ongoing costs as reflected by the FCA rule (56%) and the BEIS rule (32%), of which the median is 44%. $100,000*(1 − 0.44) = $56,000.

[16] When there is an even number of data points, there is no single middle value. In such cases, the median is computed as the arithmetic mean of the two middle data points. Accordingly, the median of Column (6) is calculated as follows: ($86,270 + $280,000)/2 = $183,135.

We next discuss our estimation process and methodology involved in producing the numbers in Table 8, including which cost estimates were included versus excluded, what assumptions were incorporated, and how the adjustment factors for targets and goals and GHG emissions measurement were calculated and applied. Many commenters did not explicitly state whether the costs of measuring emissions or setting targets and goals were included in their TCFD costs. As a result, we assumed that such costs were included only if such activities were contained in their qualitative description of climate-related disclosure activities. Of the twelve cost estimates presented in Table 8, we assume that three included the cost of target-related activities, as indicated in Column (4).[3050] We also assume that five estimates included the costs of measuring Scope 1, Scope 2, and some Scope 3 emissions, as indicated in Column (5).[3051]

We next review cost estimates specific to setting targets and goals and assessing GHG emissions (Scope 1, Scope 2, and some Scope 3) from other sources in order to obtain their adjustment factors ($54,015 and $79,236, respectively). We recognize that the final rules do not necessarily require registrants to incur costs associated with setting targets and goals or measuring all three scopes of GHG emissions. We review such cost estimates because we determined that some of the sources in Table 8 included them with their overall TCFD-related costs; however, they should not necessarily be interpreted as direct compliance costs resulting from the final rules. Instead, we use these cost estimates to obtain appropriate adjustment factors that are subsequently subtracted from the applicable estimates in Column (3).

The adjustment factor for setting targets and goals is $54,015, as indicated in Column (4). To obtain this number, we begin by reviewing four sources that provided more specific cost estimates related to targets and goals,[3052] which are presented in Table 9. The BEIS rule estimated that Metrics and Targets (including the cost of data gathering and cost of reporting, unrelated to GHG emissions) would have an ongoing cost of $72,359, while the FCA rule estimated the ongoing cost to be $53,507.

The remaining two sources only provided initial costs. Thus, to estimate the ongoing cost, we referred to the percent reduction from initial to ongoing costs reflected by the BEIS rule (23 percent reduction) and FCA rule (67 percent reduction), which yields a median percent reduction of 45 percent. One source estimated that setting targets would come with an initial cost ranging from $20,000 to $30,000.[3053] We apply the 45 percent reduction to arrive at an ongoing cost estimate of $13,750. Another company reported that it spent $1 million as an initial cost for target baseline and projections.[3054] We similarly apply the 45 percent reduction to arrive at an ongoing cost estimate of $550,000. The median of the ongoing costs of setting targets in Table 9 is $54,015, which is used as the adjustment factor for setting targets and goals (as indicated in Column (4) of Table 9).

[3050] The Financial Services company stated that it ''reports on its progress towards its low-carbon financing and carbon-neutrality goals; the percentage of renewable energy sourced to support its operations and the percentage of energy reductions year over year.'' The Communication Services company reports that it gathers metrics/data related to carbon abatement, renewable energy, water conservation, and incurs expenses for monitoring and data quality. (*See* letter from Soc. Corp. Gov (June 11, 2021)). Company 6 stated that it ''gathers data and reports on progress towards the company's low-carbon financing goal, progress toward the company's carbon-neutrality goal, the percentage of renewable energy sourced to support the company's operations, the percentage of energy reduction year-over-year.'' (*See* letter from Soc. Corp. Gov (June 17, 2022)). Based on the description of these activities, we assume that these three companies included the costs of setting targets and goals in their reported costs. The Large-cap financial institution stated that it ''is committed to achieving net-zero emissions by 2050 and is in the process of implementing the Paris Agreement Capital Transition Assessment (PACTA) methodology to align its loan portfolio with the goals of the Paris Agreement.'' *See supra* note 2987. However, given their relatively low reported costs, we assume that the cost of setting targets and goals is not included in order to remain conservative in our estimation.

[3051] The Financial Services company, Communications Services company, Company 5, and Company 6 all explicitly state that they measure and report Scopes 1, 2, and some Scope 3 emissions. The Energy company does not explicitly state that it measures emissions, however it states that it requires ''consultants in emissions, climate science, and modeling,'' ''multiple engineering disciplines,'' and ''GHG emissions reporting expertise'' as part of its disclosures. *See* letters from Soc. Corp. Gov (June 11, 2021 and June 17, 2022). Thus, we assume that these five companies included the costs of measuring Scope 1, 2, and some Scope 3 emissions within their reported costs. The Large-cap financial institution and Mid-cap company also report measuring the three scopes of emissions, however given their relatively low reported costs, we assume that the cost of measuring emissions is not included in order to remain conservative in our estimation.

[3052] These sources generally do not provide sufficient detail on precisely what the targets and goals disclosure would consist of; therefore, it is difficult to determine to what extent the corresponding cost estimates are applicable to the final rules' requirements on targets and goals. We can nevertheless use these sources to help us arrive at better informed compliance cost estimates. Similar reasoning can be applied to the cost estimates of scenario analysis, discussed in section IV.C.3.b.iv.

[3053] *See supra* note 3021.

[3054] *See* letter from Soc. Corp. Gov. (June 17, 2022).

TABLE 9—ONGOING COSTS OF SETTING TARGETS AND GOALS

Commenter or source	Ongoing costs of setting targets and goals
BEIS rule	[1] $72,359
FCA rule	[2] 35,671
Society for Corporate Governance (June 17, 2022)	[3] 550,000
S&P Global	[4] 13,750

[1] *See supra* note 2996. The BEIS rule estimated that the ongoing cost metrics and targets disclosure is £58,500 (£52,000 for annual data gathering and £6,500 for the cost of reporting). We apply the 2022 average exchange rate. (£58,500)*(1.2369 USD/GBP) = $72,359. This reflects a 23% reduction from initial to ongoing costs, which we consider in determining the appropriate percentage reduction in subsequent calculations.

[2] *See supra* note 2995. The FCA rule estimated that ongoing costs for metrics and targets disclosure is £43,259; however, this figure includes assessing Scopes 1 and 2 emissions. The corresponding initial cost disaggregates the cost, with two-thirds allocated to metrics and targets unrelated to Scopes 1 and 2 emissions. We assume the ongoing cost reflects the same proportional allocation and then we apply the 2022 average exchange rate. (£43,259)*(2/3)*(1.2369 USD/GBP) = $35,671. This reflects a 67% reduction from initial to ongoing costs, which we consider in determining the appropriate percentage reduction in subsequent calculations.

[3] *See* letter from Soc. Corp. Gov (June 17, 2022). ''Company 7'' in this comment letter reported that it spent $1 million on ''building a database for target baseline and projections,'' but did not provide the ongoing cost. To estimate the ongoing cost, we refer to the percentage reduction from initial to ongoing costs as reflected by the BEIS rule (23%) and the FCA rule (67%), of which the median is 45%. ($1,000,000)*(1 − 0.45) = $550,000.

[4] *See supra* note 3021. The S&P Global meeting memorandum provides estimates on the initial cost of setting target ($20,000–$30,000) but does not provide estimates with respect to the ongoing cost. To estimate the ongoing cost, we refer to the percentage reduction from initial to ongoing costs as reflected by the BEIS rule (23%) and the FCA rule (67%), of which the median is 45%. We apply this median percentage reduction to the midpoint of the initial cost: ($25,000)*(1 − 0.45) = $13,750.

Next, we focus on the adjustment factor for assessing Scope 1, Scope 2, and some Scope 3 emissions (as indicated in Column (5) of Table 8). To obtain this number, we review eight relevant estimates, which are presented in Table 10. Where necessary, modifications or assumptions are applied to the estimates (see table footnotes for details). Lastly, we take the median of these eight data points to obtain the adjustment factor for measuring Scope 1, Scope 2, and some Scope 3 emissions: $79,236. We reiterate that the final rules do not require the disclosure of Scope 1 and 2 emissions in all cases or from all registrants, and Scope 3 disclosures are not required. We reviewed these emissions cost in this section because we subtract them from applicable estimates in Column (3) of Table 8, which we have deemed to include emissions costs.

TABLE 10—ONGOING COSTS OF MEASURING SCOPE 1, SCOPE 2, AND SOME SCOPE 3 EMISSIONS

Commenter or source	Company (if specified)	Ongoing costs of measuring Scope 1, Scope 2, and some Scope 3 emissions
Society for Corporate Governance (June 17, 2022)	Company 9	[1] $200,000
	Company 10	[2] 83,472
	Company	[3] 75,000
ERM Survey		[4] 182,985
Air Products and Chemicals, Inc		[5] 4,032,000
Persefoni		[6] 50,000
S&P Global		[7] 40,000
South Pole		[8] 23,184

[1] *See* letter from Soc. Corp. Gov. (June 17, 2022). Company 9 discloses Scope 1 and Scope 2 and some Scope 3 GHG emissions but does not specify which categories of Scope 3 emissions are reported. The company ''conducts the emissions inventory/data gathering in-house at an estimated cost of at least $200,000 annually.'' Thus, we assume that $200,000 is the ongoing cost of measuring Scope 1, Scope 2, and some Scope 3 emissions. This estimate may be understated as it is presented as a minimum cost.

[2] *See id.* Company 10 discloses Scope 1 and Scope 2 and some Scope 3 (fuel and energy-related activities, business travel, and use of sold products) GHG emissions. Approximately five to seven staff members are involved with the emissions calculations and reporting to various agencies and for verification. The company estimates 188 hours for emissions gathering/annual operating reporting across the company's utility and gas infrastructure business unit and preparing its final verification support. Thus, we assume the 188 burden hours is the ongoing costs of measuring the specified scopes of emissions. (188 hours)*($444/hr) = $83,472.

[3] *See id.* Company 11 discloses Scope 1, Scope 2, and some Scope 3 (business travel, commuting, waste, downstream leased assets) GHG emissions. The company estimated its internal time and external resources associated with emissions inventory/data gathering to be about $75,000 annually.

[4] *See* ERM survey. The ERM survey indicated that the average spend for GHG analysis and/or disclosures is $237,000 annually. This survey category included all costs related to developing GHG inventories, including analysis and disclosure of Scope 1, Scope 2, and/or Scope 3 emissions. This category also included preparation of GHG data for inclusion in public reporting, any analysis related to setting science-based targets, and other similar efforts to understand GHG emissions. Because this estimate includes targets, we subtract the median ongoing cost of targets ($54,015), as reported in Table 9. $237,000 − $54,015 = $182,985.

[5] *See* letter from Air Products and Chemicals, Inc. This company reports Scope 1, Scope 2, and Scope 3 emissions, but does not specify which categories of Scope 3. The company's emissions reporting process requires one full-time consultant and 20 employees working part-time each year from Nov. to Mar. (1 full-time consultant)*(40 hrs/wk)*(20 weeks)*($600/hr) + (20 employees)*(20 hrs/wk)*(20 wks)*($444/hr) = $4,032,000. However, this estimate may be overstated because it includes the cost of third-party limited assurance for GHG emissions.

[6] *See supra* note 3023. Persefoni estimates that the cost of assessing Scope 1, Scope 2, and Scope 3 emissions for companies of ''high maturity'' (*i.e.*, those that are already measuring/tracking Scope 1, Scope 2, and Scope 3 emissions, among other activities) is $50,000, which we assume to reflect ongoing costs. The commenter further estimates that the corresponding cost for companies that do not already measure/track such emissions would be $125,000. If this figure is assumed to represent initial costs, then the estimates reflect a 60% reduction from initial to ongoing costs, which we consider in determining the appropriate percentage reduction in subsequent calculations.

[7] *See supra* note 3021. S&P Global estimated that the cost of assessing Scope 1, Scope 2, and Scope 3 emissions for the first time is between $75,000 and $125,000. We take the midpoint of this range ($100,000) and apply the same percent reduction (60%) reflected in the Persefoni meeting memorandum to estimate ongoing costs. $100,000*(1 − 0.6) = $40,000.

[8] *See* South Pole Memo. South Pole indicated that conducting a bottom-up assessment of Scope 1, Scope 2, and Scope 3 emissions for the first time can cost between €10,000 and €100,000. We take the midpoint (€55,000), apply the 2022 average exchange rate ($1.0538 USD/€), and apply the same percent reduction (60% reduction) reflected in the Persefoni meeting memorandum to estimate ongoing costs. (€55,000)*(1.0538 USD/€)*(1 − 0.6) = $23,184.

There were other commenters and sources that contained individual cost estimates specific to only Scope 1,[3055] Scopes 1 and 2 combined,[3056] or only Scope 3 emissions measurement,[3057] as opposed to an aggregate cost that combines all three scopes. However, because we determined that all estimates indicated by Column (5) of Table 8 include the aggregate cost of all three scopes of emissions and to remain conservative in our estimation, we opted not to use estimates of individual scopes of emissions for comparability.[3058]

We have so far obtained the adjustment factors for setting targets and goals ($54,015) and measuring Scope 1, Scope 2, and some Scope 3 emissions ($79,236). We next subtract these amounts, where applicable, from Column (3), from which the result is presented as the adjusted cost in Column (6). The median of the adjusted costs is $183,135. We next extrapolate the initial cost using the assumption of a 44 percent cost reduction [3059] from the first year to subsequent years of these corresponding disclosures. Thus, we estimate that the aggregate compliance costs for governance disclosure; disclosure regarding climate-related risks that have material impacts on strategy, business model, and outlook; and risk management disclosure are $327,000 for the first year and $183,000 for subsequent years (rounded to the nearest $1,000).[3060]

There were additional estimates associated with TCFD disclosure costs that were ultimately not included in this analysis, mainly due to the lack of details needed to obtain a quantitative estimate.[3061] For example, one commenter stated that their ''Head of Corporate ESG Strategy and Reporting leads a team of employees that required seven months to gather data and draft disclosures for our 2021 TCFD Report in coordination with numerous subject matter experts across our entire organization.'' [3062] However, the commenter did not specify how many staff or FTEs are involved, which precludes us from reliably calculating burden hours and associated costs. Another commenter asserted that the ''actual cost for complete alignment to TCFD could be up to $1,000,000 per registrant over several years.'' Because the commenter did not provide the number of years, however, we are unable to obtain the annual costs.[3063] Other sources provided costs that had general descriptions (*e.g.,* ''implementation costs'' or ''two FTEs . . . dedicated to climate reporting'') that did not explicitly mention ''TCFD'' disclosures.[3064] We similarly did not include such estimates given that we cannot reliably infer whether these costs are reflective of TCFD disclosures and the specific provisions of interest.

ii. Cost Estimates of Scope 1 and 2 Emissions Disclosures

The final rules require the disclosure of Scope 1 and 2 emissions, if material, by LAFs and AFs, while SRCs and EGCs are exempt.[3065] To inform our assessment of the associated cost, we review comment letters and other sources that contain relevant estimates, presented in Table 11. We note that three of the estimates are specific to the cost of assessing Scope 1 emissions only.[3066] Nevertheless, we include them in Table 11 because (a) these Scope 1 emissions cost estimates are generally higher than other estimates that include both Scope 1 and 2 emissions, and (b) the costs can only increase if the Scope 1 emissions estimates are adjusted to also account for Scope 2 emissions (*i.e.,* they are understated with respect to the cost of both Scope 1 and 2 emissions). Thus, we include the Scope 1 emissions cost estimates to remain conservative in our estimation.

TABLE 11—COSTS OF ASSESSING SCOPE 1 AND 2 EMISSIONS

Commenter or Source	Company (if specified)	Ongoing cost
Persefoni		[1] $25,000
FCA rule		[2] 17,836
S&P Global		[3] 40,000
International Dairy Foods Association		[4] 66,600
International Dairy Foods Association		[5] 100,000
Energy Transfer LP		[6] 10,162,035
Society for Corporate Governance (June 17, 2022)	Company 4	[7] 300,000

[3055] *See* letters from Soc. Corp. Gov. (June 17, 2022); and IDFA.

[3056] *See supra* notes 3021, 3023, and 2995; *see also* letter from IDFA.

[3057] *See* letters from Williams, Inc.; and Ørsted.

[3058] In some cases, commenters' estimates of assessing Scope 1 emissions are greater than other commenters' combined estimates of assessing Scope 1, Scope 2, and some Scope 3 emissions. However, because the resulting adjustment factor will be *subtracted* from Column (3) of Table 8 to obtain compliance costs, we do not include the greater Scope 1 cost estimates in order to remain conservative and to avoid understating final compliance costs. In the following subsection, however, we include these cost estimates when estimating the combined costs of Scopes 1 and 2 emissions in a similar bid to remain conservative.

[3059] As noted earlier in this subsection, the FCA rule and BEIS rule reflect a 56% and 32% reduction in cost, respectively, from initial year to subsequent years regarding the provisions of interest (*i.e.,* governance disclosure; disclosure regarding climate-related risks that have material impacts on strategy, business model, and outlook; and risk management disclosure). The median, 44%, is used to estimate the initial cost.

[3060] No commenters or sources offered estimates specific to the cost of the disclosure of material expenditures directly related to climate-related activities as part of a registrant's strategy, transition plan and/or targets and goals. Nevertheless, the Commission's estimates (*i.e.,* $327,000 for the first year and $183,000 annually in subsequent years) should reflect this cost based on our application of conservative assumptions and because of the small expected incremental cost given that registrants will likely be tracking the material expenditures under the financial statement disclosure requirements.

[3061] *See, e.g.,* letters from Soc. Corp. Gov. (June 11, 2021); Nasdaq; Chamber; and AEPC.

[3062] *See* letter from Nasdaq.

[3063] *See* letter from AEPC.

[3064] *See, e.g.,* letters from RILA; Nutrien; and Soc. Corp. Gov. (June 11, 2021).

[3065] *See* 17 CFR 229.1505(a)(1).

[3066] The cost estimates that are specific to Scope 1 only are those from the Society for Corporate Governance (Company 4), Energy Transfer LP, and IDFA ($100,000).

TABLE 11—COSTS OF ASSESSING SCOPE 1 AND 2 EMISSIONS—Continued

Commenter or Source	Company (if specified)	Ongoing cost
Median		$66,600

[1] *See supra* note 3023. Persefoni estimated that the ongoing cost is $25,000. This reflects a 44% cost reduction from its initial cost estimate, which we consider in determining the appropriate percentage reduction in subsequent calculations.

[2] *See supra* note 2995. The FCA estimates initial costs to be £43,259, which is converted to dollars based on the 2022 average exchange rate. (£43,259)*(1.2369 USD/GBP) = $53,507. The ongoing costs, however, are not explicitly provided, but instead are grouped with another disclosure component. Because the initial costs make up one third of the total initial cost when combined with this other component, we assume that the same proportion holds with respect to ongoing costs. $53,507/3 = $17,836. This reflects a 67% cost reduction from its initial cost estimate, which we consider in determining the appropriate percentage reduction in subsequent calculations.

[3] *See supra* note 3021.

[4] *See* letter from IDFA. One unnamed company reported that it spends between 100 and 200 hours to maintain automated GHG aggregation and reporting software system for Scope 1 and Scope 2 emissions. We take the midpoint of the burden hours and convert to dollars based on $444/hr. (150 hours)*($444/hr) = $66,600.

[5] *See id.* Another unnamed company reported that it spends about $100,000 to maintain its GHG measuring system, with the context suggesting that this is specific to Scope 1 emissions. Although this estimate does not include the cost of assessing Scope 2, it is nevertheless included to remain conservative in our estimation.

[6] *See* letter from Energy Transfer LP. This company stated that although it already tracks Scope 1 emissions to some degree, the incremental costs to comply with the proposed rules would be approximately $7 million in 2006 dollars, which is equivalent to $10,162,035 in 2022 dollars. However, because this is only the incremental cost, it is presumably understated with respect to the full cost (i.e., incremental costs are a subset of the full cost of disclosure). It is further understated since the estimate is specific to Scope 1 emissions only, whereas we seek to estimate the costs of assessing Scope 1 and 2 emissions. Nevertheless, because this estimate is greater than the other estimates in Table 11, it is included to remain conservative in our estimation.

The median ongoing cost of assessing Scope 1 and 2 emissions in Table 11 is $66,600. To estimate the initial cost, we refer to two sources that reported both initial and ongoing costs to inform our assessment of the percentage reduction between the two costs. One organization's estimated costs reflect a reduction of 44 percent [3067] while another's reflect a reduction of 67 percent.[3068] We use the median (56 percent) to extrapolate the initial cost. As a result, we estimate that the cost of assessing Scope 1 and 2 emissions is $151,000 [3069] for the first year and $67,000 for subsequent years (rounded to the nearest $1,000).

iii. Cost Estimates of Assurance for Scope 1 and 2 Emissions Disclosures

With respect to Scope 1 and 2 emissions disclosures, the final rules require assurance at different levels (limited or reasonable) with different phase in periods depending on whether the registrant is an LAF or AF, while SRCs and EGCs are exempt.[3070] To assess the costs of assurance, we reviewed comment letters that provided relevant, quantitative cost estimates, as presented in Table 12.

The estimates displayed varying degrees of assurance ''coverage'' (*i.e.,* which specific disclosures were being assured). Some commenters reported assurance costs but did not explicitly define what climate-related disclosure items were being assured.[3071] In such cases, we applied the conservative assumption that the reported assurance costs were specific to their GHG emissions disclosures only. Other estimates were specifically attributed to Scope 1 and 2 emissions,[3072] consistent with the final rules' requirements, where applicable. The majority of estimates, however, pertained to the combined assurance costs for all three scopes of emissions,[3073] which presumably overstate the assurance costs for Scope 1 and 2 emissions only. Nevertheless, we include these estimates for two reasons: first, we included them because we cannot reliably isolate the assurance costs for Scope 1 and 2 emissions only (*i.e.,* by excluding Scope 3 emissions); and second, by including costs that are overstated relative to what the final rules require, we remain conservative in our estimation.

Other commenters, however, stated that their assurance cost estimates covered both their GHG emissions and the proposed financial statement disclosures.[3074] It is likely that a significant portion of these costs is attributable to the proposed financial statement disclosures, which several commenters stated would come with high costs.[3075] We therefore did not include these estimates as they are less likely to be representative of assurance costs for Scope 1 and 2 only compared to other aggregate estimates.

The estimates also varied in the level of assurance, with most estimates equally split between either limited assurance or not specifying the level assurance. To be conservative, any estimates that did not specify the level of assurance were assumed to be limited assurance. One commenter estimated only the incremental cost of switching from limited to reasonable assurance.[3076] While we cannot infer the actual costs of either limited or reasonable assurance in this case, we nevertheless include the incremental cost because it is relatively high, allowing us to remain conservative in our estimation.

[3067] *See supra* note 3023; *see also* footnote 1 in Table 11.

[3068] *See supra* note 2995; *see also* footnote 2 in Table 11.

[3069] ($66,600)/(1 − 0.56) = $151,364.

[3070] *See supra* section II.I.

[3071] *See, e.g.,* letters from Soc. Corp. Gov (June 11, 2021 and June 17, 2022); and Persefoni.

[3072] *See, e.g.,* letters from Soc. Corp. Gov (June 17, 2022); and IDFA.

[3073] *See, e.g.,* letters from Soc. Corp. Gov (June 11, 2021 and June 17, 2022).

[3074] *See* letters from Soc. Corp. Gov (June 17, 2022); and Cummins.

[3075] *See* letter from ERM CVS (stating that the ''fees for the [attestation for climate-related data, including GHG emissions] may be small compared to the financial audit fees'' associated with the proposed rules).

[3076] *See* letter from Salesforce.

TABLE 12—COSTS OF LIMITED ASSURANCE FOR GHG EMISSIONS DISCLOSURES

Commenter	Company (if specified)	Limited assurance cost
Society for Corporate Governance (June 11, 2021)	Basic Materials	[1] $30,000
	Comm. Services	[2] 600,000
	Health Care	[3] 22,000
Society for Corporate Governance (June 17, 2022)	Company 1	[4] 400,000
	Company 3	[5] 13,000
	Company 5	[6] 45,000
	Company 6	[7] 15,000
	Company 7	[8] 50,000
	Company 8	[9] 12,500
	Company 9	[10] 72,000
	Company 10	[11] 15,000
	Company 11	[12] 15,000
	Company 12	[13] 75,000
	Company 13	[14] 550,000
Persefoni		[15] 82,000
International Dairy Foods Association		[16] 62,500
Salesforce		[17] 800,000
Median		50,000

[1] *See* letter from Soc. Corp. Gov (June 11, 2021). The Basic Materials company reported spending $30,000 for assurance over its Scope 1, 2, and 3 emissions without specifying the level of assurance.

[2] *See id.* The Communication Services (''Comm. Services'') company, which discloses Scope 1, 2, and 3 emissions (among other climate-related disclosures), reported that assurance costs are approximately $600,000 annually without specifying the coverage or level of assurance.

[3] *See id.* The Health Care company, which discloses Scope 1, Scope 2, and Scope 3 (among other climate-related disclosures), reported that assurance costs are $22,000 without specifying the coverage or level of assurance.

[4] *See* letter from Soc. Corp. Gov (June 17, 2022). Company 1 reported spending over $400,000 for ''limited assurance from a public company accounting firm over select environmental metrics disclosed in its sustainability report, including its Scope 1, 2 (location-based and market-based), and Scope 3 (including a comparison against the base year) GHG emissions; total energy consumed; percentage grid electricity; percentage renewable energy; and water usage.''

[5] *See id.* Company 3 currently pays $13,000 annually for limited assurance over its Scope 1, Scope 2, and one category of Scope 3 emissions. The cost estimated may be understated given that this company believes that its current assurance may not be in compliance with the proposed rules and that costs may increase if the rule is adopted as proposed.

[6] *See id.* Company 5 reported spending over $45,000 annually for ''limited assurance from a professional audit firm for disclosure in its sustainability report of its Scope 1 and 2 GHG emissions and defined categories of its Scope 3 GHG emissions (exclusive of processing and use of, and end-of-life treatment for, sold products, and certain other downstream activities).''

[7] *See id.* Company 6 reported spending $15,000 annually for assurance over its Scope 1 and 2 emissions and certain Scope 3 operational emissions (such as emissions associated with business travel and downstream leased assets) without specifying the level of assurance.

[8] *See id.* Company 7 reported spending $50,000 annually for assurance over its Scope 1, Scope 2, and some categories of Scope 3 emissions without specifying the level of assurance.

[9] *See id.* Company 8 reported spending between $10,000 and $15,000 annually for assurance over its Scope 1 and 2 emissions. We include the midpoint of this range in the table ($12,500).

[10] *See id.* Company 9 reported spending $10,000 for reasonable assurance over its Scope 1, Scope 2, and some Scope 3 emissions. It also noted that another firm offered to do the same work for $180,000. To be conservative, we use this higher estimate instead. Next, we extrapolate the cost of limited assurance based on a comment letter, which states that the cost of reasonable assurance could be 2–3 times higher than limited assurance. *See* letter from Center for Climate and Energy Solutions. By taking the midpoint (2.5), we estimate the cost of limited assurance: $180,000/2.5 = $72,000.

[11] *See id.* Company 10 reported spending $15,000 annually for limited assurance over its Scope 1, Scope 2, and partial Scope 3 (fuel and energy-related activities and business travel) emissions.

[12] *See id.* Company 11 reported spending $15,000 annually for limited assurance over its Scope 1, Scope 2, and some Scope 3 (business travel, commuting, waste, downstream leased assets) emissions.

[13] *See id.* Company 12 reported spending $30,000 for limited assurance over its Scope 1, 2, and 3 emissions. It also noted that another firm offered to do the same work for $75,000. To be conservative, we use this higher estimate instead.

[14] *See id.* Company 13 reported spending $550,000 for limited assurance over its Scope 1, 2, and 3 emissions.

[15] *See* ERM survey. The ERM survey indicates that 28 respondents spend an average of $82,000 for assurance/audits related to climate. According to the commenter, this ''survey did not ask issuer respondents to include details of the specific level of assurance or the scope of business practices covered, whether assurance covered all locations or all business units, or whether it consisted of limited or reasonable assurance. The costs reported by issuer respondents may include third-party assurance of Scope 1 and/or 2 GHG emissions metrics, financial metrics, or both.'' Although the level and coverage of assurance are unspecified, we apply the conservative assumption that the reported cost pertains to limited assurance of Scope 1 and 2 emissions.

[16] *See* letter from IDFA. An unnamed, privately held company reported that it discloses Scope 1 and 2 emissions. It further states that it spends between ''$50,000–$75,000 or more that is necessary to periodically hire a 3rd party consultant to review and re-validate the company's internal systems.'' The level of assurance is unspecified. We include the midpoint of this range in the table ($62,500).

[17] *See* letter from Salesforce. This commenter did not provide actual costs of limited or reasonable assurance, but it estimated that its *incremental* cost of switching from limited to reasonable assurance over its Scope 1, 2, and 3 emissions could range from $1 to 3 million. We include this incremental cost since it serves as a lower bound for its reasonable assurance costs. We take the midpoint of this range ($2 million) and convert to limited assurance (see footnote 10 of this table): ($2 million)/2.5 = $800,000. This estimate is understated considering that it is derived from the incremental cost as opposed to actual cost.

Table 12 presents the cost estimates of limited assurance from commenters, with any adjustments or assumptions explained in the table footnotes. The median of these estimates ($50,000) is subsequently used to extrapolate the cost of reasonable assurance. One commenter stated that reasonable assurance may cost two to three times more than limited assurance, based on input from stakeholders with expertise in developing GHG inventories for companies.[3077] We use the upper end of

[3077] *See* letter from Center for Climate and Energy Solutions.

this range and assume that reasonable assurance is three times the cost of limited assurance. As a result, we estimate that the cost of limited assurance for Scope 1 and Scope 2 emissions disclosures is $50,000, while the cost for reasonable assurance is $150,000.

Costs may vary, however, depending on the type of assurance provider. Specifically, assurance provided by a registered public accounting firm may cost more than if it were provided by a different type of service provider. However, the final rules do not require assurance to be obtained from a registered public accounting firm.[3078] Conversely, costs may be lower if a registrant uses its auditor to also provide assurance over its GHG emissions disclosures rather than contracting with a different third-party. We also note that some of the companies listed in Table 12 indicated that they were unsure as to whether their current assurance practices would meet the proposed rules' requirements.[3079] We are likewise unable to make this determination without additional details on these companies' assurance practices. If these companies were to incur additional costs to meet the final rules' assurance requirements, the Commissions' compliance cost estimates may be understated in this regard. However, we believe that our conservative approach in other aspects (*e.g.,* incorporating assurance costs that cover all three scopes of emissions instead of just Scopes 1 and 2 emissions) mitigate this concern.

iv. Estimates of Reporting Costs for Scenario Analysis and Targets/Goals

While the final rules do not require any registrants to undertake activities related to scenario analysis or setting targets and goals, they may require the attendant disclosures under specific circumstances,[3080] which will result in affected registrants incurring associated reporting costs. To estimate this reporting cost, we first review comment letters and other sources that inform our assessment on the costs of undertaking scenario analysis and targets or goals, then apply the assumption that 10 percent of this cost comprise the reporting cost.[3081]

Table 13 presents the relevant sources of the costs of scenario analysis.[3082] The FCA rule estimates the ongoing cost to be $40,688 for larger issuers. The BEIS rule contains ongoing cost estimates for two different types of scenario analysis: qualitative ($32,190) and quantitative ($79,706). Because the final rules allow for registrants to provide disclosures of either type, where applicable, we include the estimates of both. Finally, a survey indicates that the respondents' average annual expenditures is $154,000. The median of these ongoing costs is $60,197. We next extrapolate the initial cost. Some of the sources provide both the initial and ongoing cost of scenario analysis (see Table 13 footnotes), from which we determine the median percentage cost reduction (50 percent). This implies an initial cost of $120,394. Assuming that 10 percent of these costs comprise the reporting costs, we estimate that the reporting costs of scenario analysis is $12,000 in the initial year and $6,000 annually in subsequent years (rounded to the nearest $1,000).

TABLE 13—COSTS OF SCENARIO ANALYSIS

Commenter or source	Ongoing cost
FCA rule	[1] 40,688
BEIS rule: qualitative scenario analysis	[2] 32,190
BEIS rule: quantitative scenario analysis	[3] 79,706
ERM survey	[4] 154,000

[1] *See supra* note 2995. The FCA rule estimates ongoing costs to be £32,896 for larger issuers, which is converted to dollars based on the 2022 average exchange rate. (£32,896)*(1.2369 USD/GBP) = $40,688. This reflects a 50% reduction from the initial cost estimate ($81,377), which we consider in determining the appropriate percentage reduction in subsequent calculations.

[2] *See supra* note 2996. The BEIS rule estimates ongoing costs of *qualitative* scenario analysis to be £26,025, which is converted to dollars based on the 2022 average exchange rate. (£26,025)*(1.2369 USD/GBP) = $32,190. This reflects a 25% reduction from the initial cost estimate ($42,920), which we consider in determining the appropriate percentage reduction in subsequent calculations.

[3] *See id.* The BEIS rule estimates ongoing costs of *quantitative* scenario analysis to be £64,440 (£52,040 for writing or quantifying scenarios and £12,400 additional cost for quality assurance and internal verification). This is converted to dollars based on the 2022 average exchange rate. (£64,440)*(1.2369 USD/GBP) = $79,706. The initial cost estimate is $240,194 (£112,400 for developing a model for conducting scenario analysis, £69,390 for writing and quantifying scenarios, and £12,400 additional cost for quality assurance and internal verification, converted to dollars based on the 2022 average exchange rate). This reflects a 67% reduction from initial to ongoing costs, which we consider in determining the appropriate percentage reduction in subsequent calculations.

[4] *See* ERM survey. The ERM survey indicates that $154,000 is the average of respondents' expenditures with respect to scenario analysis, which "includes all costs to a company related to conducting assessments of the impact of climate in the short, medium, or long term using scenario analysis as well as TCFD/CDP disclosure of risks and opportunities." The survey does not include data on initial costs.

With respect to the reporting costs of targets and goals disclosure, we refer to Table 9, which presents the ongoing costs of undertaking targets and goals. The median ongoing cost of targets is $54,015. Using the median percent cost reduction from the initial year (45 percent), we extrapolate the initial cost to be $98,209. We assume 10 percent comprise the reporting costs.[3083] Thus, we estimate that the reporting costs of targets and goals are $10,000 in the initial year of disclosure and $5,000 annually in subsequent years (rounded to the nearest $1,000).

v. Cost Estimates of Amendments to Regulation S–X and Incremental Audit Fees

We reviewed comment letters that provided cost estimates pertaining to the amendments to Regulation S–X, which were often in the millions of dollars.[3084] We considered these

[3078] One commenter suggested that most registrants will nevertheless seek assurance from registered public accounting firms to comply with the proposed rules. *See* letter from Soc. Corp. Gov. (June 17, 2022). To the extent that this is also true of the final rules, registrants may incur higher assurance costs.

[3079] *See* letter from Soc. Corp. Gov (June 17, 2022).

[3080] *See* sections II.G and II.D.3.

[3081] The BEIS rule estimates that in the first year of compliance, the reporting cost of metrics and targets disclosure is approximately 9.4% of the cost of the "annual data gathering" activity associated with metrics and targets (*see supra* note 2996). We similarly assume that reporting costs are 10% of the cost of undertaking the associated activity.

[3082] *See supra* note 3052.

[3083] *See supra* note 3081.

[3084] *See, e.g.,* letters from API; Chamber; NRF; WEA/USOGA; and Williams Cos.

estimates, presented in Table 14, when developing our cost estimates but made adjustments to reflect the changes made to the final rules,[3085] which we expect will substantially reduce the compliance burden compared to the proposal.

TABLE 14—ESTIMATED COSTS OF AMENDMENTS TO REGULATION S–X

Commenter	Cost
Chamber of Commerce[1]	$1.5–2.5 million (initial); $1–2 million (ongoing).
Williams Companies, Inc	''Millions of dollars''[2] (initial).
Western Energy Alliance and U.S. Oil and Gas Association	> $100 million[3] (initial).
1. The Chamber of Commerce stated that this estimate was provided by one Well-Known Seasoned Issuer it consulted regarding the proposed amendments.	
2. Williams Cos. estimated the costs of implementing the proposed amendments to Regulation S–X would be in the ''millions of dollars'' without providing a more specific estimate.	
3. Western Energy Alliance and U.S. Oil and Gas Association stated that this estimate was based on discussions with public companies that estimated costs of over $100 million for large companies when considering the need for new systems and staff training.	

We consider the ''millions of dollars'' estimate provided by Williams Companies, Inc. as the median [3086] cost estimate. Assuming the range ''millions of dollars'' refers to a number less than $10 million but more than $1 million,[3087] we take the midpoint of $5 million as the starting point for our estimate of the costs of the proposed Regulation S–X amendments.

We believe the $5 million, however, should be adjusted downward as the costs associated with the final rules should be significantly less than the proposed rules. Many of the concerns that commenters expressed about the proposed rules were primarily focused on the expected challenges and costs related to implementing the proposed Financial Impact Metrics, which would have constituted most of the costs associated with the proposed amendments to Regulation S–X. Specifically, these commenters expressed concerns about implementing new accounting processes, policies, controls, and IT systems to identify and distinguish activities related to climate-related risks and transition activities from normal routine business activities and then to calculate the disclosure threshold and track those impacts on a line-by-line basis.[3088] These commenters also highlighted challenges posed by the significant number of estimates and assumptions that, in their view, would be required to prepare the proposed disclosures.[3089]

As discussed in greater detail above, the final rules have been significantly revised compared to the proposal to reduce burdens on registrants. The final rules do not include the proposed Financial Impact Metrics, which should result in a substantial reduction in compliance costs and burdens.[3090] For example, registrants will not be required to disclose any impacts to the Statement of Cash Flows. Moreover, registrants will not be required to disclose any impacts to revenues, costs savings, or cost reductions, which some commenters stated would be particularly difficult to disclose because such amounts are not currently captured in a registrant's books and records.[3091] In addition, registrants will not be required to apply the 1% disclosure threshold on a line-by-line basis.

Instead, the final rules focus the financial statement disclosures on expenditures related to a narrower category of activities as compared to the proposal: severe weather events and other natural conditions and the purchase and use of carbon offsets and RECs (one type of transition activity).[3092] Commenters stated that discrete expenditures of this type are captured in the books and records and would be feasible to disclose.[3093] Under the final rules, registrants will be required to apply the 1% disclosure threshold to severe weather events and other natural conditions. In addition, instead of applying the 1% disclosure threshold on a line-by-line basis throughout the financial statements as would have been required under the proposed rules, the 1% disclosure threshold will be applied only to two amounts under the final rules to determine if disclosure is required.[3094] Specifically, disclosure is required only if (1) the aggregate amount of expenditures expensed as incurred and losses equals or exceeds one percent of the absolute value of income or loss before income tax expense or benefit; and/or (2) the aggregate amount of the absolute value of capitalized costs and charges equals or exceeds one percent of the absolute value of stockholders' equity or deficit, subject to de minimis thresholds.[3095] In addition, the final rules prescribe an attribution principle—significant contributing factor—in response to commenters' concerns about their ability to isolate and attribute expenditures to severe

[3085] *See* section II.K.

[3086] *See supra* note 3046.

[3087] We recognize the possibility that the commenter's language of ''millions of dollars'' may be referring to a number greater than $10 million. However, if the commenter was referring to ''tens of millions'' or ''hundreds of millions'' of dollars, we assume that the commenter would have stated it as such. Without additional information, we believe it is reasonable to read this comment as meaning less than $10 million.

[3088] *See, e.g.,* letter from NRF (''Existing accounting systems are not designed for tracking and reporting such cost impacts, particularly with no meaningful cost threshold, across all line items, because registrants do not have systems in place to collect, calculate, and report these line items, especially at such a granular level.'').

[3089] *See, e.g.,* letter from Chamber (''[T]he Proposed Rules require untold estimates, assumptions and judgments against the backdrop of significant data limitations and speculative impacts.'').

[3090] *See* letter from Williams Cos. (''Accounting for climate impacts would require companies to write entirely new and significant accounting policies, design and implement new controls, and develop and potentially pay for new software.'').

[3091] *See, e.g.,* letters from Chamber (stating that ''GAAP financial statement line-items do not include amounts for lost revenues, cost savings, or cost reductions''); and Williams Cos. (stating that ''lost revenue'' does not exist under GAAP).

[3092] *See* 17 CFR 210.14–02(c), (d), and (e).

[3093] *See* letters from Autodesk (noting that if a fire or storm destroys a registrant's facilities, the associated costs, impairments, and contingencies would be accounted for and, if material, disclosed under U.S. GAAP); Crowe; Dow; and Nutrien (noting that it would be operationally possible to track specific costs incurred to mitigate transition risks or costs incurred due to severe weather events and natural conditions).

[3094] *See* 17 CFR 210.14–02(b).

[3095] *See id.*

weather events and other natural conditions.[3096]

The final rules require registrants to disclose costs, expenditures, and losses incurred in connection with the purchase and use of carbon offsets and RECs only if carbon offsets or RECs have been used as a material component of a registrant's plans to achieve its disclosed climate-related targets or goals.[3097] As explained above, this requirement is narrower than the proposed rules, which would have required registrants to disclose expenditures incurred to reduce GHG emissions or otherwise mitigate exposure to transition risks in the financial statements. Although registrants will not be required to disclose expenditures generally related to transition activities in the financial statements, under the final rules, registrants are required to disclose material expenditures incurred that directly result from: (1) disclosed activities to mitigate or adapt to climate-related risk (in management's assessment); (2) disclosed transition plans; and (3) disclosed targets and goals, as part of the final amendments to Regulation S–K. Since these disclosure requirements are no longer part of the amendments to Regulation S–X, the disclosures will fall outside the scope of the financial statement audit and a company's ICFR, which, along with the materiality qualifier, should further reduce costs and burdens as compared to the proposed rules.[3098]

In addition, the final rules limit the scope of the requirement to disclose estimates and assumptions in the financial statements to only those estimates and assumptions materially impacted by severe weather events and natural conditions and any climate-related targets or transition plans disclosed by the registrant, whereas under the proposed rules, registrants would have been required to disclose estimates and assumptions impacted by transition activities more generally.[3099]

Finally, the final rules require the disclosure for historical fiscal year(s) only to the extent the required information was previously disclosed or required to be disclosed (*i.e.,* on a prospective basis).[3100] Commenters stated that the proposed requirement to provide disclosure for the historical fiscal year(s) included in the consolidated financial statements would be burdensome and costly because, among other things, it would require issuers to ''retroactively estimate their historical data.'' [3101] However, under the final rules, no registrants will be required to provide disclosure for fiscal periods in which they were not required to collect or report the data.

After taking into account the fact that the final rules eliminate many of the primary drivers of the costs identified by commenters, and based on staff knowledge of accounting practices, we are using $500,000 as an estimated initial direct cost of compliance. While this represents a significant reduction from the median cost estimate provided by commenters, we view it as an upper bound estimate given the numerous changes from the proposal and the fact that discrete expenditures of this type are already captured in the books and records and therefore should be less costly to disclose.[3102] Thus, we expect that in many cases, based on staff knowledge of accounting practices, costs will be significantly lower.

Although we anticipate that the amendments to Regulation S–X we are adopting will be significantly less costly to apply than the proposed rules, registrants will incur some implementation costs related to adjustments in processes and systems, including systems of internal control. We expect these adjustments will be far fewer than would have been required under the proposed rules.

With respect to the final amendments to Regulation S–X, registrants may need to adjust their internal processes and systems to (1) identify, track, and disclose the costs, expenditures, charges, and losses incurred as a result of severe weather events and other natural conditions and related to the purchase and use of carbon offsets and RECs; (2) calculate the disclosure thresholds; (3) identify and disclose the amount of relevant recoveries; (4) evaluate and disclose financial estimates and assumptions materially impacted by severe weather events and other natural conditions or disclosed targets; and (5) to provide contextual information.

To calculate the upper bound of the range for ongoing costs, we used the estimates for the initial and ongoing costs related to the proposed amendments to Regulation S–X provided by the Chamber of Commerce to determine that the expected the ongoing costs would be approximately 75% of the initial cost.[3103] Applying that reduction to the upper bound of the Commission's initial cost estimate of $500,000 results in an estimated upper bound of $375,000 for compliance with the amendments to Regulation S–X on an ongoing, annual basis.[3104] As noted above, given the feedback from commenters that our cost estimates in the proposed rules were too low, we have considered the upper bound of the estimated range in evaluating the economic impact of the final rules. However, we acknowledge the precise amount of both the implementation costs and ongoing costs will vary depending on a number of factors including the size and complexity of the registrant (and its financial reporting systems), and the frequency in which the registrant is exposed to severe weather events and other natural conditions, among other factors.

We also consider incremental audit fees resulting from the final rules. To be clear, these incremental audit fees are separate from the fees associated with mandatory assurance over GHG emissions disclosure. In the Proposing Release, we estimated this incremental cost to be $15,000 with respect to the proposed rules.[3105] Several commenters asserted that actual costs would be much higher.[3106] One commenter estimated incremental audit fees of $70,000 to $225,000 per year.[3107] Based on the final rules' significant reductions in the burden of complying with the amendments to Regulation S–X, we expect a corresponding reduction in the cost of the audit. As a result, we are using an upper bound cost estimate of $23,000 in incremental audit fees per year (rounded to the nearest $1,000).

c. Factors that Influence Direct Costs

Incremental compliance costs may be relatively lower for registrants that

[3096] *See* 17 CFR 210.14–02(g). *See also* letter from NAM (''Companies would be required to count every single financial impact that could plausibly be attributable to climate risks, weather events, or transition activities, somehow determine the degree of climate causation associated with each, and then aggregate these impacts to determine if they meet the proposed 1% threshold—for each line item in the consolidated financial statements.'').

[3097] *See* 17 CFR 210.14–02(e).

[3098] *See* 17 CFR 229.1502(d)(2), (e)(2) and 17 CFR 229.1504(c)(2).

[3099] *See* 17 CFR 210.14–02(h).

[3100] *See* 17 CFR 210.14–01(d).

[3101] *See* letter from BlackRock; *see also* letter from Autodesk (stating that ''it may be prohibitively costly'' for registrants to accurately compile the necessary data, particularly for historical periods).

[3102] *See supra* note 3093.

[3103] The initial range provided by the Chamber of Commerce was $1.5–$2.5 million while the ongoing estimate was $1 million–$2 million. To arrive at 75%, we take the midpoint of the two ranges ($1.5 million ongoing cost to $2 million initial cost).

[3104] This figure is based on the $500,000 estimate for initial implementation costs multiplied by 75%. *See id.*

[3105] *See* Proposing Release, section IV.C.2.a.

[3106] *See, e.g.,* letters from Nutrien; Soc. Corp. Gov (June 17, 2022); National Association of Manufacturers; Edison Electric Institute; ConocoPhillips; Business Roundtable; Association of American Railroads; Ernst & Young LLP; and ABA.

[3107] *See* letter from Nutrien.

already disclose any of the information required by the final rules. For instance, covered registrants that already disclose Scope 1 and 2 emissions will face lower incremental costs relative to those that have never previously disclosed such information, all else equal. As discussed in section A.5.a, the Commission staff found that 41 percent of annual reports on Form 10–K and Form 20–F filed in 2022 contained some degree of climate-related disclosures. To the extent that these disclosures meet some of the final rules' requirements, these registrants would face lower incremental costs.

Some industry reports also document how a sizeable portion of U.S. companies report climate-related information under one or more third-party frameworks that are either fully or partially aligned with the TCFD disclosure elements. Registrants with operations in foreign jurisdictions [3108] that have disclosure requirements based on the TCFD's framework for climate-related financial reporting may also face lower incremental costs.[3109] To the extent that the final rules overlap with the TCFD framework, we expect lower incremental compliance costs for registrants that already provide most or all disclosures according to the TCFD or related frameworks, including the CDP, which has fully integrated the TCFD disclosure elements into its disclosure questionnaire, and other frameworks and/or standards partly aligned with the TCFD framework.

Similarly, while registrants in the insurance industry may face higher compliance costs due to their complex exposure to climate-related risks, they have existing disclosure obligations that may effectively lower their incremental costs due to the final rules. As discussed in section IV.A.3, a large subset of insurance companies must, by state law, disclose their climate-related risk assessment and strategy via the NAIC Climate Risk Disclosure Survey. For example, a comment letter by a state insurance commissioner stated that because this survey overlaps extensively with the TCFD recommendations, these companies should be able to easily switch from their current reporting to reporting via the TCFD framework,[3110] and accordingly, similar portions of the final rules.

We reiterate that not all quantifiable cost estimates will be applicable to all registrants. For instance, the final rules will not require SRCs and EGCs to incur costs of assessing their GHG emissions or obtaining the associated assurance. Other registrants may not have to provide certain disclosures due to materiality qualifiers. Risk management disclosure, for example, will only be required with respect to climate risks that are material. Other disclosures that may not apply to all registrants include scenario analysis and targets and goals. The final rules do not require any registrants to undertake such activities, but if registrants voluntarily do so, the related disclosures (and costs) would only be required following a materiality determination. As a result, while certain registrants may incur some costs in order to make the prerequisite materiality determination, those that subsequently deem a disclosure component to be non-material would accordingly avoid the remaining portions of the estimated compliance costs associated with the disclosure (*e.g.,* drafting, vetting and review, other reporting costs, and assurance in cases where Scope 1 and 2 emissions are not material).

With regard to California state laws on climate-related disclosure, registrants that will be required to comply with the Climate Corporate Data Accountability Act and the Climate-Related Financial Risk Act may experience reduced costs of compliance with the final rules to the extent the California laws impose similar requirements for those registrants that are subject to them. Several commenters asserted that the recently enacted California laws, which reach some of the same entities and require some of the same types of disclosure as these final rules, could affect the benefits and costs of the final rules.[3111] Another commenter stated that the Commission could not rely on the California laws to reduce cost estimates because, based on the compliance dates in the Proposing Release, the final rules would precede the California laws in implementation.[3112] We disagree with that comment, in that enacted laws—even if not fully implemented—imply future costs and benefits, and so we appropriately consider existing enacted laws as part of the baseline against which we consider the economic effects of the final rules.[3113] However, our estimates of the final rules' direct compliance costs do not reflect any adjustments with respect to the California laws because, as discussed below, the details of their implementation are uncertain.

We expect that entities subject to the California laws could have lower incremental information gathering costs with respect to the final rules to the extent that there is overlap in the information that is required to be collected and reported under the final rules and the California laws. For example, because both the Climate Corporate Data Accountability Act and the final rules require companies to collect information to disclose their Scope 1 and Scope 2 emissions and ''obtain an assurance engagement of the disclosure,'' to the extent that the information and reporting activities overlap, registrants subject to the final rules and the Climate Corporate Data Accountability Act may face lower incremental information gathering compliance costs.[3114] However, the extent and overall impact of overlapping disclosure obligations are unclear.[3115] The scope and requirements of the California laws differ from the final rules, such that compliance with the final rules could require information collection and reporting activities in addition to those performed to satisfy the California requirements.[3116]

[3108] Morningstar reports that over 35% of S&P 500 revenues came from foreign markets, while this percentage is around 20% for the revenues coming from companies belonging to the Russell 2000 index. *See* Gabrielle Dibenedetto, *Your U.S. Equity Fund is More Global Than You Think,* Morningstar (Mar. 14, 2019), available at *https://www.morningstar.com/articles/918437/your-us-equity-fund-is-more-global-than-you-think.*

[3109] *See* section IV.A.4 for a discussion on International Disclosure Requirements.

[3110] *See* letter from Mike Kreidler, Office of the Insurance Commissioner, State of Washington (June 14, 2021).

[3111] *See, e.g.,* letters from Amer. for Fin. Reform, Public Citizen and Sierra Club (Oct. 26, 2023); Institute for Policy Integrity et. al; and Rep. Maxine Waters.

[3112] Letter from Chamber II.

[3113] *See* SEC Guidance on Economic Analysis (2012), *supra* note 2574 (describing the baseline as ''the best assessment of how the world would look in the absence of the proposed action'').

[3114] One commenter agreed that compliance with the California laws could reduce the cost of compliance with the final rules, stating that ''. . . the costs of compliance with other provisions of the proposed rule will be reduced substantially due to overlap with California's new laws.'' Letter from Amer. for Fin. Reform. Public Citizen and Sierra Club (Oct. 26, 2023).

[3115] For example, the Climate Corporate Data Accountability Act directs a state agency to adopt implementing regulations by January 1, 2025 for reporting to begin in 2026. The details of those regulations are not yet available.

[3116] One commenter identified two differences in scope between the California laws and the proposed rules: (1) the Climate Corporate Data Accountability Act requires GHG emission disclosures ''based on different organizational boundaries'' than the proposed rules; and (2) Climate Related Financial Risk Act requires biennial reporting, instead of annual reporting. *See* letter from Chamber II. This commenter also stated there could be additional administrative costs related to coordinating compliance with different reporting regimes. *Id.* We agree that differences such as these reduce the potential for cost mitigation through overlapping requirements (although we note that, in a change from the proposal, the final rules allow the organizational boundaries to differ from those used

Additionally, one of the California laws allows the covered entity to satisfy certain California disclosure requirements with a disclosure prepared pursuant to another law or regulation.[3117] Therefore, while the California requirements may mitigate the costs of the final rules for some registrants, the degree of mitigation will depend on the regulations ultimately adopted and on the ways in which entities organize their compliance activities to satisfy reporting obligations in different jurisdictions.

One commenter suggested that the California laws could increase compliance costs by increasing demand, and thus the cost, for external consultants and services.[3118] We acknowledge this could occur in the short term; however, over the long-term, we expect that increased demand would cause new providers to enter the market, resulting in a corresponding increase in supply. An increase in the supply of providers would lead to greater competition among the external consultants, resulting in lower fees charged by consultants. To that end, the phased implementation of the final rules should mitigate most costs stemming from any shortage of consultants.

Registrants that have more exposure to material climate-related risks may face higher compliance costs to the extent that they must provide more extensive disclosures. However, we note that industries in which climate-risks are most likely to be material are also those that are already providing some degree of voluntary or mandatory disclosures.[3119]

The incremental costs of the financial statement disclosures may be somewhat higher for companies with exposure to severe weather events or other natural conditions that are difficult to assess, track, and disclose in the financial statements. For example, companies (*e.g.,* banks) with complicated asset structures or with operations in many jurisdictions may incur more costs to identify the expenditures for which a severe weather event or other natural condition was a ''significant contributing factor.''

Incremental costs, either proportionally or in dollar terms, may be higher for smaller registrants, such as SRCs and EGCs, considering that they are less likely to have climate-related disclosure systems and processes already in place.[3120] If smaller firms were to face higher proportional fixed costs in meeting the disclosure requirements, they may potentially be placed at a competitive disadvantage relative to larger firms.[3121] Conversely, incremental costs may be lower for smaller firms to the extent that their assets and operations are less complex, which may allow them to prepare responsive disclosures at lower cost. We recognize that a portion of the final rules' compliance costs is ''fixed'' in the sense that the costs do not scale with registrant size or its level of resources. We therefore expect that smaller registrants will have more difficulty allocating resources to comply with the final rules as compared to larger firms.[3122] To mitigate these compliance burdens, the final rules provide SRCs and EGCs certain accommodations, including being exempt from the GHG emissions disclosure requirement and the accompanying assurance requirement, as well as an extended phased in compliance period, which will allow such issuers both more time to prepare for initial compliance, as well as the benefit of observing market practices prior to preparing their initial disclosures required in response to the final rules.

We expect compliance costs to decrease over time. For example, a registrant disclosing climate-related information for the first time is likely to incur initial fixed costs to develop and implement the necessary processes and controls.[3123] Once the company invests in the institutional knowledge and systems to prepare the disclosures, the procedural efficiency of these processes and controls should subsequently improve, leading to lower costs in subsequent years.

Mandated climate disclosures may heighten demand for third-party services related to preparing the required disclosures, especially if registrants' current service providers cannot provide the specific services that registrants may seek to comply with the final rules.[3124] In the short term, there could be a potential increase in the prices of such services, leading to higher compliance costs. In the long term, however, this heightened demand is expected to spur competition, innovation, and economies of scale that could over time lower associated costs for such services and improve their availability.[3125] Moreover, the aggregate accumulation of institutional knowledge may lead to a broad convergence of disclosure-related best practices, which could further reduce the costs of the required disclosures.

Overall, the market effects deriving from competition and innovation could enhance the efficiency and availability of relevant services, thereby lowering compliance costs. These positive externalities from standard reporting practices can provide additional market-wide cost savings to the extent that they reduce duplicative effort in the production and acquisition of information.[3126]

D. Other Economic Effects

The analysis of benefits and costs in section IV.C is generally based on the assumption that the final rules will not cause registrants to change how they manage climate-related risks, but rather how they produce the associated disclosures. In this section, we consider the possibility that the rules may influence how some companies approach climate-related risks. For example, if agency conflicts currently prompt some managers to ignore long-run climate-related risks, in an effort to increase short-term cash flows, the additional transparency provided by the final rules may lead managers to focus more on long-run considerations if that is what their shareholders demand. Conversely, if some managers currently are over-prioritizing climate-related risks as compared to what investors view as optimal, the final rules may lead those managers to scale back their level of investment in managing climate-related risks. Generally, we expect that any resulting changes in behavior will

in the financial statements; *see supra* note 1034 and accompanying text).

[3117] *See* Climate Related Financial Risk Act, adding section 38533(b)(1)(A).

[3118] *See* letter from Chamber II; *see also supra* note 3125 and accompanying text.

[3119] *See* section IV.A.5.a.

[3120] Commission staff's analysis of registrants' annual filings indicate that SRCs and EGCs are less likely to have climate-related disclosures (as indicated by the presence of climate-related keywords) within their filings (*see* section IV.A.5.a); *see also* section IV.A.5.b.ii for another Commission staff analysis that finds that SRCs and EGCs are less likely to disclose GHG emissions.

[3121] *See, e.g.,* letters from Chamber and NAM.

[3122] *See, e.g.,* letter from CrowdCheck Law (''For example, for two companies we have worked with that recently became Exchange Act reporting companies, the estimated costs for the first year of compliance with the proposed rules would represent approximately 18.5% and 15%, respectively, of their entire gross revenues for the year prior to becoming a reporting company.''); *see also* letter from Independent Community Bankers (stating that ''the compliance cost burden for the smallest community banks is double that of the largest community banks'').

[3123] *See* letter from Financial Executives International's (''FEI'') Committee on Corporate Reporting (''CCR'') (June 10, 2021); *see also* Proposing Release section IV.C.4.c.

[3124] *See supra* note 1372 and accompanying text in section II.I.2.c.

[3125] *See also supra* notes 2873, 3118 and accompanying text.

[3126] *See* Christensen *et al.* (2021).

primarily stem from investors' improved ability to assess managerial decisions. That is, to the extent the final rules prompt managers to alter their approach to climate-related risks, it may be because they expect that failing to do so might prompt a negative stock price reaction to the disclosures.[3127]

Registrants may change their behavior in response to the proposed disclosure requirements by managing exposures to certain physical or transition risks. For example, empirical evidence shows that mandatory reporting of GHG emissions results in reduced aggregate reported emissions among affected firms.[3128] The final rules will require the disclosure of the location of company properties or operations subject to material physical risks (Item 1502(a)(1)), which could allow investors to better assess companies' exposures to such risks. It is possible that, in response to or anticipation of investor reactions, companies may relocate properties or operations to geographical areas less exposed to physical risks or give preference to such areas for future business activity. Any such changes to registrant behavior resulting from the final rules may come with the potential cost of lower productivity, profitability, or market share.[3129] In the case of relocation, for example, the alternate location may be more costly to operate. Similarly, we also recognize that some of the costs associated with the final rules may prompt some registrants to abandon or forgo adoption of material targets or goals relating to GHG emissions. To avoid direct costs of compliance or to simply report a lower emissions amount in their required disclosures, some registrants may take steps to reorganize their business in order to shift certain parts of their Scope 1 and Scope 2 emissions into the Scope 3 emissions category.[3130] This potential response from registrants obscures the registrants' true risk exposure and therefore could diminish the benefits of the disclosure related to investors' ability to assess exposure to climate-related transition risks.

Some commenters asserted that the compliance costs of the rules might cause some registrants to reduce their voluntary oversight of climate-related risks. For example, according to one commenter, devoting ''resources to meeting the requirements of any final rules the Commission adopts . . . will detract from other climate-related reporting efforts.'' [3131] This commenter also asserted that the proposed requirement to ''disclose internal information, such as internal carbon pricing, scenario planning, and related information if a company has an emission reduction target, could discourage companies from setting such targets.'' [3132] We recognize that some companies may pursue such avoidance strategies in response to the final rules. Other companies, however, may find the existence of disclosure requirements around climate-related targets and goals to be beneficial for signaling credible value-enhancing commitments to investors and hence may be motivated to engage in setting targets.[3133] More reliable and standardized disclosures about climate-related targets and goals will facilitate investors' understanding of the impact of those targets and goals, and hence could affect registrants' incentives for making such commitments, but the magnitude and direction of any such effects would depend upon registrants' decisions and investors' assessments about the value of those commitments rather than stemming directly from the final rules.

E. Effects on Efficiency, Competition, and Capital Formation

1. Efficiency

The final rules should have positive effects on market efficiency. As discussed above, the final rules should improve the informativeness and reliability of climate-related risks and financial disclosures. As a result of the disclosures required by the final rules, investors and other market participants should better understand the climate-related risks that registrants are facing, their potential impact (*e.g.,* on future cash flows), and registrants' ability to respond to and manage such risks. Investors and other market participants should thereby better evaluate registrants and make more informed investment and voting decisions. As a result, the required disclosures should reduce information asymmetry and mispricing in the market, improving market efficiency. More efficient prices should improve capital formation by increasing overall public trust in markets, leading to greater investor participation and market liquidity.[3134]

Currently, investors may seek information on registrant's climate-related risks from various sources, including those outside of Commission filings. For example, the necessary information may only be available from company websites or from third-party service providers that collect information and offer their analysis for a fee. Once investors locate relevant disclosures, they may need to spend time organizing and compiling information in ways that facilitate comparisons across companies. Because the final rules will make the required disclosures available from a consistent source (*i.e.,* Commission filings) and because the disclosures will be standardized and tagged, we expect the final rules to improve efficiency by reducing the costs associated with compiling and organizing information on climate-related risks and oversight.[3135]

We expect the climate-related disclosures mandated by the final rules

[3127] *See* M. Kahn, J. Matsusaka & C. Shu, *Divestment and Engagement: The Effect of Green Investors on Corporate Carbon Emissions* (Oct. 3, 2023), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4592023* (retrieved from SSRN Elsevier database).

[3128] *See* Jeong-Bon Kim, *et al., supra* note 2586; B. Downar, *et al., supra* note 2776; S. Tomar, *Greenhouse Gas Disclosure and Emissions Benchmarking,* SMU Cox Sch. of Bus. Rsch. Paper No. 19–17 (2021), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3448904* (retrieved from SSRN Elsevier database); V. Jouvenot & P. Krueger, supra note 2775.

[3129] At the same time, we recognize that a registrant may optimize for both climate risks and productivity, as these factors are not necessarily mutually exclusive.

[3130] *See* Lucas Mahieux, Haresh Sapra & Gaoqing Zhang, *Climate-Related Disclosures: What Are the Economic Trade-Offs?* (Dec. 1, 2023), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4507526* (retrieved from SSRN Elsevier database).

[3131] *See* letter from API.

[3132] *Id.*

[3133] Disclosures filed with the Commission are subject to greater liability and thus may be viewed as more credible than similar disclosures provided via other avenues (*e.g.,* company sustainability reports). In addition, the final rules will require disclosure of details or specifics that some registrants may otherwise not provide in the absence of the final rules.

[3134] *See* Grewal, *et al.,* supra note 2653; M.E. Barth, *et al., Textual Dimensions of Non-Financial Information, Stock Price Informativeness, and Proprietary Costs: Evidence from Integrated Reports,* (July 27, 2023), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3857927*; see also D.S. Dhaliwal *et al., Voluntary Nonfinancial Disclosure and the Cost of Equity Capital: The Initiation of Corporate Social Responsibility Reporting,* 86 Acct. Rev. 59 (2011); S. Kleimeier & M. Viehs, *Carbon Disclosure, Emission Levels, and the Cost of Debt,* (Jan. 7, 2018), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2719665* (retrieved from SSRN Elsevier database); E.M. Matsumura, *et al., Climate Risk Materiality and Firm Risk,* supra note 2744. *But see* I. Goldstein & L. Yang, *Good Disclosure, Bad Disclosure,* 131 J. of Fin. Econ. 118 (2019).

[3135] One commenter stated that ''[t]he Commission offers no support for the view that a rule aimed at consistency should be a stand-alone goal that will promote competition, efficiency, and capital formation.'' *See* Overdahl exhibit to letter from Chamber. To the extent that the commenter is asserting that the consistency achieved by the final rules does not promote or is somehow at odds with competition, efficiency, and capital formation, we disagree for the reasons outlined in this paragraph. Moreover, the Commission considers benefits and costs of the final rules in addition to the economic effects associated with efficiency, competition, and capital formation. *See* SEC Guidance on Economic Analysis (2012), *supra* note 2574.

will cause differential asset price and financing cost responses across companies and settings, as investors are more easily able to factor this information into their valuation decisions. These expected improvements in market efficiency are broadly consistent with empirical research. For example, one academic study finds evidence that, among companies that voluntarily report emissions via the CDP questionnaire, those with higher emissions (relative to their size and industry peers) pay higher loan spreads.[3136] Another study examined more than 16,000 companies from 2016 through 2020 and found that investors were actively and directly pricing some transition risk into valuations, an action that resulted in a negative correlation between companies' CO_2 emissions and their price-to-earnings ratio.[3137]

Empirical research has also documented evidence of current market inefficiencies with respect to climate-related risks. For example, one study found that stock prices of food processing and agricultural companies may exhibit mispricing with respect to drought exposure.[3138] The study documented that drought-exposed companies report reduced future profitability, indicating that drought exposure is a financial risk.[3139] In an efficient market, this risk should result in trading activity that decreases the current stock price and increases the expected return (to compensate investors for bearing this risk). The study, however, found that drought-exposed companies deliver *lower* future returns relative to companies with less exposure, suggesting that the market initially under-reacts to drought exposure.[3140] In other words, the market fails to sufficiently incorporate the risk of drought exposure into the current stock price, resulting in investors holding mispriced assets and bearing risk for which they are not appropriately compensated. Consistent with this finding, survey responses from institutional investors indicated that such investors believed that equity valuations do not fully reflect climate-related risks.[3141] The final rules may help address these market inefficiencies by eliciting more consistent and reliable information about climate-related risks so that those risks can be better incorporated into asset prices.

We also expect the final rules to increase efficiency by improving comparability of climate-related disclosures and requiring them to be filed in a machine-readable data language (*i.e.,* Inline XBRL).[3142] As discussed in section IV.C.2.i, efficiency gains from standardized reporting practices can provide market-wide cost savings to registrants in the long-term, to the extent that they reduce duplicative effort in registrants' production and acquisition of information (*e.g.,* certain data or third-party services related to preparing the required disclosures, including the reporting of emissions data, may become cheaper in the long run as heightened demand spurs competition, innovation, and economies of scale). Finally, more standardized reporting should also reduce investors' costs of acquiring and processing climate-related information by facilitating investors' analysis of a registrant's disclosure and assessing its management of climate-related risks against those of its competitors.

The inclusion of climate-related information in Commission filings using a machine-readable data language (*i.e.,* Inline XBRL), rather than external reports or company websites, should also make it easier for investors to find and compare this information. In that regard, XBRL requirements have been observed to reduce the informational advantages of informed traders and lead to lower cost of capital and higher stock liquidity for filers that provide tagged disclosures.[3143]

We acknowledge commenters who stated that proposed amendments could decrease efficiency by reducing the incentives for reporting companies to develop business strategies, transition plans, or goals, because the amendments would require disclosure of these strategies, plans or goals.[3144] According to these commenters, the benefits of developing these elements could be outweighed by the direct and indirect costs of disclosing them. While this may occur in some circumstances, the efficiency loss is expected to be relatively low as the required disclosures are not highly granular. Thus, in many cases, we believe the benefits of developing business strategies, transition plans or goals will exceed the costs of such disclosure. But we recognize that, more generally, the final rules may divert some resources away from what their best use would otherwise be. As explained above, by removing some of the more prescriptive elements of the proposed rules that could require disclosure of a registrant's competitively sensitive information, the final rules mitigate this concern.

Some commenters raised the more general concern that final rules could divert managers' attention from other types of risks that may be more urgent or important to investors.[3145] However, we expect this channel will be somewhat limited. First, the final rules will elicit more disclosures from those registrants for which climate-related risks have materially impacted or are reasonably likely to have material impacts on the registrants' financials or business strategy. Therefore, the final rules are unlikely to demand significant managerial attention in settings in which such attention is not warranted. Second, managers and directors have strong incentives to maximize the market value of the company (as reflected in the stock price). As a result, there is limited upside to selecting policies that prioritize climate over other concerns that investors view as more important determinants of company value.

[3136] *See* S. Kleimeier & M. Viehs, *supra* note 3134.

[3137] *See* Lazard Climate Center, *Inaugural Research Findings of the Lazard Climate Center* (Dec. 2021), available at *https://www.lazard.com/research-insights/inaugural-research-findings-of-the-lazard-climate-center/*; *see also https://lazard.com/media/ge5oromo/lazard-climate-center-presentation-december-2021.pdf* (presentation). The Lazard presentation notes, however, that the effects vary significantly across different types of GHG emissions, market capitalization, and sectors. Large capitalization companies (>$50 billion) experience greater valuation discounts, while larger emitters, such as energy companies, showed the most consistently negative correlation. On average, a 10% decrease in a large U.S. energy company's emissions corresponded with a 3.9% increase in its price-to-earnings ratio.

[3138] *See* H. Hong, *et al., supra* note 2739.

[3139] *See id.*

[3140] *See id.*

[3141] *See* Krueger, *et al., supra* note 2790.

[3142] *See* letters from Impact Capital Managers (indicating that the Inline XBRL requirement will contribute toward the goal of eliciting more consistent, comparable, and reliable disclosure); and Climate Advisers (stating that tagging the new disclosures in Inline XBRL should, by allowing the disclosed information to be more readily incorporated into investors' analyses, promote the efficiency of the U.S. capital markets).

[3143] *See, e.g.,* N. Bhattacharya, Y.J. Cho & J.B. Kim, *Leveling the Playing Field Between Large and Small Institutions: Evidence from the SEC's XBRL Mandate,* 93 Acct. Rev. 51 (2018); B. Li, Z. Liu, W. Qiang & B. Zhang, *The Impact of XBRL Adoption on Local Bias: Evidence from Mandated U.S. Filers,* 39 J. of Acct. and Pub. Policy (2020); W. Sassi, H. Ben Othman & K. Hussainey, *The Impact of Mandatory Adoption of XBRL on Firm's Stock Liquidity: A Cross-Country Study,* 19 J. of Fin. Rep. and Acct. 299 (2021); C. Ra & H. Lee, *XBRL Adoption, Information Asymmetry, Cost of Capital, and Reporting Lags,* 10 iBusiness 93 (2018); S.C. Lai, Y.S. Lin, Y.H. Lin & H.W. Huang, *XBRL Adoption and Cost of Debt,* Int'l. J. of Acct. & Info. Mgmt. (2015); Cong *et al.,* supra note 2948.

[3144] *See, e.g.,* letter from Cato Inst.; Overdahl exhibit to letter from Chamber; and Motor & Equipment Manufacturers Association.

[3145] *See, e.g.,* letters from Chamber; Southside Bancshares; and BIO.

2. Competition

Overall, we expect that by standardizing reporting practices, the final rules would level the playing field among firms, making it easier for investors to assess the climate-related risks of a registrant against those of its competitors. The effects of peer benchmarking can contribute to increased competition for companies in search for capital both across and within industries, whereby registrants can be more easily assessed and compared by investors against alternative options.

Some commenters raised concerns that the proposed rules would have increased competition among registrants for hiring individuals with climate-related expertise and/or GHG emissions attestation providers.[3146] These commenters asserted that the proposed rules could increase the costs of hiring key personnel with relevant experience, which could restrain a registrant's ability to produce climate disclosures and institute climate-related strategies.[3147] While the final rules do not completely eliminate concerns about the costs of hiring or engaging those with climate-related expertise, we have made several changes to mitigate these costs. With respect to GHG emissions assurance, for example, the final rules will permit assurance providers to use the ISO 14064–3 attestation standard, which should limit the circumstances in which registrants need to seek out different attestation engagements. In addition, the extended phase in periods for compliance with the GHG emissions disclosure and assurance requirements will provide additional time for registrants to seek out, and the markets to respond to increased demand for, climate-related professional services.

Some commenters stated that the proposed amendments would harm the competitive position of Commission registrants relative to their peers who do not face such disclosure requirements.[3148] In particular, these commenters stated that Commission registrants would face direct costs of compliance, and indirect costs such as the risk of disclosure of proprietary business information, while other companies would not face these costs.[3149] Relative to the proposed rules, the final rules take a number of steps to reduce the costs of complying with the final rules.[3150] For example, we have eliminated the requirement to disclose Scope 3 emissions, we have significantly narrowed the Regulation S–X requirements, and the final rules for subpart 1500 of Regulation S–K include additional materiality qualifiers and less prescriptive disclosure requirements. Moreover, as discussed above, a number of these changes from the proposal will serve to limit the circumstances in which disclosure of potentially competitive business information will be required.

Similarly, one commenter noted that public companies could be placed at a competitive disadvantage when bidding to acquire a private target company because they would need to screen prospective targets for their ability to produce the disclosures required by the proposed rules.[3151] Any such competitive disadvantage will be mitigated under the final rules, as compared to the proposed rules, because we no longer are applying disclosure requirements to a private company that is a party to a business combination transaction, as defined by Securities Act Rule 165(f), involving securities offerings registered on Form S–4 or F–4.

Commenters also raised concerns about disproportionate effects for smaller companies, as discussed above in section IV.C.3.c. Any costs that disproportionately impact smaller companies—such as those that do not scale with the size of the registrant—may limit the ability of smaller registrants to compete with larger registrants. As discussed above, the final rules do not require SRCs and EGCs to provide GHG emissions disclosures and provide SRCs and EGCs with longer phase in periods to delay implementation costs. This delay may effectively lower implementation costs for SRCs and EGCs to the extent that, by the time they are required to report, SRCs and EGCs can look to the disclosure practices developed by other registrants to assist them in preparing their own disclosures.

3. Capital Formation

More consistent, comparable, and reliable disclosures could lead to capital market benefits in the form of improved liquidity and lower costs of capital.[3152] These benefits would stem from reductions in information asymmetries brought about by the required disclosure of climate-related information.[3153] The reduction in information asymmetry between managers and investors could allow investors to better estimate future cash flows, which could reduce investors' uncertainty, thus lowering the costs of capital.[3154] In addition, less information asymmetry *among* investors could mitigate adverse selection problems by reducing the informational advantage of investors that have sufficient resources to become more informed about a registrant's exposure to and management of climate-related risks.[3155] This is likely to improve stock liquidity (*i.e.,* narrower bid-ask spreads), which could attract more investors and reduce the cost of capital overall.[3156]

[3146] *See, e.g.,* discussions in sections II.E.2.b and II.I.5.b.

[3147] *See, e.g.,* letter from Can. Bankers.

[3148] *See* letters from API; Matthew Winden; and Southside Bancshares, Inc.

[3149] *Id.*

[3150] *See* section IV.C.2.

[3151] Letter from Shearman Sterling. *See also supra* 2461 and accompanying text.

[3152] *See* D.W. Diamond & R.E. Verrecchia, *Disclosure, Liquidity, and the Cost of Capital,* 46 J. Fin. 1325 (1991) (finding that revealing public information to reduce information asymmetry can reduce a company's cost of capital through increased liquidity); *see also* C. Leuz & R.E. Verrecchia, *The Economic Consequences of Increased Disclosure,* 38 J. Acct. Res. 91 (2000). Several studies provide both theoretical and empirical evidence of the link between information asymmetry and cost of capital. *See, e.g.,* T.E. Copeland & D. Galai, *Information Effects on the Bid-Ask Spread,* 38 J. Fin. 1457 (1983) (proposing a theory of information effects on the bid-ask spread); Easley *et al., supra* note 2753 (showing that differences in the composition of information between public and private information affect the cost of capital, with investors demanding a higher return to hold stocks with greater private information.).

[3153] *See, e.g.,* Christensen *et al.* (2021), at 1147 (noting ''[A] primary benefit of corporate disclosure is to mitigate information asymmetries between the firm and its investors as well as among investors . . . [T]he general takeaway from this large literature is that more and better disclosure can lead to tangible capital-market benefits in the form of improved liquidity, lower cost of capital, higher asset prices (or firm value), and potentially better corporate decisions . . . To the extent that mandatory CSR reporting and CSR standards improve the information available to investors, the same theories and many of the prior findings should apply when considering the economic effects of the mandate or standard.'').

[3154] *See* Diamond *et al., supra* note 3152; Lambert, *et al.,* Accounting Information, *supra* note 2753; Christopher Armstrong, John Core, Daniel Taylor & Robert Verrecchia, *When Does Information Asymmetry Affect the Cost of Capital?,* 49 J. of Acct. Rsch. 1 (2011). We note that these articles also detail limited theoretical circumstances under which more reliable disclosures could lead to a higher cost of capital, such as in the case where improved disclosure is sufficient to reduce incentives for market making.

[3155] *See* Verrecchia, *et al., supra* note 2748.

[3156] One commenter asserted that this first channel does not apply to corporate disclosures, as it pertains only to bid-ask spreads set by market makers concerned with trading against parties with more information about order flow. *See* Overdahl exhibit to letter from Chamber. We disagree. Market makers concerned about trading against more informed parties will set larger bid-ask spreads regardless of the reason for the asymmetric information. In this setting, corporate disclosures of material climate-related information would reduce information asymmetries between market makers and other traders who have, for example, learned about a company's climate related risks through proprietary research. *See* letters from Calvert

There are two additional channels through which the disclosures could impact cost of capital. The first arises because some investors may have preferences to invest with companies that are more or less exposed to climate-related risks about which the final rules will elicit disclosure. To the extent the disclosures provide more complete and reliable information about a registrant's material climate-risks and how such risks are being managed, shifts in investor demand for the registrant's securities could increase or decrease (depending on investor preferences and how they factor this information into their investment decision-making).[3157] The second results from the fact that some aspects of climate risk may not be diversifiable and therefore could command a risk premium. Academic research suggests that investors demand a higher return to hold assets that are more exposed to non-diversifiable climate-related risk (including both transition and physical risks).[3158] If the disclosures cause investors to update their expectations of a registrant's exposure to this type of risk, the cost of capital could adjust accordingly.

More generally, if compliance costs with the final rules are sufficiently high, this could influence the marginal company's decision to exit public markets or refrain from going public in the first place to avoid having to comply with the disclosure requirements. This concern was echoed by a number of commenters.[3159] Companies may choose this strategy if they believe the potential compliance costs from the final rules outweigh the benefits of being a registered public company including, for example, a more liquid market for the company's securities and the associated reduction in cost of capital. Uptake of this avoidance strategy may widen the transparency gap between public and private companies, negatively affecting capital markets' information efficiency, and potentially reducing the size of the public markets.[3160] However, we note that this avoidance strategy will come with significant disadvantages. For example, any companies deterred from registration because of the final rules would face more limited access to the capital markets, implying higher financing costs and debt-ratios.[3161] On balance, we believe the benefits of being a public registered company are sufficiently strong such that it is unlikely many companies will choose to avoid becoming or continuing as a public registered company as a result of the final rules. In this regard, we note that the final rules include a number of changes from the proposal intended to mitigate the compliance burden on registrants and lessen disproportionate impacts on smaller and emerging growth firms.

F. Reasonable Alternatives

1. Adopt a More (or Less) Principles-Based Approach to Regulation S–K Disclosures

Many commenters recommended a more principles-based approach (either overall or with respect to specific provisions) that would permit registrants to determine the type of climate-related information to disclose based on what they deem to be appropriate.[3162] Such an approach might reduce reporting costs because registrants would be required to report only information that they determine to be appropriate given their unique circumstances. To the extent that the more prescriptive elements of the final rules result in disclosure that is less useful for investors, a principles-based approach could benefit investors by reducing the incidence of less material or even boilerplate disclosure.[3163] A principles-based approach would also reduce the risk that the disclosure requirements could lead registrants to change their risk management strategies in ways that are less than optimal for the sake of achieving what they perceive to be more favorable climate-related disclosure.

On the other hand, a more principles-based approach would not fully achieve many of the intended benefits of the rules, which are focused on enhancing the consistency and comparability of existing voluntary disclosure arrangements. In addition, a principles-based approach could increase shareholder confusion because the choice of climate metrics and other details (*e.g.,* time horizon) may vary significantly across registrants. Also, a principles-based approach may allow registrants to selectively choose the measures or time horizon that result in the most favorable disclosures. In the final rules, we elected to include prescriptive disclosure requirements (with certain modifications to address commenter concerns) to avoid such cherry-picking of information and to ensure that investors are provided with more consistent and comparable information about climate-related risks.

We similarly considered whether the final rules should be more prescriptive. This would generally improve investors' ability to compare disclosures across registrants since disclosures would be less tailored to each registrant's specific

(''Calvert purchases third party vendor data to support our ability to assess companies on their ESG factors and that provide specific data related to climate change, where available. Often vendor information is estimated when a company has not disclosed information on its climate-related risks. Sometimes the estimates are made across industries, based on what other more proactive peers have disclosed.''); Boston Trust Walden (reporting: ''our analysts examine quantitative and qualitative climate-related corporate disclosure to enhance our understanding of the existing and potential financial outcomes associated, ranging from risks (*e.g.,* losing the license to operate) to opportunities (*e.g.,* generating new sources of revenue)''). We also note that corporate disclosures of material climate-related information reduce information asymmetries between affiliated investors and other investors. *See also* Glosten *et al., supra* note 2748, for evidence that informed traders may take advantage of ''private information or superior analysis'' when making investment decisions). This commenter also asserted that the Commission must consider the potential efficiency losses that may result from investors no longer having the same incentives to invest in this type of proprietary research. We disagree with the commenter that there would be an efficiency loss. The primary benefit of proprietary research is more accurate prices. If disclosures obviate the need for proprietary research by achieving price discovery in the absence of that research, there is not an efficiency loss from the lack of research. This commenter also argues that voluntary disclosure regimes should enable corporate issuers to lower their cost of capital by reducing information asymmetry. *See supra* note 3154. We discuss shortcomings related to a voluntary disclosure regime in this context in section IV.B.2, and we cite to academic evidence in *supra* notes 2748 and 3153 that mandatory reporting that improves the information available to investors can lead to tangible capital market benefits.

[3157] *See* Yang, *supra* note 2827; Avramov, Cheng, Lioui & Tarelli, *Sustainable Investing with ESG Rating Uncertainty,* 145 J. of Fin. Econ. (Oct. 2022); L. Pastor, R. Stambaugh & L. Taylor, *Sustainable Investing in Equilibrium,* 142 J. Fin. Econ. 550 (2021); P. Bolton & M. Kacperczyk, *supra* note 2744; Li *et al., supra* note 2657.

[3158] *See, e.g.,* Bolton *et al., supra* note 3157 (finding that investors demand compensation for exposure to carbon emissions risk); Acharya *et al., supra* note 2905 (finding higher expected returns for exposure to physical risks); Huynh & Xia (2021).

[3159] *See* letters from Elaine Henry; API; Cunningham *et al.;* Matthew Winden; Southside Bancshares Inc.; David Burton; AEPC; CCMR; Chamber; Petrol. OK; and AGs of Cal. *et al.*

[3160] *See* Overdahl exhibit to letter from Chamber.

[3161] *See* Omer Brav, *Access to Capital, Capital Structure, and the Funding of the Firm,* 64 J. of Fin. 263 (2009); Anthony Saunders & Sascha Steffen, *The Costs of Being Private: Evidence from the Loan Market,* 24 Rev. of Fin. Stud. 4091 (2011); E.P. Gilj & J.P Taillard, *Do Private Firms Invest Differently than Public Firms? Taking Cues from the Natural Gas Industry,* 71 J. of Fin. 1733 (2016).

[3162] *See, e.g.,* letters from Beller, *et al.* and Microsoft; Sullivan Cromwell; Airlines for America; BOA; Business Roundtable; Soc. Corp. Gov; and Overdahl exhibit to letter from Chamber.

[3163] Similarly, one commenter described ''(1) the ability of a principles-based approach to evolve in order to keep pace with emerging issues; and (2) the flexibility of a principles-based approach to correct deficiencies or excesses in disclosure without the need for the Commission to continuously add to or update the underlying disclosure rules as new issues arise.'' Overdahl exhibit to letter from Chamber. We acknowledge that a principles-based approach can present these benefits and that prescriptive rules may need updates.

circumstances. A more prescriptive approach would also reduce the risk of boilerplate disclosures. However, we decided against this approach in light of commenters' concerns about the costs of compliance with the proposed rules, as well as the importance of allowing registrants the flexibility to provide investors with the most useful and relevant disclosures. Accordingly, in response to commenters, the final rules include additional materiality qualifiers and take a less prescriptive approach in a number of areas, which should help to mitigate some of the concerns expressed with respect to the proposed rules while continuing to elicit more decision-useful information for investors about climate-related risks.

2. Different Approaches to Assurance Over GHG Emissions Disclosures

We considered several alternative approaches to assurance over GHG emissions disclosure. For example, the Commission could not require that any GHG emissions disclosure be subject to assurance. Alternatively, the Commission could require reasonable assurance of all GHG emissions disclosures rather than only for LAFs. The Commission could also prescribe more restrictive requirements for attestation standards and assurance providers. Inherent in these choices is a tradeoff between compliance costs and the reliability of the disclosures. For example, while requiring reasonable assurance for all GHG emissions would have likely resulted in more reliable disclosures, it would have imposed considerable costs on registrants, based on feedback from commenters about the costs of obtaining reasonable assurance.[3164]

We also considered taking a less prescriptive approach to the independence requirements for assurance providers in the final rules. For example, we considered not adopting a requirement for the GHG emissions assurance provider to be independent with respect to the registrant and any of its affiliates and/or instead requiring disclosure about any potentially independence-impairing relationship.[3165] This approach would help to mitigate concerns commenters raised about a potential shortage of qualified GHG emissions assurance providers increasing the costs for registrants[3166] and potential burdens on registrants related to the need to assess the independence of assurance providers.[3167] However, not imposing an independence requirement or only requiring disclosure about potential conflicts would not provide the same confidence to investors that the attestation provider will perform the engagement in an objective and impartial manner. This in turn would diminish one of the key benefits of requiring assurance over GHG emissions disclosures, which is to improve the reliability of such disclosures.

We acknowledge that the independence requirement in the final rules may result in some registrants that are already obtaining assurance voluntarily needing to retain a new GHG emissions assurance provider that meets the independence requirement or may make it more difficult for a registrant that has not obtained GHG assurance before to find an available provider. These costs are mitigated by the modifications in the final rules that provide registrants subject to the assurance requirement with a multi-year phase in period before they are required to obtain an attestation report. The phase in period will give registrants time to find a provider that meets the independence requirement or provide existing service providers time to unwind any existing conflicts in order to meet the independence requirement. It will also give non-accountant attestation providers time to familiarize themselves with the independence requirement and adapt their business practices accordingly.

3. Different Thresholds for Financial Statement Disclosures

We considered alternative criteria for disclosure under the amendments to Regulation S–X, such as using a more principles-based materiality approach. In general, materiality thresholds can help ensure that the disclosure elicited is most likely to factor into an investor's decision or voting decisions. While materiality is used as the threshold for disclosures in certain contexts, we believe that registrants will benefit from the certainty associated with a set of bright line quantitative thresholds. In doing so, investors will have disclosures that are more consistent across registrants due to the predictable application of quantitative thresholds. As discussed above, we have significantly modified the scope of the proposed disclosures and threshold and have included de minimis exceptions to focus the requirements on providing material disclosure to investors. However, we decided not to eliminate the bright-line thresholds entirely and move to a more principles-based disclosure standard because the quantitative disclosure threshold provides registrants with greater clarity in implementing the rules, reduces the risk of underreporting, and increases consistency and comparability. This approach is consistent with the feedback we received from some commenters that expressed concerns about the risks of underreporting in the context of the financial statements, as evidenced by the limited climate-related disclosure under current accounting standards despite increasing demand by investors for such disclosure.

We considered not including de minimis disclosure thresholds. A de minimis threshold is more likely to be triggered for smaller registrants; so, not including a de minimis threshold would have resulted in similar rates of disclosure from both large and small companies. However, this approach would have been more likely to elicit disclosures that are not decision-useful to investors. In particular, for some registrants, shareholders' equity and income or losses before taxes may not scale meaningfully with the magnitude of the registrant's operations, for example, if the registrant is highly leveraged or was not very profitable (or very unprofitable) during the period. Including de minimis thresholds will avoid triggering overly granular disclosure in such anomalous situations.

Following feedback from commenters, we also considered limiting the new Regulation S–X disclosures to registrants in certain sectors. While restricting disclosure to specific sectors would limit the costs of disclosure, it would result in a lack of information about other sectors, which can be affected by severe weather events or other natural conditions. By specifying disclosures for certain sectors, the Commission would also risk making a determination about which sectors to include and exclude that may become obsolete in the future if conditions change. For sectors that are not generally affected by severe weather events or other natural conditions, the costs associated with these disclosures are likely to be moot.

4. Permit Disclosures To Be Furnished Rather Than Filed

We considered the possibility of permitting some or all of the required disclosures to be furnished rather than

[3164] *See, e.g.,* letter from Salesforce (estimating that obtaining reasonable assurance rather than limited assurance over their emissions disclosures would increase their expected costs by $1–$3 million).

[3165] *See* 17 CFR 229.1506(b)(2).

[3166] *See, e.g.,* letters from AEPC; Climate Risk Consortia; and Soc. Corp. Gov.

[3167] *See, e.g.,* letter from Soc. Corp. Gov.

filed. Although some commenters expressed a desire for furnished disclosures, stating that it would lower the legal liability for registrants who are required to provide climate-related disclosures under the final rules,[3168] furnished disclosures may also limit the benefit for investors who rely on complete and accurate information from registrants about their climate-related risks and their efforts to address these risks.[3169] By contrast, requiring registrants to file, rather than furnish, the climate-related disclosures provided pursuant to the final rules will give investors the ability to bring suit if registrants fail to comply with the new disclosure requirements, for instance under Exchange Act section 18.[3170] This will improve the avenues of redress available to investors in the case of false or misleading statements with respect to material facts and, in turn, provide benefits to investors to the extent they rely on the disclosures required under the final rules to make investment or voting decisions. Further, treating these disclosures as filed will help promote their accuracy and consistency to the extent registrants seek to avoid liability (under, for example, section 18) by taking additional care to ensure that disclosures are accurate. We believe, therefore, that information about climate-related risks should be subject to the same liability as other important business or financial information that the registrant includes in its registration statements and periodic reports.

We acknowledge that requiring these disclosures to be filed may increase registrants' litigation risks (and, therefore, their costs of complying with the final rules) relative to an alternative approach that would allow registrants to furnish the disclosures. The modifications we have made to the proposed rules, however, should help to mitigate those concerns. These modifications include: limiting the scope of the GHG emissions disclosure requirement;[3171] revising several provisions regarding the impacts of climate-related risks on strategy, targets and goals, and financial statement effects so that registrants will be required to provide the disclosures only in certain circumstances, such as when material to the registrant;[3172] and adopting a provision stating that disclosures (other than historic facts) provided pursuant to certain of the new subpart 1500 provisions of Regulation S–K constitute ''forward-looking statements'' for the purposes of the PSLRA safe harbors.[3173] We also are providing registrants with a phase in period based on filer status to give them additional time to prepare to provide the climate-related disclosures, which will constrain registrants resources less over the short run, which could effectively lower implementation costs.[3174]

Finally, regardless of whether the information is filed or furnished, registrants may be subject to potential liability under Securities Act section 17(a), Exchange Act section 10(b), and/or Rule 10b–5, as applicable, for false or misleading material statements in the information disclosed pursuant to the final rules.

5. Exempt SRCs/EGCs

We considered completely exempting SRCs and EGCs from the final rules. While such a broad exemption would avoid burdening newly public and/or smaller registrants with the costs of the final rules, which include some fixed costs that would disproportionately affect smaller registrants, such an alternative would leave significant gaps in the information set on climate-related risks faced by registrants, thereby significantly detracting from comparability and other informational benefits of the final rules. We have, however, made a number of changes from the proposal, such as generally reducing the prescriptiveness of the proposed rules, which should help to mitigate the compliance burden for all registrants, including SRCs and EGCs. We are also providing phase in periods based on filer status, which will provide registrants that are SRCs or EGCs with additional time to prepare to make disclosure under the final rules.

For emissions-related disclosures, there exists a similar trade-off between costs and benefits of exempting SRCs and EGCs. However, based in part on the analysis performed by Commission staff, which indicated extremely low rates of disclosure for SRCs and EGCs, we have exempted SRCs and EGCs from the requirement to disclose GHG emissions data given the significant compliance burden that such disclosure could impose on smaller registrants.[3175]

6. Permit Registrants To Rely on Home-Country Disclosure Frameworks/Substituted Compliance

In light of the fact that several other jurisdictions have adopted or are currently pursuing climate-related disclosure frameworks, some commenters suggested that that the Commission consider allowing registrants to comply with the proposed rules by using disclosures provided in these other jurisdictions.[3176] While this substituted compliance approach has the potential to reduce costs to the extent that there are overlapping disclosure requirements, we have determined, at this time, that it is premature to allow for substituted compliance with the final rules, given the current status of such requirements in other jurisdictions. Accordingly, the Commission intends to observe how reporting under international climate-related reporting requirements and practices develop before making any determination whether such an approach would result in consistent, reliable, and comparable information for investors. As noted above,[3177] the Commission may consider such accommodations in the future depending on developments in the international climate reporting practices and our experience with disclosures under the final rules.[3178]

Similarly, some commenters suggested that, in lieu of the proposed GHG emissions disclosure requirements, we should require registrants to submit GHG emissions data that they publicly report under other regulatory regimes, such as the GHGRP.[3179] Under such an approach, registrants would not need to track and report GHG emissions data that they are not already collecting for other regulatory purposes, and thus registrants would not incur certain direct compliance costs associated with disclosing this information under the final rules (although they would assume new securities law liability for including the information in Commission filings). However, as discussed in detail in section IV.C.2.e, reporting under other regulatory regimes, such as the GHGRP, serves different purposes than disclosure under the Federal securities laws, and the information reported is not always presented in ways that are decision-

[3168] *See, e.g.,* letter from CCMR; *see also* section II.K.2.

[3169] *See* discussion in II.K.3.

[3170] Climate-related disclosures provided pursuant to the final rules also will be subject to section 11 liability if included in, or incorporated by reference into, a Securities Act registration statement.

[3171] *See supra* section II.H.3.

[3172] *See supra* sections II.D.3, II.G.3, and II.H.3.

[3173] *See supra* section II.J.3.

[3174] *See supra* section II.O.3.

[3175] *See* section II.L.3 and *supra* note 946 and accompanying text.

[3176] *See* letters from AllianceBernstein; Davis Polk; Linklaters L; PGIM; PwC; and SAP SE.

[3177] *See supra* section II.L.3.

[3178] *See, e.g.,* section IV.A. discussing the domestic and international disclosure requirements that are still being developed and finalized at this time.

[3179] *See* letter from Grundfest; Memorandum of Meeting with Grundfest and Wilson (June 28, 2023).

useful for investors. Accordingly, we have decided not to adopt such an alternative.

7. Alternative Tagging Requirements

With respect to Inline XBRL tagging, we considered changing the scope of disclosures required to be tagged, for example by removing the tagging requirements for climate-related disclosures for all or a subset of registrants (such as SRCs). As another example, we considered requiring only a subset of proposed climate-related disclosures, such as the quantitative climate-related disclosures, to be tagged in Inline XBRL. Narrowing the scope of climate-related disclosures to be tagged could have provided some incremental cost savings for registrants compared to the final rules, because incrementally less time would have been required to select and review the particular tags to apply to the climate-related disclosures.

However, we believe any such incremental cost savings would have been low because all affected registrants are required to tag certain of their disclosures (including both quantitative and qualitative disclosures) in Inline XBRL.[3180] Moreover, narrowing the scope of tagging requirements would have diminished the extent of informational benefits that would accrue to investors by reducing the volume of climate-related information that would become less costly to process and easier to compare across time and registrants. For example, an alternative whereby only quantitative climate-related disclosures would be tagged would have inhibited investors from efficiently extracting or searching climate-related disclosures about registrants' governance; strategy, business model, and outlook; risk management; and targets and goals, thus creating the need to manually run searches for these disclosures through entire documents. Such an alternative would also have inhibited the automatic comparison and redlining of these disclosures against prior periods, and the performance of targeted machine learning assessments (tonality, sentiment, risk words, etc.) of specific narrative climate-related disclosures outside the financial statements rather than the entire unstructured document.

V. Paperwork Reduction Act

A. Summary of the Collections of Information

Certain provisions of our rules and forms that will be affected by the final rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[3181] The Commission published a notice requesting comment on changes to these collections of information in the Proposing Release and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[3182] The hours and costs associated with preparing and filing the forms and reports constitute reporting and cost burdens imposed by each collection of information.[3183] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The titles for the affected collections of information are:

- Form S–1 (OMB Control No. 3235–0065);
- Form F–1 (OMB Control No. 3235–0258);
- Form S–4 (OMB Control No. 3235–0324);
- Form F–4 (OMB Control No. 3235–0325);
- Form S–11 (OMB Control No. 3235–0067);
- Form 10 (OMB Control No. 3235–0064);
- Form 20–F (OMB Control No. 3235–0288); and
- Form 10–K (OMB Control No. 3235–0063).

The final rules will require registrants filing Securities Act registration statements on Forms S–1, F–1, S–4, F–4, and S–11 to include the climate-related disclosures required under subpart 1500 of Regulation S–K and Article 14 of Regulation S–X. The final rules will further require registrants filing Exchange Act annual reports on Forms 10–K and 20–F and Exchange Act registration statements on Forms 10 and 20–F to include the climate-related disclosures required under subpart 1500 of Regulation S–K and Article 14 of Regulation S–X. Registrants may include the climate-related disclosures required under subpart 1500 in a part of the registration statement or annual report that is separately captioned as Climate-Related Disclosure or in another appropriate section, such as Risk Factors, MD&A, or Description of Business. Registrants will be required to include the climate-related disclosures required under Article 14 in a note to the financial statements.

In addition, if a registrant is an LAF or AF that is not an SRC or EGC, the final rules may require the registrant to disclose its Scope 1 and/or Scope 2 emissions. Such registrant will also be required to file an attestation report in connection with its Scope 1 and/or Scope 2 emissions disclosure. For purposes of Exchange Act reporting on domestic forms, although a U.S. registrant may incorporate by reference such disclosure from its Form 10–Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions metrics disclosure relates, we have attributed the paperwork burden associated with the GHG emissions disclosure requirement and the related attestation report to the Form 10–K annual report. This is because the GHG emissions disclosure and related attestation report are requirements of, and relate to the same fiscal year-end as, the Form 10–K.

A description of the final rules including the need for the climate-related information and its intended use, as well as a description of the likely respondents, can be found in section II above, and a discussion of the economic effects of the final rules can be found in section IV above.

B. Current Inventory Update To Reflect $600 per Hour Rather Than $400 per Hour Outside Professional Costs Rate

At the outset, we note that the current OMB inventory for the above-referenced collections of information reflect an average hourly rate of $400 per burden hour borne by outside professionals. Similarly, in the Proposing Release, the Commission used an estimated cost of $400 per hour, recognizing that the costs of retaining outside professionals may vary depending on the nature of the professional services.[3184] The Commission recently determined to increase the estimated costs of such hourly rate to $600 per hour [3185] to adjust the estimate for inflation from Aug. 2006.[3186] In order to more accurately present the burden changes

[3180] *See supra* section IV.c.2.ix.

[3181] 44 U.S.C. 3501 *et seq.*

[3182] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[3183] The paperwork burdens for Regulation S–X, Regulation S–K, Regulation C, and Regulation S–T are imposed through the forms, schedules, and reports that are subject to the requirements in these regulations and are reflected in the analysis of those documents.

[3184] *See* Proposing Release, section V.C.

[3185] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $600 per hour.

[3186] *See* Listing Standards for Recovery of Erroneously Awarded Compensation, Rel. No. 33–11126 (Oct. 26, 2022) [87 FR 73076 (Nov. 28, 2022)].

as a result of the final rules in the context of the current burden inventory, we are presenting updated numbers for the current inventory for professional cost burden for each of the affected collections of information to reflect the updated $600 per hour rate where it has not yet been reflected in the current burden inventory last approved by OMB. This update is solely derived from the change in the hourly rate; it is not a new burden imposed by the final rules. The updated cost estimates using the $600 per hour rate are set out in the following PRA Table 1: [3187]

PRA TABLE 1—CHANGE IN PRA BURDEN DUE TO UPDATED OUTSIDE PROFESSIONAL COST ESTIMATE

Collection of information	Current inventory professional cost burden (@$400/hr.) (A)	Updated professional cost burden (@600/hr.) (B)	Increased burden due to update (C) = (B) − (A)
Form S–1	$174,015,643	$261,023,465	$87,007,822
Form F–1	32,130,375	48,195,563	16,065,188
Form S–4	675,605,379	1,013,408,069	337,802,690
Form F–4	17,013,425	25,520,138	8,506,713
Form S–11	14,790,168	22,185,252	7,395,084
Form 10	12,851,488	19,277,232	6,425,744
Form 20–F	576,533,425	864,800,138	288,266,713
Form 10–K	1,835,594,519	2,753,391,779	917,797,260

C. Summary of Comment Letters

In the Proposing Release, the Commission requested comment on the PRA burden hour and cost estimates and the analysis used to derive the estimates.[3188] While a number of parties commented on the potential costs of the proposed rules, only a few commenters mentioned the PRA analysis.[3189] One commenter stated that it opposed the rule proposal in part because, in its view, it would ''more than doubl[e] the total paper-work compliance costs to public corporations.'' [3190] Two commenters stated that the Commission had underestimated the compliance burden and costs of the proposed rules.[3191] One of the commenters stated that ''besides failing to monetize the internal compliance burden hours, the PRA Table ignores: 1. litigation costs; 2. cost not easily and directly allocable to filling out the forms listed in [the PRA Table]; 3. costs imposed on non-issuers; and 4. [t]he cost to investors, issuers and workers caused by adverse economic effects of the rule.'' [3192]

While we acknowledge the commenters' concerns about costs of the proposal, for the reasons discussed in section II and elsewhere throughout this release, we believe the information required by the final rules is necessary and appropriate in the public interest and for the protection of investors. Further, a discussion of the economic effects of the final rules, including consideration of comments that expressed concern about the expected costs associated with the proposed rules, can be found in section IV above. With regard to the calculation of paperwork burdens, we note that both the Proposing Release's PRA analysis and our PRA analysis of the final rules estimate the incremental burden of each new or revised disclosure requirement individually and fully comport with the requirements of the PRA. We further note that the costs that one commenter stated we had not included are not costs that are required to be considered or typically included in a PRA analysis.[3193] Further, our estimates reflect the modifications to the proposed rules that we are adopting in response to commenter concerns, including streamlining some of the proposed rule's elements to address concerns regarding the level of detail required and the anticipated costs of compliance.

D. Sources of Cost Estimates

We based the paperwork burden of the proposed rules in part on the BEIS impact assessment for the UK climate disclosure rules as well as the input from commenters to a request for public input.[3194] Our estimates of the paperwork burden associated with the final rules are based on the direct cost estimates discussed in the Economic Analysis.[3195] As discussed above in more detail in section IV.C.3.b, those direct cost estimates are based primarily on two cost estimates for similar UK climate disclosure rules (*i.e.,* the 2021 BEIS impact assessment and the 2021 FCA cost-benefit analysis) [3196] and on cost estimates provided by several commenters.[3197] While we believe that the direct cost estimates provide a reasonable means of determining the estimated collection of information burden associated with the final rules, they likely represent an upper bound of the paperwork burden of the final rules as they reflect a conservative approach (*i.e.,* erring on the side of overstating costs rather than understating them) to estimate approximate compliance costs for the final rules.

E. Incremental and Aggregate Burden and Cost Estimates of the Final Rules

Below we estimate the incremental and aggregate increase in paperwork burden resulting from the final rules. These estimates represent an average multi-year burden for all issuers, both large and small. While we typically calculate a three-year average for PRA purposes, because one of the amendment's requirements will not be phased in until the ninth year of initially providing the disclosures required by the amendments,[3198] we have estimated a nine-year average PRA

[3187] The table uses the percentage estimates we typically use for the burden allocation for each response. *See infra* PRA Table 2.

[3188] *See* Proposing Release at section V.D.

[3189] *See* letters from D. Burton, Heritage Fdn; Institute for Energy Research (June 17, 2022) (''IER''); and Gregory Lau (June 16, 2022) (''G. Lau'').

[3190] *See* letter from IER.

[3191] *See* letters from D. Burton, Heritage Fdn.; and G. Lau.

[3192] D. Burton, Heritage Fdn.

[3193] *See id.*

[3194] *See* Proposing Release, section V.B.

[3195] *See supra* section IV.C.3.

[3196] *See* FCA, *Enhancing climate-related disclosures by standard listed companies and seeking views on ESG topics in capital markets,* CP21–18 (June 2021), available at *https://www.fca.org.uk/publication/consultation/cp21-18.pdf*; and BEIS Final Stage Impact Assessment.

[3197] *See supra* section IV.C.3.b.

[3198] *See supra* sections II.I and O (regarding the requirement for LAFs to obtain a reasonable assurance attestation report in fiscal 2033 when the initial compliance date for most other disclosures required by LAFs is in fiscal year 2026).

burden. In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the nature of their business, the size and complexity of their operations, and whether they are subject to similar climate-related disclosure requirements in other jurisdictions or already preparing similar disclosures on a voluntary basis. For purposes of the PRA, the burden is to be allocated between internal burden hours and outside professional costs.

PRA Table 2 below sets forth the percentage estimates we typically use for the burden allocation for each affected collection of information.

PRA TABLE 2—STANDARD ESTIMATED BURDEN ALLOCATION FOR SPECIFIED COLLECTIONS OF INFORMATION

Collection of information	Internal (%)	Outside professionals (%)
Forms S–1, F–1, S–4, F–4, S–11, 10, and 20–F	25	75
Form 10–K	75	25

1. Calculation of the Paperwork Burden Estimates of the Final Rules

When estimating the paperwork burden of the proposed rules, we considered the effects of three sets of climate-related information that would be required to be filed on the Commission's forms under those rules: climate-related disclosures regarding governance, strategy, and risk management; GHG emissions metrics and targets; and financial statement metrics. When estimating the paperwork burden of the final rules, we have modified the sets of information considered to reflect changes made from the proposed rules. First, we have separated disclosures related to targets from disclosures related to metrics. Second, we have replaced ''financial statement metrics'' with ''financial statement disclosures.'' This modification reflects the fact that the final rules do not use the term ''metrics'' to describe the amendments to Regulation S–X because it is more accurate to characterize the disclosures as financial statement effects.[3199]

The estimated burden hours and costs of the final rules are generally lower than the estimated burden hours and costs of the proposed rules. This is due to changes from the proposed rules that we are adopting in the final rules. For example, the final rules include materiality qualifiers and other revisions in the disclosure categories regarding governance, risk management, and strategy, including transition plans, scenario analysis, targets and goals, and GHG emissions metrics. In addition, we have revised the average salary rate from that used for the proposed PRA estimates to convert some of commenters' cost estimates into burden hours, consistent with existing OMB guidance.[3200]

The following PRA Table 3 shows the estimated number of total burden hours resulting from the final rules based on the initial and ongoing cost estimates for the above-described sets of information as discussed in section IV above. To derive the estimated total number of burden hours, we first applied the appropriate percentage estimate from PRA Table 2 to allocate the portion of the cost estimate for each set of information pertaining to the internal burden and the portion pertaining to external professional costs. We then converted the costs to internal burden hours using a conversion rate of $441/hr. for governance, strategy, and risk management, scenario analysis, Scopes 1 and 2 emissions, targets and goals, and financial statement disclosures.[3201] We similarly converted external professional costs into burden hours using a conversion rate of $600/hr. We then added internal and external burden hours to obtain the total number of estimated burden hours for each set of information. All numbers have been rounded to the nearest whole number.

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[3199] *See supra* note 1705.

[3200] The PRA estimates for the proposed rules used an hourly rate that was based on an average annual salary of a climate specialist, according to Glassdoor, but which did not reflect additional labor costs. *See* Proposing Release, section V.B. We have based the PRA estimates for the Regulation S–K subpart 1500 disclosure requirements on average salary rates according to SIFMA Management and Professional Salaries Data, which the staff has updated to account for inflation through September 2023 and which includes overall costs and overhead associated with the reported professional and management positions. The SIFMA data provides a more realistic cost basis for determining the PRA burdens associated with the final rules because of this additional information, and is consistent with OMB guidance that, when determining burden hours, ''all wages need to be fully-loaded, meaning they reflect the full cost of labor.'' OMB, *A Guide to the Paperwork Reduction Act,* available at *https://pra.digital.gov/burden/*. In addition, unlike the PRA estimates for the proposed rules, which were based solely on the average annual salary of a climate specialist, we have based the PRA burden hour estimates of the subpart 1500 rules on the median salary rates of in-house legal counsel and systems analyst/database administrators, whom we believe in conjunction with each other will most likely perform the work underlying the disclosures of governance, strategy, risk management, targets and goals, and Scope 1 and 2 GHG emissions metrics. We therefore have taken the average of the median salary rates for SIFMA-listed attorney positions (Attorney and Assistant General Counsel, which average $525/hr.) and SIFMA-listed system analyst/database administrator positions (Systems Analyst, Sr. Systems Analyst, and Sr. Database Administrator, which average $356/hr.) calculated as follows: $525/hr. + $356/hr. = $881/hr. $881/2 = $441/hr.

[3201] *Id.*

The next three tables summarize the paperwork burden effects for three groups of registrants: (1) LAFs; (2) AFs that are not SRCs or EGCs ("non-exempt AFs") and (3) SRCs, EGCs, and NAFs. The first two tables summarize,

PRA Table 3. Estimated Total Burden Hour Effects of the Final Rules

	Estimated Initial Burden					Estimated Ongoing Burden				
Disclosure Item	**Total Initial Costs (from Direct Cost Estimates in Economic Analysis)**	**Internal Burden Hour Effect**	**Total Professional Costs**	**External Burden Hour Effect**	**Total Initial Burden Hour Effect**	**Total Ongoing Costs (from Direct Cost Estimates in Economic Analysis)**	**Internal Burden Hour Effect**	**Total Professional Costs**	**External Burden Hour Effect**	**Total Ongoing Burden Hour Effect**
	(A)	**(B)[1]**	**(C)[2]**	**(D)[3]**	**(E) = (B) + (D)**	**(F)**	**(G)[4]**	**(H)[5]**	**(I)[6]**	**(J) = (G) + (I)**
Collection of Information: Forms S-1, F-1, S-4, F-4, S-11, 10, and 20-F										
Governance, strategy, risk management	$327,000	185 hrs.	$245,250	409 hrs.	594 hrs.	$183,000	104 hrs.	$137,250	229 hrs.	332 hrs.
Scenario analysis	$12,000	7 hrs.	$9,000	15 hrs.	22 hrs.	$6,000	3 hrs.	$4,500	8 hrs.	11 hrs.
Targets	$10,000	6 hrs.	$7,500	13 hrs.	18 hrs.	$5,000	3 hrs.	$3,750	6 hrs.	9 hrs.
Scope 1 and 2 emissions	$151,000	86 hrs.	$113,250	189 hrs.	274 hrs.	$67,000	38 hrs.	$50,250	84 hrs.	122 hrs.
Financial statement disclosures	$500,000	283 hrs.	$375,000	625 hrs.	908 hrs.	$375,000	213 hrs.	$281,250	469 hrs.	681 hrs.
Collection of Information: Form 10-K										
Governance, strategy, risk management	$327,000	556 hrs.	$81,750	136 hrs.	692 hrs.	$183,000	311 hrs.	$45,750	76 hrs.	387 hrs.
Scenario analysis	$12,000	20 hrs.	$3,000	5 hrs.	25 hrs.	$6,000	10 hrs.	$1,500	3 hrs.	13 hrs.
Targets	$10,000	17 hrs.	$2,500	4 hrs.	21 hrs.	$5,000	9 hrs.	$1,250	2 hrs.	11 hrs.
Scope 1 and 2 emissions	$151,000	257 hrs.	$37,750	63 hrs.	320 hrs.	$67,000	114 hrs.	$16,750	28 hrs.	142 hrs.
Financial statement disclosures	$500,000	850 hrs.	$125,000	208 hrs.	1,059 hrs.	$375,000	638 hrs.	$93,750	156 hrs.	794 hrs.

Notes:
[1] Column B values for this PRA Table 3 are calculated as follows: ((Column A value) x (Relevant percentage for Internal from PRA Table 2)) / ($441/hr.).
[2] Column C values for this PRA Table 3 are calculated as follows: (Column A value) x (Relevant percentage for Outside Professionals from PRA Table 2).
[3] Column D values for this PRA Table 3 are calculated as follows: (Column C value) / ($600/hr.).
[4] Column G values for this PRA Table 3 are calculated as follows: ((Column F value) x (Relevant percentage for Internal from PRA Table 2)) / ($441/hr.).
[5] Column H values for this PRA Table 3 are calculated as follows: (Column F value) x (Relevant percentage for Outside Professionals from PRA Table 2).
[6] Column I values for this PRA Table 3 are calculated as follows: (Column H value) / ($600/hr.).

respectively, the estimated internal burden hour (PRA Table 4A) and external professional cost effects (PRA Table 4B) of the final rules. Both tables show the phase in for the Scopes 1 and 2 emissions disclosure requirements. Both LAFs and non-exempt AFs are subject to the requirement to disclose their Scopes 1 and 2 emissions if material. LAFs must comply with the GHG emissions disclosure requirement beginning with their second fiscal year of compliance with the final rules, while non-exempt AFs must comply beginning with their third fiscal year of compliance.[3202]

The tables span the first nine years of compliance in order to cover the first year of the paperwork burden associated with the requirement to obtain a reasonable assurance attestation report, which LAFs must comply with in their ninth year of compliance. For comparability purposes, we have also estimated the paperwork burden effects for non-exempt AFs and SRCs, EGCs, and NAFs over a nine-year span, and have taken a nine-year average for each of the three groups of registrants.[3203]

After a three-year phased in compliance period of reporting their GHG emissions, both LAFs and non-exempt AFs will be required to obtain an attestation report to verify their GHG emissions disclosure. While LAFs will initially be required to obtain an attestation report at the limited assurance level, after a four-year transition period, they will be required to obtain an attestation report at the reasonable assurance level. We estimate that a reasonable assurance attestation report will be more costly than a limited assurance report. PRA Table 4C summarizes the paperwork burden effects estimated to result from the attestation report requirement for these two groups of registrants over a nine-year span.[3204]

[3202] The final rules provide a phase in for another set of information—the material expenditures disclosure requirement, which will be provided pursuant to either Item 1502, as part of a registrant's strategy disclosure, or Item 1504 of Regulation S–K, as part of a registrant's targets and goals disclosure. All three groups of registrants must comply with the material expenditures disclosure requirement in the fiscal year immediately following the fiscal year of their initial compliance date for the final rules based on their filer status. As explained in section IV.C.3, we have assumed that costs for the material expenditures disclosure have been included in the cost estimates considered for strategy or targets and goals disclosures. *See supra* note 3060 and accompanying text. Because the material expenditures disclosure will comprise only part of a registrant's strategy or targets and goals disclosure and because most of the disclosure requirements pursuant to Item 1502 and Item 1504 are not subject to a phase in, the tables below do not account for the material expenditures phase in.

[3203] In each table, all numbers have been rounded to the nearest whole number.

[3204] *See supra* section IV.C.3.b.iii for further discussion of these attestation report estimates.

PRA Table 4A. Estimated Internal Burden Effects of the Final Rules Over the First Nine Years of Compliance

	All Registrants	LAFs			Non-Exempt AFs				SRCs, EGCs, and NAFs	
Disclosure Item	**Year 1**	**Year 2**	**Years 3-9**	**9-Year Average[1]**	**Year 2**	**Year 3**	**Years 4-9**	**9-Year Average[2]**	**Years 2-9**	**9-Year Average[3]**
Collection of Information: Forms S-1, F-1, S-4, F-4, S-11, 10, and 20-F										
Governance, strategy, risk management	185 hrs.	104 hrs.	104 hrs.	113 hrs.	104 hrs.	104 hrs.	104 hrs.	113 hrs.	104 hrs.	113 hrs.
Scenario analysis	7 hrs.	3 hrs.	3 hrs.	4 hrs.	3 hrs.	3 hrs.	3 hrs.	4 hrs.	3 hrs.	4 hrs.
Targets	6 hrs.	3 hrs.	3 hrs.	3 hrs.	3 hrs.	3 hrs.	3 hrs.	3 hrs.	3 hrs.	3 hrs.
Scope 1 and 2 emissions	0 hrs.	86 hrs.	38 hrs.	39 hrs.	0 hrs.	86 hrs.	38 hrs.	35 hrs.	0 hrs.	0 hrs.
Financial statement disclosures	283 hrs.	213 hrs.	213 hrs.	220 hrs.	213 hrs.	213 hrs.	213 hrs.	220 hrs.	213 hrs.	220 hrs.
Total				**379 hrs.**				**375 hrs.**		**340 hrs.**
Collection of Information: Form 10-K										
Governance, strategy, risk management	556 hrs.	311 hrs.	311 hrs.	338 hrs.	311 hrs.	311 hrs.	311 hrs.	338 hrs.	311 hrs.	338 hrs.
Scenario analysis	20 hrs.	10 hrs.	10 hrs.	11 hrs.	10 hrs.	10 hrs.	10 hrs.	11 hrs.	10 hrs.	11 hrs.
Targets	17 hrs.	9 hrs.	9 hrs.	9 hrs.	9 hrs.	9 hrs.	9 hrs.	9 hrs.	9 hrs.	9 hrs.
Scope 1 and 2 emissions	0 hrs.	257 hrs.	114 hrs.	117 hrs.	0 hrs.	257 hrs.	114 hrs.	104 hrs.	0 hrs.	0 hrs.
Financial statement disclosures	850 hrs.	638 hrs.	638 hrs.	661 hrs.	638 hrs.	638 hrs.	638 hrs.	661 hrs.	638 hrs.	661 hrs.
Total				**1,138 hrs.**				**1,125 hrs.**		**1,021 hrs.**

Notes:
[1] 9-Year Average values for this column are calculated as follows: ((Year 1 value for All Registrants) + (Year 2 value for LAFs) + ((Years 3-9 value for LAFs) x 7)) / 9.
[2] 9-Year Average values for this column are calculated as follows: ((Year 1 value for All Registrants) + (Year 2 value for non-exempt AFs) + (Year 3 value for non-exempt AFs) + ((Years 4-9 value for non-exempt AFs) x 6)) / 9.
[3] 9-Year Average values for this column are calculated as follows: ((Year 1 value for All Registrants) + ((Years 2-9 value for SRCs, EGCs, and NAFs) x 8)) / 9.

PRA Table 4B. Estimated External Professional Cost Effects of the Final Rules Over the First Nine Years of Compliance

	All Registrants	LAFs			Non-Exempt AFs				SRCs, EGCs, and NAFs	
Disclosure Item	**Year 1**	**Year 2**	**Years 3-9**	**9-Year Average[1]**	**Year 2**	**Year 3**	**Years 4-9**	**9-Year Average[2]**	**Years 2-9**	**9-Year Average[3]**
Collection of Information: Forms S-1, F-1, S-4, F-4, S-11, 10, and 20-F										
Governance, strategy, risk management	$245,250	$137,250	$137,250	$149,250	$137,250	$137,250	$137,250	$149,250	$137,250	$149,250
Scenario analysis	$9,000	$4,500	$4,500	$5,000	$4,500	$4,500	$4,500	$5,000	$4,500	$5,000
Targets	$7,500	$3,750	$3,750	$4,167	$3,750	$3,750	$3,750	$4,167	$3,750	$4,167
Scope 1 and 2 emissions	$0	$113,250	$50,250	$51,667	$0	$113,250	$50,250	$46,083	$0	$0
Financial statement disclosures	$375,000	$281,250	$281,250	$291,667	$281,250	$281,250	$281,250	$291,667	$281,250	$291,667
Total				**$501,750**				**$496,167**		**$450,083**
Collection of Information: Form 10-K										
Governance, strategy, risk management	$81,750	$45,750	$45,750	$49,750	$45,750	$45,750	$45,750	$49,750	$45,750	$49,750
Scenario analysis	$3,000	$1,500	$1,500	$1,667	$1,500	$1,500	$1,500	$1,667	$1,500	$1,667
Targets	$2,500	$1,250	$1,250	$1,389	$1,250	$1,250	$1,250	$1,389	$1,250	$1,389
Scope 1 and 2 emissions	$0	$37,750	$16,750	$17,222	$0	$37,750	$16,750	$15,361	$0	$0
Financial statement disclosures	$125,000	$93,750	$93,750	$97,222	$93,750	$93,750	$93,750	$97,222	$93,750	$97,222
Total				**$167,250**				**$165,389**		**$150,028**

Notes:
[1] 9-Year Average values for this column are calculated as follows: ((Year 1 value for All Registrants) + (Year 2 value for LAFs) + ((Years 3-9 value for LAFs) x 7)) / 9.
[2] 9-Year Average values for this column are calculated as follows: ((Year 1 value for All Registrants) + (Year 2 value for non-exempt AFs) + (Year 3 value for non-exempt AFs) + ((Years 4-9 value for non-exempt AFs) x 6)) / 9.
[3] 9-Year Average values for this column are calculated as follows: ((Year 1 value for All Registrants) + ((Years 2-9 value for SRCs, EGCs, and NAFs) x 8)) / 9.

PRA Table 4C. Estimated Paperwork Burden Effects of the Attestation Requirement Over the First Nine Years of Compliance

Collection of Information: Forms S-1, F-1, S-4, F-4, S-11, 10, 20-F, and 10-K						
Assurance Costs for LAFs				**Assurance Costs for Non-Exempt AFs**		
Years 1-4	**Years 5-8**	**Year 9**	**9-Year Average[1]**	**Years 1-5**	**Years 6-9**	**9-Year Average[2]**
$0	$50,000	$150,000	**$38,889**	$0	$50,000	**$22,222**

Notes:
[1] 9-Year Average values for this column are calculated as follows: (((Years 1-4 value for LAFs) x 4) + ((Years 5-8 value for LAFs) x 4) + (Year 9 value for LAFs)) / 9.
[2] 9-Year Average values for this column are calculated as follows: (((Years 1-5 value for non-exempt AFs) x 5) + ((Years 6-9 value for non-exempt AFs) x 4)) / 9.

2. Estimated Number of Affected Respondents

We estimate that the final rules will change the paperwork burden per response for each affected collection of information. However, we do not believe that the above-described paperwork burdens will affect all the filers for each collection of information. Because the final rules include materiality qualifiers and otherwise will not require disclosure in all instances from all registrants, but rather depend on the registrant's particular facts and circumstances, we estimate that only a certain percentage of filers of each form will be required to provide the climate-related disclosures. We have based the estimated percentages on third-party surveys of current climate-related disclosure practices, commenters' estimates of companies likely to disclose climate-related risks and metrics, and staff estimates of current climate-related disclosure practices.[3205]

The following PRA Table 5 provides the percentage of filers for each collection of information that we estimate will be affected by the final rules.

[3205] In particular, we have considered the percentages of surveyed companies, both issuers with larger market capitalization and all other registrants, providing climate-related disclosures as reported by the TCFD in TCFD, 2022 Status Report (Oct. 2022). That report included climate-related data from companies with a market capitalization ranging from greater than $12.2 billion to less than $3.4 billion. In addition, we have considered aspects of the third-party surveys discussed in section IV, such as the 2021 S&P Global Corporate Sustainability Assessment and estimates of climate-related risk and metrics reporting provided by commenters, such as Amer. for Fin. Reform and Public Citizen (Oct. 26, 2023). That commenter included climate-related data pertaining to Fortune 1000 companies with individual annual revenues over $2 billion. However, none of the estimates considered included companies that directly matched the registrants that will be affected by the final rules. Therefore, the estimated percentages of LAFs, AFs, and all other registrants affected by the final rules, as provided in the table below, may underestimate or overestimate the actual number of affected respondents.

PRA Table 5. Estimated Percentage of Filers for Each Collection of Information That Will Be Affected By the Final Rules

Form	No. of Respondents[1]				Disclosure Item	Percentage of Respondents Affected[2]			No. of Affected Respondents		
	Total	LAFs	Non-Exempt AFs	SRCs, EGC, and NAFs		LAFs	Non-Exempt AFs	SRCs, EGCs, and NAFs	LAFs	Non-Exempt AFs	SRCs, EGCs, and NAFs
Form S-1	**898**	296	45	557	Governance, strategy, risk management	65%[3]	45%	30%	192	20	167
					Scenario analysis	25%	20%	10%	74	9	56
					Targets	50%	35%	25%	148	16	139
					Scope 1 and 2 emissions	65%	35%	20%	192	16	111
					Financial statement disclosures	50%	35%	25%	148	16	139
					Average No. of Affected Respondents:				**151**	**15**	**123**
Form F-1	**66**	22	7	37	Governance, strategy, risk management	65%	45%	30%	14	3	11
					Scenario analysis	25%	20%	10%	6	1	4
					Targets	50%	35%	25%	11	2	9
					Scope 1 and 2 emissions	65%	35%	20%	14	2	7
					Financial statement disclosures	50%	35%	25%	11	2	9
					Average No. of Affected Respondents:				**11**	**2**	**8**
Form S-4	**588**	194	29	365	Governance, strategy, risk management	65%	45%	30%	126	13	110
					Scenario analysis	25%	20%	10%	49	6	37
					Targets	50%	35%	25%	97	10	91
					Scope 1 and 2 emissions	65%	35%	20%	126	10	73
					Financial statement disclosures	50%	35%	25%	97	10	91
					Average No. of Affected Respondents:				**99**	**10**	**80**
Form F-4	**39**	13	4	22	Governance, strategy, risk management	65%	45%	30%	8	2	7
					Scenario analysis	25%	20%	10%	3	1	2
					Targets	50%	35%	25%	7	1	6
					Scope 1 and 2 emissions	65%	35%	20%	8	1	4
					Financial statement disclosures	50%	35%	25%	7	1	6
					Average No. of Affected Respondents:				**7**	**1**	**5**
Form S-11	**67**	22	3	42	Governance, strategy, risk management	65%	45%	30%	14	1	13
					Scenario analysis	25%	20%	10%	6	1	4
					Targets	50%	35%	25%	11	1	11
					Scope 1 and 2 emissions	65%	35%	20%	14	1	8
					Financial statement disclosures	50%	35%	25%	11	1	11
					Average No. of Affected Respondents:				**11**	**1**	**9**

Form 10	**216**	71	11	134	Governance, strategy, risk management	65%	45%	30%	46	5	40
					Scenario analysis	25%	20%	10%	18	2	13
					Targets	50%	35%	25%	36	4	34
					Scope 1 and 2 emissions	65%	35%	20%	46	4	27
					Financial statement disclosures	50%	35%	25%	36	4	34
					Average No. of Affected Respondents:				**36**	**4**	**29**
Form 20-F	**729**	241	80	408	Governance, strategy, risk management	65%	45%	30%	157	36	122
					Scenario analysis	25%	20%	10%	60	16	41
					Targets	50%	35%	25%	121	28	102
					Scope 1 and 2 emissions	65%	35%	20%	157	28	82
					Financial statement disclosures	50%	35%	25%	121	28	102
					Average No. of Affected Respondents:				**123**	**27**	**90**
Form 10-K	**8,292**	2,736	415	5,141	Governance, strategy, risk management	65%	45%	30%	1,778	187	1,542
					Scenario analysis	25%	20%	10%	684	83	514
					Targets	50%	35%	25%	1,368	145	1,285
					Scope 1 and 2 emissions	65%	35%	20%	1,778	145	1,028
					Financial statement disclosures	50%	35%	25%	1,368	145	1,285
					Average No. of Affected Respondents:				**1,395**	**141**	**1,131**

Notes:

[1] The number of respondents for each group of registrants is based on the approximate percentage of respondents in 2022 that were LAFs, non-exempt AFs, and all other registrants (SRCs, EGCs, and NAFs). As discussed in Section IV, the number of domestic registrants and foreign private issuers affected by the final rules is estimated as the number of companies that filed a unique Form 10-K or Form 20-F during calendar year 2022, excluding asset-backed securities issuers. Of domestic respondents, approximately 33% were LAFs, 5% were non-exempt AFs, and 62% were all other registrants (SRCs, EGCs, and NAFs). Of foreign respondents, approximately 33% were LAFs, 11% were non-exempt AFs, and 56% were all other registrants (SRCs, EGCs, and NAFs).

[2] All percentages for LAFs, non-exempt AFs, and all other registrants (SRCs, EGCs, and NAFs) rounded to nearest 5%.

[3] For example, according to the TCFD 2022 Status Report, an average of 48% of the largest companies provided disclosures related to governance, strategy, and risk management (excluding scenario analysis), 68% of LAFs provided some climate-related disclosures in Commission filings in 2022 as discussed in Section IV above, and 73% of Fortune 1000 companies will likely be required to disclose their climate risks and strategies pursuant to recent California law, according to one commenter. *See* letter from Amer. for Fin. Reform, Public Citizen, and Sierra Club (Oct. 26, 2023). 48 + 68 + 73 = 189; 189/3 = 63, which we have rounded up to 65%.

3. Summary of the Estimated Burden Hour and Cost Increases Resulting From the Final Rules

The following two tables provide:

- The calculation of the incremental and aggregate change in burden hour and professional cost estimates of current responses resulting from the final rules (PRA Table 6); and
- The program change and total requested change in paperwork burden for the final rules (PRA Table 7).

PRA Table 6. Calculation of the Incremental and Aggregate Change in Burden Hour and Cost Estimates of Current Responses Resulting from the Final Rules[1]

Form	Filed By	Average Number of Affected Respondents (From PRA Table 5)	Average Internal Burden Hour Increase per Affected Respondent (From PRA Table 4A)	Aggregate Internal Burden Hour Increase for Affected Respondents	Average Professional Cost Increase per Affected Respondent (From PRA Table 4B)	Aggregate Professional Cost Increase for Affected Respondents	Average Assurance Cost Increase per Affected Respondent (From PRA Table 4C)	Aggregate Assurance Cost Increase for Affected Respondents	Aggregate Professional and Assurance Cost Increase for Affected Respondents
		(A)	(B)	(C) = (A) x (B)	(D)	(E) = (A) x (D)	(F)	(G) = (A) x (F)	(H) = (E) + (G)
Form S-1	LAFs	151	379	57,252	$501,750	$75,744,180	$38,889	$5,870,667	$81,614,847
	Non-Exempt AFs	15	375	5,738	$496,167	$7,591,350	$22,222	$340,000	$7,931,350
	SRCs, EGCs, and NAFs	123	340	41,688	$450,083	$55,153,212	$0	$0	$55,153,212
	Total	**289**		**104,678**		**$138,488,742**		**$6,210,667**	**$144,699,408**
Form F-1	LAFs	11	379	4,255	$501,750	$5,629,635	$38,889	$436,333	$6,065,968
	Non-Exempt AFs	2	375	893	$496,167	$1,180,877	$22,222	$52,889	$1,233,766
	SRCs, EGCs, and NAFs	8	340	2,769	$450,083	$3,663,678	$0	$0	$3,663,678
	Total	**22**		**7,917**		**$10,474,190**		**$489,222**	**$10,963,412**
Form S-4	LAFs	99	379	37,523	$501,750	$49,643,145	$38,889	$3,847,667	$53,490,812
	Non-Exempt AFs	10	375	3,698	$496,167	$4,892,203	$22,222	$219,111	$5,111,314
	SRCs, EGCs, and NAFs	80	340	27,318	$450,083	$36,141,692	$0	$0	$36,141,692
	Total	**189**		**68,539**		**$90,677,040**		**$4,066,778**	**$94,743,818**
Form F-4	LAFs	7	379	2,514	$501,750	$3,326,603	$38,889	$257,833	$3,584,436
	Non-Exempt AFs	1	375	510	$496,167	$674,787	$22,222	$30,222	$705,009
	SRCs, EGCs, and NAFs	5	340	1,647	$450,083	$2,178,403	$0	$0	$2,178,403
	Total	**13**		**4,671**		**$6,179,793**		**$288,056**	**$6,467,848**
Form S-11	LAFs	11	379	4,255	$501,750	$5,629,635	$38,889	$436,333	$6,065,968
	Non-Exempt AFs	1	375	383	$496,167	$506,090	$22,222	$22,667	$528,757
	SRCs, EGCs, and NAFs	9	340	3,143	$450,083	$4,158,770	$0	$0	$4,158,770
	Total	**21**		**7,781**		**$10,294,495**		**$459,000**	**$10,753,495**
Form 10	LAFs	36	379	13,733	$501,750	$18,168,368	$38,889	$1,408,167	$19,576,534
	Non-Exempt AFs	4	375	1,403	$496,167	$1,855,663	$22,222	$83,111	$1,938,774
	SRCs, EGCs, and NAFs	29	340	10,029	$450,083	$13,268,457	$0	$0	$13,268,457
	Total	**69**		**25,164**		**$33,292,488**		**$1,491,278**	**$34,783,765**
Form 20-F	LAFs	123	379	46,614	$501,750	$61,670,093	$38,889	$4,779,833	$66,449,926
	Non-Exempt AFs	27	375	10,201	$496,167	$13,495,733	$22,222	$604,444	$14,100,178

	SRCs, EGCs, and NAFs	90	340	30,536	$450,083	$40,399,480	$0	$0	$40,399,480
	Total	**240**		**87,351**		**$115,565,306**		**$5,384,278**	**$120,949,584**
Form 10-K	LAFs	1,395	1,138	1,587,578	$167,250	$233,373,960	$38,889	$54,264,000	$287,637,960
	Non-Exempt AFs	141	1,125	158,751	$165,389	$23,336,372	$22,222	$3,135,556	$26,471,928
	SRCs, EGCs, and NAFs	1,131	1,021	1,154,316	$150,028	$169,684,417	$0	$0	$169,684,417
	Total	**2,667**		**2,900,645**		**$426,394,749**		**$57,399,556**	**$483,794,305**

Notes:
[1] All numbers rounded to nearest whole number.

PRA Table 7. Requested Change in Paperwork Burden for the Final Rules

Form	Current Burden, as Adjusted[1]			Program Change			Requested Change in Burden		
	Current Annual Responses (From PRA Table 5)	Current Internal Burden Hours	Current External Cost Burden, as Adjusted (From PRA Table 1)[1]	No. of Affected Responses (From PRA Table 6)	Change in Internal Burden Hours (From PRA Table 6)	Change in External Costs (Professional and Assurance Costs) (From PRA Table 6)	Annual Responses	Internal Burden Hours	External Cost Burden
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H) = (B) + (E)	(I) = (C) + (F)
Form S-1	898	141,978	$261,023,465	289	104,678	$144,699,408	898	246,656	$405,722,873
Form F-1	66	26,571	$48,195,563	22	7,917	$10,963,412	66	34,488	$59,158,975
Form S-4	588	560,988	$1,013,408,069	189	68,539	$94,743,818	588	629,527	$1,108,151,886
Form F-4	39	13,999	$25,520,138	13	4,671	$6,467,848	39	18,670	$31,987,986
Form S-11	67	12,101	$22,185,252	21	7,781	$10,753,495	67	19,882	$32,938,747
Form 10	216	10,821	$19,277,232	69	25,164	$34,783,765	216	35,985	$54,060,997
Form 20-F	729	479,303	$864,800,138	240	87,351	$120,949,584	729	566,654	$985,749,721
Form 10-K	8,292	13,988,811	$2,753,391,779	2,667	2,900,645	$483,794,305	8,292	16,889,456	$3,237,186,084
Total		**15,234,572**	**$5,007,801,633**		**3,206,746**	**$907,155,635**		**18,441,318**	**$5,914,957,268**

Notes:
[1] Current cost burden updated to reflect change in hourly rate of the costs of outside professionals to $600/hr., as reflected in PRA Table 1.

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VI. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'') requires the Commission, in promulgating rules under section 553 of the Administrative Procedure Act,[3206] to consider the impact of those rules on small entities. We have prepared this Final Regulatory Flexibility Analysis (''FRFA'') in accordance with section 604 of the RFA.[3207] An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with the RFA and was included in the Proposing Release.[3208]

A. Need for, and Objectives of, the Final Amendments

The final amendments add a new subpart 1500 to Regulation S–K and a new Article 14 to Regulation S–X, which will require registrants to provide certain climate-related disclosures in their Securities Act and Exchange Act registration statements and Exchange Act reports. These requirements will elicit more complete and useful information about the impacts of climate-related risks on registrants to improve the consistency, comparability, and reliability of climate-related information for investors. As required by the RFA, this FRFA describes the impact of the final amendments on small entities. The need for, and objectives of, the final rules are described in sections I and II above. We discuss the economic impact and potential alternatives to the amendments in section IV, and the estimated compliance costs and burdens of the amendments for purposes of the PRA in section V.

B. Significant Issues Raised by Public Comments

In the Proposing Release, the Commission requested comment on any aspect of the IRFA, and particularly on the number of small entities that would be affected by the proposed amendments, the existence or nature of the potential impact of the proposed amendments on small entities discussed in the analysis, how the proposed amendments could further lower the burden on small entities, and how to quantify the impact of the proposed amendments.

We received one comment letter on the IRFA from the U.S. Small Business Administration's Office of Advocacy (''Advocacy'').[3209] Advocacy's letter expressed concern that ''the IRFA does not adequately describe the regulated small entities and potential impacts on those entities.'' [3210] In the Proposing Release, the Commission estimated that the proposed amendments would apply to 1,004 registrants that may be considered small entities.[3211] Advocacy's comment letter stated that this estimate did ''not provide additional information, such as the North American Industry Classification System (''NAICS'') classifications of the affected entities'' and did not ''break down the affected entities into smaller size groups (*e.g.,* based on total assets).'' [3212]

The comment letter from Advocacy also addressed the discussion of alternatives within the IRFA and the Commission's explanation of why it did not ultimately propose such alternatives. Advocacy also stated that ''[t]he RFA requires that an IRFA provide significant, feasible alternatives that accomplish an agency's objectives,'' and stated that the IRFA did not satisfy this requirement because it listed ''broad categories of potential alternatives to the proposed rules but [did] not analyze specific alternatives that w[ere] considered by the SEC'' and because it did not ''contain a description of any additional regulatory alternatives which accomplish the SEC's stated objectives and which would further minimize the significant economic impact of the proposal on small entities.'' [3213] Finally, Advocacy stated that the Commission had not ''considered the impacts of the proposal to indirectly regulated small entities'' as a result of the proposed requirement for Scope 3 emissions data from certain registrants.[3214] Advocacy stated that ''[m]any of these upstream and downstream parties will be small, privately-owned companies that do not have public reporting requirements,'' and as result such ''small businesses are unsure what information they would be expected to provide to public companies, how to collect the necessary information, and whether their businesses would be able to absorb the associated costs.'' [3215]

1. Estimate of Affected Small Entities and Impact to Those Entities

With respect to the adequacy of the Proposing Release's estimate of affected small entities, the RFA requires ''a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.'' [3216] Advocacy's published guidance recommends agencies use NAICS classifications to help in ''identifying the industry, governmental and nonprofit sectors they intend to regulate.'' [3217] Here, given that the rulemaking applies to and impacts all public company registrants, regardless of industry or sector, we do not believe that further breakout of such registrants by industry classification is necessary or would otherwise be helpful to such entities in understanding the impact of the proposed or final rules. In this case, small entities in certain industries and sectors are not necessarily more affected than others, as climate-related risks may exist across all industries and sectors, and may or may not exist for a particular registrant irrespective of the industry classification.[3218] For the same reasons, we are not breaking down the affected entities into smaller size groups (*e.g.,* based on total assets), as recommended by Advocacy. Given the nature of the final rules, we believe that our estimate below of the number of small entities to which the final rules will apply adequately describes and estimates the small entities that will be affected.[3219]

We disagree with the statement in Advocacy's comment letter that ''SEC expects that the costs associated with the proposed amendments to be similar for large and small entities.'' The Commission explained in the IRFA that the proposed amendments would apply to small entities to the same extent as other entities, irrespective of size, and that therefore, the Commission expected that ''the *nature* of any benefits and costs associated with the proposed amendments to be similar for large and

[3206] 5 U.S.C. 553.

[3207] 5 U.S.C. 604.

[3208] Proposing Release at section VI.

[3209] See letter from U.S. Small Business Administration Office of Advocacy (June 17, 2022) (''Advocacy''). Some commenters, while not specifically addressing the IRFA, did address the impact of the proposed rules on SRCs. *See* letters from Soc. Corp. Gov. (Nov. 11, 2022); BIO; FFAC; CCR; HDA; ICI; Jones Day; NACCO; NAHB; Rho Impact; CBD; Grant Eisenhofer; ICBA; and Williams Cos.

[3210] *See* letter from Advocacy.

[3211] Proposing Release at 16617.

[3212] *See* letter from Advocacy.

[3213] *See id.*

[3214] *See id.*

[3215] *See id.*

[3216] 5 U.S.C. 603(b)(3).

[3217] U.S. Small Business Administration Office of Advocacy, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act (Aug. 2017), at 18, available at *https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf.*

[3218] A breakout would be relevant where, for example, the Commission finds that small entities generally would not be affected by a rule but small entities in a particular industry would be affected.

[3219] *See infra* section VI.C.

small entities'' (emphasis added).[3220] The analysis with respect to the *nature* of the costs (and benefits) of the proposed rules detailed in the Economic Analysis of the Proposing Release was referenced in the IRFA to help small entities understand such impacts, not to imply that small entities face the same proportional costs as large entities. Indeed, the Commission went on to state in both the IRFA and the Economic Analysis of the Proposing Release that costs ''can vary significantly depending on firm characteristics, such as firm size, industry, business model, the complexity of the firm's corporate structure, starting level of internal expertise, etc.'' [3221]

The Commission solicited comments on the proposal's potential effect on small entities, and specifically acknowledged that their varied characteristics, including ''the nature and conduct of their businesses make[s] it difficult to project the economic impact on small entities with precision.'' [3222] We note that the proposal, while not exempting small entities from the full scope of the proposed amendments, did exempt SRCs, which would generally include all estimated small entities that would be subject to the proposed rules, from the proposed Scope 3 emissions disclosure requirements and from the proposed GHG attestation requirements. Under the proposal, SRCs also were afforded a longer transition period to comply with the proposed rules than other registrants.

We nonetheless recognize the concerns raised by Advocacy and others regarding the costs to small entities subject to the proposed rules, as well as the concerns about the indirect impact to small entities not subject to the proposed rules. We discuss the economic effects, including costs, of the final rules across all entities in section IV above. We recognize that, to the extent the costs of the final rules are generally fixed across entities, they would be proportionally more costly for smaller companies. However, as discussed both above and below, to help mitigate that relatively greater burden to smaller companies and to respond to commenter concerns, we have made a number of changes in the final rules to ease these burdens, including providing SRCs, EGCs and NAFs with the longest phase in periods for compliance as well as excluding them entirely from some of the requirements, such as the GHG emissions disclosure and related assurance requirements. Additionally, certain changes from the proposal, including streamlining the requirements, making them less prescriptive and adding materiality qualifiers, will reduce the overall burden of the final rules for all registrants, including small entities. Accordingly, we believe that both this FRFA and our prior IRFA adequately describe and analyze the relative impact of costs to small entities.

2. Consideration of Alternatives

The IRFA's discussion of significant alternatives, and our discussion of alternatives below, satisfy the RFA. The relevant RFA requirement provides that an IRFA ''shall also contain a description of any significant alternatives to the proposed rule *which accomplish* the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.'' [3223] In the Proposing Release, the Commission discussed each of the types of significant alternatives noted in section 603 of the RFA and concluded that none of these alternatives would accomplish the stated objectives of the rulemaking while minimizing any significant impact on small entities. In addition, section IV.F of the Proposing Release discussed reasonable alternatives to the proposed rules and their economic impacts. Similarly, in addition to the discussion in section VI.E below, in section IV.F of this release we also discuss reasonable alternatives of the final rules and their economic impacts.

While not commenting on the alternatives raised in the IRFA specifically, several commenters asked the Commission to provide further exemptions not only for SRCs as proposed, but also for other small businesses without reporting obligations that may have faced upstream or downstream reporting obligations under the proposed rules.[3224] One of these commenters stated that while ''appreciat[ive] that the Commission proposes to exempt small companies from a portion of the reporting requirements (Scope 3)'' small companies in the biotechnology industry ''will be disproportionately affected by the proposed rule while providing limited benefit to investors.'' [3225] This commenter also asserted that the proposed exemptions would not provide relief to smaller companies that ''have no product revenues but often fall outside of the scope of smaller reporting companies due to existing public float threshold.'' [3226] Failure to consider these companies, it argued, could lead to ''diminishing incentives'' to go public and potentially duplicative regulation.[3227] Another commenter reiterated this concern, stating that Scope 3 emission requirements extend beyond registrants to privately owned entities, specifically those without the resources to comply with the proposed disclosures.[3228]

Advocacy stated it was concerned about the potential upstream and downstream effects of Scope 3 emissions disclosure requirements on non-regulated small businesses.[3229] Several commenters raised similar concerns.[3230] While small businesses without reporting requirements were not obligated under the proposed rules to provide this information, several commenters expressed concerns that companies with reporting obligations would compel the collection of this information as a condition of doing business with these businesses.[3231]

The Commission also received comments that explicitly opposed a wholesale exemption for smaller companies, pointing to the need for greater transparency about climate-related risks irrespective of a registrant's size.[3232] Some of these commenters

[3220] Proposing Release at section VI.D.

[3221] *Id.* at 21441.

[3222] *Id.* at 21463.

[3223] 5 U.S.C. 603(c) (emphasis added).

[3224] *See* SBCFAC Recommendation; Small Business Forum Recommendation (2023); and letters from OOIDA; NAHB; and NACS.

[3225] Letter from BIO. However, some commenters disputed this characterization. *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.,* (stating that ''[o]ffering a wholesale exemption is unsupported by the extensive research, discussed throughout these comments, showing that climate-related financial risks are widely dispersed throughout the economy and not limited to large registrants. In addition, given their smaller size, SRCs are likely to have significantly less costs in assessing and disclosing Scope 3 emissions than large registrants.'').

[3226] *See* letter from BIO.

[3227] *See id.*

[3228] See letter from Independent Community Banks of North Dakota (July 14, 2022).

[3229] *See* letter from Advocacy.

[3230] *See* letter from AFPA (''The SEC should carefully consider that the potential burdens of the proposal are not limited to public companies subject to SEC regulation, as private companies, including innumerable small businesses, also are expected to face inquiries from many SEC-regulated customers as a result of the rules.'').

[3231] *See* letter from Venture Dairy Cooperative (''Although this proposed rule is likely well intended as a step to both measure and monitor climate related information on publicly traded companies on Wall Street, this extension of reporting on Scope 3 emissions will inevitably filter down the supply chain to our nation's family farms who grow and raise the food we eat.''). *See also* letters from IDFA and PDMPA.

[3232] *See* letters from Anthesis Bailard; CalSTRS CBD; Change Finance; ClientEarth; Defenders Wildlife; Essex Invest. Mgmt.; IASJ IEN; FFAC; Grant Eisenhofer; NCF; OMERA PWHC LLP; Prentiss; S. Lloyd; Sweep; Terra Alpha; UNCA; and WAP.

explained their opposition to a wholesale exemption by stating that smaller companies may face disproportionately greater climate-related risks, and asserted that the additional proposed phase in period was adequate to ensure smaller companies had time to comply with the proposed rules.[3233]

Another commenter stated that, with respect to the proposal to require disclosure about the climate expertise of board members, small companies' ''operations and limited resources do not naturally lend themselves to requiring discrete board expertise for every risk, including climate-related risk.'' [3234] This commenter also stated that requiring the disclosure of board expertise for a smaller company could lead to the selection of board members without other requisite skills.

The Commission considered the comments on the Proposing Release, including those addressing the impact of the proposed reporting obligations on small entities. The final rules address several concerns raised by Advocacy and other commenters and modify the proposal in ways that will significantly reduce costs to smaller reporting companies, including small entities that meet the definition of SRCs, EGCs, and NAFs. For example, SRCs, EGCs and NAFs are not subject to the requirement to disclose Scope 1 and 2 emissions, as discussed above. Additionally, the Commission is not adopting the proposal to require disclosure of Scope 3 emissions for any entities. This will address any concerns about the possible impacts of the proposed Scope 3 requirements on small entities, including private companies, in a reporting company's value chain. Additionally, as a result of eliminating the reference to negative climate-related impacts on a registrant's value chain from the proposed definition of climate-related risks, the final rules further limit the burdens of climate risk assessment on parties in a registrant's value chain that might have occurred under the rule proposal.

We agree with commenters that stated that smaller companies should not be fully exempted from the final rules because they could face material climate risks about which investors need information to make informed voting and investment decisions.[3235] As with other sized entities, many of the changes we have made to streamline the rules and provide additional flexibility to registrants to tailor their disclosures based on their particular facts and circumstances will similarly benefit smaller companies. For example, the changes made to the governance and risk management sections are less prescriptive and more principles-based, which will allow smaller companies to avoid disclosure requirements that are not compatible with their business. Additionally, as discussed in section II.O, we are providing SRCs, EGCs, and NAFs with significant additional time to comply with the final rules, with the earliest disclosures being required no sooner than the filings that are required to include financial information for fiscal year 2027.

C. Small Entities Subject to the Final Amendments

The final rules apply to registrants that are small entities. The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [3236] For purposes of the RFA, under our rules, a registrant, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities that does not exceed $5 million.[3237] An investment company, including a business development company,[3238] is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[3239] We estimate that, as of December 31, 2022, there were approximately 800 issuers and 10 business development companies that may be considered small entities that would be subject to the final amendments.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

As noted above, requirements to disclose material GHG emissions information and obtain assurance over that information will not apply to SRCs, EGCs, or NAFs in response to concerns raised by commenters. For the remainder of the requirements, we continue to expect that the nature of any benefits and costs associated with the amendments to be similar for large and small entities, and so we refer to the discussion of the amendments' economic effects on all affected parties, including small entities, in section IV above. Also consistent with the discussion in sections II and IV above, we acknowledge that, to the extent that a smaller entity would be required to provide disclosure under the final rules, it may face costs that are proportionally greater as it may be less able to bear such costs relative to larger entities.[3240] The costs of preparing the disclosure would be a primary contributing factor given that compliance with certain provisions of the final amendments may require the use of professional skills, including legal, accounting, and technical skills. We also anticipate that the economic benefits and costs likely could vary widely among small entities based on a number of factors, such as the nature and conduct of their businesses, including whether and how they managed any material climate-related risks, which makes it difficult to project the economic impact on small entities with precision. To the extent that the disclosure requirements have a greater effect on smaller registrants relative to large registrants, they could result in adverse effects on competition.

E. Agency Action To Minimize Effect on Small Entities

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. Accordingly, we considered the following alternatives:

1. Exempting small entities from all or part of the requirements;
2. Establishing different compliance or reporting requirements that consider the resources available to small entities;
3. Using performance rather than design standards; and
4. Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities.

[3233] *See* letter from ICI (''In addition, we support the Commission not proposing generally to exempt SRCs or EGCs from the entire scope of the proposed climate-related disclosure rules because climate-related risks may pose a significant risk to the operations and financial condition of smaller companies. At the same time, providing them with more time than other companies to comply with any new requirements could mitigate the Proposal's compliance burden for smaller companies by giving them additional time to allocate the resources necessary to compile and prepare climate-related disclosures.'').

[3234] *See* letter from NRP.

[3235] *See, e.g., supra* notes 2410–2413.

[3236] 5 U.S.C. 601(6).

[3237] *See* 17 CFR 240.0–10(a).

[3238] Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act [15 U.S.C. 80a–2(a)(48) and 80a–53 through 64].

[3239] 17 CFR 270.0–10(a).

[3240] We note that some commenters stated that SRCs may have proportionately lower expenses. *See* letter from Amer. for Fin. Reform, Sunrise Project *et al.*

The rules are intended to allow investors to make more informed investment and voting decisions about the impact of climate-related risks on registrants' business and financial condition. As explained in section I.A. above, current requirements are not yielding consistent and comparable disclosure sufficient to meet investors' needs. The disclosure that does exist is scattered in various parts of registrants' filings and public disclosures and provided at different intervals, making it difficult for investors to locate, analyze, and compare across registrants.

Given the current disclosure landscape, exempting small entities entirely from the rules or otherwise clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities would frustrate the rulemaking's goal of providing investors with more consistent, comparable and timely disclosure about climate-related risks across all registrants. However, as discussed in section II above, we have consolidated and simplified the disclosure requirements for all entities, which should ease small entities' compliance as well. Further, as some commenters noted, smaller companies may face equal or greater climate-related risk than larger companies, making the disclosures important for investors in these companies.[3241] However, we have determined to require the disclosure of Scope 1 and Scope 2 GHG emissions only in certain circumstances from the largest filers, thereby excluding smaller companies from these provisions. We believe that this strikes an appropriate balance between the needs of investors in smaller companies, including small entities, to understand the likely impacts of material climate-related risks and the costs associated with compliance.

We also believe the rulemaking's stated objectives can be achieved by providing smaller companies with additional time to comply. Therefore, smaller companies, including small entities that are SRCs, EGCs and NAFs, will be provided with more than two years from the effective date of the final rules before compliance is required; specifically, these entities must begin to comply in filings that are required to include financial information for fiscal year 2027. These changes will benefit small entities and other small companies, both by giving them an extended compliance period to establish disclosure controls and procedures and by allowing them to observe and learn from best practices as they develop among larger registrants.

Similarly, the final rules incorporate a combination of performance and design standards with respect to all affected registrants, including small entities, in order to balance the objectives and compliance burdens of the final rules. While the final rules use design standards to promote uniform compliance requirements for all registrants and to address the disclosure concerns underlying the amendments, which apply to entities of all sizes, they also incorporate elements of performance standards to give registrants sufficient flexibility to craft meaningful disclosure that is tailored to their particular facts and circumstances. For example, the final rules require a registrant to describe the actual and potential material impacts of any material climate-related risk on the registrant's strategy, business model, and outlook. The rules also provide a non-exhaustive list of examples of disclosure items that a registrant should include, if applicable, in providing responsive disclosure rather than specifying more prescriptive set of disclosures, as in the proposal.

[3241] *See supra* note 3233.

Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in sections 7, 10, 19(a), and 28 of the Securities Act, as amended, and sections 3(b), 12, 13, 15, 23(a), and 36 of the Exchange Act, as amended.

List of Subjects in 17 CFR Parts 210, 229, 230, 232, 239, and 249

Accountants; Accounting; Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

Text of Amendments

For the reasons set out in the preamble, the Commission is adopting amendments to title 17, chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78*l,* 78m, 78n, 78*o*(d), 78q, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012), unless otherwise noted.

■ 2. Amend § 210.8–01 by revising paragraph (b) to read as follows:

§ 210.8–01 General requirements for Article 8.

* * * * *

(b) Smaller reporting companies electing to prepare their financial statements with the form and content required in Article 8 need not apply the other form and content requirements in 17 CFR part 210 (Regulation S–X) with the exception of the following:

(1) The report and qualifications of the independent accountant shall comply with the requirements of §§ 210.2–01 through 210.2–07 (Article 2); and

(2) The description of accounting policies shall comply with § 210.4–08(n); and

(3) Smaller reporting companies engaged in oil and gas producing activities shall follow the financial accounting and reporting standards specified in § 210.4–10 with respect to such activities; and

(4) Sections 210.14–01 and 210.14–02 (Article 14).

* * * * *

■ 3. Add an undesignated center heading and §§ 210.14–01 and 210.14–02 to read as follows:

Article 14 Disclosure of Severe Weather Events and Other Information

§ 210.14–01 Instructions related to disclosure of severe weather events and other information.

(a) *General.* A registrant must include disclosure pursuant to § 210.14–02 in any filing that is required to include disclosure pursuant to subpart 229.1500 of this chapter and that also requires the registrant to include its audited financial statements. The disclosure pursuant to § 210.14–02 must be included in a note to the financial statements included in such filing.

(b) *Definitions.* The definitions in § 229.1500 of this chapter (Item 1500 of Regulation S–K) apply to §§ 210.14–01 and 210.14–02 (Article 14) except where otherwise indicated.

(c) *Basis of calculation.* When calculating the financial statement effects in this Article 14, except where otherwise indicated, a registrant must:

(1) Use financial information that is consistent with the scope of its consolidated financial statements included in the filing; and

(2) Apply the same accounting principles that it is required to apply in

the preparation of its consolidated financial statements included in the filing.

(d) *Periods to be disclosed.* Disclosure must be provided for the registrant's most recently completed fiscal year, and to the extent previously disclosed or required to be disclosed, for the historical fiscal year(s), for which audited consolidated financial statements are included in the filing.

§ 210.14–02 Disclosures related to severe weather events and other information.

(a) *Contextual information.* Provide contextual information, describing how each specified financial statement effect disclosed under § 210.14–02(b) through (h) was derived, including a description of significant inputs and assumptions used, significant judgments made, other information that is important to understand the financial statement effect and, if applicable, policy decisions made by the registrant to calculate the specified disclosures.

(b) *Disclosure thresholds.* (1) Disclosure of the aggregate amount of expenditures expensed as incurred and losses pursuant to paragraph (c) of this section is required if the aggregate amount of expenditures expensed as incurred and losses equals or exceeds one percent of the absolute value of income or loss before income tax expense or benefit for the relevant fiscal year. Such disclosure is not required, however, if the aggregate amount of expenditures expensed as incurred and losses is less than $100,000 for the relevant fiscal year.

(2) Disclosure of the aggregate amount of capitalized costs and charges incurred pursuant to paragraph (d) of this section is required if the aggregate amount of the absolute value of capitalized costs and charges equals or exceeds one percent of the absolute value of stockholders' equity or deficit at the end of the relevant fiscal year. Such disclosure is not required, however, if the aggregate amount of the absolute value of capitalized costs and charges is less than $500,000 for the relevant fiscal year.

(c) *Expenditures expensed as incurred and losses resulting from severe weather events and other natural conditions.* Disclose the aggregate amount of expenditures expensed as incurred and losses, excluding recoveries, incurred during the fiscal year as a result of severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise. For example, a registrant may be required to disclose the amount of expense or loss, as applicable, to restore operations, relocate assets or operations affected by the event or other natural condition, retire affected assets, repair affected assets, recognize impairment loss on affected assets, or otherwise respond to the effect that severe weather events and other natural conditions had on business operations. Disclosure pursuant to this paragraph must separately identify where the expenditures expensed as incurred and losses are presented in the income statement.

(d) *Capitalized costs and charges resulting from severe weather events and other natural conditions.* Disclose the aggregate amount of capitalized costs and charges, excluding recoveries, incurred during the fiscal year as a result of severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise. For example, a registrant may be required to disclose the amount of capitalized costs or charges, as applicable, to restore operations, retire affected assets, replace or repair affected assets, recognize an impairment charge for affected assets, or otherwise respond to the effect that severe weather events and other natural conditions had on business operations. Disclosure pursuant to this paragraph must separately identify where the capitalized costs and charges are presented in the balance sheet.

(e) *Carbon offsets and RECs.* (1) If carbon offsets or RECs have been used as a material component of a registrant's plans to achieve its disclosed climate-related targets or goals, disclose the aggregate amount of carbon offsets and RECs expensed, the aggregate amount of capitalized carbon offsets and RECs recognized, and the aggregate amount of losses incurred on the capitalized carbon offsets and RECs, during the fiscal year. In addition, disclose the beginning and ending balances of the capitalized carbon offsets and RECs for the fiscal year. Disclosure pursuant to this paragraph must separately identify where the expenditures expensed, capitalized costs, and losses are presented in the income statement and the balance sheet.

(2) If a registrant is required to provide disclosure pursuant to paragraph (e)(1) of this section, then a registrant must state its accounting policy for carbon offsets and RECs as part of the contextual information required by paragraph (a) of this section.

(f) *Recoveries.* If a registrant is required to provide disclosure pursuant to paragraphs (c) or (d) of this section, then as part of the contextual information required by paragraph (a) of this section, a registrant must state separately the aggregate amount of any recoveries recognized during the fiscal year as a result of severe weather events and other natural conditions for which capitalized costs, expenditures expensed, charges, or losses are disclosed pursuant to paragraphs (c) or (d) of this section. Disclosure pursuant to this paragraph must separately identify where the recoveries are presented in the income statement and the balance sheet.

(g) *Attribution.* For purposes of providing disclosure pursuant to paragraphs (c), (d), and (f) of this section, a capitalized cost, expenditure expensed, charge, loss, or recovery results from a severe weather event or other natural condition when the event or condition is a significant contributing factor in incurring the capitalized cost, expenditure expensed, charge, loss, or recovery. If an event or condition is a significant contributing factor in incurring a cost, expenditure, charge, loss, or recovery, then the entire amount of such cost, expenditure, charge, loss, or recovery must be included in the disclosure pursuant to paragraphs (c), (d), and (f) of this section.

(h) *Financial estimates and assumptions materially impacted by severe weather events and other natural conditions or disclosed targets or transition plans.* Disclose whether the estimates and assumptions the registrant used to produce the consolidated financial statements were materially impacted by exposures to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise, or any climate-related targets or transition plans disclosed by the registrant. If yes, provide a qualitative description of how the development of such estimates and assumptions were impacted by such events, conditions, targets, or transition plans.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 4. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78l, 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78ll, 78

mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

■ 5. Amend § 229.601 by:

■ a. In the exhibit table in paragraph (a), revising entry 27; and

■ b. Adding paragraph (b)(27).

The revision and addition read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

EXHIBIT TABLE

	Securities Act forms										Exchange Act forms					
	S–1	S–3	SF–1	SF–3	S–4 [1]	S–8	S–11	F–1	F–3	F–4 [1]	10	8–K [2]	10–D	10–Q	10–K	ABS–EE
*	*			*			*		*			*		*		
(27) Letter re GHG emissions attestation provider	X	X				X		X	X	X	X				X	X	
*	*			*			*		*			*		*		

[1] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Form S–3 or F–3; and (2) the form, the level of which has been elected under Form S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.

[2] A Form 8–K exhibit is required only if relevant to the subject matter reported on the Form 8–K report. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

* * * * *

(b) * * *

(27) *Letter re GHG emissions attestation report.* A letter, where applicable, from the attestation provider that acknowledges awareness of the use in a registration statement of a GHG emissions attestation report that pursuant to 17 CFR 230.436(i)(1) (Rule 436(i)(1)) under the Securities Act is not considered a part of a registration statement prepared or certified by a person within the meaning of sections 7 and 11 of the Securities Act. Such letter may be filed with the registration statement, an amendment thereto, or a report on Form 10–K (§ 249.310), Form 10–Q (§ 249.308a), or Form 20–F (§ 249.220f), which is incorporated by reference into the registration statement.

* * * * *

■ 6. Add subpart 229.1500, consisting of §§ 229.1500 through 229.1508, to read as follows:

Subpart 229.1500—Climate-Related Disclosure

Sec.
229.1500 (Item 1500) Definitions.
229.1501 (Item 1501) Governance.
229.1502 (Item 1502) Strategy.
229.1503 (Item 1503) Risk management.
229.1504 (Item 1504) Targets and goals.
229.1505 (Item 1505) GHG emissions metrics.
229.1506 (Item 1506) Attestation of Scope 1 and Scope 2 emissions disclosure.
229.1507 (Item 1507) Safe harbor for certain climate-related disclosures.
229.1508 (Item 1508) Interactive data requirement.

Subpart 229.1500—Climate-Related Disclosure

§ 229.1500 (Item 1500) Definitions.

As used in this subpart, these terms have the following meanings:

Carbon offsets represents an emissions reduction, removal, or avoidance of greenhouse gases (''GHG'') in a manner calculated and traced for the purpose of offsetting an entity's GHG emissions.

Climate-related risks means the actual or potential negative impacts of climate-related conditions and events on a registrant's business, results of operations, or financial condition. Climate-related risks include the following:

(1) *Physical risks* include both acute risks and chronic risks to the registrant's business operations.

(2) *Acute risks* are event-driven and may relate to shorter term severe weather events, such as hurricanes, floods, tornadoes, and wildfires, among other events.

(3) *Chronic risks* relate to longer term weather patterns, such as sustained higher temperatures, sea level rise, and drought, as well as related effects such as decreased arability of farmland, decreased habitability of land, and decreased availability of fresh water.

(4) *Transition risks* are the actual or potential negative impacts on a registrant's business, results of operations, or financial condition attributable to regulatory, technological, and market changes to address the mitigation of, or adaptation to, climate-related risks, including such non-exclusive examples as increased costs attributable to changes in law or policy, reduced market demand for carbon-intensive products leading to decreased prices or profits for such products, the devaluation or abandonment of assets, risk of legal liability and litigation defense costs, competitive pressures associated with the adoption of new technologies, and reputational impacts (including those stemming from a registrant's customers or business counterparties) that might trigger changes to market behavior, consumer preferences or behavior, and registrant behavior.

Carbon dioxide equivalent or *CO2e* means the common unit of measurement to indicate the global warming potential (''GWP'') of each greenhouse gas, expressed in terms of the GWP of one unit of carbon dioxide.

Emission factor means a multiplication factor allowing actual GHG emissions to be calculated from available activity data or, if no activity data are available, economic data, to derive absolute GHG emissions. Examples of activity data include kilowatt-hours of electricity used, quantity of fuel used, output of a process, hours of operation of equipment, distance travelled, and floor area of a building.

GHG or *Greenhouse gases* means carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), nitrogen trifluoride (NF_3), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6).

GHG emissions means direct and indirect emissions of greenhouse gases expressed in metric tons of carbon dioxide equivalent (CO_2e), of which:

(1) Direct emissions are GHG emissions from sources that are owned or controlled by a registrant.

(2) Indirect emissions are GHG emissions that result from the activities of the registrant but occur at sources not owned or controlled by the registrant.

Internal carbon price means an estimated cost of carbon emissions used internally within an organization.

Operational boundaries means the boundaries that determine the direct and indirect emissions associated with

the business operations owned or controlled by a registrant.

Organizational boundaries means the boundaries that determine the operations owned or controlled by a registrant for the purpose of calculating its GHG emissions.

Renewable energy credit or *certificate* or *REC* means a credit or certificate representing each megawatt-hour (1 MWh or 1,000 kilowatt-hours) of renewable electricity generated and delivered to a power grid.

Scenario analysis means a process for identifying and assessing a potential range of outcomes of various possible future climate scenarios, and how climate-related risks may impact a registrant's business strategy, results of operations, or financial condition over time.

Scope 1 emissions are direct GHG emissions from operations that are owned or controlled by a registrant.

Scope 2 emissions are indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant.

Transition plan means a registrant's strategy and implementation plan to reduce climate-related risks, which may include a plan to reduce its GHG emissions in line with its own commitments or commitments of jurisdictions within which it has significant operations.

§ 229.1501 (Item 1501) Governance.

(a) Describe the board of directors' oversight of climate-related risks. If applicable, identify any board committee or subcommittee responsible for the oversight of climate-related risks and describe the processes by which the board or such committee or subcommittee is informed about such risks. If there is a climate-related target or goal disclosed pursuant to § 229.1504 or transition plan disclosed pursuant to § 229.1502(e)(1), describe whether and how the board of directors oversees progress against the target or goal or transition plan.

(b) Describe management's role in assessing and managing the registrant's material climate-related risks. In providing such disclosure, a registrant should address, as applicable, the following non-exclusive list of disclosure items:

(1) Whether and which management positions or committees are responsible for assessing and managing climate-related risks and the relevant expertise of such position holders or committee members in such detail as necessary to fully describe the nature of the expertise;

(2) The processes by which such positions or committees assess and manage climate-related risks; and

(3) Whether such positions or committees report information about such risks to the board of directors or a committee or subcommittee of the board of directors.

Instruction 1 to Item 1501: In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (a) of this section, the term ''board of directors'' means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of § 240.10A–3(c)(3) of this chapter, for purposes of paragraph (a) of this section, the term ''board of directors'' means the issuer's board of auditors (or similar body) or statutory auditors, as applicable.

Instruction 2 to Item 1501: Relevant expertise of management in paragraph (b)(1) of this section may include, for example: Prior work experience in climate-related matters; any relevant degrees or certifications; any knowledge, skills, or other background in climate-related matters.

§ 229.1502 (Item 1502) Strategy.

(a) Describe any climate-related risks that have materially impacted or are reasonably likely to have a material impact on the registrant, including on its strategy, results of operations, or financial condition. In describing these material risks, a registrant must describe whether such risks are reasonably likely to manifest in the short-term (*i.e.,* the next 12 months) and separately in the long-term (*i.e.,* beyond the next 12 months). A registrant must disclose whether the risk is a physical or transition risk, providing information necessary to an understanding of the nature of the risk presented and the extent of the registrant's exposure to the risk, including the following non-exclusive list of disclosures, as applicable:

(1) If a physical risk, whether it may be categorized as an acute or chronic risk, and the geographic location and nature of the properties, processes, or operations subject to the physical risk.

(2) If a transition risk, whether it relates to regulatory, technological, market (including changing consumer, business counterparty, and investor preferences), or other transition-related factors, and how those factors impact the registrant. A registrant that has significant operations in a jurisdiction that has made a GHG emissions reduction commitment should consider whether it may be exposed to a material transition risk related to the implementation of the commitment.

(b) Describe the actual and potential material impacts of any climate-related risk identified in response to paragraph (a) of this section on the registrant's strategy, business model, and outlook, including, as applicable, any material impacts on the following non-exclusive list of items:

(1) Business operations, including the types and locations of its operations;

(2) Products or services;

(3) Suppliers, purchasers, or counterparties to material contracts, to the extent known or reasonably available;

(4) Activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes; and

(5) Expenditure for research and development.

(c) Discuss whether and how the registrant considers any impacts described in response to paragraph (b) of this section as part of its strategy, financial planning, and capital allocation, including, as applicable:

(1) Whether the impacts of the climate-related risks described in response to paragraph (b) have been integrated into the registrant's business model or strategy, including whether and how resources are being used to mitigate climate-related risks; and

(2) How any of the targets referenced in § 229.1504 or transition plans referenced in paragraph (e) of this section relate to the registrant's business model or strategy.

(d)(1) Discuss how any climate-related risks described in response to paragraph (a) of this section have materially impacted or are reasonably likely to materially impact the registrant's business, results of operations, or financial condition.

(2) Describe quantitatively and qualitatively the material expenditures incurred and material impacts on financial estimates and assumptions that, in management's assessment, directly result from activities disclosed under paragraph (b)(4) of this section.

(e)(1) If a registrant has adopted a transition plan to manage a material transition risk, describe the plan. To allow for an understanding of the registrant's progress under the plan over time, a registrant must update its annual report disclosure about the transition plan each fiscal year by describing any actions taken during the year under the plan, including how such actions have impacted the registrant's business, results of operations, or financial condition.

(2) Include quantitative and qualitative disclosure of material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the transition plan disclosed under paragraph (e)(1) of this section.

(f) If a registrant uses scenario analysis to assess the impact of climate-related risks on its business, results of operations, or financial condition, and if, based on the results of such scenario analysis, the registrant determines that a climate-related risk is reasonably likely to have a material impact on its business, results of operations, or financial condition, the registrant must describe each such scenario including a brief description of the parameters, assumptions, and analytical choices used, as well as the expected material impacts, including financial impacts, on the registrant under each such scenario.

(g)(1) If a registrant's use of an internal carbon price is material to how it evaluates and manages a climate-related risk identified in response to paragraph (a) of this section, disclose in units of the registrant's reporting currency:

(i) The price per metric ton of CO_2e; and

(ii) The total price, including how the total price is estimated to change over the time periods referenced in paragraph (a) of this section, as applicable.

(2) If a registrant uses more than one internal carbon price to evaluate and manage a material climate-related risk, it must provide the disclosures required by this section for each internal carbon price and disclose its reasons for using different prices.

(3) If the scope of entities and operations involved in the use of an internal carbon price described pursuant to this section is materially different from the organizational boundaries used for the purpose of calculating a registrant's GHG emissions pursuant to § 229.1505, briefly describe this difference.

§ 229.1503 (Item 1503) Risk management.

(a) Describe any processes the registrant has for identifying, assessing, and managing material climate-related risks. In providing such disclosure, registrants should address, as applicable, the following non-exclusive list of disclosure items regarding how the registrant:

(1) Identifies whether it has incurred or is reasonably likely to incur a material physical or transition risk;

(2) Decides whether to mitigate, accept, or adapt to the particular risk; and

(3) Prioritizes whether to address the climate-related risk.

(b) If managing a material climate-related risk, the registrant must disclose whether and how any processes described in response to paragraph (a) of this section have been integrated into the registrant's overall risk management system or processes.

§ 229.1504 (Item 1504) Targets and goals.

(a) A registrant must disclose any climate-related target or goal if such target or goal has materially affected or is reasonably likely to materially affect the registrant's business, results of operations, or financial condition. A registrant may provide the disclosure required by this section as part of its disclosure in response to §§ 229.1502 or 229.1503.

(b) In providing disclosure required by paragraph (a) of this section, a registrant must provide any additional information or explanation necessary to an understanding of the material impact or reasonably likely material impact of the target or goal, including, as applicable, but not limited to, a description of:

(1) The scope of activities included in the target;

(2) The unit of measurement;

(3) The defined time horizon by which the target is intended to be achieved, and whether the time horizon is based on one or more goals established by a climate-related treaty, law, regulation, policy, or organization;

(4) If the registrant has established a baseline for the target or goal, the defined baseline time period and the means by which progress will be tracked; and

(5) A qualitative description of how the registrant intends to meet its climate-related targets or goals.

(c) Disclose any progress made toward meeting the target or goal and how any such progress has been achieved. A registrant must update this disclosure each fiscal year by describing the actions taken during the year to achieve its targets or goals.

(1) Include a discussion of any material impacts to the registrant's business, results of operations, or financial condition as a direct result of the target or goal or the actions taken to make progress toward meeting the target or goal.

(2) Include quantitative and qualitative disclosure of any material expenditures and material impacts on financial estimates and assumptions as a direct result of the target or goal or the actions taken to make progress toward meeting the target or goal.

(d) If carbon offsets or RECs have been used as a material component of a registrant's plan to achieve climate-related targets or goals, separately disclose the amount of carbon avoidance, reduction or removal represented by the offsets or the amount of generated renewable energy represented by the RECs, the nature and source of the offsets or RECs, a description and location of the underlying projects, any registries or other authentication of the offsets or RECs, and the cost of the offsets or RECs.

§ 229.1505 (Item 1505) GHG emissions metrics.

(a)(1) A registrant that is a large accelerated filer or an accelerated filer, each as defined in § 240.12b–2 of this chapter, must disclose its Scope 1 emissions and/or its Scope 2 emissions, if such emissions are material, for its most recently completed fiscal year and, to the extent previously disclosed in a Commission filing, for the historical fiscal year(s) included in the consolidated financial statements in the filing.

(2) For any GHG emissions required to be disclosed pursuant to paragraph (a)(1) of this section:

(i) Disclose the registrant's Scope 1 emissions and/or Scope 2 emissions separately, each expressed in the aggregate, in terms of CO_2e. In addition, if any constituent gas of the disclosed emissions is individually material, disclose such constituent gas disaggregated from the other gases.

(ii) Disclose the registrant's Scope 1 emissions and/or Scope 2 emissions in gross terms by excluding the impact of any purchased or generated offsets.

(3)(i) A smaller reporting company, as defined by §§ 229.10(f)(1), 230.405, and 240.12b–2 of this chapter, and an emerging growth company, as defined by §§ 230.405 and 240.12b–2 of this chapter, are exempt from, and need not comply with, the disclosure requirements of this section.

(ii) A registrant is not required to include GHG emissions from a manure management system when disclosing its overall Scopes 1 and 2 emissions pursuant to paragraph (a)(1) of this section so long as implementation of such a provision is subject to restrictions on appropriated funds or otherwise prohibited under federal law.

(b)(1) Describe the methodology, significant inputs, and significant assumptions used to calculate the registrant's GHG emissions disclosed pursuant to this section. This description must include:

(i) The organizational boundaries used when calculating the registrant's disclosed GHG emissions, including the method used to determine those boundaries. If the organizational boundaries materially differ from the scope of entities and operations included in the registrant's consolidated financial statements, provide a brief explanation of this difference in sufficient detail for a reasonable investor to understand;

(ii) A brief discussion of, in sufficient detail for a reasonable investor to understand, the operational boundaries used, including the approach to categorization of emissions and emissions sources; and

(iii) A brief description of, in sufficient detail for a reasonable investor to understand, the protocol or standard used to report the GHG emissions, including the calculation approach, the type and source of any emission factors used, and any calculation tools used to calculate the GHG emissions.

(2) A registrant may use reasonable estimates when disclosing its GHG emissions as long as it also describes the underlying assumptions, and its reasons for using, the estimates.

(c)(1) Any GHG emissions metrics required to be disclosed pursuant to this section in a registrant's annual report on Form 10–K filed with the Commission may be incorporated by reference from the registrant's Form 10–Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions metrics disclosure relates, or may be included in an amended annual report on Form 10–K no later than the due date for such Form 10–Q. If the registrant is a foreign private issuer, as defined in §§ 230.405 and 240.3b–4(c) of this chapter, such information may be disclosed in an amendment to its annual report on Form 20–F (§ 249.220f of this chapter), which shall be due no later than 225 days after the end of the fiscal year to which the GHG emissions metrics disclosure relates. In either case, the registrant must include an express statement in its annual report indicating its intention to incorporate by reference this information from either a quarterly report on Form 10–Q or amend its annual report on Form 10–K or Form 20–F to provide this information by the due date specified by this section.

(2) In the case of a registration statement filed under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] or filed on Form 10 (§ 249.210 of this chapter) or Form 20–F (§ 249.220f of this chapter) under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*], any GHG emissions metrics required to be disclosed pursuant to paragraph (a) of this section must be provided as of the most recently completed fiscal year that is at least 225 days prior to the date of effectiveness of the registration statement.

§ 229.1506 (Item 1506) Attestation of Scope 1 and Scope 2 emissions disclosure.

(a) *Attestation.* (1) A registrant that is required to provide Scope 1 and/or Scope 2 emissions disclosure pursuant to § 229.1505 must include an attestation report covering such disclosure in the relevant filing, subject to the following provisions:

(i) For filings made by an accelerated filer beginning the third fiscal year after the compliance date for § 229.1505 and thereafter, the attestation engagement must, at a minimum, be at a limited assurance level and cover the registrant's Scope 1 and/or Scope 2 emissions disclosure;

(ii) For filings made by a large accelerated filer beginning the third fiscal year after the compliance date for § 229.1505, the attestation engagement must, at a minimum, be at a limited assurance level and cover the registrant's Scope 1 and/or Scope 2 emissions disclosure; and

(iii) For filings made by a large accelerated filer beginning the seventh fiscal year after the compliance date for § 229.1505 and thereafter, the attestation engagement must be at a reasonable assurance level and cover the registrant's Scope 1 and/or Scope 2 emissions disclosure.

(2) Any attestation report required under this section must be provided pursuant to standards that are:

(i) Publicly available at no cost or that are widely used for GHG emissions assurance; and

(ii) Established by a body or group that has followed due process procedures, including the broad distribution of the framework for public comment.

(3) A registrant that is required to provide Scope 1 and/or Scope 2 emissions disclosure pursuant to § 229.1505 that obtains voluntary assurance over its GHG emissions disclosure prior to the first required fiscal year for assurance must comply with paragraph (e) of this section. Voluntary assurance obtained by such registrant after the first required fiscal year that is in addition to any required assurance must follow the requirements of paragraphs (b) through (d) of this section and must use the same attestation standard as the required assurance over Scope 1 and/or Scope 2 emissions disclosure.

(b) *GHG emissions attestation provider.* The GHG emissions attestation report required by paragraph (a) of this section must be prepared and signed by a GHG emissions attestation provider. A GHG emissions attestation provider means a person or a firm that has all of the following characteristics:

(1) Is an expert in GHG emissions by virtue of having significant experience in measuring, analyzing, reporting, or attesting to GHG emissions. Significant experience means having sufficient competence and capabilities necessary to:

(i) Perform engagements in accordance with attestation standards and applicable legal and regulatory requirements; and

(ii) Enable the service provider to issue reports that are appropriate under the circumstances.

(2) Is independent with respect to the registrant, and any of its affiliates, for whom it is providing the attestation report, during the attestation and professional engagement period.

(i) A GHG emissions attestation provider is not independent if such attestation provider is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that such attestation provider is not, capable of exercising objective and impartial judgment on all issues encompassed within the attestation provider's engagement.

(ii) In determining whether a GHG emissions attestation provider is independent, the Commission will consider:

(A) Whether a relationship or the provision of a service creates a mutual or conflicting interest between the attestation provider and the registrant (or any of its affiliates), places the attestation provider in the position of attesting to such attestation provider's own work, results in the attestation provider acting as management or an employee of the registrant (or any of its affiliates), or places the attestation provider in a position of being an advocate for the registrant (or any of its affiliates); and

(B) All relevant circumstances, including all financial or other relationships between the attestation provider and the registrant (or any of its affiliates), and not just those relating to reports filed with the Commission.

(iii) The term ''affiliate'' as used in this section has the meaning provided in § 210.2–01 of this chapter, except that references to ''audit'' are deemed to be references to the attestation services provided pursuant to this section.

(iv) The term ''attestation and professional engagement period'' as used in this section means both:

(A) The period covered by the attestation report; and

(B) The period of the engagement to attest to the registrant's GHG emissions or to prepare a report filed with the Commission (''the professional engagement period''). The professional engagement period begins when the GHG attestation service provider either signs an initial engagement letter (or other agreement to attest to a registrant's GHG emissions) or begins attest procedures, whichever is earlier.

(c) *Attestation report requirements.* The form and content of the attestation report must follow the requirements set forth by the attestation standard (or standards) used by the GHG emissions attestation provider.

(d) *Additional disclosure by the registrant.* In addition to including the GHG emissions attestation report required by paragraph (a) of this section, a large accelerated filer and an accelerated filer must disclose, alongside the GHG emissions disclosure to which the attestation report relates, after requesting relevant information from any GHG emissions attestation provider as necessary:

(1) Whether the GHG emissions attestation provider is subject to any oversight inspection program, and if so, which program (or programs), and whether the GHG emissions attestation engagement is included within the scope of authority of such oversight inspection program.

(2)(i) Whether any GHG emissions attestation provider that was previously engaged to provide attestation over the registrant's GHG emissions disclosure pursuant to paragraph (a) of this section for the fiscal year period covered by the attestation report resigned (or indicated that it declined to stand for re-appointment after the completion of the attestation engagement) or was dismissed. If so,

(A) State whether the former GHG emissions attestation provider resigned, declined to stand for re-appointment, or was dismissed and the date thereof; and

(B) State whether during the performance of the attestation engagement for the fiscal year period covered by the attestation report there were any disagreements with the former GHG emissions attestation provider on any matter of measurement or disclosure of GHG emissions or attestation scope of procedures. Also,

(*1*) Describe each such disagreement; and

(*2*) State whether the registrant has authorized the former GHG emissions attestation provider to respond fully to the inquiries of the successor GHG emissions attestation provider concerning the subject matter of each such disagreement.

(ii) The term ''disagreements'' as used in this section shall be interpreted broadly, to include any difference of opinion concerning any matter of measurement or disclosure of GHG emissions or attestation scope or procedures that (if not resolved to the satisfaction of the former GHG emissions attestation provider) would have caused it to make reference to the subject matter of the disagreement in connection with its report. It is not necessary for there to have been an argument to have had a disagreement, merely a difference of opinion. For purposes of this section, however, the term disagreements does not include initial differences of opinion based on incomplete facts or preliminary information that were later resolved to the former GHG emissions attestation provider's satisfaction by, and providing the registrant and the GHG emissions attestation provider do not continue to have a difference of opinion upon, obtaining additional relevant facts or information. The disagreements required to be reported in response to this section include both those resolved to the former GHG emissions attestation provider's satisfaction and those not resolved to the former provider's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level, *i.e.,* between personnel of the registrant responsible for presentation of its GHG emissions disclosure and personnel of the GHG emissions attestation provider responsible for rendering its report.

(iii) In determining whether any disagreement has occurred, an oral communication from the engagement partner or another person responsible for rendering the GHG emissions attestation provider's opinion or conclusion (or their designee) will generally suffice as a statement of a disagreement at the ''decision-making level'' within the GHG emissions attestation provider and require disclosure under this section.

(e) *Disclosure of voluntary assurance.* A registrant that is not required to include a GHG emissions attestation report pursuant to paragraph (a) of this section must disclose in the filing the following information if the registrant's GHG emissions disclosure in the filing were subject to third-party assurance:

(1) Identification of the service provider of such assurance;

(2) Description of the assurance standard used;

(3) Description of the level and scope of assurance services provided;

(4) Brief description of the results of the assurance services;

(5) Whether the service provider has any material business relationships with or has provided any material professional services to the registrant; and

(6) Whether the service provider is subject to any oversight inspection program, and if so, which program (or programs) and whether the assurance services over GHG emissions are included within the scope of authority of such oversight inspection program.

(f) *Location of disclosure.* A registrant must include the attestation report and disclosure required by this section in the filing that contains the GHG emissions disclosure to which the report and disclosure relate. If, in accordance with the requirements in § 229.1505, a registrant elects to incorporate by reference its GHG emissions disclosure from its Form 10–Q (§ 249.308a of this chapter) for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions disclosure relates or to provide this information in an amended annual report on Form 10–K (§ 249.310 of this chapter) or 20–F (§ 249.220f of this chapter), then the registrant must include an express statement in its annual report indicating its intention to incorporate by reference the attestation report from either a quarterly report on Form 10–Q or amend its annual report on Form 10–K or Form 20–F to provide the attestation report by the due date specified in § 229.1505.

Instruction 1 to Item 1506: A registrant that obtains assurance from an attestation provider at the limited assurance level should refer to § 229.601(b)(27) and paragraph 18 of Form 20–F's Instructions as to Exhibits.

§ 229.1507 (Item 1507) Safe harbor for certain climate-related disclosures.

(a)(1) The safe harbors for forward-looking statements in section 27A of the Securities Act of 1933 (15 U.S.C. 77z–2) and section 21E of the Securities Exchange Act of 1934 (15 U.S.C. 78u–5) (''statutory safe harbors'') apply as provided in this section to information provided pursuant to §§ 229.1502(e), 229.1502(f), 229.1502(g), and 229.1504.

(2) The safe harbor provided by this section applies to a forward-looking statement specified in the statutory safe harbors:

(i) Made in connection with an offering of securities by a blank check company, as specified in 15 U.S.C. 77z–2(b)(1)(B) and 15 U.S.C. 78u–5(b)(1)(B);

(ii) Made with respect to the business or operations of an issuer of penny stock, as specified in 15 U.S.C. 77z–2(b)(1)(C) and 15 U.S.C. 78u–5(b)(1)(C);

(iii) Made in connection with a rollup transaction, as specified in 15 U.S.C. 77z–2(b)(1)(D) and 15 U.S.C. 78u–5(b)(1)(D);

(iv) Made in connection with an initial public offering, as specified in 15 U.S.C. 77z–2(b)(2)(D) and 15 U.S.C. 78u–5(b)(2)(D); and

(v) Made in connection with an offering by, or relating to the operations of, a partnership, limited liability company, or a direct participation investment program, as specified in 15 U.S.C. 77z–2(b)(2)(E) and 15 U.S.C. 78u–5(b)(2)(E).

(3) Notwithstanding 15 U.S.C. 77z–2(a)(1) and 15 U.S.C. 78–u(a)(1), the safe harbor provided by this section will apply where an issuer that, at the time that the statement is made, is not subject to the reporting requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934.

(b) For purposes of paragraph (a) of this section, all information required by §§ 229.1502(e), 229.1502(f), 229.1502(g), and 229.1504 is considered a *forward-looking statement* for purposes of the statutory safe harbors, except for historical facts, including, as non-exclusive examples, terms related to carbon offsets or RECs described pursuant to § 229.1504 and statements in response to §§ 229.1502(e) or 229.1504 about material expenditures actually incurred.

§ 229.1508 (Item 1508) Interactive data requirement.

Provide the disclosure required by this subpart 1500 in an Interactive Data File as required by § 232.405 of this chapter (Rule 405 of Regulation S–T) in accordance with the EDGAR Filer Manual (see § 232.301 of this chapter).

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 7. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78*o,* 78*o*–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s).

* * * * *

■ 8. Amend § 230.436 by adding paragraph (i) to read as follows:

§ 230.436 Consents required in special cases.

* * * * *

(i) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the following shall not be considered part of the registration statement prepared or certified by a person within the meaning of sections 7 and 11 of the Act:

(1) A report by an attestation provider covering Scope 1, Scope 2, and/or Scope 3 GHG emissions at a limited assurance level; and

(2) Any description of assurance regarding a registrant's GHG emissions disclosure provided in accordance with § 229.1506(e) of this chapter.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 9. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78*o*(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 80b–4, 80b–6a, 80b–10, 80b–11, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 10. Amend § 232.405 by adding paragraphs (b)(4)(vi) and (vii) to read as follows:

§ 232.405 Interactive Data File submissions.

* * * * *

(b) * * *

(4) * * *

(vi) [Reserved]

(vii) The climate-related information required by §§ 229.1500 through 229.1507 of this chapter (subpart 1500 of Regulation S–K).

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PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 11. The general authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78*o*(d), 78*o*–7 note, 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, 80a–37, and sec. 71003 and sec. 84001, Pub. L. 114–94, 129 Stat. 1321, unless otherwise noted.

* * * * *

■ 12. Amend Form S–1 (referenced in § 239.11) by adding Item 11(o) to Part I.

Note: Form S–1 is attached as Appendix A to this document. Form S–1 will not appear in the Code of Federal Regulations.

■ 13. Amend Form S–3 (referenced in § 239.13) by adding Item 12(e) to Part I.

Note: Form S–3 is attached as Appendix B to this document. Form S–3 will not appear in the Code of Federal Regulations.

■ 14. Amend Form S–11 (referenced in § 239.18) by replacing Item 9 to Part I.

Note: Form S–11 is attached as Appendix C to this document. Form S–11 will not appear in the Code of Federal Regulations.

■ 15. Amend Form S–4 (referenced in § 239.25) by adding General Instructions B.3 and C.3.

Note: Form S–4 is attached as Appendix D to this document. Form S–4 will not appear in the Code of Federal Regulations.

■ 16. Amend Form F–3 (referenced in § 239.33) by adding paragraph (g) to Item 6 to Part I.

Note: Form F–3 is attached as Appendix E to this document. Form F–3 will not appear in the Code of Federal Regulations.

■ 17. Amend Form F–4 (referenced in § 239.34) by adding General Instructions B.3 and C.3.

Note: Form F–4 is attached as Appendix F to this document. Form F–4 will not appear in the Code of Federal Regulations.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 18. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112–106, 126 Stat. 313 (2012), Sec. 72001 Pub. L. 114–94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116–222, 134 Stat. 1063 (2020), unless otherwise noted.

* * * * *

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. 107–204, 116 Stat. 745, and secs. 2 and 3, Pub. L. 116–222, 134 Stat. 1063.

* * * * *

Section 249.308a is also issued under secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 249.310 is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

■ 19. Amend Form 10 (referenced in § 249.210) by adding Item 3.A (''Climate-Related Disclosure'').

Note: Form 10 is attached as Appendix G to this document. Form 10 will not appear in the Code of Federal Regulations.

■ 20. Amend Form 20–F (referenced in § 249.220f) by:

■ a. Adding Item 3.E (''Climate-related disclosure''); and

■ b. Revising the Instructions as to Exhibits.

Note: Form 20–F is attached as Appendix H to this document. Form 20–F will not appear in the Code of Federal Regulations.

■ 21. Amend Form 10–Q (referenced in § 249.308a) by adding Item 1.B (''Climate-Related disclosure'') to Part II (''Other Information'').

Note: Form 10–Q is attached as Appendix I to this document. Form 10–Q will not appear in the Code of Federal Regulations.

■ 22. Amend Form 10–K (referenced in § 249.310) by:
■ a. Revising paragraph (1)(g) of General Instruction J (''Use of this Form by Asset-backed Issuers''); and
■ b. Adding Item 6 (''Climate-Related Disclosure'') to Part II.

Note: Form 10–K is attached as Appendix J to this document. Form 10–K will not appear in the Code of Federal Regulations.

By the Commission.

Dated: March 6, 2024.

Vanessa A. Countryman,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Form S–1

FORM S–1

* * * * *

Part I—Information Required in Prospectus

* * * * *

Item 11. Information with Respect to the Registrant.

* * * * *

(o) Information required by subpart 1500 of Regulation S–K (17 CFR 229.1500 through 229.1507), in a part of the registration statement that is separately captioned as *Climate-Related Disclosure.* A registrant may include disclosure that is responsive to the topics specified in Items 1500 through 1507 of Regulation S–K in other parts of the registration statement (*e.g.,* Risk Factors, Business, or Management's Discussion and Analysis), in which case it should consider whether cross-referencing the other disclosures in the separately captioned section would enhance the presentation of the climate-related disclosures for investors.

* * * * *

Appendix B—Form S–3

FORM S–3

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Part I—Information Required in Prospectus

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Item 12. Incorporation of Certain Information by Reference.

* * * * *

(e) If a registrant is required to disclose its Scope 1 emissions and/or its Scope 2 emissions pursuant to 17 CFR 229.1505(a), the GHG emissions metrics disclosure that would be incorporated by reference must be as of the most recently completed fiscal year that is at least 225 days prior to the date of effectiveness of the registration statement. Accordingly, if a registrant has filed its annual report on Form 10–K for the most recently completed fiscal year and, in reliance on 17 CFR 229.1505(c)(1) has not yet filed its Form 10–Q for the second fiscal quarter containing the disclosure required by 17 CFR 229.1505(a), it must incorporate by reference its GHG emissions metrics disclosure for the fiscal year that is immediately prior to its most recently completed fiscal year.

* * * * *

Appendix C—Form S–11

FORM S–11

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Part I—Information Required in Prospectus

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Item 9. Climate-related disclosure. Provide the information required by subpart 1500 of Regulation S–K (17 CFR 229.1500 through 229.1507), in a part of the registration statement that is separately captioned as *Climate-Related Disclosure.* A registrant may include disclosure that is responsive to the topics specified in Items 1500 through 1507 of Regulation S–K in other parts of the registration statement (*e.g.,* Risk Factors, Business, or Management's Discussion and Analysis), in which case it should consider whether cross-referencing the other disclosures in the separately captioned section would enhance the presentation of the climate-related disclosures for investors.

* * * * *

Appendix D—Form S–4

FORM S–4

* * * * *

General Instructions

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B. Information With Respect to the Registrant

* * * * *

3. If the registrant is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, then, in addition to the information otherwise required to be provided by this Form, the information required by subpart 1500 of Regulation S–K (17 CFR 229.1500 through 229.1507) must be provided with respect to the registrant, in a part of the registration statement that is separately captioned as *Climate-Related Disclosure.* A registrant may include disclosure that is responsive to the topics specified in Items 1500 through 1507 of Regulation S–K in other parts of the registration statement (*e.g.,* Risk Factors, Business, or Management's Discussion and Analysis), in which case it should consider whether cross-referencing the other disclosures in the separately captioned section would enhance the presentation of the climate-related disclosures for investors. A registrant may incorporate by reference the information required by Items 1500 through 1507 of Regulation S–K to the extent it is permitted to incorporate by reference the other information required by this Form and by the same means provided by this Form.

* * * * *

C. Information With Respect to the Company Being Acquired

* * * * *

3. If the company being acquired is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, then, in addition to the information otherwise required to be provided by this Form, the information required by subpart 1500 of Regulation S–K (17 CFR 229.1500 through 229.1507) must be provided with respect to the company being acquired, in a part of the registration statement that is separately captioned as *Climate-Related Disclosure.* Disclosure with respect to the company being acquired that is responsive to the topics specified in Items 1500 through 1507 of Regulation S–K may be included in other parts of the registration statement (*e.g.,* Risk Factors, Business, or Management's Discussion and Analysis), in which case it should be considered whether cross-referencing the other disclosures in the separately captioned section would enhance the presentation of the climate-related disclosures for investors. The information required by Items 1500 through 1507 of Regulation S–K may be incorporated by reference to the extent the other information required by this Form with respect to the company being required is permitted to be incorporated by reference and by the same means provided by this Form.

* * * * *

Appendix E—Form F–3

FORM F–3

* * * * *

Part I—Information Required in the Prospectus

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Item 6. Incorporation of Certain Information by Reference.

* * * * *

(g) If a registrant is required to disclose its Scope 1 emissions and/or its Scope 2 emissions pursuant to 17 CFR 229.1505(a), the GHG emissions metrics disclosure that would be incorporated by reference must be as of the most recently completed fiscal year that is at least 225 days prior to the date of effectiveness of the registration statement. Accordingly, if a registrant has filed its annual report on Form 20–F for the most recently completed fiscal year and, in reliance on 17 CFR 229.1505(c)(1), has not yet filed an amended Form 20–F containing the disclosure required by 17 CFR 229.1505(a), it must incorporate by reference its GHG emissions metrics disclosure for the fiscal year that is immediately prior to its most recently completed fiscal year.

* * * * *

Appendix F—Form F–4

FORM F–4

* * * * *

General Instructions

* * * * *

B. Information With Respect to the Registrant

* * * * *

3. If the registrant is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, then, in addition to the information otherwise required to be provided by this Form, the information required by subpart 1500 of Regulation S–K (17 CFR 229.1500 through 229.1507) must be provided with respect to the registrant, in a part of the registration statement that is separately captioned as *Climate-Related Disclosure.* A registrant may include disclosure that is responsive to the topics specified in Items 1500 through 1507 of Regulation S–K in other parts of the registration statement (*e.g.,* Risk Factors, Business, or Management's Discussion and Analysis), in which case it should consider whether cross-referencing the other disclosures in the separately captioned section would enhance the presentation of the climate-related disclosures for investors. A registrant may incorporate by reference the information required by Items 1500 through 1507 of Regulation S–K to the extent it is permitted to incorporate by reference the other information required by this Form and by the same means provided by this Form.

C. Information With Respect to the Company Being Acquired.

* * * * *

3. If the company being acquired is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, then, in addition to the information otherwise required to be provided by this Form, the information required by subpart 1500 of Regulation S–K (17 CFR 229.1500 through 229.1507) must be provided with respect to the company being acquired, in a part of the registration statement that is separately captioned as *Climate-Related Disclosure.* Disclosure that is responsive to the topics specified in Items 1500 through 1507 of Regulation S–K may be included in other parts of the registration statement (*e.g.,* Risk Factors, Business, or Management's Discussion and Analysis), in which case it should be considered whether cross-referencing the other disclosures in the separately captioned section would enhance the presentation of the climate-related disclosures for investors. The information required by Items 1500 through 1507 of Regulation S–K may be incorporated by reference to the extent the other information required by this Form with respect to the company being required is permitted to be incorporated by reference and by the same means provided by this Form.

* * * * *

Appendix G—Form 10

FORM 10

* * * * *

Item 3.A Climate-Related Disclosure.

Provide the information required by subpart 1500 of Regulation S–K (17 CFR 229.1500 through 229.1507), in a part of the registration statement that is separately captioned as *Climate-Related Disclosure.* A registrant may include disclosure that is responsive to the topics specified in Items 1500 through 1507 of Regulation S–K in other parts of the registration statement (*e.g.,* Risk Factors, Business, or Management's Discussion and Analysis), in which case it should consider whether cross-referencing the other disclosures in the separately captioned section would enhance the presentation of the climate-related disclosures for investors.

* * * * *

Appendix H—Form 20–F

FORM 20–F

* * * * *

Part I

* * * * *

Item 3. Key Information

* * * * *

E. Climate-Related Disclosure

The company must provide disclosure responsive to the topics specified in subpart 1500 of Regulation S–K (17 CFR 229.1500 through 229.1507) in a part of the registration statement or annual report that is separately captioned as *Climate-Related Disclosure.* A registrant may include disclosure that is responsive to the topics specified in Items 1500 through 1507 of Regulation S–K in other parts of the registration statement or annual report (*e.g.,* Risk Factors, Business, or Management's Discussion and Analysis), in which case it should consider whether cross-referencing the other disclosures in the separately captioned section would enhance the presentation of the climate-related disclosures for investors.

* * * * *

Instructions as to Exhibits

* * * * *

18. *Letter re GHG emissions attestation report.* A letter, where applicable, from the GHG emissions attestation provider that acknowledges awareness of the use in a registration statement of a GHG emissions attestation report that pursuant to Rule 436(i)(1) (17 CFR 230.436(i)(1)) under the Securities Act is not considered a part of a registration statement prepared or certified by a person within the meaning of sections 7 and 11 of the Securities Act. Such letter may be filed with the Form 20–F if the Form 20–F is incorporated by reference into a Securities Act registration statement.

19 through 96 [Reserved]

* * * * *

Appendix I—Form 10 Q

FORM 10–Q

* * * * *

Item 1B. Climate-Related Disclosure. A registrant that is required to disclose its Scope 1 and/or Scope 2 emissions pursuant to Item 1505 of Regulation S–K (17 CFR 229.1505) and elects to provide this disclosure in a Form 10–Q must provide this disclosure in its Form 10–Q for the second quarter in the fiscal year immediately following the fiscal year to which those GHG emissions relate.

* * * * *

Appendix J—Form 10–K

FORM 10–K

* * * * *

General Instructions

* * * * *

J. Use of This Form by Asset-Backed Issuers

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(1) * * *

(g) Item 6, Climate-Related Disclosure;

* * * * *

Part II

* * * * *

Item 6. Climate-Related Disclosure

Provide the disclosure required by subpart 1500 of Regulation S–K (17 CFR 229.1500 through 229.1507) in a part of the annual report that is separately captioned as *Climate-Related Disclosure.* A registrant may include disclosure that is responsive to the topics specified in Items 1500 through 1507 of Regulation S–K in other parts of the annual report (*e.g.,* Risk Factors, Business, or Management's Discussion and Analysis), in which case it should consider whether cross-referencing the other disclosures in the separately captioned section would enhance the presentation of the climate-related disclosures for investors.

* * * * *

[FR Doc. 2024–05137 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 89 Thursday,

No. 61 March 28, 2024

Part III

Environmental Protection Agency

40 CFR Parts 118 and 300

Clean Water Act Hazardous Substance Facility Response Plans; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 118 and 300

[EPA–HQ–OLEM–2021–0585; FRL–7881–01–OLEM]

RIN 2050–AH17

Clean Water Act Hazardous Substance Facility Response Plans

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is finalizing facility response plan requirements for worst case discharges of Clean Water Act (CWA) hazardous substances for onshore non-transportation-related facilities that could reasonably be expected to cause substantial harm to the environment by discharging a CWA hazardous substance into or on the navigable waters, adjoining shorelines, or exclusive economic zone.

DATES: This final rule is effective on May 28, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2021–0585. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rebecca Broussard, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–6706; email: *broussard.rebecca@epa.gov.*

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I. General Information

A. Does this action apply to me?

A list of entities with facilities that could be affected by requirements established under CWA section 311(j)(5) is provided in Table 1:

TABLE 1—ENTITIES POTENTIALLY AFFECTED BY THE FINAL RULE

NAICS 3	NAICS description
111	Crop Production.
112	Animal Production and Aquaculture.
115	Support Activities for Agriculture and Forestry.
211	Oil and Gas Extraction.
212	Mining (except Oil and Gas).
213	Support Activities for Mining.
221	Utilities.
236	Construction of Buildings.
237	Heavy and Civil Engineering Construction.
238	Specialty Trade Contractors.
311	Food Manufacturing.
312	Beverage and Tobacco Product Manufacturing.
313	Textile Mills.
314	Textile Product Mills.
321	Wood Product Manufacturing.
322	Paper Manufacturing.
323	Printing and Related Support Activities.
324	Petroleum and Coal Products Manufacturing.
325	Chemical Manufacturing.
326	Plastics and Rubber Products Manufacturing.
327	Nonmetallic Mineral Product Manufacturing.

TABLE 1—ENTITIES POTENTIALLY AFFECTED BY THE FINAL RULE—Continued

NAICS 3	NAICS description
331	Primary Metal Manufacturing.
332	Fabricated Metal Product Manufacturing.
333	Machinery Manufacturing.
334	Computer and Electronic Product Manufacturing.
335	Electrical Equipment, Appliance, and Component Manufacturing.
336	Transportation Equipment Manufacturing.
339	Miscellaneous Manufacturing.
423	Merchant Wholesalers, Durable Goods.
424	Merchant Wholesalers, Nondurable Goods.
441	Motor Vehicle and Parts Dealers.
444	Building Material and Garden Equipment and Supplies Dealers.
447	Gasoline Stations.
453	Miscellaneous Store Retailers.
481	Air Transportation.
486	Rail Transportation.
488	Support Activities for Transportation.
493	Warehousing and Storage.
511	Publishing Industries (except Internet).
518	Data Processing, Hosting, and Related Services.
522	Credit Intermediation and Related Activities.
531	Real Estate.
541	Professional, Scientific, and Technical Services.
561	Administrative and Support Services.
562	Waste Management and Remediation Services.
611	Educational Services.
622	Hospitals.
624	Social Assistance.
712	Museums, Historical Sites, and Similar Institutions.
713	Amusement, Gambling, and Recreation Industries.
811	Repair and Maintenance.
812	Personal and Laundry Services.
921	Executive, Legislative, and Other General Government Support.
924	Administration of Environmental Quality Programs.
926	Administration of Economic Programs.
928	National Security and International Affairs.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding affected entities likely to be regulated by this action. This table includes the types of entities that EPA is aware could potentially be regulated by this action. Other types of entities not included in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in § 118.3. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

EPA is finalizing new requirements for Facility Response Plans (FRPs) for worst case discharges of CWA hazardous substances from onshore non-transportation related facilities (hereafter, covered facilities or facility) that, because of their location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or exclusive economic zone.

C. What is the Agency's authority for taking this action?

This final rule is authorized by section 311(j)(5) and 501(a) of the CWA, (33 U.S.C. 1321(j)(5), 1361(a)).

D. What are the incremental costs and benefits of this action?

EPA estimated the total incremental costs of the final action by combining the per-covered facility estimates of compliance costs with the estimate of the affected covered facility universe. EPA estimated the annualized cost of the final rule over a 20-year analysis period, using three percent and seven percent discount rates, as presented in Table 2.

TABLE 2—TOTAL INCREMENTAL COMPLIANCE COST OF THE FINAL ACTION, ANNUALIZED

[2022$]

	Present value, 7%	Annualized cost, 7%	Present value, 3%	Annualized cost, 3%
Facility Cost	$1,120,290,646	$105,747,512	$1,641,867,861	$110,359,310
Agency Cost	70,880,205	6,690,590	101,561,496	6,826,528
Total Cost	1,191,170,851	112,438,102	1,743,429,357	117,185,838

The final action is expected to have a mitigating effect on CWA hazardous substance worst case discharges because the rule provisions address the categories of damages and adverse impacts expected from this type of discharge. The planning activities associated with developing FRPs are likely to mitigate several damage categories through pre-discharge planning and identification of potential receptors and applicable endpoints; the emergency response information provision; descriptions of discharge detection systems, hazard evaluation, and training programs; and drills and exercises. Quantifying the costs and benefits of this action is challenging due to a lack of data around the likelihood of a worst case discharge in the baseline, the universe of potentially regulated facilities, costs of program elements, historical discharges, baseline compliance behavior, and the degree to which the final action will mitigate the probability and severity of worst case discharges. Despite the numerous uncertainties associated with estimating the benefits of the final action quantitatively, information on previous worst case discharges of a similar nature suggests that the benefits of mitigating these discharges could be large relative to the final rule's estimated cost. Chapters 5 and 6 of the final rule Regulatory Impact Analysis (RIA) developed for this action provide additional details on costs and benefits, respectively. This analysis, ''Regulatory Impact Analysis: Clean Water Act Hazardous Substance Facility Response Plans,'' is available in the docket.

E. List of Abbreviations and Acronyms

ACP Area Contingency Plan
ANFO ammonium nitrate-fuel oil
APA Administrative Procedures Act
BLS United States Bureau of Labor Statistics
CAA Clean Air Act
CAS Chemical Abstracts Service
CBI Confidential Business Information
CFR Code of Federal Regulations
CERCLA Comprehensive Environmental Response, Compensation, and Liability Act of 1980
CFATS Chemical Facility Anti-Terrorism Standards
CRA Congressional Review Act
CWA Clean Water Act
DHS United States Department of Homeland Security
DOI United States Department of the Interior
E.O. Executive Order
EPA United States Environmental Protection Agency
EPCRA Emergency Planning and Community Right-to-Know Act
ERAP Emergency Response Action Plan
FBI Federal Bureau of Investigation
FR Federal Register
FRP Facility Response Plan
FRS Facility Registry Service
FWSE Fish, Wildlife, and Sensitive Environments
GIUE Government-Initiated Unannounced Exercises
HAZWOPER Hazardous Waste Operations and Emergency Response
ICP Integrated Contingency Plan
ICR Information Collection Request
IPAWS Integrated Public Alert & Warning System
LC50 Lethal Concentration 50%
LEPC Local Emergency Planning Committee
MCL Maximum Contaminant Level
MOU Memorandum of Understanding
MTR Marine Transportation-Related
NAICS North American Industry Classification System
NCEI National Centers for Environmental Information
NCP National Contingency Plan
NOAA National Oceanic and Atmospheric Administration
NPDES National Pollutant Discharge Elimination System
NPDWR National Primary Drinking Water Regulations
NPRM Notice of Proposed Rulemaking
NRC National Response Center
NSFCC National Strike Force Coordination Center
O&M Operations and Maintenance
OMB Office of Management and Budget
OPA 90 Oil Pollution Act of 1990
OSC On-Scene Coordinator
OSHA Occupational Safety and Health Administration
POTW Publicly Owned Treatment Works
PRA Paperwork Reduction Act
PREP Preparedness for Response Exercise Program
PSM Process Safety Management
PWS Public Water System
QI Qualified Individual
RA Regional Administrator
RCP Regional Contingency Plan
RCRA Resource Conservation and Recovery Act
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RMP Risk Management Plan
RQ Reportable Quantity
SDWA Safe Drinking Water Act
SDWR State Drinking Water Regulations
SERC State Emergency Response Commission
SPCC Spill Prevention Control and Countermeasure
SRO Spill Response Organization
SWPA Source Water Protection Area
TBD Technical Background Document
TEPC Tribal Emergency Planning Committee
TRI Toxics Release Inventory
TSDF Treatment, Storage, and Disposal Facility
U.S.C. United States Code
UMRA Unfunded Mandates Reform Act
USCG United States Coast Guard
USDOT United States Department of Transportation
UST Underground Storage Tank
WOTUS Waters of the United States
ZOC Zone of Concern

II. Background

A. Statutory Authority and Delegation of Authority

1. Statutory Requirements

The CWA, as amended by the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq; hereafter, ''OPA 90''), states, ''The President shall issue regulations which require an owner or operator of a tank vessel or facility . . . to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance'' (33 U.S.C. 1321(j)(5)(A)(i)). The statute defines a covered facility as ''. . . [an] onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone'' (33 U.S.C. 1321(j)(5)(C)(iv)). As described below, the Administrator has been delegated this authority under Executive Order (E.O.) 12777 (56 FR 54757, October 18, 1991). The Administrator also has authority under CWA section 501 to prescribe such regulations as are necessary to carry out provisions of the Act.

In 33 U.S.C. 1321(j)(5)(D), the CWA states that these response plans must:

(1) Be consistent with the National Contingency Plan (NCP) and Area Contingency Plans (ACP);

(2) Identify the qualified individual (QI) having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment;

(3) Identify, and ensure by contract or other means approved by the President the availability of private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;

(4) Describe the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent the discharge, or the substantial threat of a discharge;

(5) Be updated periodically; and

(6) Be resubmitted for approval of each significant change.

EPA's responsibilities pursuant to the CWA (33 U.S.C. 1321(j)(5)(E)) for this action for facilities that could

reasonably be expected to cause significant and substantial harm to the environment by discharging into or on the navigable waters are to:

(1) Promptly review plans;

(2) Require amendments when plans do not meet the statutory requirements;

(3) Approve plans; and

(4) Review each plan periodically.

Additionally, EPA may require inspection of containment booms, skimmers, vessels, and other major equipment used to remove discharges (33 U.S.C. 1321(j)(6)(A)). EPA also has the authority to conduct unannounced drills of removal capability in areas for which ACPs are required and under relevant FRPs (33 U.S.C. 1321(j)(7)).

EPA intends that the provisions of the rule be severable. In the event that any individual provision or part of the rule is invalidated, EPA intends that this would not render the entire rule invalid, and that any individual provisions that can continue to operate will be left in place. The rule contains many discrete provisions that operate independent of each other. For example, the screening criteria are designed to provide an initial, relatively bright line for identifying covered facilities that do not need to engage in any further applicability determination. That is independent of the criteria that actually determine whether a covered facility could cause substantial harm to the environment from a worst case discharge into or on the navigable waters or a conveyance to navigable waters. Thus, the rule would still satisfy the statutory requirements if the one-half mile distance screening criterion were struck down. Similarly, the four substantial harm criteria are independent of one another, and covered facility owners and operators could still conduct a substantial harm analysis to determine whether an FRP is required absent any one substantial harm criterion. Likewise, if the provisions regarding Regional Administrator (RA) determinations were struck down, the rule would still meet statutory requirements and fulfill its purpose. Furthermore, while there are many different components of an FRP, they serve different functions and are independent requirements.

2. Delegation of Authority

Under E.O. 12777 (56 FR 54757, October 18, 1991), EPA was delegated the authority to regulate non-transportation-related onshore facilities and non-transportation-related offshore facilities landward of the coastline. The U.S. Department of Transportation (USDOT) was the delegated authority for transportation-related facilities and the U.S. Coast Guard (USCG) was delegated the authority for tank vessels and marine transportation-related (MTR) facilities. Section 2(i) of E.O. 12777 allows for further delegation between the agencies as later occurred in a February 3, 1994 memorandum of understanding (MOU) between EPA, the U.S. Department of the Interior (DOI), and USDOT (59 FR 9494, February 28, 1994). DOI redelegated 33 U.S.C. 1321(j)(5) authority to regulate non-transportation-related offshore facilities landward of the coastline to EPA. This MOU applies to both oil and CWA hazardous substance facilities.

EPA has delegated authority over offshore facilities landward of the coastline as per 40 CFR part 112 Appendix B. However, this final action is limited to non-transportation-related onshore facilities as defined in the consent decree described below.

B. Litigation

On March 21, 2019, the Natural Resources Defense Council, on behalf of Clean Water Action, and the Environmental Justice Health Alliance for Chemical Policy Reform filed suit in the United States District Court for the Southern District of New York alleging violations of the CWA section 311(j)(5)(A)(i) and the Administrative Procedures Act (APA).[1] The first claim alleged that EPA failed to issue ''regulations mandated by the [CWA] requiring non-transportation-related substantial-harm facilities to plan, prevent, mitigate and respond to worst case spills of hazardous substances . . . [which] constitutes a failure to perform a non-discretionary duty or act in violation of the [CWA].'' The second claim alleged, ''EPA's failure to issue these regulations constitute[d] Agency action unlawfully withheld contrary to and in violation of the [APA] and the [CWA].'' The plaintiffs requested an order from the Court to compel EPA to promulgate CWA Hazardous Substance Worst Case Discharge Planning Regulations. Following EPA's Answer, filed on June 4, 2019, Plaintiffs and EPA entered discussions regarding a potential resolution of the lawsuit.

The plaintiffs and EPA entered into a consent decree on March 12, 2020, which resolved the claims of the suit.[2] The consent decree requires that within two years (24 months) of entry into the consent decree, *i.e.,* by March 12, 2022, EPA sign a notice of proposed rulemaking pertaining to the issuance of the CWA Hazardous Substance Worst Case Discharge Planning Regulations for non-transportation-related onshore facilities. The consent decree further requires EPA to sign a notice taking final action within an additional two and half years, or 30 months after publication of the proposal. On March 28, 2022 (87 FR 17890), EPA proposed to require planning for worst case discharges of CWA hazardous substances for onshore non-transportation-related facilities. This final action satisfies EPA's second obligation under the consent decree.

C. Proposed Rule

On March 28, 2022, EPA proposed to require planning for worst case discharges of CWA hazardous substances for onshore non-transportation-related facilities that could reasonably be expected to cause substantial harm to the environment by discharging CWA hazardous substances into or on the navigable waters, adjoining shorelines, or exclusive economic zone, with a 60-day comment period, which was later extended to 120 days. EPA proposed that FRPs must (1) be consistent with the NCP and ACPs; (2) identify the QI having full authority to implement response actions and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment, with a description of duties; (3) identify, and ensure by contract or other approved means, the availability of private personnel and equipment necessary to respond to the maximum extent practicable to a worst case discharge of CWA hazardous substances (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge; (4) describe the training, equipment testing, periodic unannounced drills, and response actions of persons at the covered facility; (5) be reviewed and updated periodically and resubmitted to the RA for approval of each significant change.

In developing CWA hazardous substance worst case discharge plan components, EPA considered existing requirements for the Oil Pollution Prevention FRP regulation under 40 CFR 112.20 given that these requirements have been in place since 1994 and were promulgated under the same statutory authority as the proposal. Notwithstanding the differences between CWA hazardous substances and oil, EPA understands that, where possible, there is value to having a high

[1] Complaint for Declaratory and Injunctive Relief, Environmental Justice Health Alliance for Chemical Policy Reform v. EPA, No. 1–19–cv–02516 (S.D.N.Y., filed March 21, 2019).

[2] Envtl. Justice Health All. for Chem. Reform v. U.S. EPA, Case1:19–cv–02516–VM, Document 32 (S.D.N.Y., filed March 12, 2020).

level of consistency between similar regulatory programs. Even if this rule applies to a different set of regulated entities, there will be synergy among local responders, States, and others, such as spill response organizations (SROs) and consultants, that have experience with worst case discharge planning. Invariably, the experience of implementing and complying with the Oil Pollution Prevention FRP regulation will make this rule easier to comply with, understand, and implement. Additionally, EPA examined elements under the Risk Management Plan (RMP) regulation under 40 CFR part 68, which implements section 112(r)(7) of the Clean Air Act (CAA) and requires facilities that use regulated substances to develop an RMP. Specific CWA hazardous substance FRP components in the proposed rule included: facility information, owner or operator information, hazard evaluation, reportable discharge history, response personnel and equipment, evidence of contracts or other approved means to ensure the availability of personnel and equipment, notification lists, discharge information, personnel roles and responsibilities, response equipment information, evacuation plans, discharge detection systems, response actions, disposal plans, containment measures, training and exercise procedures, self-inspection, and coordination activities.

Eight commenters requested a 60-day extension to submit comments. In response, EPA extended the original comment period an additional 60 days, to July 26, 2022. EPA received a total of 220 unique comments: 59 organization comments from 53 unique organizations, 158 private citizens, and 3 mass mailer campaigns representing a total of 29,860 signatories.

III. This Action

After issuing its proposal, EPA received comments on numerous issues relating to:

1. General comments;
2. Costs and benefits of various regulatory provisions;
3. Background analyses; and
4. Proposed provisions.

EPA has structured this document to address these issues and discuss each proposal element, related significant comments, and how any changes EPA considered are reflected in the final rule.

A. General Comments

As discussed above in Section II.A.1 of this preamble, Congress directed EPA to issue regulations to address worst case discharges for both oil and CWA hazardous substances, providing clear and unambiguous authority for this action. While some commenters asserted that the Agency has the authority to decide not to proceed with the rulemaking and questioned the data analysis supporting this action, including the breadth of the potentially regulated community, EPA has judged the underlying data as sufficient to warrant a regulatory program as detailed in the RIA, available in the docket. While worst case discharges historically may be rare, that in and of itself is not a rationale for not planning for a worst case discharge. This is especially true given trends in natural disasters in the US, with more than $1 trillion in damage from 2016–2022,[3] illustrating that planning for severe weather events is critical as they become more common and intense and reflecting the long term challenges posed by climate change.[4] Additionally, the requirements follow the statutory directives set forth in 33 U.S.C. 1321(j)(5)(D). Indeed, OPA 90 is clear in directing the President to promulgate regulations for worst case discharges of CWA hazardous substances, regardless of the number of facilities that may be ultimately regulated. EPA is following the same approach as the Oil Pollution Prevention FRP regulation, which was promulgated under the same statutory authority, and as such disagrees with commenters who argued that the proposal represents administrative overreach. Worst case discharge planning provisions will appropriately place response planning responsibilities on covered facility owners and operators, as is clearly the Congressional intent, as per the OPA 90 Conference Report, while enumerating EPA's role in oversight and enforcement.

EPA notes that in March 2000, USCG published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled ''Marine Transportation-Related Facility Response Plans for Hazardous Substances'' (65 FR 17416, March 31, 2000) under the same CWA authority as this final rule. USCG then withdrew that rulemaking in February 2019 (84 FR 2799). Given that nearly 20 years elapsed between the proposal and withdrawal, it is unsurprising that USCG found the proposed rule was no longer appropriate to the current state of spill response in the chemical industry. USCG also noted that their NPRM may overlap with existing local and State regulatory schemes as well as current industry practice. EPA has reviewed USCG's actions, reports, and findings. EPA did not find sufficient overlap for onshore non-transportation-related facilities to justify not promulgating this regulation as per Chapter 2 of the Technical Background Document (TBD), available in the docket. Finally, to commenters who pointed to the no action final rule under CWA 311(j)(1)(C) (84 FR 46100, October 3, 2019), that rulemaking is outside the scope of this final rule and the Agency conclusion there has no bearing here.

EPA disagrees with commenters who asserted they were not adequately notified as per the APA. The proposal was clear and the comment period was ample. Indeed, the Agency extended the comment period to 120 days from 60 days to accommodate commenters who requested additional time (87 FR 29728, May 16, 2022).

Several commenters noted that the rule does not fully define ''waters of the United States'' (WOTUS) and that this causes the term ''navigable waters'' to be ''very ambiguous.'' The commenters highlighted a related and, at the time, pending Supreme Court decision and EPA rulemaking that would ultimately clarify these concerns. These commenters stressed the importance of holding off from any final rulemaking until the court decision is issued or navigable waters is more clearly defined while additional commenters recommended EPA release a supplementary proposed rule once 'WOTUS' and 'navigable waters' are clearly defined.

EPA disagrees with the comment. Following the Supreme Court's May 25, 2023, decision in *Sackett* v. *Environmental Protection Agency,* 143 S. Ct. 1322 (2023), the EPA and Department of the Army developed a rule to amend the final ''Revised Definition of 'Waters of the United States''' rule consistent with *Sackett* (88 FR 61964, Sept. 8, 2023).

EPA has determined that the rule should cite to the definition in 40 CFR 120.2 to determine whether a particular water is a water of the United States, as opposed to establishing a separate definition. The revised definition provides clarity and citing to this definition will ensure consistency with the Supreme Court's decision in *Sackett,* as well as ensuring greater understanding and consistency

[3] National Oceanic and Atmospheric Administration (NOAA) National Centers for Environmental Information (NCEI). (2023). U.S. Billion-Dollar Weather and Climate Disasters. *https://www.ncei.noaa.gov/access/billions/,* DOI: 10.25921/stkw–7w73.

[4] U.S. Global Change Research Program (USGCRP). (2017). Climate Science Special Report: Fourth National Climate Assessment, Volume I, Chapter 7: Precipitation Change in the United States. *https://science2017.globalchange.gov/chapter/7/.*

nationwide. Because this definition is also used by other regulatory programs, it provides the greatest amount of information and experience regarding its applicability. The Agency disagrees with commenters who asserted that this definition is prohibitively technical or costly; and notes that the September 2023 definition, issued following *Sackett,* covers fewer waters than the rule that was in place at the time comments were received. In sum, it is the Agency's position that the regulated community has sufficient information to determine whether they are more than one-half mile from navigable waters or a conveyance to navigable waters such that they are not subject to the rule. Doing so, as some commenters suggest, could inadvertently inject unintended ambiguities or questions about applicability, causing more uncertainty, not less.

Finally, EPA acknowledges concerns raised about the impact of litigation and court rulings on post-2015 definitions of ''waters of the United States,'' and a resulting patchwork of definitions across the country. Needless to say, this is a different rule and while EPA recognizes that due to ongoing litigation there is variation among jurisdictions as to which definition of ''waters of the United States'' governs, *e.g.,* using the pre-2015 definition in the SPCC context, presumably at some point the litigation will be resolved resulting in national consistency and, in any event, introducing another variation would do nothing to advance national consistency. To the contrary, codifying yet another definition would introduce more complexity within every jurisdiction by requiring regulated entities that need to comply with different CWA regulations to navigate two different definitions within that jurisdiction. Thus, even if currently there is variation with respect to which definition (pre- or post-2015) applies in different jurisdictions, there is merit to having the definition be consistent for regulated parties within their jurisdiction for purposes of the CWA (see Operative Definition of Waters of the United States chart at: *https://www.epa.gov/wotus/definition-waters-united-states-rule-status-and-litigation-update*).

B. Costs and Benefits of Various Regulatory Provisions

EPA estimated the total costs of the final action by combining the per-covered facility estimates with the estimate of the affected facility universe. To provide information about the scale of costs that covered facilities will incur, EPA compiled estimates of unit compliance costs for each of the program elements in the final action. EPA developed unit burden estimates for individual elements of the response plan on a first- and subsequent-year basis. EPA also estimated the extent of baseline compliance for facilities subject to the rule due to the overlap in facilities and program elements in the existing Oil Pollution Prevention FRP, RMP, and Resource Conservation and Recovery Act (RCRA) regulatory requirements, as these three regulations have the most significant crossover. EPA estimated an average compliance cost per covered facility after accounting for baseline compliance with existing regulations by multiplying labor rates and unit burdens.

EPA has prepared and posted in the docket an RIA of the potential costs and benefits associated with this action. As presented in Chapter 5 of that analysis, EPA estimated the final rule will result in total annualized costs of 112.4 to 117.2 million per year, at 7 percent and 3 percent discount rates, respectively. This cost includes 92.0–93.5 million for existing covered facilities to comply, 13.7–16.9 million for projected new covered facilities to comply in the future, and 6.7–6.8 million for the Agency to administer the regulations. Table 3 and Table 4 present the estimated costs of the final rule by FRP program component for covered facilities and the Agency, respectively. See Chapter 6 of the final rule RIA for additional details regarding benefits of the final action.

TABLE 3—TOTAL COST OF THE FINAL ACTION, FACILITIES, ANNUALIZED (2022)

Response plan requirements	Present value, 7%	Annualized cost, 7%	Present value, 3%	Annualized cost, 3%
Facilities completing the substantial harm certification only				
Rule Familiarization	$2,840,473	$268,121	$2,950,783	$198,339
Substantial Harm Certification Form	51,660,843	4,876,418	57,916,345	3,892,888
Subtotal, Substantial Harm Certification Form only facilities	54,501,316	5,144,539	60,867,128	4,091,227
Facilities developing FRPs				
Rule Familiarization	2,120,519	200,162	2,202,869	148,067
Substantial Harm Determination	38,419,664	3,626,544	43,071,820	2,895,103
Facility and Owner Information	1,234,121	116,492	1,383,558	92,997
Emergency Response	501,508,344	47,338,840	730,536,570	49,103,533
Hazard Evaluation	16,929,190	1,597,996	18,979,110	1,275,694
Discharge Detection	1,456,263	137,461	1,632,598	109,736
Response Actions, Disposal, and Containment	7,407,466	699,212	8,304,421	558,188
Drills & Exercises	253,557,291	23,934,015	376,924,100	25,335,220
LEPC/TEPC Coordination	46,538,057	4,392,863	69,523,895	4,673,098
Training	3,597,780	339,605	4,670,568	313,936
FRP Amendments	38,554,948	3,639,314	59,705,771	4,013,166
ERAP	9,234,533	871,675	13,347,586	897,167
Subtotal, FRP facilities	920,558,174	86,894,179	1,330,282,867	89,415,904
Subtotal, Existing Facilities	975,059,491	92,038,718	1,391,149,995	93,507,131
Subtotal, Projected New Facilities	145,231,155	13,708,794	250,717,866	16,852,179

TABLE 3—TOTAL COST OF THE FINAL ACTION, FACILITIES, ANNUALIZED (2022)—Continued

Response plan requirements	Present value, 7%	Annualized cost, 7%	Present value, 3%	Annualized cost, 3%
Grand Total, Facilities	1,120,290,646	105,747,512	1,641,867,861	110,359,310

TABLE 4—TOTAL COST OF THE FINAL ACTION, THE AGENCY, ANNUALIZED (2022)

Agency cost	Annualized cost, 7%	Annualized cost, 3%
Review Existing Facility Plans	$1,359,732	$1,126,250
Review New Facility Plans	345,366	389,990
Government-Initiated Unannounced Exercises (GIUEs) and Inspections	3,846,625	4,141,097
FRP Amendments	289,529	311,693
IT/Data Management and Integration	849,339	857,498
Total	6,690,590	6,826,528

The benefits of the final action are assessed qualitatively and include a wide diversity of potential benefit mechanisms, such as reductions in impacts to public water systems (PWS) and waterways used for recreational and commercial purposes; impacts to the ecosystem and environment; impacts to human health; and other socioeconomic impacts driven by business disruption, evacuations, and other elements of emergency response. These benefits include prevention of economic loss in value of homes near discharges [5] and the economic losses to communities affected by a discharge. See Chapter 6 of the final rule RIA for additional details regarding benefits of the final action.

The Agency disagrees with commenters who assert that EPA has underestimated costs. EPA recognizes commenters' concern that covered facility owners or operators will need to spend some resources to determine whether they meet the initial screening criteria, and for those that do, potentially significantly more resources and time determining whether they meet any of the substantial harm criteria, preparing an FRP including in-depth hazard evaluations, and potentially revising the FRP. The Agency has accounted for these costs, as well as all other aspects of the regulatory program in Chapter 5 of the final RIA.

The Agency proposed that if the maximum capacity onsite exceeds 10,000x the reportable quantity (RQ), a covered facility meets the threshold quantity screening criterion. While EPA proposed a 10,000x RQ multiplier, the Agency has determined that a 1,000x RQ multiplier will more appropriately screen for covered facilities that could cause substantial harm to the environment from a worst case discharge of a CWA hazardous substance, to fully address the range of potential releases that merit worst case discharge planning and response. This results in substantially more covered facilities having to determine whether they are subject to the planning requirements of the rule, *i.e.,* meet the initial screening criteria in the first instance, and analyzing the substantial harm criteria. The Agency also revised the economic analysis for the final rule, estimating annualized costs for regulated facilities of approximately 117 million per year, as documented in section 5.5 the final RIA.

EPA estimated the total costs of the final action by combining per-facility estimates with the estimate of the affected facility universe. To provide information about the scale of costs that covered facilities would incur, EPA compiled estimates of unit compliance costs for each of the program elements in the final action. EPA developed unit burden estimates for individual elements of the response plan on a first- and subsequent-year basis. EPA calculated the annualized total cost to regulated facilities of the final action over a 20-year analysis period, using the three percent and seven percent discount rates.

The Agency also notes that the majority of labor burden for regulated facility staff are estimated using labor rates of $93.50 and $70.84, based on U.S. Bureau of Labor Statistics (BLS) wage data. The Agency also recognizes the role of consultants in facility planning efforts. This cost is accounted for as an annually recurring cost of $18,471 per facility for contractor support.

C. Background Analyses

1. CWA Hazardous Substance Discharge History And Impacts Analysis

EPA maintains that it has sufficient data to support the need for this final rule. As detailed in the final rule RIA, EPA analyzed National Response Center (NRC) data on CWA hazardous substances discharges to water. 40 CFR 117.21 requires immediate notification to the NRC once the person in charge of a vessel or an offshore or onshore facility has knowledge of a discharge of a CWA hazardous substance from the facility in quantities equal to or exceeding its assigned RQ in any 24-hour period. NRC data are generated by notifications received immediately following a discharge and often lack complete information on chemicals and quantities discharged, incident and response details, impacts, and locations. While EPA's analysis of NRC data shows a decline in the average number of CWA hazardous substance discharges from 2010 to 2019, past discharge history is not a guarantee of future outcomes, nor does the number of discharges definitively indicate the level of impact of those discharges. Thus, it's possible that a smaller number of higher consequence discharges could cause more adverse impacts due to the circumstances of the incident. Moreover, NRC data are a starting point for further analysis to inform CWA hazardous substance worst case discharge occurrences. Based on past experiences of oil and chemical spills, EPA has observed data gaps with NRC reports, but continues to improve oil and CWA hazardous substance spill data as incidents progress through regional and EPA Emergency Operation Center reporting. Furthermore, NRC

[5] Burton, K., Maas, A., and Lee, K. (2022). A Case Study in Contamination: Persistent Home Value Losses Associated with the Elk River Spill. *https://jareonline.org/articles/a-case-study-in-contamination-persistent-home-value-losses-associated-with-the-elk-river-spill/*).

data is the most complete dataset available, and it does show that CWA hazardous substance discharges to water continue to occur. Accordingly, EPA has determined that worst case discharge planning regulations for CWA hazardous substances are critical to protect the environment, keep our waterways safe and clean, and protect human health.

While 10 CWA hazardous substances account for most of the CWA hazardous substance discharges reported to the NRC, as detailed in section 3.1 of the RIA, these data often lack the names and quantities of chemicals discharged, and do not reflect future probabilities of release. Also, the frequency of reported releases does not reflect the impacts that could occur with a worst case discharge. While some commenters suggested narrowing the number of CWA hazardous substances covered by the rule, changing the list of CWA hazardous substances in 40 CFR part 116 is outside the scope of this action.

Moreover, EPA has no reliable information to support the commenter claim that the industry is already devoting the necessary resources and capabilities to prevent and respond to discharges that may reach navigable waters or a conveyance to navigable waters. And even if there is any merit to the commenter's assertion, that would generally serve to change the baseline, mitigating the impact of this rule, and not a reason to have no rule or even the playing field between those that are responsibly planning for such events and those that are not. In any case, EPA intends to work collaboratively with industry to ensure robust response plans for CWA hazardous substance worst case discharges into or on navigable waters or a conveyance to navigable waters that could cause substantial harm to the environment. Additionally, while this final regulation does not address the causes of worst case discharges, it does require comprehensive response planning regardless of how a CWA hazardous substance discharge occurs. By focusing on covered facilities within one half mile to navigable waters or a conveyance to navigable waters and above the threshold quantity that also meet one or more proposed substantial harm criteria, the final regulation will appropriately ensure robust planning for covered facilities that pose the highest risk of causing substantial harm to the environment.

2. Analysis of Existing Programs/ Technical Background Document

In sum, EPA's analysis found few Federal programs that comprehensively cover all the CWA section 311(j)(5)(D) requirements for all CWA hazardous substances. While CWA hazardous substance covered facilities subject to the Oil Pollution Prevention Program FRP requirements or RMP regulations, among others, have some overlap for the required program elements, those programs do not cover all requirements in CWA section 311(j)(5)(D) for CWA hazardous substances. EPA also recognizes commenter feedback that industry guidance and voluntary programs are valuable resources for ensuring safe, protective practices. However, those practices are not enforceable nor required and do not fulfill the statutory requirements of this action. In addition, EPA acknowledges State programs may be comprehensive for CWA hazardous substance worst case discharge planning. The Agency agrees with commenters who stated that duplicative requirements should be avoided and refers the commenters to Chapter 2 of the TBD for more information and analysis. As such, a regulated facility owner or operator may augment an existing plan with the requirements of this rule or use an Integrated Contingency Plan (ICP) approach, such as One Plan, which will reduce the administrative burden. However, an owner or operator may not assume they are compliant with this regulation due to their compliance under other programs (*e.g.,* the Oil Pollution Prevention FRP regulation, RMP regulation). See the Response to Comments document for specific responses to each program, in the docket for this action. Please see section III.D.7 of this Preamble for a discussion of exemptions.

D. Rule Provisions

1. Definitions

Some commenters requested that EPA revise its definitions of key terms. EPA has considered these comments carefully as is committed to providing clarity throughout this action.

i. Adverse Weather

EPA considered comments advocating that the definition of ''adverse weather'' should be revised. To the extent that commenters are concerned with ''ambiguity,'' it seems largely because they are interested in narrowing the definition to a limited number of clearly delineated events. However, the definition is intentionally broad and meant to capture the wide range of potential weather changes and conditions due to the nation's varying regional weather patterns. Prescribing specific types of events or adverse weather conditions is unrealistic and does not represent the myriad challenges facing our nation due to climate change. EPA also disagrees with commenters who asserted that the breadth of this definition will cause uneven implementation of the final rule; rather, it will allow covered facility owners or operators and local emergency planners to consider the full range of potential adverse weather events, taking into consideration varying local and regional weather patterns (current and future), that could impact the covered facility and affect worst case discharge response planning as well as changing conditions and emerging threats such as the widening impact of extreme heat. For example, while specific events, such as ''20-year storm conditions'' may be useful as one type of climatological condition to consider in one region, EPA agrees that it is equally important to consider effects of, for example, increased drought or lack of rain activity in other regions and the effects on a potential worst case discharges of CWA hazardous substances. As such, EPA has added language describing some types of climate change impacts that may need to be considered when accounting for adverse weather conditions during a worst case discharge of CWA hazardous substances into or on the navigable waters or a conveyance to navigable water, such as the increased frequency and intensity of adverse weather, temperature fluctuations, rising seas, storm surges, inland and coastal flooding, drought, wildfires, and permafrost melt in northern areas.

EPA chose to define ''adverse weather'' in this final rule differently from the Oil Pollution Prevention regulation definition of adverse weather found in 40 CFR 112.2 due to the variance in physicochemical properties among oil and the 296 CWA hazardous substances as well as how different types of adverse weather may impact the analysis of appropriate response actions for those myriad CWA hazardous substances. This is another reason why a broad definition of ''adverse weather'' is appropriate for this rule.

EPA recognizes that, given the increased probability of extreme weather events, historic incidents are becoming less of a predictor of future effects. Compliance assistance will be available to aid owners or operators in determining the appropriate types and severity of weather events, sea level rise, drought, flooding, heat, wildfire, and subsidence risk, etc., to consider for their worst case discharge in adverse

weather, as well as references and data sources.

ii. Container

While several commenters noted that the definition of ''container'' is not consistent with the Oil Pollution Prevention regulation in 40 CFR 112.2 and that there is no corresponding definition in this action for ''bulk storage container.'' The primary reason for this is because the two regulations do not cover the same substances. Additionally, while the Oil Pollution Prevention regulation has determined that a 55-gallon *de minimis* container size is appropriate, as noted by commenters, this is not the case for CWA hazardous substances. To the contrary, certain CWA hazardous substances have been determined that they ''may be harmful'' at quantities as low as one pound. Accordingly, a 55-gallon container size would be an inappropriate *de minimis* amount for all substances because smaller containers may contain hazardous levels of substances that could cause substantial harm in the event of a worst case discharge, especially when aggregated. Additionally, CWA hazardous substances are stored in a wide variety of containers, and CWA hazardous substances are typically measured and regulated [6] by mass (*e.g.,* pounds), not volume (gallons), underscoring why a 55-gallon *de minimis* container standard would be unsuitable. Because of the variation of the chemical properties, including toxicity, of CWA hazardous substances, EPA has no basis for setting a *de minimis* container size at 55-gallons or any other level, including the RQ level, as suggested by some commenters. Furthermore, the OPA Conference Report states that ''. . . the selection criteria should not necessarily omit those smaller facilities that are near major water supplies or that are near environmentally sensitive areas.'' (H.R. Rep. No. 101–653, 10lst Cong., 2d Sess., p.151.). Threshold determinations must consider all CWA hazardous substance present at the covered facility in the aggregate, but without consideration to container size or capacity because the maximum quantity onsite may contribute to the potential harm posed by a covered facility. Finally, two commenters asked for additional examples of containers. Accordingly, EPA notes that containers may consist of a rail car or other mobile storage not under active shipping papers, process vessel, canister, drum, bulk storage tank, dumpster, tote, or bulk cargo container positioned on land, among other things. For the reasons enumerated above, EPA is finalizing the definition of container as proposed.

iii. Conveyance to Navigable Waters

EPA considered whether to include a rule-specific definition for ''conveyance to a navigable waterway.'' EPA is aware that the CWA definition of ''point source'' at 33 U.S. Code § 1362(14) uses the term conveyance and includes some examples. However, EPA determined that cross-referencing that description of conveyance, with its specific exclusions, would not be appropriate for this rule. In this rule, conveyances are a critical consideration in a facility's worst case discharge scenarios because a straight-line analysis may overlook an opportunity to travel via pipe or open channel that could more easily enter navigable waters. Indeed, the concern is not particular types of structures or pathways (and categorizing them) but that a conveyance to navigable waters can result in a more immediate discharge to navigable waters. Moreover, while there are some broad categorical generalizations that can be made about what constitutes a conveyance to navigable waters, there are factual elements that necessarily make the determination a case-by-case determination (even if most of the time it will be straightforward, if not obvious), *i.e.,* where identifying particular types of conveyances will not suffice or capture the variations that exist in the real world.

In any case, in terms of a definition, conveyance is meant to have its normal English language definition and usage. That said, consistent with having the elements of the initial screen be relatively straightforward, EPA is clarifying that it considers a conveyance to navigable waters in the context of this rule to be a means of transport that provides a direct pathway to navigable waters. In the majority of cases, a means of transport will be discernible, confined, and discrete, and thus will present a straightforward factual scenario. Some examples are a storm drain, pipe, or channel that discharge directly into navigable waters.

A few commenters had categorical questions about types of structures or features such as a dry gulch, a wellhead, subsurface water or even groundwater. While EPA could make some generalization that it does or does not expect that any of these examples would serve as a means of transport, the reality is there will inevitably be situations where it will depend on the specific facts to determine whether a given structure or feature (no matter what it is called) serves as a means of transport to navigable waters. Finally, given the purpose of the rule, EPA disagrees that the inclusion of a means of transport that could result in a more immediate discharge to navigable waters in the initial screen (and in some cases may require some analysis), makes the reach or scope of the rule ''unbounded.''

iv. Distance to Endpoint

EPA is adjusting the definition of distance to endpoint for clarity and to reflect that the distance represents the greatest distance a CWA hazardous substance can travel in a worst case discharge to navigable waters or a conveyance into or on the navigable waters while still being able to cause injury to fish, wildlife, or sensitive environments (FWSE) or public receptors, or adversely impact a PWS.

v. Endpoint

Accordingly with the definition of distance to endpoint above, EPA is adjusting the definition of endpoint to clarify that it represents the concentration at which a worst case discharge of a CWA hazardous substance into or on the navigable waters has the ability to cause injury to FWSE or public receptors, or adversely impact a PWS.

vi. Facility

Some commenters asserted that the definition of ''facility'' is unclear while others were concerned about the possibility of gamesmanship in drawing facility boundaries. EPA is adjusting the definition to reflect the Preamble to the proposed rule, that stated that an owner or operator may not make determinations as to what constitutes a covered facility indiscriminately and in such a manner as to simply avoid applicability of the final rule (for example, the division of one facility into separate facilities with one CWA hazardous substance container located at each facility where all containers are located side-by-side or in close proximity to each other and are used for the same purpose). EPA maintains that the flexibility afforded to owners or operators in determining what constitutes a covered facility allows those most knowledgeable about its operations to decide whether it should be aggregated or divided, which may vary widely due to the range of CWA hazardous substance operations and types of facilities. Furthermore, EPA notes that it is adopted from the Oil Pollution Prevention regulation at 40 CFR 112.2, is appropriately broad, and captures the types of facilities intended

[6] EPCRA Reporting Rule (40 CFR part 370), RMP regulation (40 CFR part 68), DHS CFATS (6 CFR part 27), OSHA's PSM (29 CFR 1910.119).

to be regulated by EPA under CWA hazardous substance worst case discharge regulations. Please see the Response to Comments document in the docket for further discussion.

EPA has adjusted the definition to separate out non-transportation-related onshore facilities for clarity and ease of navigation in the document.

vii. Injury

Because of the need to maintain consistency with the NCP, the Agency has determined it is appropriate to use the definition of ''injury'' established by the Natural Resource Trustees for this rule. Federal officials authorized by the President and the authorized representatives of Indian Tribes and State and foreign governments act as public trustees to recover damages to natural resources under their trusteeship. Under the NCP, each trustee has responsibilities for protection of resources; mitigation and assessment of damage; and restoration, rehabilitation, replacement, or acquisition of resources equivalent to those affected (40 CFR 300.615). EPA maintains that the definition of ''injury'' is appropriate to assess substantial harm based on the extensive experience of the Natural Resource Trustees in conducting evaluations of CWA hazardous substance impacts on natural resources. The definition of ''injury'' in 40 CFR 112.2 of the Oil Pollution Prevention regulation was adapted from the definition of ''injury'' in the DOI Natural Resources Damage Assessments (NRDA) final rule at 43 CFR part 11 and includes only the part of the definition that addresses oil discharges, which EPA is now adapting for this regulation to provide regulatory consistency.

In response to the commenters who stated that the definition of ''injury'' could apply to ''insubstantial effects'' rather than ''substantial harm,'' EPA notes that the definition of ''injury'' is intended to assist in the identification of covered facilities that could cause substantial harm. The potential for a spill to cause an injury to FWSE or public receptors is coupled with the screening criteria to determine if a covered facility could cause substantial harm to the environment. In that context, causing injury indicates the potential for a worst case discharge to cause substantial harm to the environment. EPA concludes that the injury relies on changes that have been demonstrated to adversely impact the resources in question, or services provided by those resources.

While ''injury'' to a public receptor as a concept may be new to the regulatory community, EPA holds that it is an important consideration due to the variability of CWA hazardous substances, how they act in water, their effects on human health and the environment, and their impact on the potentially exposed public. EPA agrees with the commenter who asserted that just being a measurable effect does not mean that the effect is ''substantial;'' however, the endpoints in Appendix B are not limited to just measurable effects. Indeed, the endpoints are both measurable and indicate a covered facility could cause substantial harm to the environment due a worst case discharge into or on the navigable waters or a conveyance to navigable waters.

viii. Maximum Quantity Onsite

EPA has revised the definition of ''maximum capacity onsite'' to ''maximum quantity onsite.'' This is based on the decision to use a threshold quantity based on quantity, not capacity, discussed below in section III.D.2.ii. Please note, a covered facility owner or operator must plan proactively for future anticipated product onsite and FRP threshold quantities are based on the maximum quantity onsite at any time for each CWA hazardous substance. For example, a covered facility with both chlorine and benzene onsite must consider when those CWA hazardous substances will be at their maximum quantity onsite both as to whether they meet the threshold quantity and for planning purposes. If the owner or operator is developing a plan in January and does not want to amend their plan in the coming months, the maximum quantity onsite for chlorine may occur in March and the maximum quantity onsite of benzene may occur in September. For the FRP to be valid without amendments, it must plan for the maximum quantities onsite for each CWA hazardous substance at any time, so both maximum quantities onsite, regardless as to whether the times overlap.

ix. Permanently Closed

EPA is removing the definition of ''permanently closed'' because a CWA hazardous substance maximum quantity onsite, threshold quantity, and worst case discharge scenario quantities in the final rule are based on using quantity, not capacity, discussed below in section III.D.2.ii.

x. Publicly Owned Treatment Works

EPA is adding a definition for publicly owned treatment works (POTW), referring to the existing definition in 40 CFR 403.3, but including federally owned treatment works for the purposes of this final rule.

xi. Public Receptor

Some commenters suggested that the definition of ''public receptor'' is too broad. However, EPA's definition of ''public receptor'' is intentionally so in order to cover a wide variety of areas through which the public has access to navigable waters and could be affected by a worst case discharge. EPA did not include first responders in the definition of public receptor, as one commenter suggested, because first responders are covered in a facility and community's health and safety plan and emergency planning.

While this definition is not part of the Oil Pollution Prevention regulation in 40 CFR part 112, CWA hazardous substances differ from oil in important and varied ways and require different considerations. For instance, certain CWA hazardous substances may have no realistic means of recovery once the substance enters a waterbody, meaning that receptors must be prepared for and swiftly notified of the diluted substance as it travels downstream. As with other aspects of this rule, EPA intends to provide compliance assistance to covered facility owners or operators on types of areas they should consider when determining their ability to cause injury to public receptors.

xii. Public Vessel

EPA did not receive any comments on the definition of public vessel and has adjusted the definition to refer to the definition in section 311(a)(4) of the CWA. This will provide regulatory consistency with other CWA programs and reflect the statutory authority of this action rather than creating a new definition just for use in this regulation.

xiii. Vessel

EPA did not receive any comments on the definition of vessel has adjusted the definition to refer to the sections 311(a)(4) of the CWA and 101(28) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This will provide regulatory consistency with other CWA and CERCLA programs and reflect the statutory authority of this action, rather than creating a new definition just for use in this regulation.

xiv. Water Distribution System

EPA has revised the definition for accuracy and to align with its use in other EPA programs in order to more

accurately reflect drinking water system characteristics.[7]

xv. Wellhead Protection Area

EPA is adding a definition for wellhead protection area for consistency with the Oil Pollution Prevention FRP regulation and to aid responders in identifying risks in the event of a worst case discharge to protect drinking water sources.

xvi. Worst Case Discharge

Some commenters suggested EPA change its definition of worst case discharge; however, EPA concludes that the current definition is designed to capture the worst case discharge and consistent with the statutory authority of this action. It is worth noting, however, that discharges in compliance with NPDES (40 CFR part 122) are not covered by this regulation. To commenters concerned with impacts due to climate change, a largest foreseeable discharge must already be evaluated in adverse weather conditions, including those due to climate change, which may include challenging climatic conditions such the increased frequency and intensity of extreme weather events, temperature fluctuations, rising seas, storm surges, inland and coastal flooding, drought, wildfires, and permafrost melt in northern areas. In addition, EPA refers commenters to 40 CFR 118.10 and section III.D.9 of this preamble for more specific language and discussion on worst case discharge calculations.

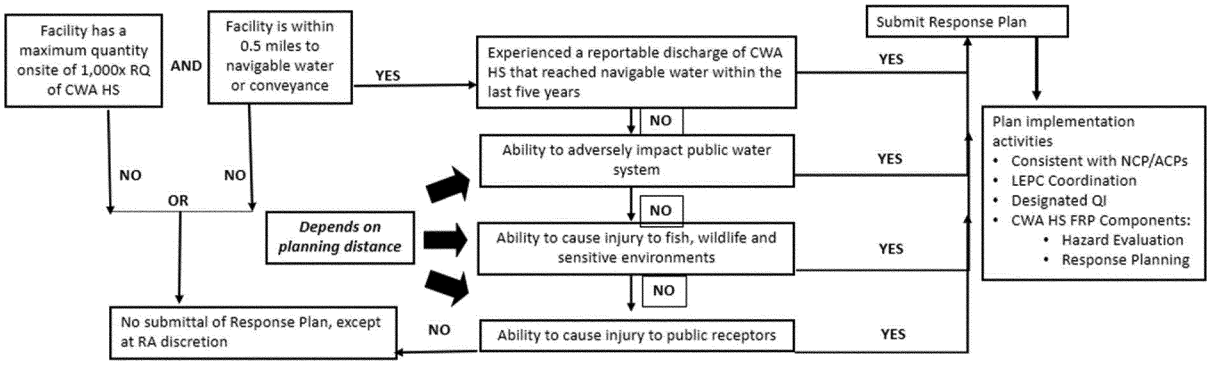
xvii. Other Definitions

EPA did not receive major substantive comments on the remaining definitions in § 118.2 and is finalizing them as proposed, with some separated out for clarity.

2. Applicability

In 40 CFR 118.3, EPA set forth a two-step applicability process, whereby a covered facility owner or operator assesses two screening criteria, and, if both criteria are met, the owner or operator then, and only then, assesses the ability to cause substantial harm to the environment through four substantial harm criteria (all described in detail below). To ensure that EPA tied the proposed applicability provisions to the statutory requirements, the Agency proposed four substantial harm criteria to target covered facilities that could cause substantial harm to the environment by discharging into or on navigable waters or a conveyance to navigable waters. Additionally, EPA proposed location-based criteria (using both distance from navigable waters or conveyance and planning distance calculations) to ensure covered facilities are regulated based on their location, as required by statute. In combination with the screening criteria, EPA determined that the substantial harm criteria reflect real world scenarios whereby a worst case discharge could cause substantial harm to the environment. Some commenters raised concerns about the level of responsibility on owners or operators to determine if they are subject to the rule. While EPA staff will be available to work with facilities and provide compliance assistance, consistent with Congressional intent, the responsibility for safeguarding their materials and for planning for a worst case discharge of CWA hazardous substances into or on the navigable waters or a conveyance to navigable waters rests first and foremost with the covered facility owner or operator (H.R. Rep. No. 101–653, 101st Cong., 2d Sess. 1990).

Figure 1—Final Applicability Criteria for CWA Hazardous Substance FRP-Subject Facilities



i. Example of the Applicability Determination Process

Below is a detailed discussion of the applicability determination process in 40 CFR 118.3. The first step is to complete the screening criteria, which are to be assessed concurrently; there is no implied order of which screening criterion to assess initially, and a covered facility owner or operator may choose to examine either their distance to navigable waters or a conveyance to navigable waters or threshold quantity first, whichever is preferable to their circumstances. In this example, the owner or operator chooses to determine if their maximum quantity/quantities onsite of CWA hazardous substance(s) meets or exceeds the threshold quantity first. The aggregate maximum quantity onsite at any time of benzene (a listed hazardous substance as found in 40 CFR 116.4) is 15,000 pounds. Since benzene has an RQ of 10 and the RQ multiplier is 1,000, the threshold quantity for benzene is 10,000 pounds. Because the covered facility's maximum quantity onsite exceeds the threshold quantity for benzene, it meets this screening criterion. If there are mixtures containing CWA hazardous substances onsite, the owner or operator must follow the requirements regarding mixtures, as detailed in section III.D.8 of this preamble. The covered facility owner or operator then determines whether it has a maximum quantity onsite at any time that meets or exceeds the threshold quantity for each other CWA hazardous substance onsite and in mixtures following the same procedure. Alternatively, if a covered facility does not have any CWA hazardous substances that meet the CWA hazardous substance screening threshold (1,000x RQ), it need not

[7] *https://www.epa.gov/dwreginfo/drinking-water-distribution-system-tools-and-resources.*

proceed further with the applicability determination.

Again, if the covered facility meets the CWA hazardous substance threshold quantity screening criterion, the owner or operator next determines its distance to navigable waters or a conveyance to navigable waters. In this instance, the covered facility boundary or nearest opportunity for discharge nearest to a navigable water or a conveyance to navigable water as assessed using an online mapping tool is 0.3 miles. Thus, the covered facility is within one-half mile of navigable waters or a conveyance to navigable waters. Since the covered facility meets both prongs of the screening criteria, the owner or operator then determines whether it meets any of the substantial harm criteria. If a covered facility is not within one-half mile of a navigable waters or a conveyance to navigable waters, the owner or operator need not proceed further.

Similar to the screening criteria, there is no implied order of operations in determining whether a covered facility meets any of the substantial harm criteria, and an owner or operator may proceed through the criteria as preferred. However, unlike the screening criteria (where both prongs need to be met), if an owner operator determines that the covered facility meets one of the substantial harm criteria, the owner or operator must submit an FRP to EPA. In addition, the owner or operator must still assess the other substantial harm criteria, as it is important to have a guide to all the potential areas of impact in the case of a worst case discharge as well as past vulnerabilities as shown through previous reportable discharges. Therefore, the assessments for all four criteria must be included in the FRP or Appendix A: Substantial Harm Certification Form.

Proceeding through each of the substantial harm criteria, for the substantial harm criteria based on calculating distances to endpoints (FWSEs and public receptors and the ability to adversely impact a PWS), EPA expects that covered facility owners or operators will need to gather information related to the CWA hazardous substances onsite above the threshold quantity and information relevant to their fate and transport following a worst case discharge. This may include modeling a worst case discharge scenario under various flow conditions to obtain the arrival time, duration, and concentration of the discharge as it reaches a FWSE, public receptor, or water intake. Typically, low flow conditions will result in larger peak concentrations of the discharged substance, and thus could be more likely to cause substantial harm.

Next, a covered facility owner or operator determines whether a worst case discharge of each CWA hazardous substance with a maximum quantity onsite above the threshold quantity could cause injury to FWSE. To calculate the quantity of a worst case discharge for each CWA hazardous substance onsite above the threshold quantity, the owner or operator identifies the maximum CWA hazardous substance container, interconnected containers, pipe, or piping system quantity onsite. Then, a covered facility owner or operator consults the relevant ACP (available by contacting their EPA regional office) to identify FWSE that could potentially be reached by a worst case discharge. To calculate planning distance, the owner or operator must consider the factors for overland and in water transport detailed in § 118.10(b)(3)(i) and (ii), as well as adverse weather conditions in § 118.10(b)(3)(iii) and properties of the CWA hazardous substance in 40 CFR 118.10(b)(3)(iv) or associated aqueous products. Once an owner or operator completes the planning distance calculations, they compare the concentration-based (*i.e.,* mg/L) results to the chart in Appendix B to determine whether a worse case discharge could cause injury to FWSE.

To determine whether a covered facility could cause injury to a public receptor, the owner or operator follows the same steps as for FWSE, but uses the appropriate concentration-based (*i.e.,* mg/kg) endpoint values found in Appendix B. To identify public receptors, an owner or operator may consult local maps, local authorities, their Local Emergency Planning Committee (LEPC) or Tribal Emergency Planning Committee (TEPC), or any other available information about parks, recreational areas, docks, or other public spaces inhabited, occupied, or used by the public at any time where members of the public could be injured as a result of a worst case discharge into or on the navigable waters or a conveyance to navigable waters.

To evaluate whether a worst case discharge from a covered facility could adversely impact a PWS, the owner or operator determines whether a worst case discharge would result in certain outcomes as detailed below by working with potentially affected PWSs. Using information including properties of CWA hazardous substances onsite and information relevant to their fate and transport arrival time, duration, and concentration of the discharge as it reaches a water intake, the owner or operator coordinates with downstream PWSs to determine impacts to the system and documents that coordination. If the owner or operator has made and documented good faith efforts but is nonetheless unable to work with the PWS, the covered facility will use the estimated concentration of the CWA hazardous substance from a worst case discharge at the water intake to assess the potential to adversely impact a PWS. Specifically, an owner or operator must assess each of the following impacts:

—Violation of a National Primary Drinking Water Standard or State Drinking Water Regulation: To assess whether a worst case discharge violates any National Primary Drinking Water Regulations (NPDWR) or State Drinking Water Regulations (SDWR), a covered facility owner or operator determines whether the released CWA hazardous substance, aqueous products, or a chemical product that forms when the CWA hazardous substance reacts with drinking water treatment chemicals, is subject to a NPDWR or SDWR, and is predicted to exceed the maximum contaminant level (MCL) at the point of compliance with the NPDWR or SDWR. For example, benzene is a CWA hazardous substance and is subject to a NPDWR with an MCL of 0.005 mg/L measured at the entry point to the water distribution system. An example of a chemical product that could form through a reaction is the CWA hazardous substance ammonium thiocyanate, which reacts with free chlorine to form cyanogen chloride and/or free cyanide, both of which are acutely toxic above a threshold and are regulated under SDWA.

—Interference with the ability of PWSs to comply with any NPDWR or SDWR: To assess whether a worst case discharge compromises the ability of the PWS to produce water that complies with any NPDWR or SDWR, a covered facility owner or operator determines whether the released CWA hazardous substance alters water quality or interferes with treatment processes in a manner that impacts a PWS's ability to produce water that complies with an NPDWR or SDWR. For example, a release of a strong acid, such as sulfuric acid in sufficient quantity may reduce water alkalinity to a degree where the PWS can no longer maintain adequate corrosion control, putting it at risk of a violation under the Lead and

Copper Rule (40 CFR part 141 subpart I).

—Threat to public health: To assess whether a worst case discharge results in adverse health impacts in people exposed to the maximum concentration that could enter a drinking water distribution system, a covered facility owner or operator determines whether the released CWA hazardous substance, aqueous products, or a chemical product that forms when the CWA hazardous substance reacts with drinking water treatment chemicals, is predicted to exceed scientifically accepted reference concentrations below which adverse human health impacts are not expected. An example of such reference concentrations are EPA's established Drinking Water Health Advisories, which are intended to protect public health during an emergency, such as a chemical release. As an example, benzene has a one-day Drinking Water health advisory of 0.2 mg/L.

—Contamination of PWS infrastructure: To assess whether a worst case discharge will contaminate PWS infrastructure, including but not limited to intake structures, treatment facilities, and drinking water distribution systems, or premise plumbing systems [8] to a degree that requires remediation to restore system components to acceptable performance, a covered facility owner or operator determines whether the released CWA hazardous substance, aqueous products, or a chemical product that forms when the CWA hazardous substance reacts with drinking water treatment chemicals, is likely to corrode, foul, adhere to, adsorb into, permeate into, or otherwise damage components and materials used at any point in the PWS, from the intake through premise plumbing systems. For example, CWA hazardous substances that are oil-like can foul water treatment filtration media, making it ineffective.

—Impact to aesthetic characteristics of drinking water: To assess whether a worst case discharge impairs the taste, odor, or other aesthetic characteristic of the water entering a drinking water distribution system to a degree that could make the water unacceptable to consumers and that could prompt the PWS to issue use restrictions, a covered facility owner or operator determines whether the released CWA hazardous substance, aqueous products, or a chemical product that forms when the CWA hazardous substance reacts with drinking water treatment chemicals, is predicted to exceed scientifically accepted reference concentrations, below which aesthetic impacts from the CWA hazardous substance are not expected. For example, a CWA hazardous substance at a concentration above established taste and odor thresholds could prompt a water system to issue use restrictions, such as a ''do not drink'' order. When available, secondary MCLs established under SDWA should be used as a reference concentration for aesthetic impacts. For example, chloride has a secondary MCL of 250 mg/L—above this concentration, the taste of the water may be unacceptable to customers. Several CWA hazardous substances, such as hydrochloric acid, would increase the chloride concentration in water.

When assessing each criterion for substantial harm to PWSs, the covered facility owner or operator should attempt to work collaboratively with the downstream PWS(s) to determine precisely how the worst case discharge would impact the system. Given the complexity of fate and transport of a CWA hazardous substance in aqueous environments as well as the impact of drinking water treatment processes on the CWA hazardous substance, system specific information from the PWS will facilitate the most accurate assessment for the potential of the CWA hazardous substance to cause substantial harm to the PWS. However, if the covered facility owner or operator has made and documented good faith efforts but is nonetheless unable to work with the PWS in this assessment, the owner or operator must use the predicted concentration of the CWA hazardous substance at the drinking water intake resulting from a worst case discharge, along with scientifically accepted information about the impact of common water treatment processes (*e.g.,* chlorination) on the CWA hazardous substance to make the substantial harm determination.

The covered facility owner or operator must consider each of the five potentially adverse outcomes to PWSs described above and determine the concentration at which the adverse outcome could occur. The lowest concentration at which any of the five adverse outcomes could occur must be used in the substantial harm determination, and if the concentration at the reference point (*e.g.,* at the intake, at the entry point to the distribution system) is equal to or greater than the concentration at which the adverse outcome could occur, then the covered facility meets this substantial harm criterion.

Finally, a covered facility owner or operator assesses whether they have had a reportable discharge of a CWA hazardous substance (a discharge over the RQ) to navigable waters in the last five years. This could be accomplished by reviewing discharge records and those submitted to the NRC in the event of a reportable discharge.

If the covered facility CWA hazardous substance maximum quantity onsite meets or exceeds the threshold quantity and it is located within one-half mile of navigable waters or a conveyance to navigable waters, but does not meet any of substantial harm criteria, the owner or operator must still submit a Substantial Harm Certification Form (Appendix A) to EPA, including supporting calculations and modeling. If the covered facility meets at least one of the substantial harm criteria, the owner or operator must complete and submit an FRP to EPA that includes information on each CWA hazardous substance onsite above the threshold quantity, along with their Substantial Harm Certification Form.

Below is a detailed discussion of the significant comments and EPA's responses, as well as adjustments made to the regulatory text.

ii. Threshold Quantity

In 40 CFR 118.3, EPA proposed that if the maximum capacity onsite exceeds 10,000x the RQ, a covered facility meets the threshold quantity screening criterion. While EPA proposed using 10,000x RQ multiplier for threshold quantities, the Agency has determined that a 1,000x RQ multiplier will more appropriately screen for covered facilities that could cause substantial harm to the environment from a worst case discharge. For example, some commenters criticized the 10,000x multiplier citing a lack of evidence that those facilities under that threshold quantity would not be reasonably be expected to cause substantial harm to the environment from a worst case discharge. Therefore, the commenters urged EPA to take a more precautionary approach and not exclude these facilities from determining their ability to cause substantial harm to the environment. Since threshold quantity is a screening tool, *i.e.,* a covered facility with less than that amount is not covered by the rule and need not consider whether it may reasonably cause a worst case discharge in the first instance, setting a lower initial screening level at this stage has merit,

[8] *https://www.epa.gov/emergency-response-research/premise-plumbing-decontamination.*

since even with less than a 10,000x RQ amount, it is reasonably foreseeable that a covered facility could cause substantial harm from a worst case discharge. Said another way, setting the threshold quantity too high may mean that higher risk covered facilities are not required to determine their ability to cause substantial harm at all, which could leave the environment more vulnerable to worst case discharges.

Several commenters supported the initial proposed 10,000x RQ multiplier, but EPA agrees with other commenters who suggested lowering the RQ multiplier to 1,000x. See Chapter 2 of the RIA for this final rule for a detailed analysis of covered facilities with CWA hazardous substances onsite at the 1,000x and 10,000x RQ multiplier levels. This analysis shows that at the 1,000x RQ multiplier, a number of additional covered facilities with CWA hazardous substances onsite that present a significant threat to downstream PWSs, FWSEs, and public receptors will need to determine if they meet the substantial harm criteria. For example, for covered facilities with 1,000x RQ onsite of arsenic trioxide (arsenic, a known toxin regulated under the Safe Drinking Water Act (SDWA)), 66% would now meet the quantity threshold, versus 50% at 10,000x RQ. Similarly, for covered facilities with benzene onsite, a known carcinogen also regulated under the SDWA, 75% would now meet the threshold quantity versus 32% at 10,000x RQ. A few other examples include lead sulfate (lead, regulated under SDWA), 66% of covered facilities at 1,000x RQ versus 17% at 10,000x RQ; sodium arsenate (arsenic, a known toxin regulated under SDWA), 100% of covered facilities at 1,000x RQ versus 11% at 10,000x RQ; and hydrogen cyanide (cyanide, regulated under SDWA), 57% at 1,000x RQ versus 29% at 10,000x RQ. These additional covered facilities evaluating their substantial harm criteria will significantly add to protection of the environment.

EPA disagrees with commenters who argued that this lower multiplier value will bring in too many covered facilities under the rule without a concomitant increase in environmental protection. First, meeting the threshold quantity does not automatically make a covered facility subject to the rule. Second, a lower threshold quantity is appropriate for an initial screening criterion, ensuring that only covered facilities that are unlikely to meet the substantial harm criteria are excluded from the scope of the rule. Accordingly, EPA has judged that the screening criteria in conjunction with the substantial harm criteria appropriately targets those covered facilities that could cause substantial harm to the environment from a worst case discharge of CWA hazardous substances into or on the navigable waters.

To the commenters who asked for more information on the basis of the threshold quantity, the RQ multiplier reflects relative toxicity parameters used to establish the original RQs. See section IV.A.1.a.i of the proposed rule preamble, Docket ID EPA–HQ–OLEM–2021–0585–0001, for a discussion on RQs and how they were derived. The RQs provide a means to use an existing regulatory structure that already considers risk on a scale and that has been successfully used for release notification for decades. EPA also balanced the variability among the 296 CWA hazardous substances and tailoring threshold amount against a uniform, easily applied, mass-based RQ multiplier, as advocated for by many commenters, deciding on balance in favor of using a single RQ multiplier. In addition, while the proposal focused on capturing larger capacity covered facilities that could pose a greater risk, with additional consideration, in EPA's judgment, a 1,000x multiplier for determining the threshold quantity as a screening criterion more effectively represents the potential risks associated with a worst case discharge.

In this final rule, EPA has adjusted its approach to use maximum quantity onsite (inventory) rather than maximum container capacity onsite as the basis for assessing risk to the environment. EPA based this decision largely on the fact that risk determinations using maximum quantity onsite will more accurately reflect the hazard posed and has been used successfully in other EPA chemical regulations, such that this is standard business practice. Additionally, since containers are typically measured by volume and CWA hazardous substances may vary dramatically in weight due to their physical properties, there is not a clear association between container size and quantity of CWA hazardous substances onsite, which many commenters raised as an unnecessary complication. Thus, a covered facility owner, operator, or inspector would have to convert the volume of each CWA hazardous substance container onsite to a chemical-specific weight in order to compare reported values and determine if the covered facility meets the threshold quantity, exacerbating conversion difficulties discussed in the proposed rule including at 87 FR 17900 and raised by several commenters.

While the Oil Pollution Prevention FRP regulations use container capacity for applicability threshold determination, this is consistent with how oil is measured and regulated, using volume (gallons). On the chemical side, CWA hazardous substances (and all chemicals that EPA and other Federal agencies regulate) are measured and regulated by weight, typically in pounds. CWA RQs are also weight-based (1, 10, 100, 1,000, and 5,000 pounds). The OPA Conference Report (H.R. Rep. No. 101–653, 101st Cong., 2d Sess. 1990) specifically directed EPA to account for oil storage capacity, but it has no corresponding language for CWA hazardous substances. As oil and the 296 CWA hazardous substances differ in important and myriad ways, it is reasonable to pursue a different approach in terms of determining the appropriate amount that should be used for determining threshold quantities and as a planning factor.

In so doing, EPA is responding to commenter concerns about covered facilities that may have capacity for but will never actually have CWA hazardous substances onsite in quantities sufficient to meet the threshold quantity but (if capacity were the metric) could be subject to the rule, especially considering some CWA hazardous substances will never be stored at the full capacity of a container due to their physical properties. For example, several commenters noted that for one of the highest volume and occurrence CWA hazardous substances, anhydrous ammonia, containers are prohibited to be filled beyond 85% liquid volume to allow expansion and contraction.

For mixtures, using capacity gets even more complicated, an issue raised by many commenters, since a covered facility owner or operator, or EPA inspector would have to convert varying volumes of CWA hazardous substances into weights, then extrapolate based on their proportions to the full capacity of the container. This seems needlessly complex and potentially introduces calculation errors into threshold applicability determinations and worst case discharge scenario quantities. To add to the complexity, CWA hazardous substance and mixtures can be present onsite in myriad types of containers and configurations.

EPA understands the concern regarding fluctuating quantities and numbers of containers, particularly at certain batch processors and in some industries and also the use of mobile storage containers and notes that the maximum quantity onsite must reflect the aggregated quantity at the covered

facility across all containers, including but not limited to rail cars or other mobile storage not under active shipping papers, process vessels, canisters, drums, bulk storage tanks, dumpsters, totes, or bulk cargo containers positioned on land. However, EPA disagrees with commenters who asserted that the only way to adequately plan for response to worst case discharges is to account for the full storage capacity for CWA hazardous substances. Indeed, EPA and other Federal regulators routinely use actual chemical inventory quantities for a variety of regulatory and planning purposes. EPA intends that an FRP for CWA hazardous substances be forward-looking and account for the maximum quantity onsite at any time. On balance, EPA believes that choosing quantity over capacity is appropriate in terms of implementability and the risks presented. Moreover, covered facilities have many incentives to accurately track their inventories over time.

iii. Proximity to Navigable Waters or a Conveyance to Navigable Waters

EPA is retaining the proposed location-based screening criterion that covered facilities must determine whether they are located within one-half mile of navigable waters or a conveyance to navigable waters, while clarifying that this should be measured from the facility boundary or nearest opportunity for discharge. This distance is based on research related to the Oil Pollution Prevention FRP regulation. On balance, while the Agency agrees that there are significant differences between oil and CWA hazardous substances, one-half mile is an appropriate distance to infer that a covered facility has a reasonable expectation to discharge to navigable waters or a conveyance to navigable waters in the event of a worst case discharge.

Some commenters argued that the distance should be extended farther for more complete protection of the nation's waters and in the context of CWA hazardous substances. However, in EPA's analysis, 80% of covered facilities with CWA hazardous substances onsite were within one-half mile to navigable waters (see Chapter 2 of the RIA in the rulemaking docket). To extend the distance would make the criterion effectively meaningless because nearly every covered facility that meets or exceeds the threshold quantity would meet this screening criterion. While commenters were concerned about differences in topography complicating determinations of whether a covered facility is within one-half mile of navigable waters or a conveyance to navigable waters, this distance should be measured from the nearest opportunity for discharge and industry will be able to comply using widely available electronic mapping tools. EPA has determined that the one-half mile distance is protective and simple to calculate, and covered facility owners or operators will have the opportunity to model a worst case discharge in evaluating the substantial harm criteria that depend on planning distance. Additionally, an owner or operator may appeal to the RA if they believe there is no reasonable expectation to discharge into or on navigable waters or a conveyance to navigable waters from their covered facility.

EPA agrees with commenters who stated that one-half mile to navigable waters or conveyance to navigable waters applicability requirement is important to minimize harms to the environment. The Agency again notes that this is an initial screening criterion; it does not mean that a facility is subject by the rule. Rather, it means that if a covered facility does not meet either of these initial screening thresholds, it is not subject to the rule and need not do any further analysis. Only covered facilities within one-half mile to navigable water or a conveyance that also meets or exceeds a threshold quantity must then determine whether they satisfy any of the substantial harm criteria.

EPA recognizes commenter concerns regarding CWA hazardous substances that have physical properties (*e.g.,* viscosity, vapor pressure, etc.) that preclude the substance from reaching navigable waters or a conveyance to navigable waters. However, a covered facility owner or operator will consider these properties, and their implications for the ability of the substance to impact water, when they evaluate the substantial harm criteria, not in the initial screening criteria. A covered facility will need to determine its distance to navigable waters or a conveyance to navigable waters regardless of the route or method of travel of a CWA hazardous substance in a worst case discharge.

iv. Substantial Harm Criteria

In § 118.3(c), EPA proposed four substantial harm criteria. EPA is retaining these criteria in the final rule, with minor modifications. Below is a summary of changes and responses to major comments.

Several commenters asserted that the extensive efforts to assess whether they meet the substantial harm criteria were essentially requiring compliance with the rule. EPA disagrees with this premise; indeed, the reason for the initial screening criteria is to mitigate the impact on covered facilities that would not meet the substantial harm criteria. However, given the variability of the CWA hazardous substances at issue (including variations in transport, fate, and other chemical characteristics), it is inevitable that some covered facilities that meet the screening criteria will nonetheless not meet any of the substantial harm criteria. Because of the myriad of variables involved, the analysis is necessarily case-by-case. And while simplicity can reduce costs, it also often faces the dilemma of being either over or under inclusive. So, while EPA determined that simple to apply, bright line screening criteria were appropriate to satisfy the requirements of the statute in terms of adequately protecting human health and the environment, a more nuanced analysis of the substantial harm criteria to determine which covered facilities must incur the added cost of preparing an FRP is warranted. Nevertheless, in principle, EPA agrees that making it as easy as possible to conduct these assessments is an important goal and will facilitate the successful implementation of this rule. EPA intends to continue to identity and provide tools to the regulated community and the public to support these determinations.

To commenters who suggested a standalone substantial harm criterion based on the potential impacts of worst case discharges to navigable waters or a conveyance to navigable waters on communities with environmental justice concerns, EPA recognizes the unique risks faced by these communities. In § 118.5(b), an RA may determine that a covered facility could cause substantial harm to the environment due to its potential impacts on communities with environmental justice concerns. Another issue for communities with environmental justice concerns is the potential cumulative impact of multiple covered facilities in one area where any one covered facility may not have a maximum quantity onsite that meets or exceeds the threshold quantity of CWA hazardous substances, but it seems likely that if one covered facility experienced a worst case discharge due to extreme weather conditions, others could be similarly impacted and the collective effects could cause substantial harm to the environment. Upon consideration and in response to commenter concerns, an RA may now consider concerns regarding co-located covered facilities when determining whether a covered facility has the

potential to cause substantial harm to the environment.

a. Ability To Cause Injury to FWSE

In § 118.3(c)(1), EPA proposed and is retaining in the final rule a substantial harm criterion to consider the covered facility's ability to cause injury to FWSE. Relatedly, the Agency proposed in Appendix B, and is retaining in the final rule, 10 percent of Lethal Concentrations 50% (LC50) as the toxic endpoints a covered facility owner or operator must use to perform planning distance calculations. FWSEs are identified in ACPs. This regulation does not alter how FWSEs are identified or what constitutes FWSE. EPA has added language that facility owners and operators must also consider aqueous products that form when the CWA hazardous substance enters water to ensure the full range of risk is represented in this assessment.

EPA disagrees with the commenter who requested that the regulated community should identify endpoints for individual CWA hazardous substances (as opposed to categories of CWA hazardous substances) and incorporate these facility-defined endpoint concentrations given EPA approval. Determining these on a site-by-site and CWA hazardous substance-by-substance basis would be prohibitively difficult to assess. On a case-by-case basis, a covered facility owner or operator may appeal a substantial harm determination to the RA if they disagree with the planning distance calculations. EPA maintains that the LC50-based endpoints appropriately model for effects on wildlife, regardless of the type of hazardous substance discharge or type of waterbody.

One commenter requested that EPA acknowledge that ''not all navigable waters identify fish, wildlife, and sensitive environments and public receptors in their Area Contingency Plans,'' and asked for flexibility in these determinations because of these situations, specifically referencing the Oil Pollution Prevention FRP regulation's vulnerability analysis, § 112.20(h)(4) and section 1.4.1 of Appendix F. EPA is aware that ACPs currently may not reflect impacts of worst discharge of CWA hazardous substances to navigable waters. Working with Federal response partners, the Agency intends to provide compliance assistance to covered facilities to ensure these areas are properly identified and impacts are assessed. In addition, the owner or operator is responsible for identifying public receptors, not just ACPs.

b. Ability to Adversely Impact a Public Water System

EPA proposed in § 118.3(c)(2) and is retaining in the final rule the substantial harm criterion for covered facilities located at a distance such that a worst case discharge has the ability to adversely impact a PWS. Covered facilities are required to coordinate with the PWS to determine whether predicted concentrations from a worst case CWA hazardous substance discharge would result in substantial harm to the PWS. EPA has added language that facility owners and operators must also consider aqueous products that form when the CWA hazardous substance enters water to ensure the full range of risk is represented in this assessment.

However, several commenters expressed concern with EPA's approach. Some commenters requested that EPA provide detailed, transparent, and clear guidance about the applicable drinking water standards to prevent inconsistencies in implementation and confusion for covered facilities. An owner or operator must assess the possibility of a worst case discharge to cause any of the impacts enumerated in § 118.3(c)(2)(ii) through (v). Information that supports this assessment includes NPDWR, SDWR, human health impact thresholds, taste and odor thresholds, and physicochemical properties of the CWA hazardous substance. Furthermore, EPA intends to provide compliance assistance to covered facility owners or operators in making these assessments, including resources that crosswalk CWA hazardous substances against existing NPDWR.

Additionally, several commenters suggested that EPA allow covered facility owners or operators to show a good-faith effort of coordination with PWSs through documented attempts, especially in certain circumstances where coordination is difficult or not possible. EPA agrees and is revising the requirement to more clearly state that owner or operators may show a good-faith effort of coordination with PWSs through documented attempts where coordination is difficult or not possible.

(i) Alternative Approaches

—*Source Water Protection Areas (SWPAs):* As part of the proposal, EPA considered requiring covered facilities within SWPAs to prepare an FRP. Although several commenters supported this approach, largely for the reasons enumerated in the proposal preamble at IV.A.2.b.ii EPA has decided not to finalize this requirement. On the one hand, SWPAs would be a useful tool that could eliminate the need for distance planning if they were universally available and uniformly applied. However, they are not. Moreover, EPA is concerned with the burden that would be placed on State drinking water programs to respond to requests for SWPAs from covered facilities if this were a requirement of the rule. Commenters provided no data or information to support the assertion that responding to requests for SWPAs from covered facilities would likely not place a significant burden on State drinking water programs. One purpose of this final regulation is to implement congressional intent by shifting the responsibility for planning from public resources to private covered facilities that pose a substantial risk to the environment in the event of a worst case discharge into or on the navigable waters or a conveyance to navigable waters, not create new burdens for State drinking water programs or PWSs. Furthermore, requiring additional updating of SWPAs or uniformity in their application so that they could be used as a substantial harm criterion is outside the scope of this rulemaking.

—*Groundwater:* Including potential discharges to groundwater is outside of the scope of this final rule, which is specific to onshore non-transportation-related facilities that, because of their location, could reasonably be expected to cause substantial harm to the environment by a worst case discharge into or on navigable waters or a conveyance to navigable waters. Nonetheless, several commenters requested that EPA include a provision to protect groundwater under the final rule. One commenter recognized that groundwater is not jurisdictional water of the United States under the CWA but argued that the rule affects the quality of groundwater drawn by groundwater-supplied PWSs regulated under the SDWA as well as nearby groundwater users and other downstream surface water users if the groundwater discharges to surface water. Again, navigable waters does not, by definition, include groundwater.

—*Zones Of Concern (ZOCs):* EPA disagrees with commenters who posited that the source water zones of concern (ZOCs) described in the report ''Occurrence of Releases with the Potential to Impact Sources of Drinking Water'' (EPA 817–R–21–001) are appropriate for this regulation. The ZOCs used in the study described in the referenced report were

intended to provide a uniform definition for identifying whether releases captured by the NRC would be included in the analysis or not. The methodology was not designed to identify worst case discharges. As noted in Section 2.6 of the referenced report: Limitations of the Methodology, ''It is possible that releases significantly impacting a source of drinking water occurred outside a zone of concern. Conversely, it is also possible that releases within a zone of concern did not significantly impact the source water.'' The criteria in the final rule, which are based on whether a worst case discharge from a covered facility could cause substantial harm to a PWS are outcome based and therefore will more appropriately target covered facilities for regulation compared to the ZOCs in the referenced report.

c. Ability To Cause Injury to Public Receptors

In § 118.3(c)(3), EPA proposed a substantial harm criterion for covered facilities that could cause injury to public receptors through a worst case discharge into or on navigable waters or a conveyance to navigable waters, using the same parameter and toxic endpoint approach proposed for FWSE. EPA is retaining this provision in this final action. Several commenters expressed concern with EPA's proposal to have a separate substantial harm criterion for covered facilities that could cause injury to public receptors through a worst case discharge into or on the navigable waters or a conveyance to navigable waters and asserted that this is out of scope of the CWA. EPA disagrees that this substantial harm criterion does not fall under the scope of the CWA or the stated purpose of this final rule. The scope of the rule is onshore non-transportation-related facilities that, because of their location, could reasonably be expected to cause substantial harm to the environment by a worst case discharge into or on navigable waters or a conveyance to navigable waters. Public receptors are defined as areas through which the public has access to navigable waters, thus tying this criterion to the statutory authority.

Covered facility owner or operators should include impacts to public receptors in their hazard evaluations in § 118.11(b)(3), based on the physicochemical properties of the CWA hazardous substances onsite and their potential effects as well as the potential economic effects to businesses.

d. Reportable Discharge History

In § 118.3(c)(4), EPA proposed, and is retaining in the final action, that a reportable discharge history is a substantial harm criterion, meaning the covered facility has had a discharge of a CWA hazardous substance at or exceeding the RQ, as listed in 40 CFR 117.3, that violates CWA section 311(b)(3), *i.e.,* that reaches navigable waters or adjoining shorelines. If a covered facility that meets the screening criteria has had a reportable discharge within the last five years that reached navigable waters, it will be considered to have the potential to cause substantial harm in the event of a worst case discharge. Reportable discharge history will be limited to the preceding five years, so if a covered facility has had a reportable discharge outside of that date range, it does not meet that substantial harm criterion. EPA clarifies here that discharges permitted under National Pollutant Discharge Elimination System (NPDES) are not subject to this regulation (40 CFR part 122).

EPA notes that the fact that a reportable discharge in this context means that the discharge entered into or on navigable waters in quantities that may be harmful. Furthermore, these discharges are required to be reported to the NRC, so evaluating whether a covered facility has had one in the last five years should add no burden. Additionally, discharge history may indicate deficiencies at a covered facility and so warrant further care and additional planning, as shown in the related study of oil spills discussed in the preamble to the Oil Pollution Prevention FRP regulation (58 FR 8832, February 17, 1993).

EPA maintains that five years is a reasonable look back window and ample time for a covered facility to improve spill resilience as demonstrated through the lack of reportable discharges into or on navigable waters. EPA agrees with commenters that limiting the reportable discharge releases into or on navigable waters is reasonable and has added clarifying text to the final rule. The Agency is not expanding the discharge history criterion to cover other reportable discharges (*e.g.,* to land) given that the authority for this action is specific to impacts into or on navigable waters, adjoining shorelines, or exclusive economic zone.

e. Passive Mitigation, Administrative Controls, and Secondary Containment

EPA did not propose and is not including provisions regarding passive mitigation, administrative controls, or secondary containment in this rule. This is a planning regulation, as per its statutory authority under the CWA 311(j)(5). As such, the Agency is not incorporating mitigation techniques into the screening criteria, determinations of substantial harm, nor in the FRP hazard evaluation.

As per the CWA, as amended by the OPA, a worst case discharge is defined as ''the largest foreseeable discharge in adverse weather conditions.'' The OPA Conference Report goes on to state that the largest foreseeable spill from a given type of facility is intended to describe a case that is worse than either the largest spill to date or the maximum most probable spill for that type of facility. Further, Congress' intent was that the worst case discharge reflects the partial failure of various preventive systems, and that the private sector be encouraged to increase its spill response capability (H.R. Rep. No. 101–653, 101st Cong., 2d Sess. 1990). Relatedly, in extreme weather events, mitigation systems may fail. In addition, written administrative controls may be overridden or overlooked, making it foreseeable that a worst case discharge could occur notwithstanding such controls.

Furthermore, although EPA encourages covered facilities to implement additional release prevention, detection, and mitigation measures such as those cited by commenters, the Agency believes that the effects of these measures on the size and impact of a potential spill are not readily quantifiable, nor easily supported with historical spill evidence. CWA hazardous substances vary widely in physicochemical properties and prevention and response strategies correspondingly differ based on the substance. EPA maintains that incorporating factors into the worst case discharge calculation that consider the risks associated with a variety of site-specific conditions regarding passive mitigation or administrative controls will, in general, be too complex for this rulemaking, and will require a very detailed verification and inspection processes. Requirements to prevent CWA hazardous substance discharges are based on many different regulatory regimes and industry standards and thus may be difficult for an inspector to assess and requiring installation or operation of such systems is outside the scope of this final action. As a result, EPA does not believe that it is feasible or warranted to include a calculation of mitigation measures tied to a reduction in the worst case discharge volume. Nonetheless, if an owner or operator

believes that the circumstances of the covered facility are such that it could not cause substantial harm to the environment from a worst case discharge to navigable waters or a conveyance to navigable waters, they may appeal the substantial harm determination to their RA.

For these reasons, EPA maintains that it is inappropriate to include secondary containment, administrative controls, and passive mitigation in this final rule.

f. Transfers Over Water

EPA did not propose an additional or different substantial harm criteria for covered facilities that transfer CWA hazardous substances over water. The Agency received comments both supporting and opposing such a provision. EPA has decided against including one in this final action. First and foremost, the USCG has primary responsibility for MTR facilities and would be the implementing Agency for any CWA hazardous substance FRP regulations for that type of facility. Should the USCG initiate a rulemaking for facilities over which it and the Agency share jurisdiction, the two agencies will collaborate to ensure consistency. Moreover, EPA did not receive data or information to support adding this as a substantial harm criterion. EPA notes that should a covered facility within EPA's jurisdiction have a reportable discharge during transfers over water, this would meet the § 118.3(c)(4) substantial harm criterion (*i.e.,* reportable discharge of a CWA hazardous substances under § 117.21 within last five years).

3. General Requirements

In § 118.4, EPA proposed and is finalizing, with some adjustments, general requirements and compliance dates for CWA hazardous substance FRPs. In § 118.4(a), to aid in informing the regulated community of their responsibilities under this regulation, the Agency has added ''implement'' to the list of items a covered facility must do regarding their FRP. This will reduce uncertainty and make clear that plans must be in place and followed.

In § 118.4(a), EPA has changed the language for plan submission to emphasize that there is an initial 36-month implementation period. This will allow covered facilities ample time to familiarize themselves with the rule requirements, gauge seasonal and commodity flow-related inventory fluctuations to determine the maximum quantity onsite at any time, perform planning distance calculations, and prepare their plans. Plan preparation, submission, and implementation timelines are as follows:

—*Initially regulated covered facilities (covered facilities in operation on November 30, 2026, and that meet the criteria in § 118.3 or are notified by an RA as in § 118.5): by June 1, 2027.*

—*Newly regulated covered facilities (covered facilities that meet the criteria in § 118.3 or are notified by an RA as in § 118.5 after November 30, 2026:* Within 6 months.

—*Newly constructed covered facilities (covered facilities starting operations after June 1, 2027:* Prior to the start of operations and including a 60-day start up period adjustment phase.

—*Covered facilities regulated as a result of a planned event or change:* Prior to the start of operations and including a 60-day start up period adjustment phase, but no sooner than June 1, 2027. An example of a facility characteristic change could be processing expansion whereby nearest opportunity to discharge moves within one-half mile to navigable waters or a conveyance to navigable waters, such as adding a rail spur.

—*Covered facilities regulated as a result of an unplanned event or change:* Prior to the start of operations and including a 60-day start up period adjustment phase, but no sooner than November 30, 2026.

Newly constructed covered facility owners or operators should use projected CWA hazardous substance maximum quantities onsite to develop the FRP, which can then be adjusted during the 60-day operational start up period.

For covered facilities meeting the criteria in § 118.3(a) and (b), Appendix A: Substantial Harm Certification Forms must be submitted to EPA by June 1, 2027, while covered facilities meeting that criteria at a later date have 60 days to submit their forms to EPA, but no sooner than June 1, 2027. The Agency has adjusted this timeline from one month to recognize that the required calculations may require additional time and resources.

EPA recognizes that some commenters believe that the timelines provided are too short or insufficient for FRP development and submission. In response, all covered facilities now have 36 months following the effective date to comply with the requirements in 40 CFR part 118. On the other hand, some commenters would prefer a swifter implementation period. However, due to resource constraints and the complexity of implementing a new regulatory program, EPA had judged a 36-month implementation period to be warranted. Moreover, as this is a new program, albeit modeled on an existing program, EPA is prepared to provide necessary compliance assistance as facilities develop plans for the first time.

Although EPA understands that current practices at some covered facilities may present challenges with meeting the 60-day window for changes to FRPs, documenting and adjusting material changes must be done swiftly to ensure that plans adequately prepare for worst case discharges of CWA hazardous substances. Longer timelines could render the FRP unusable as a response plan. Larger and more complex batch processors, laboratories, and facilities require proactive planning for the anticipated maximum quantities onsite. In addition, as detailed in the proposal, these timelines are roughly based on OPA 90 transition provisions, which directed EPA to issue regulations for oil worst case discharge response plans (oil FRPs) under section 311(j)(5) of the CWA within 24 months. Facilities could submit the oil FRPs beginning 30 months from enactment and were required to be submitted by 36 months of enactment. For existing and new facilities, oil FRPs were to be submitted within six months from the time of discovery or notification that a facility could cause ''substantial harm.'' This timeline is similar to that of the oil FRP program, where an oil FRP must be resubmitted within 60 days of each material change in facility or plan that could affect the adequacy of a facility's response capabilities, such as the ability to respond to a worst case discharge.

EPA has added § 118.4(a)(6), whereby a covered facility owner or operator must review and recertify their plan Agency every five years. This will ensure that FRPs stay updated and that owners or operators remain cognizant of their responsibilities under this regulation. A five-year review period is common in EPA programs and the Agency judges this to be a necessary component of an effective program.

EPA has added § 118.4(a)(7), whereby a covered facility owner or operator must evaluate their operations if EPA adds or removes a CWA hazardous substance from the list at 40 CFR 116.4 or adjusts relevant RQs as found in 40 CFR 117.3. Such additions, deletions, or adjustments are done through a formal notice and comment rulemaking procedure, so the regulated community will be on notice and have ample opportunity to review such proceedings before they become final. If a covered facility becomes newly subject to this regulation at that time, the owner or operator has six months to submit a new or updated FRP to EPA.

4. Regional Administrator Determination of Substantial Harm and Significant and Substantial Harm

In proposed § 118.5, EPA detailed a process by which an RA may require a covered facility to prepare a CWA hazardous substance FRP after consideration of site-specific factors. EPA has added a provision in § 118.5(a) whereby the RA may require amendments to FRPs submitted under their authority in § 118.5. Additionally, the Agency proposed factors for the RA to consider in § 118.5(b), as well as the factors in § 118.3. Some commenters urged EPA to remove the provision regarding the process for RAs to determine that a covered facility could cause substantial harm to the environment and must prepare, implement, and submit an FRP.

For the following reasons, EPA has decided to retain the language largely as proposed in the final action. On the one hand, EPA understands that § 118.5 creates some uncertainty for owners and operators. With respect to determining whether covered facilities could cause substantial harm to the environment in the first instance, EPA decided to implement a rule with two components (*i.e.,* regulatory criteria, including an initial screen followed by an analysis of substantial harm criteria). The regulatory criteria are designed to capture the bulk of those covered facilities that could reasonably be expected to cause substantial harm to the environment. However, because of the size and diversity of the types of covered facilities within the regulated community, EPA believes that there are covered facilities that will not meet the criteria in § 118.3, but may, due to facility-specific or location-specific circumstances, pose sufficient risk to the environment to be designated as being able to cause substantial harm to the environment. Accordingly, EPA has included the ability of the RA to make a case-by-case determination. Although EPA has made every effort to avoid being overly broad in terms of covered facilities that must submit an FRP, EPA understands that there may be circumstances where the regulatory criteria are overinclusive. In such cases, an owner or operator may seek a determination by the RA that the covered facility does not have the potential to cause substantial harm to the environment despite meeting the regulatory criteria. The Agency recognizes that RAs possess unique knowledge of Region-specific considerations and EPA has authority under E.O. 12777 to designate covered facilities on a case-by-case basis that could reasonably be expected to cause substantial harm to the environment. That said, EPA expects to exercise this authority judiciously and in manner that is reserved to ensure adequate protection of the environment. This type of process is not without precedent; indeed, the Oil Pollution Prevention FRP regulation has a similar provision in 40 CFR 112.20.

Moreover, EPA agrees with commenters who stressed that communities with environmental justice concerns may have unique circumstances that are not captured in the published applicability criteria. To be sensitive to these specific issues, of which RAs are uniquely positioned to have knowledge, EPA maintains that considering these concerns and circumstances is necessary to protect these communities. Similarly, the impacts of climate change may be difficult to anticipate and vary widely; thus, the Regional ability to assess facilities on a case-by-case basis and, if appropriate, to require a facility to develop a response plan is warranted in order to protect the environment.

EPA has decided to augment § 118.5(b)(2) to specifically reference CWA hazardous substance characteristics, such as ignitability and reactivity. Thus, RAs may take such considerations into account when determining if a covered facility could cause substantial harm to the environment in the event of a worst case discharge to navigable waters. This addition is important in certain instances to account for the wide variety of CWA hazardous substances and their physicochemical properties, including CWA hazardous substances present in waste, especially in combination with the other substantial harm factors in § 118.5(b), of which the RA is uniquely situated to be knowledgeable. In addition, and with further consideration of public comments, EPA has decided to add § 118.5(b)(10), whereby an RA may consider facility density and potential cumulative impacts of co-located facilities in requiring a covered facility to prepare and submit an FRP. EPA agrees with commenters concerned about cascading effects of a worst case discharge and submits that the RA is best positioned to evaluate this potential in the regulated community.

Some commenters also urged EPA to remove the provision regarding the process by which RAs determine that a covered facility could cause significant and substantial harm through a worst case discharge into or on navigable waters or a conveyance to navigable waters. However, the CWA directs the President to develop criteria to identify a subset of substantial harm facilities that could reasonably be expected to cause both significant and substantial harm to the environment. As such, EPA proposed factors for the RA to consider when determining that a covered facility could cause significant and substantial harm to the environment in § 118.5(d), along with the substantial harm criteria found in §§ 118.3(c) and 118.5(b). Also, in § 118.5(d)(3), EPA has expanded the factors an RA may consider when designating a covered facility as a significant and substantial harm facility to include the condition of containers or equipment onsite, as deteriorating or poor quality containers or equipment could more readily fail. In addition, EPA removed a duplicative provision referring to plan reviews. Finally, an owner or operator may appeal an RA's determination that their covered facility could cause significant and substantial harm to the environment through a worst case discharge using the process in § 118.6.

To assist RAs in achieving nationwide consistency, EPA intends to outline specific screening procedures for use by RAs and to foster consistency in how the substantial harm and significant and substantial harm factors are applied. RAs should consider the relationship of the substantial harm and significant and substantial harm factors and not consider one factor in isolation except under unique circumstances. Although the RA may consider that one factor is sufficient to require that a response plan be submitted, this would be done only under limited circumstances where site-specific conditions warrant. EPA believes that this will help to ensure a greater degree of uniformity in Regional determinations of substantial harm and significant and substantial harm.

RAs will provide a written basis for the determination of substantial harm or significant and substantial harm, which will be made available to the covered facility owner or operator. An owner or operator may use the appeals provision in § 118.6 to request reconsideration and ultimately appeal to the Administrator that their covered facility could cause substantial harm or significant and substantial harm to the environment from a worst case discharge into or on navigable waters or a conveyance to navigable waters.

5. Appeals

EPA proposed and is retaining in § 118.6 a two-step appeals process to allow covered facility owners or operators seek reconsideration of the RA's determination of substantial harm or significant and substantial harm or the disapproval of a CWA hazardous

substance FRP, and then, if warranted, to appeal that decision to the EPA Administrator. The two-step appeals process is similar to one that has been available in the Oil Pollution Prevention FRP regulation for close to 30 years and is intended to provide owners or operators with an avenue to present their data and information to EPA through a formal process.

In the first stage, the owner or operator submits a request for reconsideration, including supporting data and information, to the RA. Then, the RA will evaluate the submitted information and data and decide whether to approve the covered facility's appeal or adjust its evaluation of the ability to cause substantial harm to the environment. The RA will issue a written decision, including the basis for the determination, as soon as practicable. Depending on the outcome, the owner or operator either must submit a plan or amendments to a plan following the timelines in § 118.4 or is not required to submit a plan or amendments. After the RA issues a determination, the owner or operator may appeal the decision to the EPA Administrator within 60 days. If the EPA Administrator requires a plan or amendments to be submitted to EPA, the owner or operator shall follow the timelines in § 118.4.

As per the OPA 90 amendments to the CWA, the intent of this regulation is to shift the burden of planning and response to covered facilities rather than public resources; thus, putting the onus on the owner or operator to disprove the need for a plan is appropriate.

6. Petitions

EPA proposed and is retaining in this final rule a petition provision in § 118.7 whereby the public and other government agencies may petition EPA to determine whether a CWA hazardous substance covered facility should be required to submit an FRP to EPA. Petitions are submitted to the RA, who in turn reviews the submissions as soon as practicable. Petitions must include a reasonable basis for asserting that the covered facility may pose a risk of substantial harm to the environment. Specifically, a petition must include a discussion of how the factors in § 118.3 apply to the covered facility. Although including quantitative or other data as to the substantial harm criteria would be ideal, petitioners are not required to submit such data. EPA will make the petition available to the owner or operator that is the subject of the petition and provide an opportunity to respond. RAs may render a decision based solely on the information in the petition and in the response provided by the owner or operator that is the subject of the petition, but may also gather additional information before rendering a decision.

In terms of public availability, EPA does not believe that making all petitions public would serve to protect human health and the environment. Some materials may contain sensitive information or be inaccurate; once a covered facility is subject to FRP requirements, EPA will make public those parts of the FRP that can be shared as determined in conjunction with Federal partners like the U.S. Department of Homeland Security (DHS) and the Federal Bureau of Investigation (FBI). EPA is also not adding a deadline for acting on petitions, since they and covered facilities may be complex, and it is important to allow ample time for review and to work with both petitioners and owners or operators to address any concerns.

EPA disagrees with commenters who assert that petitions will lead to the regulation being unevenly applied. It is not unusual for Executive Agencies to have a process that develops and establishes applicability norms over time. A few commenters suggested that the rule should require petitioners to provide supporting evidence and allow covered facility owners or operators an opportunity to respond before an RA decides how the Agency will proceed in response to such a petition. Other commenters expressed concern that the rule does not provide procedures for covered facilities that are the subject of a petition to test the claims made in the petition, to submit data or information, or rebut the petition in other ways. In response to these concerns, EPA has revised § 118.7 to specify EPA will make the petition available to the owner or operator of the covered facility in question and provide an opportunity to respond. In addition, the RA will work with the owner or operator to substantiate the petition, as appropriate. The appeals and petitions provisions are complementary: one the one hand, the petition provision allows for stakeholder participation in whether EPA determines if a covered facility poses a risk of substantial harm to the environment through a worst case discharge into or on navigable waters or a conveyance to navigable waters and must prepare an FRP. On the other hand, the appeals provision allows covered facilities that may meet the criteria but could not reasonably be expected to cause substantial harm to the environment from a worst case discharge into or on navigable waters or a conveyance to navigable waters to appeal to the RA that the owner or operator is not required to submit an FRP, or otherwise engage with EPA on determinations.

While commenters expressed concern that the petition process is based on subjective opinion and lacks evidence-based standards for determining covered facility applicability, EPA will still determine covered facility status based on the regulatory criteria in §§ 118.3 and 118.5. EPA clarifies here that it is not necessary for petitioners to provide detailed analyses and calculation as to whether the covered facility meets one of the specific criteria in § 118.3 but rather must provide a reasonable basis for asserting that the covered facility may pose a risk of substantial harm to the environment. For example, if a covered facility is located near a wildlife sanctuary and appears to store significant quantities of a CWA hazardous substance, then the petition need only include such observations. That said, a petition that fails to provide a basis for why a covered facility should be determined to reasonably be expected to cause substantial harm to the environment from a worst case discharge into or on navigable waters or a conveyance to navigable waters (*e.g.,* the covered facility is near a drinking water supply or a priority sensitive environment listed in an ACP, or has a history of frequent discharges to water or poor maintenance, etc.) may not receive immediate action by the RA or may be summarily denied. The purpose of the requirement to provide some basic information based on knowledge of EPA's criteria is to help screen out frivolous, unfounded petitions. The RA will use his or her discretion in following up on petitions that do not include a reasonable basis to believe a covered facility could cause substantial harm to the environment from a worst case discharge into or on navigable waters or a conveyance to navigable waters.

To commenters concerned that communities at risk of a CWA hazardous substance discharge would be dependent on petitions in order to protect themselves, EPA maintains that the applicability criteria in § 118.3 appropriately target the bulk of covered facilities that could cause substantial harm to the environment from a worst case discharge into or on navigable waters or a conveyance to navigable waters. Rather, for the subset of covered facilities that may not be captured using that mechanism, the public may submit a petition asking EPA to pursue the matter. The RA then follows the processes in §§ 118.3 and 118.5 to

determine whether a covered facility could cause substantial harm to the environment.

One commenter requested that EPA authorize State Emergency Response Commissions (SERCs) to make covered facility designations—due to their greater local capacity to address environmental justice, responder and public safety—unless the RA disagrees. EPA disagrees that SERCs should be authorized to make covered facility designations, as this is EPA's authority. The SERC may use the petition process to work with the RA in determining whether a covered facility could cause substantial harm to the environment through a worst case discharge into or on navigable waters or a conveyance to navigable waters.

Finally, EPA disagrees that the petitions process is unprecedented and expansive; the petitions process is similar to one that has been available in the Oil Pollution Prevention FRP regulation for close to 30 years and is intended to provide stakeholders and the public with an avenue to participate in the FRP determination process with EPA through a formal process.

7. Exceptions and Exemptions

EPA proposed and is retaining in § 118.8 certain exceptions and exemptions to this regulation, but with some adjustments and clarifications. Several commenters expressed concern about areas where they thought the rule overlapped with other regulations or programs. Below is a brief summary of the regulations commenters most commonly cited as overlapping:

—The RMP regulation under the CAA's authority is for air releases; for that reason alone, it is insufficient to rely upon to determine whether a covered facility could cause substantial harm to the environment by discharging into or on navigable waters (40 CFR part 68).

—The Oil Pollution Prevention Program FRP regulation is comprehensive for oils but does not regulate CWA hazardous substances (40 CFR 112.20 and 112.21, Appendices C–F). Similarly, the Oil Pollution Prevention Spill Prevention, Control, and Countermeasure (SPCC) program regulates oils, specifically the prevention of oil spills (40 CFR part 112).

—Occupational Safety and Health Administration's (OSHA) Process Safety Management (PSM) standard sets requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals in order to protect workers. The provisions of the PSM standard were written to assure safe and healthful working conditions for employees, not to protect the environment from discharges of CWA hazardous substances. (29 CFR 1910.119).

—The CWA NPDES Permit Program, authorized by the CWA, controls water pollution by regulating point sources that discharge pollutants into waters of the United States. An NPDES permit establishes limits on what can be discharged, monitoring and reporting requirements, and other provisions to protect water quality. In essence, the permit translates general requirements of the CWA into specific provisions tailored to the operations of the facility discharging pollutants. A NPDES general permit may be written to establish requirements that apply to eligible facilities with similar operations and types of discharges that obtain authorization to discharge under the general permit. It does not require response planning and permitted discharges are not regulated under this final rule (40 CFR part 122).

—Bureau of Alcohol, Tobacco, Firearms and Explosives ammonium nitrate-fuel oil (ANFO) requirements apply to ANFO, which is not a CWA hazardous substance (27 CFR part 555).

—USDOT regulations for product and waste shipping apply to items in transportation, while this proposal applies explicitly to onshore non-transportation-related facilities (49 CFR parts 171–185).

—DHS regulations do not require planning for worst case discharges of CWA hazardous substance into or on the navigable waters or a conveyance to navigable waters; rather, they identify and regulate high-risk facilities to ensure security measures are in place to reduce the risk that certain dangerous chemicals are weaponized by terrorists (6 CFR part 27).

—The Emergency Planning and Community Right-to-Know Act (EPCRA) Reporting Rule is a reporting rule and does not require worst case discharge planning (40 CFR part 370).

EPA refers commenters to the TBD, available in the docket, for more information on how the program elements in existing Federal programs do or do not align with the requirements in CWA Sec. 311(j)(5).

After examining the RCRA regulations and commenter concerns, EPA is adding an exemption at § 118.8(b)(2)(viii) for the storage and accumulation of hazardous waste subject to the Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF), 40 CFR part 264 and 40 CFR part 265 and Standards Applicable to Generators of Hazardous Waste, 40 CFR part 262, subpart M. For covered facilities subject to the TSDF requirements under 40 CFR parts 264 and 265, these regulations comprehensively address the program elements required under CWA section 311(j)(5)(D). For hazardous waste generators covered under 40 CFR part 262, EPA is exempting those generators subject to subpart M (*i.e.,* large quantity generators) for the same reason; the contingency plan and emergency procedures requirements therein comprehensively address the program elements required under CWA section 311(j)(5)(D). While small quantity generators have preparedness and prevention requirements, these do not cover all required program elements under CWA section 311(j)(5)(D), and very small quantity generators are not subject to prevention and preparedness requirements nor required to develop a contingency plan and emergency procedures. Since hazardous waste at these generators may contain CWA hazardous substances and are not subject to all RCRA hazardous waste requirements, EPA has decided that hazardous waste generators not subject to RCRA part 262, subpart M requirements must follow the applicability criteria at § 118.3 to determine if they could cause substantial harm to the environment through a worst case discharge into or on navigable waters or a conveyance to navigable waters. Solid, non-hazardous waste is also subject to this final rule.

Additionally, EPA excepts tanks already regulated under the underground storage tank (UST) program at 40 CFR part 280 at 40 CFR 118.8(a)(4). EPA is not regulating substances present as oil and that may be part of an oil mixture, such as gasoline, at covered facilities in this action since those are regulated under 40 CFR 112.20.

In terms of adjustments and clarifications, the Agency clarifies that permitted discharges are not included in the § 118.3 applicability determinations, nor the § 118.11 FRP requirements. Also, EPA is adding an exemption under § 118.8(b)(2)(v) for wastewater whereby a POTW does not need include CWA hazardous substances present in wastewater entering their collection system prior to treatment under a NPDES permit in their threshold quantity determinations. The Agency, however, notes the pretreatment program oversight requirements in 40

CFR 403.8(f) for any industrial users that may be subject to this rule, and recommends control authorities evaluate whether program elements such as slug control plans or local limits expressed as best management practices should be issued or revised in coordination with the requirements of this rule.

Additionally, EPA clarifies here that the exemption under § 118.8(b)(2)(iv) for use of process water or cooling water is specific to amounts of a CWA hazardous substance present in water drawn into a covered facility from the environment or municipal sources. For example, chlorine present in water taken from municipal sources does not have to be considered for threshold determination. This is consistent with the approach taken by other chemical regulations, including Toxics Release Inventory (TRI) and RMP, and DHS's Chemical Facility Anti-Terrorism Standards (CFATS) program and reflects the low level of risk of such waters.

Finally, this regulation applies to only the non-transportation-related portion of MTR facilities that are subject to both EPA and USCG jurisdiction, as per § 118.8. As such, the non-transportation-related portion of the facility is generally defined as the valve manifold adjacent to the tank nearest the connection to the transportation-related portion of the facility (*i.e.,* the structure used or intended to be used to transfer CWA hazardous substances to or from a vessel or pipeline). The interface may be defined differently at a specific facility if agreed to by the RA and the appropriate Federal official.

8. Mixtures

In § 118.9, EPA proposed and is retaining in this final action a mixture provision for determining the CWA hazardous substance maximum quantity onsite at the covered facility of CWA hazardous substance(s), under § 118.3(a) and mixture worst case discharge quantities under § 118.10. This provision is based on CERCLA Notification Requirements, found in CERCLA section 103(a) (40 CFR 302.6). EPA agrees with a commenter that noted the chosen approach mirrors existing regulations on how to treat mixtures of CWA hazardous substances under the CWA and CERCLA. Regulated facilities are familiar with the mixture rule and how to apply it.

EPA disagrees with commenters who argued that requiring the use of the lowest RQ when the exact mixture composition is unknown is overly conservative, unrealistic, and does not reflect the actual risk of harm. If there are known and unknown substance constituent quantities, the covered facility owner or operator must only apply the lowest RQ to the unknown portion of the mixture, not the entire quantity. This approach is properly conservative and reflective of risk. If a covered facility owner or operator can provide evidence that the mixture composition does not meet the lowest RQ, they may use the appeals provision in § 118.6 to adjust their maximum quantity onsite or worst case discharge scenario quantity, or for reconsideration of their status.

A few examples illustrate how the mixture rule is applied when evaluating whether the quantity of CWA hazardous substances onsite is greater than or equal to their respective RQs. The first example provides a case where a covered facility has a mixture where all components are known. The covered facility has 5,000 pounds of a cleaning solution containing 45–55% water, 1–10% chromic acid, 1–10% sodium sulfate, and 25–35% sulfuric acid onsite. Chromic acid (CAS 7738–94–5) and sulfuric acid (CAS 7664–93–9) are CWA hazardous substances with RQs of 10 and 1,000 pounds, respectively. The owner or operator assumes the highest percentage of each CWA hazardous substance in the range, performing mixture calculations based on 10% chromic acid and 35% sulfuric acid. Based on the total quantity of the cleaning solution at the covered facility, there are 500 pounds of chromic acid and 1,750 pounds of sulfuric acid onsite. The threshold quantity for chromic acid is 10,000 pounds, while the threshold quantity for sulfuric acid is 100,000 pounds. The quantities of chromic acid and sulfuric acid onsite are below the threshold quantity.

A second example demonstrates threshold calculations when the composition of a mixture is not known. A large manufacturing covered facility produces chromated copper arsenate as a wood preservative for specialized timber applications. The covered facility regularly generates production waste, which is stored in a container. The container has 1,000 pounds of a waste of unknown composition, but which has been determined to be non-hazardous under RCRA and contains water, copper oxide, arsenic pentoxide, and chromic acid. Arsenic pentoxide (CAS 1303–28–2) and chromic acid (CAS 7738–94–5) are CWA hazardous substances with RQs of 1 and 10 pounds, respectively. The covered facility has 50 pounds of arsenic pentoxide and 75 pounds of chromic acid onsite as reactants. Because the composition of the waste is unknown, the owner or operator must assume that the entire mixture is composed of the lowest RQ substance, in this case arsenic pentoxide. Based on the total mass of the waste, the owner or operator calculates that they have 1,000 pounds of arsenic pentoxide from the waste mixture, and 50 pounds of arsenic pentoxide as a reactant (but which is not a commercial chemical product), with a total mass of 1,050 pounds of arsenic pentoxide. The threshold quantity for arsenic pentoxide is 1,000 pounds. The quantity of arsenic pentoxide onsite is above the threshold quantity.

A final example demonstrates a case when part of a waste mixture containing CWA hazardous substances is known and part is unknown. A small, covered facility uses hydrochloric acid and nitric acid as part of its manufacturing process. The spent acid is collected in a large vessel containing 100,000 pounds of a mixture with a pH of 3 composed of 25% water by weight and an unknown percentage of hydrochloric acid, nitric acid, and several other unknown chemical substances. Hydrochloric acid (CAS 7647–01–0) and nitric acid (CAS 7697–37–2) are CWA hazardous substances with RQs of 5,000 and 1,000, respectively. The covered facility has 1,000 pounds of hydrochloric acid and 5,000 pounds of nitric acid onsite. Because 25% of the waste mixture is of known composition, the owner or operator only needs to assume the remaining 75% of the mixture is the CWA hazardous substance with the lowest RQ. Because nitric acid has the lowest RQ, the owner operator calculates that they have 75,000 pounds of nitric acid in the waste mixture, with 80,000 total pounds of nitric acid onsite. The threshold quantity for nitric acid is 1,000,000 pounds. The quantity of nitric acid onsite is below the threshold quantity.

Note that CWA hazardous substance maximum quantities onsite are calculated by CWA hazardous substance. They should not be aggregated, even if they have the same RQ.

9. Worst Case Discharge Calculations

As discussed earlier, EPA is adjusting the worst case discharge calculations in § 118.10. The CWA, as amended by the OPA, defines the worst case discharge for a facility as ''the largest foreseeable discharge in adverse weather conditions.'' As detailed above, adverse weather conditions include those due to climate change, which may consist of challenging climatic conditions such as those that would maximize the peak concentration of the discharged substance in the receiving waterbody. The OPA Conference Report goes on to

state that the largest foreseeable spill from a given type of facility is intended to describe a case that is worse than either the largest spill to date or the maximum most probable spill for that type of facility (see H.R. Rep. No. 101–653, l0lst Cong., 2d Sess. 1990 at pp. 149–150.), which is unlikely to be the entire capacity or quantity stored at a facility in a single event.

Again, EPA has adjusted its approach to worst case discharge scenario quantity to use the maximum quantity of a single container for substances stored in separate containers or the maximum quantity of a group of interconnected containers, rather than capacity. Facility circumstances and methods of storage vary widely, and owners or operators should know their inventories and largest containers. Additionally, this simplifies procedures for facilities accounting for mixtures. EPA has further adjusted its approach to require worst case discharge scenarios for all CWA hazardous substances onsite above the threshold quantity once a covered facility is subject to this regulation. This will satisfy the statutory requirement to plan for CWA hazardous substance worst case discharges and address the concerns of commenters around which substance to use in worst case discharge scenarios. The Agency has also revised language to clarify that covered facility owners or operators must compare the distance to the endpoints provided in Appendix B against their calculated CWA hazardous substance planning distance to determine if the covered facility could cause substantial harm to FWSE or public receptors from a worst case discharge into or on navigable waters or a conveyance to navigable waters and also in their hazard evaluation once a covered facility is subject to the regulation. EPA has further adjusted the properties of the CWA hazardous substance to be evaluated to reflect those properties as they relate to a discharge to navigable waters. Additionally, an owner or operator must provide evidence in their Appendix A: Substantial Harm Certification Form that containers with common piping or piping systems are not operated as one unit. Finally, EPA has added pH and alkalinity under the conditions of the receiving water to better characterize a worst case discharge in § 118.10(b)(ii)(E).

While a few commenters were concerned about piping and measuring the contents of piping systems, EPA maintains that, in general, if a covered facility owner or operator has two or more containers that contain a CWA hazardous substance and are connected through piping or hoses to transfer the CWA hazardous substance, the owner or operator must consider the total quantity of the CWA hazardous substance in all the connected containers and piping when determining the maximum worst case discharge scenario quantity. If the containers are connected for transfer of the CWA hazardous substance using hoses that are sometimes disconnected, the owner or operator still must consider the contents of the containers as one process, because if one container were to rupture while a hose was attached or a hose were to break during the transfer, both containers could be affected. Again, the statute directs EPA to address the worst case discharge scenarios—even in situations where the conditions are not static, *i.e.,* sometimes containers are connected but not always. Therefore, the owner or operator must count the quantities in both containers and in any connecting piping or hoses. Similarly, the presence of automatic shutoff valves or other devices that can limit flow do not change the analysis because these are assumed to fail for the purpose of determining the worst case discharge scenario quantity. This is consistent with and required under other regulations, such as onshore oil pipelines regulated by the USDOT Pipeline and Hazardous Materials Safety Administration.

EPA agrees with commenters who noted that there are chemicals in the CWA hazardous substance list at 40 CFR 116.4 that may be in either a solid or gaseous form upon release and may be physically unable to reach navigable waters or a conveyance to navigable waters. Specifically, facility circumstances and methods of storage vary widely, so the covered facility owner or operator must use their best professional judgment based on the physicochemical properties and characteristics of the substance at issue and best available information and practice in determining if a worst case discharge or a CWA hazardous substance that releases as a gas or solid could, in adverse weather conditions, reach navigable waters or a conveyance to navigable waters, cause injury to a public receptor or FWSE, or adversely impact a PWS. This may mean that for a substance released as a gas in adverse weather conditions and without consideration of passive mitigation, secondary containment, or administrative controls, the distance to endpoints cannot be calculated. Solid CWA hazardous substances may be miscible in water and, as such, a planning distance may be calculated. Thus, if a solid stored as a powder or in pellets has the ability to release in a flood scenario and reach navigable waters or a conveyance to navigable waters, the covered facility owner or operator must make a substantial harm determination, and if determined to be able to cause substantial harm to the environment from a worst case discharge of a CWA hazardous substance into or on navigable waters or a conveyance to navigable waters, submit an FRP to EPA. However, EPA stresses that adverse weather conditions, including extreme events due to climate change, must be considered. As such, if a solid stored as a powder or in pellets could release in a high-intensity rainfall event or flood scenario and navigable waters or a conveyance to navigable waters, the covered facility must make a substantial harm determination. Similarly, should a worst case discharge consist of a CWA hazardous substance releasing as a gas that could mix with rainwater and then reach navigable waters or a conveyance to navigable waters, the covered facility owner or operator would need to examine that outcome in their worst case discharge scenario(s). Relatedly, EPA is not choosing to set a temperature range or define the form of the substance as it releases; instead, the covered facility owner or operator should make a similar determination as described above. The Agency recognizes commenter concern over covered facilities with a variable inventory of CWA hazardous substances. Owners or operators of these covered facilities will need to plan for the maximum quantity in a single container or interconnected containers of a CWA hazardous substance onsite at any one time and forecast when such occasions may occur. Due to the potentially catastrophic effects of a worst case discharge, the Agency does not see these requirements as overly burdensome. EPA notes that plans can and should be updated if, for example, there is an unexpected increase in demand such that the worst case discharge scenario quantity is outside of anticipated fluctuations and necessitates different or more response resources, requiring an amendment to the FRP as in § 118.4(b).

While some commenters asked for clarification on the timing of a discharge, EPA maintains that a worst case discharge may occur instantaneously or over time, and a covered facility owner or operator is best situated to determine the appropriate timing scenario based onsite-specific considerations and the

physicochemical properties of the CWA hazardous substances in question. The timing used for the worst case discharge scenario should reflect reasonable conditions that have the greatest potential to cause substantial harm. One commenter suggested that calculations should be based on the dollar amount of potential damage. EPA is not following this approach as such calculations would be very difficult to assess and could fluctuate over time dependent on inflation and the costs of equipment, materials, labor, etc.

The Agency is aware that CWA hazardous substance planning distance modeling is a critical component of successful implementation of this regulation and is engaged with its research arm to identify additional data and resources to aid the regulated community in compliance. That said, EPA disagrees with commenter concerns that having covered facilities exercise their professional judgment and applying best modeling practices creates opportunities for inconsistency, as it provides flexibility and allows for those most familiar with the substance, facility, and site conditions to examine the event of a worst case discharge and its potential effects.

For commenters concerned with public availability of the models used, § 118.10 as proposed and finalized in this action requires covered facility owners or operators to provide EPA access to models, submit documentation substantiating the methodology, and describe the features to local emergency planners. EPA will work with other Federal partners to determine the feasibility and safety of providing such information to the public.

For the commenter who suggested requiring use of the Chezy Manning equation as in the Oil Pollution Prevention FRP regulation (40 CFR part 112, Appendix C), this approach may be applicable to some oil-like CWA hazardous substances. However, it is not generally applicable to the myriad characteristics and effects of the 296 hazardous substances listed in 40 CFR 116.4. So, while they may be useful tools, dictating or limiting the analysis to those methods alone would not be adequate for calculating planning distances for all CWA hazardous substances, though they may be used for oil-like CWA hazardous substances as appropriate.

10. Facility Response Plan Requirements

EPA proposed and is finalizing with adjustments the FRP requirements in § 118.11. One major objective of the OPA 90 amendments to section 311(j)(5) of the CWA was to shift the burden of response from public to private resources. While a worst case discharge of hazardous substances will likely require the use of both public and private resources, section 311(j)(5)(D)(iii) of the CWA states specifically that facility owners or operators must identify and ensure by contract or other means the availability of private personnel and equipment necessary to respond to the maximum extent practicable to a worst case discharge. The Agency clarifies here that covered facility owner or operators who meet the screening and one or more of the substantial harm criteria must prepare and submit an FRP to EPA that plans for all CWA hazardous substances onsite above the threshold quantity but not CWA hazardous substances onsite below the threshold quantity.

The requirements in § 118.11 are designed to address concerns specific to CWA hazardous substances; as such they do not mirror exactly the requirements under the Oil Pollution Prevention FRP regulation. A written plan that complies with other Federal contingency plan regulations or is consistent with the approach in the National Response Team's ICP Guidance (''One Plan'') and that includes the elements required will satisfy the requirements of this final rule. Facilities may augment an existing response plan with requirements that are specific to this action.

The Agency is aware that planning for any number of the 296 possible CWA hazardous substances with disparate characteristics and impacts may be involved. That is one reason EPA has implemented an initial screen with relatively bright line criteria to that will identify covered facilities that do not need to engage in further analysis.

In this final action, once a covered facility determines it meets one of the substantial harm criteria, the owner or operator must plan for all CWA hazardous substance onsite above the threshold quantity. EPA has adjusted its approach from the proposed rule, where one CWA hazardous substance worst case discharge scenario provided the basis for the FRP. This change is consistent with EPA's statutory authority under this action to require plans for covered facilities that, because of their location, could cause substantial harm to the environment from a worst case discharge into or on the navigable waters. It also recognizes that response and/or recovery actions may vary widely depending on the physicochemical properties of the substance, so one CWA hazardous substance at facilities with multiple CWA hazardous substances that meet or exceed the threshold quantity cannot adequately inform that facility's FRP.

i. Consistency With National Contingency Plan and Area Contingency Plans

Despite supporting the overall proposed rule, one commenter requested EPA add a provision to § 118.11(a)(1) to provide a way to evaluate facility owner or operator compliance with the requirement to ensure consistency with the NCP and ACPs. This seems like a commonsense suggestion that should not impose any additional burden on facilities and will allow the Agency and other reviewers to confirm compliance and cross check relevant plans. Accordingly, EPA has added § 118.11(a)(1)(ii), requiring a signed affirmation of review of relevant plans and § 118.11(a)(1)(iii), requiring a list of area and sub-area plans reviewed.

Additionally, EPA has augmented this provision to require consistency with Regional Contingency Plans (RCPs) as per 40 CFR 300.210. This is appropriate and consistent with the requirements of the CWA since RCPs form a fundamental component of the NCP.

ii. Qualified Individual

Several commenters stated that the requirements for a QI are extremely difficult to meet and impractical, while placing all these responsibilities on one individual is inconsistent with most facilities' operational structures. On the one hand, EPA understands that this is a new program and these requirements may be foreign compared to how owners or operators currently do business. On the other hand, such requirements have been in operation for close to 30 years in the Oil Pollution Prevention FRP regulation, so there is precedent and a successful model for this approach. Accordingly, EPA is keeping in place the requirements for a QI. However, in response to the concerns raised in the comments, EPA is clarifying that a documented management system that can perform the stated functions may take the place of a single individual. For example, as in the Oil Pollution Prevention FRP regulation, duties may be spread across corporate departments and consist of a regional QI structure, corporate call center, and corporate media relations department.

As stated in the OPA conference report (H.R. Rep. No. 101–653, 101st Cong., 2d Sess. 1990), a main objective of this statutory mandate is to shift the burden of response from public to private resources. A sufficiently trained QI can be a valuable member of the incident response team who has

intimate knowledge of the facility and its operations, allowing the QI to make better and informed decisions for the facility if the plan needs to be put into action as well as how the facility response fits into the larger community response. Assuming public responders will take on this role is inappropriate to this action.

In § 118.11(a)(2)(xii), EPA is requiring QIs to acquire and maintain incident commander training requirements consistent with 29 CFR 1910.120(q)(6)(v). Commenters asserted that this is inappropriate because OSHA's Hazardous Waste Operations and Emergency Response (HAZWOPER) standard at 29 CFR 1910.120 is for uncontrolled releases, which could be mitigated by passive mitigation and thus be controlled. EPA maintains that a worst case discharge into or on navigable waters or a conveyance to navigable waters that causes substantial harm to the environment is, by definition, an uncontrolled release and is not allowing for consideration of passive mitigation in this final action. EPA maintains that proper facility personnel training is critical to an effective response program.

iii. Emergency Response Information

EPA has endeavored to provide a framework in § 118.11(b) that is consistent with the Oil Pollution Prevention FRP regulation in 40 CFR 112.20 while maintaining the flexibility needed to address the specific planning needs for 296 disparate CWA hazardous substances.

Facility Information

EPA agrees with a commenter suggestion to add EPA identification numbers to make it easier for EPA, response officials, and stakeholders to cross-reference other relevant information about the facility related to discharge response and preparedness. As such, the Agency has added ''EPA identification numbers'' as a data element to report so facility owner or operators can report various EPA ID numbers they may use, such as TRI IDs, Facility Registry Service (FRS) numbers, etc. This will aid in cross referencing submissions across programs.

Additionally, to provide consistency with the Oil Pollution Prevention FRP regulation, EPA is adding that a facility owner or operator must indicate whether their facility is located in or drains into a wellhead protection area as defined by the SDWA. This information will aid responders in determining whether further assessment of impacts to those areas is warranted.

Owner or Operator Information

The Agency maintains that information on the facility owner or operator is sufficient; both are not needed. EPA is not requiring notification of related facilities nearby and disagrees with a commenter who suggested that listing all facilities within a three-mile radius that are under common ownership would enhance response planning efforts. Related information should be included in the hazard evaluation, where a facility owner or operator would identify nearby businesses that could be affected by a worst case discharge.

Hazard Evaluation

The Agency is aware of the complexity and cost of modelling endpoints for all CWA hazardous substances above the threshold, examining communities with environmental justice concerns, and considering climate change impacts in hazard evaluations. EPA intends to provide tools and compliance assistance to help the regulated community comply with these requirements and maintains that their inclusion is critical to protect the environment in the event of a worst case discharge. The hazard evaluation will additionally serve to inform equipment selection (*i.e.,* based on physicochemical characteristics of the CWA hazardous substance as floater, sinker, or soluble in water) and response actions to be taken, since those will all depend on what risks are identified and characterized, the necessary control methods, and communications required. Additionally, EPA has added a requirement that, when identifying risks, facility owners or operators must assess the age of CWA hazardous substance containers, since older containers may be more susceptible to failure. Facility owners or operators must also identify taste or odor thresholds in water in their assessment of the ability to adversely impact a PWS in order to more fully inform the relevant PWS of the risks.

For the commenters concerned about assessing cascading failures, EPA does not have access to facility-specific risk information and is not taking on that responsibility for this evaluation, nor is it requiring facilities to assess these impacts across facilities. However, the risks associated with facility density is a factor the RA may consider in § 118.5(b)(10) when determining if a facility could cause substantial harm to the environment through a worst case discharge into or on navigable waters or a conveyance to navigable waters. That said, it is incumbent upon the facility owner or operator to identify nearby schools, businesses, places of worship, or other areas that could be impacted by a worst case discharge.

In addition, the hazard evaluation must examine the effects of CWA hazardous substance worst case discharges on communities with environmental justice concerns as well as the effects of climate change, including those that result in low flow conditions in receiving water bodies, on the likelihood, duration, and impacts of a CWA hazardous substance worst case discharge into or on navigable waters or a conveyance to navigable waters. EPA is not specifying specific climatological data or scenarios in regulation in order to be flexible and in recognition that climate change impacts are occurring in unexpected ways. Indeed, climate change considerations may include the increased frequency and intensity of extreme weather events, temperature fluctuations, rising seas, storm surges, inland and coastal flooding, drought, wildfires, and permafrost melt in northern areas. Instead, the Agency will continue to provide compliance assistance for assessing both climate change impacts and effects on communities with environmental concerns.

Reportable Discharge History

EPA maintains that reportable discharge history is not only relevant but also an appropriate substantial harm criterion; this information is critical to scenario development, including lessons learned from past CWA hazardous substance discharges and response efforts. In terms of a timeline for reporting, EPA is following the lead of the Oil Pollution Prevention FRP regulation and requiring this information to be retained for the life of the facility. EPA notes that permitted discharges under NPDES and reportable discharges under 40 CFR part 112 are covered under those regulations. EPA is not requiring information on non-CWA hazardous substance discharges, since it is unclear at best how relevant they are or would be to worst case discharges of CWA hazardous substances. Similarly, EPA is only including reportable discharges that reach navigable waters, since other discharges are outside the scope of this action.

Another commenter suggested that that any discharge above a RQ is already required to be reported under the CWA or the ancillary State program, so it should be sufficient for the CWA hazardous substance FRP to simply reference the notification submitted to EPA or the State. EPA disagrees that this

is an adequate substitute for purposes of using the information as a planning tool.

Response Personnel and Equipment

Pursuant to § 118.11(b)(5), facility owners or operators must provide the identity and a description of response personnel and equipment and response action implementation necessary to respond to a discharge of a CWA hazardous substance. The Agency clarifies that a management system that clearly outlines the spill response roles will be sufficient for this requirement, as long as it is properly documented.

Contracts

EPA has revised the contracts requirement to explicitly require response resources with firefighting capability. Adding this clarification will aid facility owners or operators in their preparations for a worst case discharge due to fire or explosion, as per the statutory requirement. This is also consistent with the Oil Pollution Prevention FRP regulation at 40 CFR part 112, Appendix E, section 7.4. If a facility does not have adequate resources onsite and it is unable to rely on locally available resources with firefighting capabilities, the facility owner or operator must identify such resources and ensure they are available by contract or other approved means as per § 118.2. The plan must also identify an individual, who could be the QI, at the facility to work with the local fire department during a response and verify that sufficient well-trained resources are available within a reasonable response time to respond to a worst case discharge.

EPA recognizes that, in many cases, contracting resources will need to be identified to fill the role of SROs. Most large Oil Spill Removal Organizations already have the capability to respond to hazardous material incidents, particularly if they have been contracted by truck and rail carriers. EPA expects that the potential increase in demand for SROs caused by the rule will result in greater competition and increased market entry by new contractors. Additionally, in § 118.4, EPA is providing a 36-month implementation period before facility owner or operators must submit plans. Finally, EPA will work with USCG to identify SROs that can fulfill this role.

Notification Lists

EPA received a variety of suggestions of possible interested parties who could potentially be contacted in the event of a discharge. EPA is not expanding the scope of the notification list, since Federal, Tribal, State, and local responders, as well as the non-specific listing of potential receptors or interested parties is inclusive of all of these suggestions. The Agency did, however, remove the requirement to notify the Federal On-Scene Coordinator (OSC) and/or Regional Response Center, since this notification will be handled by the NRC. Federal, State, and local responders will be best positioned to determine whether additional types of notifications are necessary and will be most knowledgeable about the language needs of their local community. Additionally, local responders will be aware of special populations, *e.g.,* hospitals, long-term care homes, assisted living facilities, etc., that may have specific concerned and needs in an emergency situation.

EPA can expect facilities to ensure that a community notification system is available because FEMA has established the Integrated Public Alert & Warning System (IPAWS) for community notification. This system provides authenticated emergency and life-saving information to the public through mobile phones using wireless emergency alerts. It also provides alerts to radio and television via the Emergency Alert System and on NOAA's Weather Radio. The Emergency Alert System devices found at radio, TV and cable stations can support multiple languages and wireless Emergency Alerts can support both English and Spanish. EPA has judged that the presence of State and/or local IPAWS alerting authorities—with the designated authority to alert and warn the public when there is an impending natural or human-made disaster, threat, or dangerous or missing person—in all 50 States provides the necessary infrastructure for facilities to ensure that a community notification system is operational in the event of a worst case discharge of a CWA hazardous substance with the potential to impact the public. The most applicable alerts through this system would be the imminent threat and public safety alerts. Imminent threat alerts include natural or human-made disasters, extreme weather, active shooters, and other threatening emergencies that are current or emerging. Public safety alerts contain information about a threat that may not be imminent, or about an imminent threat that has occurred.

EPA disagrees with commenters who argued that ''preferred communication'' should be removed, since telephone call is not the only method of notification. The reason telephone communication has been historically preferred is because the ''sender'' knows that they have gotten through, or just as importantly, that they have *not* gotten through and need to continue trying. That said, as long as receipt of the communication is confirmed, notification can take any number of electronic forms, including text or email.

Discharge Information

EPA clarifies that there is an expectation that a facility will provide response officials with material updates to discharge information as the facility learns more about the scope and nature of the discharge as it becomes available to aid response efforts.

Personnel Roles and Responsibilities

In response to the concerns raised in the comments, the Agency is clarifying that a documented management system that can perform the stated functions may take the place of a specific individual.

Response Equipment Information

In order to avoid unnecessary confusion or redundancy, EPA notes that CWA hazardous substance FRPs may reference lists in other plans as long as they meet the requirements of § 118.11. For example, oil FRP plan holders could reference their existing response equipment and update the narrative to meet the CWA hazardous substance FRP requirements in an ICP.

EPA disagrees with a commenter who asserted that monitoring and sampling equipment should be specified as ''can be made available.'' Since time will always be of the essence in responding to a worst case discharge, these items are an important component of CWA hazardous substance response and should be actually available rather than possibly available. Additionally, plan holders should refer to their ACP, which contains equipment and response resource requirements in some areas. Finally, determining the type, quantity, etc. of response resources may vary widely given the range of facilities and chemicals at issue, which is one reason EPA has decided that facility owners and operators should have the latitude to make these types of determinations.

Evacuation Plans

One commenter suggested that the final rule explicitly require FRPs to identify the community evacuation plan(s) with which they coordinated and how that coordination with the surrounding community was conducted. EPA agrees with the commenter that this is an important aspect of response planning for a worst case discharge and has adjusted its approach to require FRPs to identify and list the community

evacuation plans consulted in § 118.11(b)(11).

The Agency recognizes that evacuation routes may vary, which is why § 118.11(b)(11) includes ''limitations on evacuation routes'' as a plan element. A facility may include more than one diagram to reflect different scenarios as necessary. Facility owner or operators may include evacuation plans prepared in accordance with 29 CFR 1910.38, but they must reflect the requirements of this section.

To the commenter who suggested cross referencing to evacuation plans prepared under other statutes, while EPA understands there is some redundancy in submitting a plan and in some cases cross referencing is appropriate, the Agency maintains submitting the evacuation plan here allows OSCs to have the plans readily available in the event of a worst case discharge and to inform coordinated response. However, a facility owner or operator may combine their plans in a single ICP to reduce the administrative burden.

Discharge Detection Systems

The Agency maintains that in the event of a worst case discharge, discharge detection systems are critical to inform response timelines. If a facility demonstrably has the ability to cause substantial harm to the environment, it must also have the ability to detect when such a discharge is occurring. EPA notes, however, that the facility owner or operator may include personnel procedures (visual examination, etc.) designed to detect discharges. EPA recognizes that this may increase costs but maintains that the effects of worst case discharges can be catastrophic and costly (see chapter 3 of RIA in the docket).

EPA disagrees with a commenter who argued that discharge detection systems for the 296 CWA hazardous substances should follow the same requirements as for oils. The context of this regulation is for worst case discharges of CWA hazardous substances, as such, discharge detection systems should be sufficient for those events. Additionally, the Agency notes that these systems should not be limited to response actions, as they may alert a facility owner operator of a discharge in the first place.

Response Actions

EPA has adjusted the language in this section to clarify that air monitoring and water sample collection, including analytical methods and laboratory support, must be described in this section. Monitoring and sampling are critical components of CWA hazardous substance release responses, since many CWA hazardous substances cannot be recovered, in contrast to oil discharges, where recovery is more likely feasible. Therefore, it is imperative that they be planned for accordingly. Additionally, and in the same vein, EPA has added a requirement to identify types of environmental monitoring to be collected, including method collection techniques, parameter of interest measurement, a description of how the data will be used in a response, and personal protection and safety considerations.

A facility owner or operator; PWS; or responding Federal, State, or local agency can determine whether it is necessary to obtain a third-party to assess and monitor the community health effects following a hazardous discharge to a PWS and make this information publicly available. This will be part of the response actions to a discharge.

One commenter recommended that EPA require facilities to develop a safety plan prior to conducting sampling that considers variable factors like weather conditions, chemical hazards, and situational awareness. EPA notes provisions for worker health and safety are found at § 300.150 of the NCP. The Agency emphasizes that the NCP requires compliance with applicable worker health and safety regulations, including OSHA, under § 300.150(b) during a response action taken by the responsible party, the responsible party must assure that an occupational safety and health program consistent with 29 CFR 1910.120 is made available for protection of workers at the response site.

Finally, EPA has added requirements for response actions to be taken within one- and two-hours of discharge detection. Within one hour of discharge detection, actions include making notifications, mobilizing facility personnel, identifying the extent of the incident, coordinating with the SRO, consulting the hazard evaluation to determine potential effects of the discharge, ensuring containment and neutralization systems are working, evacuation assessment, and coordination with PWSs and local responders. Within two hours, resources and monitoring must be deployed. Explicitly stating EPA's expectations within these critical response time frames will ensure resources are ready and available, and guide exercise and training programs as well as GIUEs, further enabling readiness.

Disposal Plans

EPA has adjusted its approach to include disposal plans for firefighting foam and runoff. As seen in responses such as the Menominee Michigan Warehouse Fire, where several million gallons of fire suppression water have been collected to minimize runoff of fire-related contaminants into to the Menominee and Marinette water treatment plant and adjacent Menominee River,[9] these types of plans are important to ensure chemicals are properly disposed of and to minimize runoff of fire-related contaminants.

Containment Measures

One commenter recommended that EPA define the term ''adequate containment'' to prevent industry confusion and differences in interpretations by the regions. Adequate containment will vary based on the worst case discharge scenario and associated response actions and consist of sufficient resources to contain the items described in § 118.11(b)(15). As per the statutory authority of this action under CWA sec. 311(j)(5), this is a response planning regulation. Inherently safer technologies and designs related to CWA hazardous substance storage are outside the scope of this rule. Nonetheless, EPA notes that § 118.11(b)(15) includes requirements for measures to provide adequate containment and drainage of discharged CWA hazardous substances in a response scenario, as this is a response function.

Training Procedures

See section III.D.vi of this preamble for a discussion of training procedures.

Exercise Procedures

See section III.D.vi of this preamble for a discussion of training procedures.

Self-Inspection

EPA is finalizing § 118.11(b)(18) as proposed.

iv. Emergency Response Action Plan

In § 118.11(c), EPA has added a provision requiring an Emergency Response Action Plan (ERAP), similar to the provision under the Oil Pollution Prevention FRP regulation at 40 CFR 112.20(h)(1). As detailed in the proposed rule, the ERAP's purpose is to provide a summary of steps for discharge source stabilization, including immediate actions by the facility incident management team, such as internal and external notifications and

[9] *https://response.epa.gov/site/site_profile.aspx?site_id=15823.*

initiation of CWA hazardous substance discharge preparedness and evacuation procedures, to be kept in the front of the CWA hazardous substance FRP or in a separate binder to accompany the full CWA hazardous substance FRP. This requirement will provide important site-specific information for facility personnel and responders. EPA has found ERAPs to be important to plan holders responding to oil spills and expects that a CWA FRP ERAP will be similarly critical for responders to a CWA hazardous substance worst case discharge into or on navigable waters or a conveyance to navigable waters.

v. Coordination Activities

As State and local emergency response officials are vital participants in community and facility response planning, EPA disagrees with the commenters who requested that EPA remove § 118.12(c) as well as the requirement to coordinate drills and exercises with local public emergency response officials and invite them to participate in § 118.13(c)(1). The Agency maintains that such coordination is critical for planning for worst case discharges since public entities are often involved in response efforts and, as such, EPA has added language to include local emergency planning and response organizations outside of SERCs, TERCs, LEPCs, and TEPCs in coordination activities. Additionally, the rule does not contain language that State and local emergency response officials should set drill and exercise schedules; rather, it states that facility owner or operators shall include consulting with the appropriate officials to establish schedules and plans.

EPA recognizes that, in some cases, it may be difficult to coordinate with LEPCs, TEPCs, or other local emergency planning and response organizations due to competing priorities or limited resources. In response, the Agency has added § 118.12(d)(3), which allows a facility owner or operator to demonstrate through documentation that he or she has made a good faith effort to coordinate on the schedule required under § 118.12(a). The Agency is retaining the requirement to maintain signed agreements as a compliance tool and to encourage in-depth, practicable coordination. Correspondence such as email may be used for purposes of documenting good faith efforts, as long as it is preserved. In terms of retention, facility owners or operators are expected to maintain coordination documentation for the life of the facility. Due to the ease of storing electronic records, the Agency does not expect this to be burdensome, and past agreements and discussions may be valuable tools in response planning, revision, and augmentation.

EPA recognizes that historically, planning and response has been a public function. However, as stated in the OPA Conference Report (H.R. Rep. No. 101–653, 101st Cong., 2d Sess.), a major purpose of this action is to shift the burden of worst case discharge planning from public resources to private resources and ensure that facility owners and operators are properly planning for worst case discharges of CWA hazardous substances into or on navigable waters or a conveyance to navigable waters. EPA agrees that facility and community plans should work in concert to plan for these events. However, this regulation does not put requirements on local emergency responders because that is beyond the scope and authority for this action. Nonetheless, EPA notes that ASTM E3241–20 Standard Guide for Coordination and Cooperation between Facilities, Local Emergency Planning Committees, and Emergency Responders is a valuable guide and resource and encourages LEPCs or TEPCs and emergency responders to familiarize themselves with the standard. The Agency is aware that many communities prepare all hazards plans and reiterates that this regulation does not require additional planning by emergency planners. Instead, facilities must reach out to these planners and coordinate FRPs. Community planners then have access to this information and any other types of information they may need to strengthen their community plans.

vi. Facility Response Training, Drills, and Exercises

EPA proposed and is finalizing with minor adjustments training requirements in § 118.13(b). EPA is retaining a reference to OSHA's 29 CFR 1910.120 training specific to hazardous substances, while also ensuring that training is conducted for facility personnel, private personnel, casual laborers, and volunteer responders. However, in response to commenter concerns and consistent with the Oil Pollution Prevention FRP program, training may be specific to job tasks and personnel roles. This additional training will ensure the full population of those who could respond to a worst case discharge are prepared. The Agency notes that OSHA's 29 CFR 1910.120 already applies to emergency response operations for releases of, or substantial threats of release of, hazardous substances without regard to the location of the hazard (29 CFR 1910.120(a)(1)(v)) and facility owners or operators should already be complying with these requirements. EPA has added language to § 118.13(b) to clarify that facility personnel are also subject to these requirements.

While some commenters suggested that the provision that requires facilities to work with and train volunteers and casual laborers who may respond to a discharge should be removed from the FRP requirements and instead a public entity such as the LEPC or TEPC should coordinate volunteer and casual laborer response activities, EPA disagrees, as this shifts the burden of properly training response personnel to the public, which is counter to the intent of OPA 90. Additionally, there may be LEPCs or TEPCs that are inactive or do not have time, personnel, resources, or capabilities to provide this type of training.

To account for modern business practices and the easy of electronic record storage, EPA has adjusted the documentation provision in § 118.13(b)(4) to allow records to be maintained under usual and customary business practices and either as an annex or included in the FRP.

Under § 118.13(c), EPA is finalizing the drills and exercises requirements with minor adjustments. In § 118.13(b)(1), a facility owner or operator must coordinate with local public emergency response officials when appropriate and invite them to participate. EPA has added language in § 118.13(c)(1) which allows a facility owner or operator to demonstrate through documentation that he or she has made a good faith effort to coordinate. Finally. EPA notes that the Preparedness for Response Exercise Program (PREP) guidelines will be updated to reflect the requirements under 40 CFR part 118, CWA Hazardous Substance FRPs.

11. Substantial Harm Certification Form

EPA has made several adjustments to Appendix A: Substantial Harm Certification Form to reduce confusion and duplicative entries as well as to aid in compliance. EPA has adjusted the initial submission date from one month to within 60 days of meeting the criteria in § 118.3(a) and § 118.3(b), for covered facilities that do not satisfy the substantial harm criteria in § 118.3(c). Because substantial harm calculations and modeling may be involved, the Agency recognizes that additional time may be necessary. Those submitting an FRP will still need to submit a Substantial Harm Certification Form, which should add minimal burden, since this information will be included in their FRP. However, facilities submitting their FRPs may submit their

Appendix A Substantial Harm Certification Form at the same time. EPA has added a requirement to list the ACP(s) consulted in question 3, as well as list the FWSEs and list and describe the public receptors potentially affected by a worst case discharge. This will allow reviewers to cross check entries against the ACP. EPA is not requiring submission of forms to local emergency response organizations, though covered facility owners or operators must make the forms available to local emergency response organizations upon request. Covered facility owner or operators must also recertify their Forms every five years.

EPA understands why covered facilities are interested in keeping the form as simple as possible and has taken efforts to that effect. However, there are countervailing reasons for including more robust information. Completing and submitting Appendix A ensures that the covered facility reviews their potential to cause substantial harm to the environment and that EPA has access to updated information in a timely manner. This approach is based on the Oil Pollution Prevention FRP regulation, in which facility personnel must complete, and maintain at the facility, a certification form which identifies substantial harm information for the facility (see 40 CFR part 112 Appendix C, Attachment C–II). The form is required of all SPCC-regulated facilities and requires signature by the certifier for the facility. The inclusion of information that demonstrates the reliability and analytical soundness of the substantial harm evaluation as well as a review of potential receptors that could be impacted as a result of a CWA hazardous substance discharge will assist EPA in making compliance determinations as well as provide sufficient information to identify those covered facilities that could reasonably be expected to cause significant and substantial harm to the environment. Again, while EPA recognizes that the form will require time and resources to complete, the agency maintains that this information is critical for protecting the environment and can help covered facility owner or operators identify risks at their facilities.

EPA disagrees that these forms will cause confusion for the public. Appendix A will be used as a public information, enforcement, and compliance tool for this regulation; thus, the relevant information on CWA hazardous substance present onsite must be readily available. EPA has revised Appendix A in the final rule to aid in clarity. For example, EPA has adjusted the language in Question 5 to clarify that the reportable discharge must have been to navigable waters. For discharges after the effective date of this rule, EPA expects that covered facility owners or operators will collect this information routinely in order to improve their business practices and minimize accidental discharges. The adverse impact reported are limited to what is listed in Appendix A. In addition, conforming changes regarding the requirement to analyze all CWA hazardous substances above the threshold level onsite have been made. Finally, EPA has adjusted the certification statement for clarity as to its expectations of the certifier.

12. Confidential Business Information (CBI)

EPA agrees with commenters concerned about security and the sensitivity of certain types of information and will work with its Federal partners such as DHS and DOJ and other appropriate agency security and cybersecurity experts to determine which parts of the FRP may not be made publicly available. Additionally, the Agency takes personal privacy seriously and will ensure the safety of individual information and data.

E. Additional Considerations

1. Climate Change

EPA appreciates the concerns raised by the commenters and understands that the unpredictability of breadth of the impacts of climate change make it challenging to assess. Because the impacts of climate change continue to expand, EPA expects to provide ongoing compliance assistance and guidance to assist covered facilities in compliance with the climate change considerations in the final rule. That said, EPA disagrees that climate change impacts are occurring on a longer-term scale than can be considered within the FRP's five-year cycle. For example, the increase in severity and frequency of severe weather, including conditions resulting in flooding or drought, is a clear impact of climate change that should be considered by a covered facility owner or operator when evaluating their worst case discharge scenarios. The agency agrees that owners or operators should use the best available climate data when evaluating climate risks because the climate is changing rapidly compared to historical conditions. As part of ongoing compliance assistance, EPA expects to make existing and evolving data sources and tools available. The Agency recognizes that these evaluations are not without costs, however, due to the known risks of increasing and more frequent severe weather and other climate change impacts, their inclusion in this action is vital to ensure protection of human health and the environment.

One commenter stated that, because climate change could impact factors like the distance to navigable waters or a conveyance to navigable waters, EPA could plan to reassess CWA worst case scenario discharge risks at a regular interval to see if the actions' requirements remain effective. The Agency notes that FRPs must be recertified every five years as per § 118.4(a)(6), which will give owners or operators the opportunity to reassess their worst case discharge scenarios. Finally, EPA appreciates the suggested data and information sources suggested by commenters and will evaluate them for purposes of ongoing compliance assistance.

2. Communities With Environmental Justice Concerns

As discussed in the Preamble to the proposed rule, there is clear evidence of co-location of hazardous substance facilities in or near communities with environmental justice concerns. Specifically, the co-location assessment confirms that industrial facilities and aboveground storage tanks are disproportionately located in these communities and worst case discharges or threats of worst case discharges of CWA hazardous substances are examples of environmental justice concerns that can affect local communities. Currently, once a facility meets the applicability criteria in § 118.3, their hazard evaluation (§ 118.11(b)(3)) must examine impacts on nearby communities that could be affected by a discharge. Although, the final rule does not require consultation with communities with environmental justice concerns, there are other avenues of participation for the public in the response planning process, including involvement in the ACP development process or participation in the LEPC or TEPC. EPCRA section 303 tasks LEPCs and TEPCs to develop community emergency response plans and to share chemical information to citizens in the community and is the current avenue for public participation in these types of plans, in consideration of communities with environmental justice concerns. Existing stewardship programs through partnerships or company initiatives may fulfill the requirements in § 118.11(b)(3) or be augmented to do so. In addition, one factor RAs may consider in determining whether to require CWA hazardous substance FRPs for covered

facilities is the potential for a worst case discharge to adversely impact communities with environmental justice concerns.

3. Facility Density

EPA recognizes the increased risk of worst case discharges in areas with a high density of CWA hazardous substance facilities that could be involved in an incident impacting multiple sites. In § 118.5(b)(10), EPA has included density of facilities in the immediate area with CWA hazardous substances onsite as a factor that an RA may consider in determining whether to require that a covered facility owner or operator to submit an FRP. EPA notes, however, that the hazard evaluation (§ 118.11(b)(3)) must already consider local businesses that could be affected by a worst case discharge. EPA also recognizes that there are many factors, including greenbelts, facility design, spacing requirements, facility size, and manufacturing processes, that complicate considerations for facility density. Accordingly, the RA must take all these site-specific circumstances into account when making a determination.

F. Consistency With the NCP

Section 311(j)(5)(D) of the CWA states that facility response plans must be consistent with the NCP and ACPs. As such, in §§ 300.185, 300.211, and 300.411, EPA is finalizing as proposed minor changes to 40 CFR part 300 to ensure uniformity. EPA did not receive any comments on these changes which include adding references to 40 CFR part 118 in §§ 300.185 and 300.211, adding § 300.411 to detail requirements for responses to CWA hazardous substance worst case discharges, and mirroring the requirements for oil worst case discharges in § 300.324, including OSC responsibilities to notify the NSFCC, requiring the FRP be initiated, implementing ACP worst case discharge plans, taking response actions, and coordinating private and public equipment for response.

IV. Statutory and Executive Orders 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 in 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. The EPA prepared an economic analysis of the potential impacts associated with this action. This *Regulatory Impact Analysis, Clean Water Act Hazardous Substance Facility Response Plans,* is available in the docket for this action.

B. Paperwork Reduction Act (PRA)

The information collection activities in this final action have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR No. 2710.02. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The CWA hazardous substance provisions of the final rule include requirements for onshore non-transportation-related facilities that could reasonably be expected to cause substantial harm to the environment, based on their location, to prepare FRPs for worst case discharges and submit them to EPA. Specific CWA hazardous substance FRP components include: facility information, owner or operator information, hazard evaluation, reportable discharge history, response personnel and equipment, evidence of contracts or other approved means to ensure the availability of personnel and equipment, notification lists, discharge information, personnel roles and responsibilities, response equipment information, evacuation plans, discharge detection systems, response actions, disposal plans, containment measures, training and exercise procedures, self-inspection, a coordination activities.

EPA has estimated an average annual total burden for respondents of 984,891 hours per year in the first three years, average annual labor cost of $69.7 million and operations and maintenance (O&M) costs of $18.0 million ($87.7 million total cost per year). EPA has carefully considered the burden imposed upon the regulated community by the regulations. EPA believes that the activities required are necessary and, to the extent possible, has attempted to minimize the burden imposed. The requirements specified in the final rule are intended to have a mitigating effect on CWA hazardous substance worst case discharges because the rule provisions address the categories of damages and adverse impacts expected from this type of discharge.

Respondents/affected entities: 12,618, including 7,264 estimated for rule familiarization and the Substantial Harm Certification Form; and 5,354 facilities further developing and maintaining FRPs under the final rule.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 12,618 responses by 12,618 respondents during the three-year ICR period. The overall average number of responses during the ICR period is 4,206.

Frequency of response: One-time, then if required to amend an FRP.

Total estimated burden: Average hours per year: 984,891. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: Average cost per year: $87,705,322 per year.

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 OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

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 1,509 potentially small businesses classified under a broad range of 148 different North American Industry Classification System (NAICS) industries, at the five-digit level. For facilities owned by regulated small entities, the cost per facility ranges from $11,753 to $20,064, depending on the industry. The Agency has determined that 47 small entities may experience a cost-to-revenue impact of 1% to 3% of revenues (or, about three percent of all small entities). These entities are in four industries:

- Animal Food Manufacturing (33 small entities).
- Sawmills and Wood Preservation (4 small entities).
- Resin and Synthetic Rubber Manufacturing (9 small entities).
- Marine Cargo Handling (1 small entity).

The Agency also estimated 21 entities (around 1.4 percent of all regulated small entities), may experience an

impact greater than 3% of revenue. These entities include:

- Electric Power Generation (19 small entities).
- Support Activities for Mining (2 small entities).

As documented in section 8.3 of the RIA for the final rule, and in accordance with RFA requirements and SBA guidance, EPA has prepared a screening analysis to assess small entity impacts. This conclusion was reached by identifying the subset of small entities regulated by the final action based on SBA criteria for each NAICS industry. Then, EPA assessed the potential impact of the rule on those small entities using the cost-to-revenue threshold test. The Agency compared the annualized cost per small entity to annual revenues and identified entities where costs exceed one or three percent of annual revenues.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This final rule imposes no new enforceable duty on any State, local, or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. 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 has Tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt Tribal law. EPA has concluded that this action may have Tribal implications because it requires covered facility owner or operators to notify their local TEPC if a worst case discharge should occur and coordinate with their TEPC on developing the Facility Response Plan and any associated community emergency response planning.

EPA mapped the location of the available sample of 661 in-scope facilities present in EPA's Tier II data against EPA's geographic boundaries for Tribal lands and did not identify any covered facilities located on Tribal lands. EPA notes that these data capture only a portion of potentially regulated facilities, and do not include some States with relatively higher proportions of Tribal lands, such as Oklahoma. In addition, EPA lacks information on the location of water intakes associated with facilities, which is a further uncertain potential source of Tribal impacts. EPA consulted with Tribal officials under EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to enable them to have meaningful and timely input into its development. EPA held a national Tribal consultation on the Clean Water Act Hazardous Substance Worst Case Discharge Planning Regulation Proposal in FY2022. On March 21, 2022, EPA sent a notification letter via email to Tribal leaders of all 574 federally recognized Tribes in lieu of a hardcopy because of the COVID–19 pandemic. In addition, EPA hosted one national Tribal informational webinar on April 6, 2022, to explain the action, answer questions, and record Tribal input. Five Tribal participants attended the webinar. No Tribes requested government to government consultation with EPA on the Clean Water Act Hazardous Substance Worst Case Discharge Planning Regulation Proposal. A few Tribes provided comments during the webinar. No federally recognized Tribes submitted comments to the docket during the public comment process.

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

Executive Order 13045 directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The Agency has concluded that the effect of the requirements codified in this final rule will mitigate the adverse effects of environmental and socio-economic damage that could otherwise result from worst case discharges. This final action will therefore not have a disproportionate adverse effect on children. However, EPA's *Policy on Children's Health* applies to this action. Information on how the Policy was applied is available under ''Children's Environmental Health'' in the Supplementary Information section of this preamble.

H. Executive Order 13211: Actions 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. The requirements specified in the final rule are intended to result in greater overall environmental protection. The final rule will not cause reductions in the supply or production of oil, fuel, coal, or electricity; nor will it result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice concerns. Under Executive Order 14096, ''Revitalizing Our Nation's Commitment to Environmental Justice for All'' (which builds upon Executive Order 12898 [10]) agencies must, as appropriate and consistent with applicable law, identify, analyze, and address the disproportionate and adverse human health and environmental effects (including risks) and hazards of rulemaking actions and other Federal activities on communities with environmental justice concerns.[11] Worst case discharges of hazardous substances from facilities regulated by this action would likely pose disproportionate risks to such communities located near these sites *e.g.,* including communities that have been historically marginalized by underinvestment and overburdened by pollution. EPA has concluded that the regulatory requirements will advance fair treatment of those communities by

[10] Exec. Order No. 12898 of Feb. 11, 1994 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations), 59 FR 7629 (Feb. 16, 1994).

[11] For further information, including the definition of environmental justice, see Exec. Order No. 14096 of Apr. 21, 2023 (Revitalizing Our Nation's Commitment to Environmental Justice for All), 88 FR. 25,251 (Apr. 26, 2023).

reducing the disproportionate damages that worst case discharges might otherwise inflict on those areas.

The EPA believes that this action is likely to reduce existing disproportionate and adverse effects on communities with environmental justice concerns. EPA has concluded that the regulatory requirements will advance fair treatment of those communities by reducing the disproportionate damages that worst case discharges might otherwise inflict on those areas. EPA has concluded that the requirements codified in this final rule will mitigate the adverse effects of environmental and health damage that could otherwise result from worst case discharges and are likely to reduce existing disproportionate and adverse effects on communities with environmental justice concerns. EPA has concluded that the regulatory requirements will advance fair treatment of those communities by reducing the disproportionate damages that worst case discharges might otherwise inflict on those areas.

The focus of this action is to finalize new requirements for FRPs for worst case discharges of CWA hazardous substances for onshore non-transportation related facilities that, because of their location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or a conveyance to navigable waters. The EPA additionally identified and addressed environmental justice concerns associated with the final rule and qualitatively assessed whether the requirements codified in this final rule will mitigate the adverse effects of environmental and health damage that could otherwise result from worst case discharges. EPA has concluded that, while the changes in this rule were independent of environmental justice considerations, the regulatory requirements will advance fair treatment of communities with environmental justice concerns by reducing the disproportionate damages that discharges might otherwise inflict on them. Specifically, EPA has concluded that:

- Communities with environmental justice concerns (including communities historically marginalized by underinvestment and overburdened by pollution) are more likely to be in proximity to those covered facilities (and thus at greater risk) than other communities. To the extent that communities living closer to covered facilities are more likely to be exposed if a discharge occurs, potential CWA FRP facilities pose a greater risk to these groups. Therefore, the final action will reduce risk for these communities.
- The final requirements for FRPs will improve preparedness planning and public awareness of planning and response activities. EPA expects the final rule requirements will also enhance EPA's ability to address area- and regional-specific concerns.

The information supporting this review is contained in the RIA, section 8.7, which includes an environmental justice analysis and is available in the docket for this action.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action does not meet the criteria set forth in 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 118 and 300

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Michael S. Regan,
Administrator.

For the reasons stated in the preamble, Title 40, chapter I, of the Code of Federal Regulations is amended as follows:

■ 1. Add part 118 to subchapter D to read as follows:

Subchapter D Water Programs

PART 118—CLEAN WATER ACT HAZARDOUS SUBSTANCES FACILITY RESPONSE PLANS

Sec.
118.1 Purpose.
118.2 Definitions.
118.3 Applicability.
118.4 General requirements.
118.5 Regional Administrator determination of substantial harm and significant and substantial harm.
118.6 Appeals process.
118.7 Petitions.
118.8 Exceptions and exemptions.
118.9 Mixtures.
118.10 Worst case discharges.
118.11 Facility response plan requirements.
118.12 Coordination activities.
118.13 Facility response training and drills/exercises.
Appendix A to Part 118: Certification form
Appendix B to Part 118: Toxicity endpoints for calculating planning distance for fish, wildlife and sensitive environments and public receptors.

Authority: 33 U.S.C. 1251 *et seq.,* and Executive Order 11735, superseded by Executive Order 12777, 56 FR 54757.

§ 118.1 Purpose.

This part establishes Clean Water Act (CWA) hazardous substance facility response plan requirements for the owner or operator of any non-transportation-related onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging CWA hazardous substances into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.

§ 118.2 Definitions.

For the purposes of this part:

Adverse weather means weather conditions that make it difficult for response equipment and personnel to clean up or respond to discharged CWA hazardous substances, accounting for impacts due to climate change, such as the increased frequency and intensity of extreme weather events, temperature fluctuations, rising seas, storm surges, inland and coastal flooding, drought, wildfires, and permafrost melt in northern areas and that must be considered when identifying response systems and equipment in a response plan for the applicable operating environment.

Article means a manufactured item that is formed to a specific shape or design during manufacture, has end use functions dependent in whole or in part upon the shape or design during end use, and does not release or otherwise result in exposure to a CWA hazardous substance under normal conditions of processing and use.

Container means any device or portable device in which a CWA hazardous substance is processed, stored, used, transported, treated, disposed of, or otherwise handled.

Contract or other approved means is defined as:

(1) A written contractual agreement with a spill response organization that identifies and ensures the availability of the necessary personnel and equipment within appropriate response times;

(2) A written certification by the owner or operator that the necessary personnel and equipment resources, owned or operated by the facility owner or operator, are available to respond to a discharge within appropriate response times;

(3) Active membership in a local or regional spill response organization that has identified and ensures adequate access through such membership to necessary personnel and equipment to respond to a discharge within appropriate response times in the specified geographic area; or

(4) Any other specific arrangement approved by the Regional Administrator upon request of the owner or operator.

CWA Hazardous Substance means any hazardous substance designated in 40 CFR part 116.

Discharge includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a CWA hazardous substance, but excludes: discharges in compliance with a permit under section 402 of the CWA; discharges resulting from circumstances identified, reviewed, and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit; and continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems.

Distance to the endpoint means the greatest distance a CWA hazardous substance in a worst case discharge into or on the navigable waters or a conveyance to navigable waters can travel while still having the ability to cause injury to public receptors or fish, wildlife, and sensitive environments, as determined under § 118.3(c)(1) and (c)(3) using endpoint concentrations enumerated in Appendix B or adversely impact a public water system as in § 118.3(c)(2).

Endpoint means the concentration at which a worst case discharge of a CWA hazardous substance has the ability to cause injury to public receptors or fish, wildlife, and sensitive environments as in Appendix B or adversely impact a public water system as in § 118.3(c)(2).

Exclusive economic zone means the zone contiguous to the territorial sea of the United States extending to a distance up to 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

Facility means any mobile or fixed building, property, parcel, lease, structure, installation, equipment, pipe, or in-plant pipeline (other than a vessel or a public vessel), used in CWA hazardous substance handling, production, manufacturing, storage, processing, refining, transfer, distribution, treatment, or in which any CWA hazardous substance is used. The boundaries of a facility depend on several site-specific factors, including but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and types of activity at the site. Therefore, contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines under the ownership or operation of the same person may, for legitimate operational and response planning reasons, be considered separate facilities.

Fish, wildlife, and sensitive environments mean areas that may be identified by their legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include wetlands, national and State parks, critical habitats for endangered or threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, Federal and State lands that are research national areas, heritage program areas, land trust areas, and historical and archaeological sites and parks. These areas may also include unique habitats such as aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

Injury means a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource or public receptor (including to human health) resulting either directly or indirectly from exposure to a discharge, or exposure to a product of reactions (*e.g.,* more hazardous degradation products, ignition, or reaction) resulting from a discharge.

Interconnected containers mean containers that are connected via pipes, hoses, or other conveyance (either permanent or temporary) to allow movement of a CWA hazardous substance between containers.

Maximum extent practicable means within the limitations used to determine CWA hazardous substance release planning resources for recovery, shoreline protection, and cleanup for worst case discharges from onshore non-transportation-related facilities in adverse weather. It includes the planned capability to respond to a worst case discharge, including a discharge resulting from fire or explosion, as contained in a facility response plan that meets the requirements in § 118.11 or in a specific plan approved by the Regional Administrator.

Maximum quantity onsite means the maximum total aggregate quantity for each CWA hazardous substance present at all locations within the entire non-transportation-related onshore facility at any time.

Mitigation or mitigation system(s) means specific activities, technologies, or equipment designed or deployed to capture or control substances upon loss of containment to minimize exposure of the public or the environment. Passive mitigation means equipment, devices, or technologies that function without human, mechanical, or other energy input.

Navigable waters mean waters of the United States as defined in 40 CFR 120.2, adjoining shorelines, and the exclusive economic zone.

Non-transportation-related onshore facility means any facility of any kind located in, on, or under any land within the United States and excludes movement of CWA hazardous substances in interstate or intrastate commerce under active shipping papers by rail, pipeline, highway vehicle, or vessel pursuant to 49 CFR parts 171–180.

Offshore facility means any facility of any kind (other than a vessel or public vessel) located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters.

Offsite means areas beyond the property boundary of a facility, and areas within the property boundary to which the public has routine and unrestricted access during or outside business hours.

Onshore facility means any facility of any kind located in, on, or under any land within the United States other than submerged land. Furthermore, this extends to in, on, or under any submerged land as delegated to the Environmental Protection Agency (EPA) pursuant to 40 CFR part 112 Appendix B.

Owner or operator means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated or maintained the facility immediately prior to such abandonment.

Person means an individual, firm, corporation, association, or partnership.

Planning distance means the distance to an endpoint such that a worst case discharge of CWA hazardous substances into or on the navigable waters or a conveyance to navigable waters from a non-transportation-related onshore facility could adversely impact a public water system or cause injury to fish, wildlife, and sensitive environments or public receptors, as described in § 118.10.

Publicly Owned Treatment Works is defined in 40 CFR 403.3 and includes Federally Owned Treatment Works.

Public receptors mean parks, recreational areas, docks, or other public spaces inhabited, occupied, or used by the public at any time where members of the public could be injured as a result of a worst case discharge into or on the navigable waters or a conveyance to navigable waters.

Public vessel as defined by section 311(a)(4) of the CWA means a vessel owned or bareboat-chartered and operated by the United States, or a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

Public water system is a system as defined in 40 CFR 141.2. A public water system is either a ''community water system'' or a ''non-community water system.''

Qualified individual (QI) means the individual having full authority to implement response actions and required to initiate immediate communications with the appropriate Federal official and the persons providing personnel and equipment to respond, to the maximum extent practicable, to a worst case discharge and to mitigate or prevent a substantial threat of such a discharge.

Regional Administrator means the Regional Administrator of the EPA, in and for the Region in which the non-transportation-related onshore facility is located.

Reportable quantities mean quantities that may be harmful as set forth in § 117.3, the discharge into the environment during a 24-hour period, which is a violation of Clean Water Act section 311(b)(3) and requires notice as set forth in § 117.21.

Respond or response means containment, removal, remediation, neutralization, source control, mechanical recovery, bioremediation, or other release countermeasures, in accordance with the applicable Regional Contingency Plan and Area Contingency Plan, of the CWA hazardous substances from the water and adjoining shorelines or the taking of such other actions that may be necessary to prevent, minimize, or mitigate damage to the environment, public health, or welfare, including, but not limited to, persons, fish, shellfish, wildlife, public water systems, and public and private property, shorelines, and beaches.

Response equipment means equipment (including firefighting equipment), or other mitigating substances and devices, available to an owner or operator and Federal, State, and local or Tribal agencies, designed or used to ensure an effective and immediate response to a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge.

Response resources means the personnel, equipment, supplies, and other capability necessary to perform the response activities identified in the facility response plan required under this part.

Source water protection area means the area delineated by the State for a public water system or including numerous public water systems, whether the source is ground water or surface water or both, as part of the State Source Water Assessment Program approved by EPA under section 1453 of the Safe Drinking Water Act (42 U.S.C. 300j–13).

Spill response organization (SRO) means an entity that provides spill response resources to mitigate or remove CWA hazardous substances from the environment and mitigate associated impacts.

Transportation or transport means the movement of property and loading, unloading, or storage incidental to movement pursuant to 49 CFR part 171–199.

Transportation-related onshore facility means any facility of any kind, in, on, or under any land within the United States which provides movement or conveyances of CWA hazardous substances in interstate or intrastate commerce by rail, pipeline, highway vehicle, or vessel pursuant to 49 CFR parts 171–199.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Pacific Island Governments.

Vessel as defined by section 101(28) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water; and, as defined by section 311(a)(3) of the CWA, means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

Water distribution system means a system to connect water treatment plants or water sources (in the absence of treatment) to customers via a network of pipes, storage facilities, valves, and pumps.

Wellhead protection area means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

Worst case discharge means the largest foreseeable discharge in adverse weather conditions including a discharge resulting from fire or explosion.

§ 118.3 Applicability.

This part applies to the owner or operator of any non-transportation-related onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging CWA hazardous substances into or on the navigable waters or a conveyance to navigable waters by meeting the following criteria:

(a) *Threshold quantity.* The maximum quantity onsite for any CWA hazardous substance listed at 40 CFR 116.4 at any time, meets or exceeds 1,000 times the Reportable Quantity in pounds (kilograms) found at 40 CFR 117.3. Do not include any exceptions or exemptions identified in § 118.8. To calculate the threshold quantities of CWA hazardous substances in mixtures, follow the procedures in § 118.9; and

(b) *Proximity to navigable waters.* The non-transportation-related onshore facility boundary or nearest opportunity for discharge is located within one-half mile of navigable waters or a conveyance to navigable waters; and

(c) *Substantial harm criteria.* The non-transportation-related onshore facility meets one or more of the following substantial harm criteria:

(1) *Ability to cause injury to fish, wildlife, and sensitive environments.* The non-transportation-related onshore facility is located at a distance to an endpoint as calculated using a planning distance in § 118.10(b) such that a worst case discharge of a CWA hazardous substance or the aqueous products that form when the CWA hazardous substance enters water from the non-transportation-related onshore facility could cause injury to fish, wildlife, and sensitive environments. For identification of fish, wildlife, and sensitive environments, owners or operators shall use the applicable Area Contingency Plan prepared pursuant to section 311(j)(4) of the CWA, in addition to identifying other areas pursuant to the definition in § 118.2;

(2) *Ability to adversely impact a public water system.* The non-transportation-related onshore facility is located at a distance to an endpoint such that a worst case discharge could adversely impact a public water system, as described by the five criteria listed

under paragraphs (c)(2)(i) through (v) of this section. This assessment should be conducted in collaboration with the downstream public water system(s). If the owner or operator is unable to work with the public water system after good faith efforts to do so, the owner or operator should use the estimated peak concentration of the CWA hazardous substance from a worst case discharge at the water intake to assess the potential to adversely impact a public water system. Ability to adversely impact a public water system includes a concentration of a CWA hazardous substance, or the aqueous products that form when the CWA hazardous substance enters water, reaching a public water system which:

(i) Violates any National Primary Drinking Water Standard or State Drinking Water Regulation, such as an exceedance of a Maximum Contaminant Level;

(ii) Compromises the ability of the public water system to produce water that complies with any National Primary Drinking Water Standard or State Drinking Water Regulation;

(iii) Results in adverse health impacts in people exposed to the maximum concentration that could enter a drinking water distribution system;

(iv) Contaminates public water system infrastructure, including but not limited to intake structures, treatment facilities, and drinking water distribution systems, or premise plumbing systems to a degree that requires remediation to restore system components to acceptable performance; or

(v) Impairs the taste, odor, or other aesthetic characteristic of the water entering a drinking water distribution system to a degree that could make the water unacceptable to consumers and that could prompt the public water system to issue use restrictions;

(3) *Ability to cause injury to public receptors.* The non-transportation-related onshore facility is located at a distance to an endpoint as calculated using a planning distance in § 118.10(b) such that a worst case discharge into or on the navigable waters or a conveyance to navigable waters could cause injury to a public receptor as defined in § 118.2; or

(4) *Reportable discharge history.* The non-transportation-related onshore facility has had a reportable CWA hazardous substance discharge under § 117.21 within the last five years that reached navigable waters.

§ 118.4 General requirements.

(a) *Preparation, submission, and implementation of facility response plans.* The owner or operator of any non-transportation-related onshore facility meeting the applicability requirements of § 118.3 shall prepare, submit, and implement a facility response plan according to the following provisions:

(1) *Initially regulated facilities.* The owner or operator of a non-transportation-related onshore facility in operation on November 30, 2026 that satisfies the criteria in § 118.3 shall prepare and submit a facility response plan that satisfies the requirements of this section and Appendix A: Substantial Harm Certification Form to the Regional Administrator by June 1, 2027.

(2) *Newly regulated facilities.* The owner or operator of a non-transportation-related onshore facility that did not satisfy the criteria in § 118.3 on November 30, 2026, but satisfies the criteria in § 118.3 after November 30, 2026 or that is notified by the Regional Administrator pursuant to § 118.5 shall prepare and submit a facility response plan that satisfies the requirements of this section and Appendix A: Substantial Harm Certification Form to the Regional Administrator within six months of meeting the criteria or notification.

(3) *Newly constructed facilities.* For a newly constructed non-transportation-related onshore facility that commences operation after June 1, 2027, and is required to prepare and submit a facility response plan based on the criteria in § 118.3, the owner or operator shall submit the facility response plan and Appendix A: Substantial Harm Certification Form to the Regional Administrator prior to the start of operations. Adjustments to the facility response plan to reflect changes that occur during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days.

(4) *Facilities regulated as a result of a planned event or change.* For a non-transportation-related onshore facility required to prepare and submit a facility response plan after June 1, 2027, as a result of a planned change in design, construction, operation, or maintenance so that the non-transportation-related onshore facility now meets the criteria in § 118.3 of this part, the owner or operator shall submit the facility response plan and Appendix A: Substantial Harm Certification Form to the Regional Administrator before the portion of the non-transportation-related onshore facility undergoing the planned change commences operations. Adjustments to the facility response plan to reflect changes that occur during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days.

(5) *Facilities regulated as a result of an unplanned event or change.* For a non-transportation-related onshore facility required to prepare and submit a facility response plan after June 1, 2027, as a result of an unplanned event or change in facility characteristics that renders the non-transportation-related onshore facility subject to the criteria in § 118.3, the owner or operator shall submit the facility response plan and Appendix A: Substantial Harm Certification Form to the Regional Administrator within six months of the unplanned event or change.

(6) *Recertification.* Owners or operators must review and recertify their facility response plans and Appendix A: Substantial Harm Certification Forms every five years.

(7) *Updated CWA hazardous substance information in 40 CFR 116.4 or 40 CFR 117.3.* If a CWA hazardous substance is added or removed from the list maintained at 40 CFR 116.4 or a reportable quantity adjusted as listed at 40 CFR 117.3, an owner operator shall update their facility response plan accordingly within six months.

(b) *Facility response plan amendments.* (1) The owner or operator of a non-transportation-related onshore facility for which a facility response plan is required under this part shall revise and resubmit revised portions of the facility response plan within 60 days of each change that materially may affect the response to or potential for a worst case discharge, including:

(i) A change in the non-transportation-related onshore facility's configuration that materially alters the information included in the facility response plan;

(ii) A change in the CWA hazardous substance maximum quantity onsite (*i.e.,* increase or decrease in the maximum quantity stored onsite) that materially alters the required response resources;

(iii) A material change in capabilities of the spill response organization(s) that provide equipment and personnel to respond to discharges of CWA hazardous substances described in § 118.11(a)(3);

(iv) A material change in the non-transportation-related onshore facility's discharge mitigation and response equipment or emergency response procedures; and

(v) Any other changes that materially affect the implementation of the facility response plan.

(2) Except as provided in paragraph (b) of this section, amendments to

information in the facility response plan (such as personnel, contact information, or changes in the spill response organization(s)) that do not result in a material change in response capabilities do not require review and approval by the Regional Administrator. Owners or operators shall provide a copy of such changes to the Regional Administrator as the revisions occur.

(3) The owner or operator of a non-transportation-related onshore facility that submits changes to a facility response plan as provided in the preceding paragraphs of this section shall provide an EPA-issued facility identification number (where one has been assigned, such as Facility Registry Service number) with the changes.

(4) The Regional Administrator shall review and approve or disapprove changes to a facility response plan submitted pursuant to the requirements in paragraph (b)(1) of this section for a non-transportation-related onshore facility that he or she has determined pursuant to § 118.5(c) to have the potential to cause significant and substantial harm to human health or the environment.

(c) *Substantial harm certification form submission.* If the non-transportation-related onshore facility meets the criteria in § 118.3(a) and (b) but not (c):

(1) If the non-transportation-related onshore facility is in operation on March 30, 2027, complete and submit to the EPA Regional Administrator the Substantial Harm Certification Form in Appendix A to this part by June 1, 2027, or, for facilities meeting the criteria in § 118.3(a) and (b) after March 30, 2027, within 60 days. Owner or operators must retain their completed Appendix A and supporting documentation for the duration that the CWA hazardous substance maximum quantity onsite meets or exceeds the threshold quantity and for an additional 10 years.

(2) Attach to the form documentation, calculations, and any other information necessary to demonstrate the reliability and analytical soundness of the substantial harm determination as well as a review of potential receptors that could be impacted as a result of a CWA hazardous substance discharge.

(3) Submit to the EPA Regional Administrator a recertification of the Substantial Harm Certification Form every five years, or within 60 days of a change at or outside the non-transportation-related onshore facility that impacts the potential to cause substantial harm to the environment in accordance with the criteria in § 118.3.

(4) Provide the Substantial Harm Certification Form in Appendix A to this part to local emergency response organizations upon request.

(d) *Assertion of claims of confidential business information.* (1) Except as provided in paragraph (2) of this section, an owner or operator of a non-transportation-related onshore facility required to submit a facility response plan or otherwise provide information under this part may make a claim of confidential business information for any such information that meets the criteria set forth in § 2.302 of this chapter.

(2) Notwithstanding the provisions of 40 CFR part 2, an owner or operator of a facility subject to this part may not claim as confidential business information the following information:

(i) Data required by § 118.11 (b); and

(ii) Data required in Appendix A of this part, excluding the supporting documentation.

(iii) Notwithstanding the procedures specified in 40 CFR part 2, an owner or operator asserting a claim of confidential business information with respect to information contained in its facility response plan as per § 118.11, shall submit to EPA at the time it submits the facility response plan the following:

(A) The information claimed confidential, provided in a format to be specified by EPA;

(B) A sanitized (redacted) copy of the facility response plan, with the notation ''CBI'' substituted for the information claimed confidential, except that a generic category or class name shall be substituted for any chemical name or identity claimed confidential; and

(C) The document or documents substantiating each claim of confidential business information, as described in paragraph (e) of this section.

(e) *Substantiating claims of confidential business information.* (1) An owner or operator claiming that information is confidential business information must substantiate that claim by providing documentation that demonstrates that the claim meets the substantive criteria set forth in § 2.302 of this chapter.

(2) Information that is submitted as part of the substantiation may be claimed confidential by marking it as confidential business information. Information not so marked will be treated as public and may be disclosed without notice to the submitter. If information that is submitted as part of the substantiation is claimed confidential, the owner or operator must provide sanitized and unsanitized versions of the substantiation.

(3) The owner, operator, or senior official with management responsibility at the non-transportation-related onshore facility shall sign a certification that the signer has personally examined the information submitted and that based on inquiry of the persons who compiled the information, the information is true, accurate, and complete, and that those portions of the substantiation claimed as confidential business information would, if disclosed, reveal trade secrets or other confidential business information.

§ 118.5 Regional Administrator determination of substantial harm and significant and substantial harm.

(a) *Regional Administrator authority to require facility response plans and amendments.* After considering the factors in paragraph (b) of this section, the Regional Administrator may at any time require the owner or operator of any non-transportation-related onshore facility to prepare and submit a facility response plan under this section. If such a determination is made, the Regional Administrator shall notify the owner or operator in writing and shall provide a basis for the determination and the owner or operator shall submit the facility response plan to the Regional Administrator as per the preparation, submission, and implementation guidelines in § 118.4. The Regional Administrator may require amendments to any facility response plan that does not meet the requirements § 118.11.

(b) *Regional Administrator substantial harm determination.* To determine whether a non-transportation-related onshore facility could, because of its location, reasonably be expected to cause substantial harm to the environment by a discharge, or substantial threat of a discharge, of CWA hazardous substances into or on the navigable waters or a conveyance to navigable waters, the Regional Administrator may consider the following:

(1) Type of transfer operation(s);

(2) CWA hazardous substance quantity and category as determined in 40 CFR 117.3 and characteristics (*e.g.,* ignitability or reactivity) stored onsite;

(3) Proximity to fish, wildlife, and sensitive environments and other areas determined by the Regional Administrator to possess ecological value;

(4) Ability to adversely impact public water systems as described in § 118.3(c)(ii);

(5) Location in a source water protection area;

(6) Ability to cause injury to public receptors;

(7) Lack of passive mitigation measures or systems, including those

that enhance resilience to climate change;

(8) Potential to adversely impact communities with environmental justice concerns;

(9) Potential vulnerability to adverse weather conditions resulting from climate change;

(10) Density of facilities with CWA hazardous substances onsite in the immediate area;

(11) Reportable discharge history; or

(12) Other site-specific characteristics and environmental factors that the Regional Administrator determines to be relevant to recovery, shoreline protection, and cleanup.

(c) *Regional Administrator responsibilities for significant and substantial harm facilities.* The Regional Administrator shall review facility response plans submitted by facilities meeting the applicability requirements of § 118.3 to determine whether the non-transportation-related onshore facility could, because of its location, reasonably be expected to cause significant and substantial harm to the environment by a discharge, or a substantial threat of discharge, of CWA hazardous substances into or on the navigable waters or a conveyance to navigable waters based on the factors identified in paragraph (d) of this section. If such a determination is made, the Regional Administrator shall notify the owner or operator in writing and:

(1) Approve any facility response plan that meets the requirements of § 118.11; and

(2) Review each facility response plan periodically thereafter on a schedule established by the Regional Administrator.

(d) *Regional Administrator significant and substantial harm determination.* To determine whether a non-transportation-related onshore facility could, because of its location, reasonably be expected to cause significant and substantial harm to the environment by discharging a CWA hazardous substance into or on the navigable waters or a conveyance to navigable waters, the Regional Administrator shall consider the factors in paragraph (b) of this section and § 118.3(c), as well as the following:

(1) Frequency of past reportable discharges;

(2) Proximity to navigable waters or a conveyance to navigable waters;

(3) Age or condition of containers and equipment;

(4) Potential for hazards such as flooding, hurricanes, earthquakes, or other disasters that could result in a worst case discharge; and

(5) Other facility- and Region-specific information, including local impacts on public health.

§ 118.6 Appeals process.

(a) *Owner or operator request to reconsider requirement to prepare a facility response plan.* In the event the owner or operator of a non-transportation-related onshore facility does not agree that the facility meets the applicability criteria under § 118.3 or with the Regional Administrator's determination under § 118.5 that the facility could, because of its location, reasonably be expected to cause substantial harm or significant and substantial harm to the environment by discharging CWA hazardous substances into or on the navigable waters or a conveyance to navigable waters, or that amendments to the facility response plan are necessary, such as changes to the worst case discharge planning quantity, the owner or operator may submit a request for reconsideration to the Regional Administrator and provide additional information and data in writing to support the request. The request and accompanying information must be submitted to the Regional Administrator within 60 days of receipt of notice of the Regional Administrator's original decision. The Regional Administrator shall consider the request and render a written decision with the basis for the determination as soon as practicable. The owner or operator shall then follow the preparation, submission, and implementation guidelines in § 118.4.

(b) *Owner or operator request to reconsider classification status.* In the event the owner or operator of a non-transportation-related onshore facility believes a change in classification status is warranted because of an unplanned event or change in the facility's characteristics (*i.e.,* substantial harm or significant and substantial harm), the owner or operator may submit a request for reconsideration to the Regional Administrator and provide additional information and data in writing to support the request. The Regional Administrator shall consider the request and render a written decision with the basis for the determination and notify the owner or operator as soon as practicable.

(c) *Appeals process following Regional Administrator decision.* After a request for reconsideration under paragraph (a) or (b) of this section has been denied by the Regional Administrator, an owner or operator may appeal a determination made by the Regional Administrator. The appeal shall be made to the EPA Administrator and shall be made in writing within 60 days of receipt of the decision from the Regional Administrator that the request for reconsideration was denied. A complete copy of the appeal must be sent to the Regional Administrator at the time the appeal is made. The appeal shall contain a clear and concise statement of the issues and points of fact in the case. It also may contain additional information from the owner or operator, or from any other person. The EPA Administrator may request additional information from the owner or operator, or from any other person. The EPA Administrator shall render a written decision with the basis for the determination and notify the owner or operator as soon as practicable. If the EPA Administrator determines a non-transportation-related onshore facility is subject to this regulation, the owner or operator must submit a facility response plan to the Regional Administrator following the preparation, implementation, and submission guidelines in § 118.4.

§ 118.7 Petitions.

Any person, including a member of the public or any representative from a Federal, State, or local agency who has a reasonable basis to believe that a non-transportation-related onshore facility subject to this section could, because of its location, reasonably be expected to cause substantial harm to the environment by a discharge, or substantial threat of a discharge, of CWA hazardous substance into or on the navigable waters or a conveyance to navigable waters may petition the Regional Administrator to determine whether the facility meets the criteria in § 118.3. Such a petition shall include a discussion of how the factors in § 118.3 apply to the non-transportation-related onshore facility and EPA shall make the petition available to the owner or operator in question and provide an opportunity to respond. The Regional Administrator shall consider such petitions and respond as soon as practicable in writing including the basis for the determination. The Regional Administrator may render a decision based solely on the information in the petition but may also gather additional information before rendering a decision.

§ 118.8 Exceptions and exemptions.

(a) *Exceptions.* This part does not apply to the owner or operator of any facility, equipment, or operation that is not subject to the jurisdiction of the EPA under section 33 U.S.C. 1321(j)(5)(C), as follows:

(1) Any non-transportation-related onshore facility, that due to its location, could not reasonably be expected to have a discharge, or substantial threat of a discharge, as described in § 118.3. This determination must be based solely upon consideration of the geographical and location aspects of the non-transportation-related onshore facility (such as proximity to navigable waters, land contour, drainage, etc.) and must exclude consideration of manmade features such as dikes, equipment, depressions, or other structures, which may serve to restrain, hinder, contain, or otherwise prevent a discharge.

(2) Any equipment, or operation of a vessel or transportation-related onshore facility which is subject to the authority and control of the U.S. Department of Transportation, and which provides movement or conveyances of CWA hazardous substances in interstate or intrastate commerce by rail, pipeline, highway vehicle, or vessel. For modes other than pipeline, this exception is limited to movement under active shipping papers prior to arrival at a final destination pursuant to 49 CFR parts 171–180.

(3) Any equipment, or operation of a vessel or onshore or offshore facility which is subject to the authority and control of the U.S. Coast Guard or the U.S. Department of the Interior, as defined in the Memorandum of Understanding between the Secretary of Transportation, the Secretary of the Interior, and the Administrator of EPA (40 CFR part 112, Appendix B).

(4) Any underground storage tank and connected underground piping, underground ancillary equipment, and containment systems, at any facility, that is subject to all the technical requirements of part 280 of this chapter or a State program approved under part 281 of this chapter.

(b) *Exemptions.* For the purposes of determining whether the maximum quantity onsite meets or exceeds the threshold quantity of a CWA hazardous substance or substances, under § 118.3(a), at the non-transportation-related onshore facility, the following exemptions apply:

(1) *Articles.* CWA hazardous substances contained in articles need not be considered when determining whether the maximum quantity onsite meets or exceeds the threshold quantity.

(2) *Uses.* CWA hazardous substances, when in use for the following purposes, need not be included in determining whether the maximum quantity onsite meets or exceeds the threshold quantity:

(i) *Structural components.* Use as a structural component of the non-transportation-related onshore facility;

(ii) *Janitorial.* Use of products for routine janitorial maintenance;

(iii) *Foods, drugs, cosmetics.* Use by employees of foods, drugs, cosmetics, or other personal items containing the CWA hazardous substance;

(iv) *Process water or cooling water.* Use of CWA hazardous substances present in process water or non-contact cooling water as drawn from the environment or municipal sources;

(v) *Wastewater treated by Publicly Owned Treatment Works.* Use of municipal wastewater entering a publicly owned treatment works prior to treatment under a National Pollution Discharge Elimination System permit;

(vi) *Compressed air.* Use of CWA hazardous substances present in air used either as compressed air or as part of combustion;

(vii) *Retail and personal uses.* Use for personal, family, or household purposes, or present in the same form and concentration as a product packaged for distribution and use by the general public. Present in the same form and concentration as a product packaged for distribution and use by the general public means a CWA hazardous substance packaged in a similar manner and present in the same concentration as the substance when packaged for use by the general public, whether or not it is intended for distribution to the general public or used for the same purpose as when it is packaged for use by the general public; and

(viii) *RCRA hazardous waste.* Storage or accumulation of hazardous waste regulated under the Resource Conservation and Recovery Act Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, 40 CFR parts 264 and 265, and Resource Conservation Recovery Act Standards Applicable to Generators of Hazardous Waste, 40 CFR part 262 subpart M.

§ 118.9 Mixtures.

For the purposes of determining the CWA hazardous substance maximum quantity onsite at the non-transportation-related onshore facility of CWA hazardous substance(s), under § 118.3(a), the following provisions apply to CWA hazardous substances mixtures:

(a) If the quantity of all of the CWA hazardous substance constituent(s) of the mixture or solution is known, the mixture meets the threshold quantity when the maximum quantity onsite, as defined in § 118.2, meets or exceeds the threshold quantity of any CWA hazardous substance in the mixture.

(b) If the quantity of one or more of the CWA hazardous substance constituent(s) of the mixture or solution is unknown, the mixture meets the threshold when the maximum quantity onsite of the mixture or solution meets or exceeds the quantity for the CWA hazardous substance established in § 118.3(a) with the lowest threshold quantity.

§ 118.10 Worst case discharge.

Non-transportation-related onshore facility owners or operators are required to model a worst case discharge scenario, determine appropriate endpoints using Appendix B as per § 118.3(c)(1) and (3) from a discharge into or on the navigable waters or a conveyance to navigable waters, calculate the distances to endpoints and CWA hazardous substance planning distances, and compare the distances to endpoints against the CWA hazardous substance planning distances from the non-transportation-related onshore facility. If the CWA hazardous substance planning distances determined are shorter than the distances to endpoints as per Appendix B, the worst case discharge can cause substantial harm. Owners or operators shall also use their worst case discharge scenario(s) to determine if the non-transportation-related onshore facility has the ability to adversely impact public water systems per § 118.3(c)(2) from a discharge into or on the navigable waters or a conveyance to navigable waters. The worst case discharge scenarios must represent each CWA hazardous substance onsite that meets or exceeds the threshold quantity set in § 118.3(a). Each scenario must use the largest quantity following the below parameters:

(a) *Determination of worst case discharge quantity.* The worst case discharge quantity shall be the greater of the following:

(1) For CWA hazardous substances in separate containers, the maximum quantity of a single container, such as a bulk storage tank, process vessel, rail car, or mobile or portable container;

(2) For CWA hazardous substances in interconnected containers, the maximum quantity of a group of interconnected containers; or

(3) For substances in pipes, the maximum quantity of a pipe or interconnected pipes, and the owner or operator must provide evidence in Appendix A that containers with common piping or piping systems are not operated as one unit.

(4) For mixtures of CWA hazardous substances, follow the procedures in § 118.9.

(b) *Planning distance determinations.* To determine the distance to endpoints for fish, wildlife, and sensitive

environments, public water systems, and public receptors as referenced in § 118.3(c), an owner or operator shall use a methodology, model, or other technique that accounts for facility-specific conditions and accounts for the stated requirements in this paragraph. An owner or operator may use proprietary models, provided that the owner or operator allows EPA access to the model, submits documentation that demonstrates the reliability and analytical soundness of the methodology used, and describes the model's features to local emergency planners, upon request. Any models used for planning distance determinations shall be used in exercises conducted per § 118.13.

(1) Endpoints for fish, wildlife, and sensitive environments are provided in Appendix B of this part.

(2) Endpoints for public receptors are provided in Appendix B of this part.

(3) In determining CWA hazardous substance planning distance endpoints, owners or operators shall consider the following parameters:

(i) Factors affecting overland transport including:

(A) Nearest opportunity for discharge into or on the navigable waters;

(B) Ground conditions which may include topography of the surrounding area, drainage patterns, land use coverage, impervious cover, soil distribution or porosity, and soil absorption rate or soil saturation during adverse weather conditions; and

(C) Properties of the CWA hazardous substance, which may include evaporation rate based on wind speed; atmospheric stability, ambient temperature, pressure, and humidity; reactivity with rainwater and/or other substances along the overland flow path into or on the navigable water; and ignitability and explosive potential;

(ii) Factors affecting in-water transport including:

(A) Point of entry to navigable waters;

(B) Flow rate and duration of the discharge;

(C) Direction of the discharge at the point of entry;

(D) Surface versus underwater entry; and

(E) Conditions of the receiving water including the velocity of the navigable waters which may be affected by: Slope of the river; hydraulic radius; turbulence and potential for cross-channel mixing; Manning's Roughness coefficient; differentiation of still, tidal or moving waters; currents; wave height; tidal influence; and water temperature, pH, alkalinity, and salinity.

(iii) Adverse weather conditions, which shall be calculated based on adverse winds, currents, and/or river stages, over a range of seasons, weather conditions, and river stages.

(iv) Properties of the CWA hazardous substance such as solubility in water, speciation in water, density (relative to water), polarity, vapor pressure, reactivity with water and common solutes in natural waterbodies, human toxicity, mammalian toxicity, aquatic toxicity, and flammability.

§ 118.11 Facility response plan requirements.

(a) *General requirements.* A written plan that complies with other Federal contingency plan regulations or is consistent with the approach in the National Response Team's Integrated Contingency Plan Guidance (''One Plan'') and that includes the elements provided in this section shall satisfy the requirements. The owner or operator may augment an existing plan with these required elements. All facility response plans must include the following:

(1) *Consistency With National Contingency Plan, Area Contingency Plans, and Regional Contingency Plans.* Plans must be consistent with the requirements of the National Oil and Hazardous Substance Pollution Contingency Plan (40 CFR part 300) and applicable Area Contingency Plans prepared pursuant to section 311(j)(4) of the Clean Water Act and Regional Contingency Plans as per 40 CFR 300.210.

(i) The owner or operator shall review relevant portions of the National Oil and Hazardous Substances Pollution Contingency Plan and applicable Area Contingency Plan annually and, if necessary, revise the facility response plan to ensure consistency with these plans;

(ii) Include a signed affirmation that the owner or operator has reviewed relevant plans during facility response plan development and resubmission and;

(iii) Include a list of area plans and sub-area plans reviewed.

(2) *Qualified individual.* Identify the qualified individual or documented management system having full authority to implement response actions and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment, with a description of duties including:

(i) Activate internal alarms and hazard communication systems to notify all facility personnel;

(ii) Notify all response personnel, as needed;

(iii) Identify the character, exact source, amount, and extent of the discharge, as well as the other items needed for notification;

(iv) Notify and provide necessary information to the appropriate Federal, State, and local authorities with designated response roles, including the National Response Center, State Emergency Response Commission or Tribal Emergency Response Commission, and Local Emergency Planning Committee or Tribal Emergency Planning Committee;

(v) Notify and provide necessary information to public water systems that may be impacted by a discharge;

(vi) Assess the interaction of the discharged CWA hazardous substance with water, solutes in water, water treatment chemicals, and/or other substances stored at the facility and notify response personnel at the scene of that assessment;

(vii) Assess the possible hazards to human health and the environment due to the worst case discharge. This assessment must consider both the direct and indirect effects of the discharge (*i.e.,* the effects of any toxic, irritating, or asphyxiating gases that may be generated, or the effects of any hazardous surface water runoffs from water or chemical agents used to control fire and heat-induced explosion) and initiate appropriate monitoring;

(viii) Implement prompt response actions to contain and respond, to the maximum extent practicable, the CWA hazardous substance discharged;

(ix) Coordinate rescue and response actions as previously arranged with response personnel;

(x) Use authority to immediately access company funding to initiate cleanup activities;

(xi) Direct cleanup activities until properly relieved of this responsibility; and

(xii) Acquire and maintain incident commander training requirements consistent with 29 CFR 1910.120(q)(6)(v).

(3) *Response resources.* Identify, and ensure by contract or other approved means, the availability of private personnel and equipment necessary to respond to the maximum extent practicable to a worst case discharge of CWA hazardous substances (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;

(4) *Training, testing, and drills.* Describe the training, equipment testing, periodic unannounced drills, and response actions of persons at the facility to be carried out under the plan to ensure facility safety and to mitigate

or prevent the discharge, or the substantial threat of a discharge; and,

(5) *Plan updates.* Review and update facility response plan periodically and resubmit to the Regional Administrator for approval of each significant change as required by 118.4(a)(6) and (b)(1).

(b) *Emergency response information.* The facility response plan shall include:

(1) *Facility information.* Facility details including the facility name; latitude and longitude; street address, with city, State, and zip code; telephone number; facility location information described in a manner that would aid a reviewer and a responder in locating the facility, EPA identification numbers, and indication if the facility is located in or drains into a wellhead protection area as defined by the Safe Drinking Water Act of 1986;

(2) *Owner or operator information.* Contact information to include name and preferred contact method;

(3) *Hazard evaluation.* Hazard evaluation for worst case discharge into or on the navigable waters or a conveyance to navigable waters and risk-based decision support system shall include:

(i) Chemical-specific information, including the response considerations, health hazards, fire hazards, chemical reactivity, hazard classifications, and physical and chemical properties; potential effects of a CWA hazardous substance worst case discharge as per 118.10; impacts to communities with environmental justice concerns; and impacts of climate change, including but not limited to the increased frequency and intensity of extreme weather events, temperature fluctuations, rising seas, storm surges, inland and coastal flooding, drought, wildfires, and permafrost melt in northern areas. Illustrative diagrams of the hazard evaluation should be included.

(ii) This section of the plan must outline processes that will help responders make decisions relating to the identification, evaluation, and control of risks to human health and the environment following a CWA hazardous substance discharge. The processes outlined below do not need to be scenario-specific but can be generic in nature. At a minimum, the processes must include all the following:

(A) *Risk identification*—describe the process that will be used to determine the extent and route of CWA hazardous substance exposure to humans and the environment including location and age of containers and their contents;

(B) *Risk characterization*—describe the process that will be used to establish relative degrees of risk and prioritizing risks;

(C) *Risk control*—describe the process that will be used to determine feasible response methods to mitigate CWA hazardous substance discharge impacts on human health and the environment; and

(D) *Risk communication*—describe the process that will be used to communicate information resulting from paragraphs (A), (B), and (C) of this section to parties internal and external to response activities.

(4) *Reportable discharge history.* Discharges reported under 40 CFR part 117.21 that reached navigable waters with additional data including date, time, and discharge duration; CWA hazardous substance(s) discharged; estimated quantity discharged in pounds; quantity discharged that reached navigable waters in pounds; the type of discharge event and its source; weather conditions; on-site impacts; offsite impacts; initiating event; description of how the discharge was detected; clean-up actions taken, steps taken to reduce the possibility of recurrence; and contributing factors with all data to be retained for the life of the facility;

(5) *Response personnel and equipment.* The identity and a description of response personnel, equipment, and response action implementation necessary to respond to the maximum extent practicable to a worst case discharge of a CWA hazardous substance described in § 118.10, and to mitigate or prevent a substantial threat of a worst case discharge;

(6) *Contracts.* Evidence of contracts or other approved means as per the definition in § 118.2 to ensure the availability of proper response personnel and equipment, including response resources with firefighting capability and the availability of resources if facility or mutual aid resources are not capable of handling a worst case discharge incident resulting from a fire or explosion. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that cannot rely on sufficient local firefighting resources through mutual aid agreements must identify adequate firefighting resources, including contracted resources. The response plan must also identify an individual located at the facility to work with the fire department in a response. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility;

(7) *Notifications.* A list of the identities, contact information, and preferred communication method(s) of individuals or organizations to be notified in the event of a discharge so that immediate communications and liaising between the qualified individual identified in paragraph (a)(2) of this section and the appropriate Federal officials; State, local, or Tribal response organizations; and persons providing response personnel and equipment can be ensured, and a description of communication methods. Notification shall include but not be limited to the: National Response Center, qualified individual, facility response team, local response team (fire department or cooperatives), fire marshal, State Emergency Response Commission or Tribal Emergency Response Commission, State police, Local Emergency Planning Committee or Tribal Emergency Planning Committee, downstream public water systems, local media for evacuation notification, local hospitals, and any other potential receptor or interested party who could be impacted by a discharge;

(8) *Discharge information.* A description of information to pass to response personnel in the event of a reportable discharge, including specifics about the event, CWA hazardous substance name and quantity discharged, possible areas and receptors affected, potential routes of transport, distance(s) to nearby waterways and conveyances, any data on the characteristics of the CWA hazardous substance and other hazardous substances in proximity, ignition sources, explosion potential, and any other information that may be helpful to responders and the public, including updates on the scope and nature of the discharge as available;

(9) *Personnel roles and responsibilities.* A description of response personnel capabilities, including the duties of persons at the facility during a response action and their response times, training, and qualifications or a description of documented management system that can perform the stated functions, as appropriate;

(10) *Response equipment information.* A description of the facility's response equipment, including roles in response actions, location of the equipment, last inspection or response equipment test date, inspection frequency, last deployment drill date, deployment

frequency, response times, and equipment testing;

(11) *Evacuation plans.* Facility-wide plans for evacuation including a diagram. Include identification and documentation of coordination with community evaluation plans, as appropriate, and consider locations of CWA hazardous substances and their risks when discharged; anticipated flow direction; water conditions; emergency response personnel and equipment arrival routes; limitations on evacuation routes; transportation of injured personnel to nearest emergency medical facility; location of alarm/notification systems; check-in areas for evacuation validation; command center location; and location of shelter at the facility as an alternative to evacuation;

(12) *Discharge detection systems.* Procedures and equipment used to detect discharges, as well as detect and monitor any hazardous air releases resulting from discharges into or on the navigable water or a conveyance to navigable waters as appropriate, including personnel (*i.e.,* routine walk-around visual inspection) or automatic discharge detection for regular and afterhours operations by CWA hazardous substance, reliability checks, and inspection frequency;

(13) *Response actions.* This section should describe the response actions to be carried out by facility personnel or contracted personnel under the facility response plan to ensure the safety of the facility and to mitigate or prevent worst case discharges described in § 118.10 or the substantial threat of such discharges, including immediate response actions for personnel safety, personal protective equipment use, facility personnel responsibilities by job title, facility personnel actions, facility personnel information gathering assignments for response personnel, and facility responsibilities to mitigate a CWA hazardous substance worst case discharge. Identify the types of environmental monitoring data to be collected, collection methods, techniques for measuring the environmental parameters of interest (including established analytical methods when applicable), a description of the data's utility during a response (including procedures for sharing data with response personnel and the public), and required personal protection requirements and safety procedures during data collection and analysis. Include a description of actions to be taken within:

(i) One hour of discharge detection: Complete notifications; mobilize facility response personnel for immediate response actions; identify the scale of the incident and coordinate with SRO on appropriate response actions; complete cross-check of worst case discharge scenarios and resulting potential effects to begin tactical planning based on the scale of the incident; ensure containment and neutralization systems are operational; coordinate evacuation of facility, if necessary; coordinate with drinking water authorities; mobilize response equipment, as appropriate; and coordinate with local police and fire officials. Initiate community evacuation plan, if necessary, and evaluate if downstream (or upstream, if tidally influenced waterbody) public receptors that could be impacted and may require evacuation.

(ii) Two hours of discharge detection: As appropriate, deploy response resources identified in the response plan, including containment and recovery devices (such as containment dams, culvert plugs, underflow dams, containment booms, skimmer equipment or acid/base neutralization resources); and initiate any water, soil, and air monitoring as outlined in the response plan.

(14) *Disposal plans.* Plans to dispose of contaminated cleanup materials, if appropriate to the material, including how and where the facility intends to recover, reuse, decontaminate, treat, and dispose of materials after a discharge has taken place and plans for temporary storage of recovered materials as well as the appropriate permits required to manage recovered materials according to local, State, and Federal requirements. The disposal plan must account for recovered product; contaminated soil and water; contaminated equipment and materials including drums, tank parts, valves, and shovels; personal protective equipment; decontamination solutions; adsorbents; and spent chemicals including firefighting runoff management;

(15) *Containment measures.* Measures to provide adequate containment and drainage of discharged CWA hazardous substances including containment volumes, draining routes from storage and transfer areas, materials used to construct drainage troughs, number and types of valves and separators used in the drainage system, sump pump capacities, containment capacity of weirs and booms and their locations, and other cleanup materials;

(16) *Training procedures.* Training procedures as per § 118.13;

(17) *Exercise procedure.* Exercise procedures as per § 118.13 and the schedule set under § 118.12(c); and

(18) *Self-inspection.* Written procedures and records of inspections including an inspection checklist and method to record the inspection date and findings, to be retained for five years.

(c) *Emergency response action plan.* The response plan shall include an emergency response action plan that is maintained in the front of the response plan, or as a separate document accompanying the response plan, addresses the first two hours of the incident response followed by an outline of continued operations appropriate for Incident Command, and that includes the following information:

(i) The identity and telephone number of a qualified individual having full authority, including contracting authority, to implement removal actions;

(ii) The identity of individuals or organizations to be contacted in the event of a discharge so that immediate communications between the qualified individual identified in paragraph (a)(2) of this section and the appropriate Federal officials and the persons providing response personnel and equipment can be ensured;

(iii) A description of information to provide to response personnel in the event of a worst case discharge;

(iv) A description of the facility's response equipment and its location;

(v) A description of response personnel capabilities, including the duties of persons at the facility during a response action and their response times and qualifications;

(vi) Plans for evacuation of the facility and a reference to community evacuation plans, as appropriate;

(vii) A description of immediate measures to secure the source of the discharge, including the response actions to be taken in the first two hours of an incident as per paragraph (b)(13) of this section, and to provide adequate containment and drainage of discharged CWA hazardous substances;

(viii) A description of the potential discharge pathways of the CWA hazardous substances to public water systems, public receptors, and fish, wildlife, and sensitive environments, and estimated time of travel; and

(ix) A diagram of the facility including evacuation routes.

§ 118.12 Coordination Activities.

The facility response plan shall be coordinated with the local emergency response plan developed by the Local Emergency Planning Committee or Tribal Emergency Planning Committee under section 303 of title III of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 11001 *et seq.*). Upon request, the owner

or operator shall provide a copy of the facility response plan to the Local Emergency Planning Committee, Tribal Emergency Planning Committee, State Emergency Response Commission, Tribal Emergency Response Commission or other local emergency planning and response organizations. The owner or operator shall coordinate response needs with local emergency planning and response organizations to determine how the facility is addressed in the community emergency response plan and to ensure that local response organizations are aware of the CWA hazardous substances at the facility, their quantities, the risks presented, and the resources and capabilities provided by the facility to respond to a worst case discharge of a CWA hazardous substance into or on the navigable waters or a conveyance to navigable waters.

(a) Coordination shall occur at least annually, and more frequently, if necessary, to address changes at the facility, in the facility response plan, and/or in the community emergency response plan.

(b) Coordination shall include providing to the appropriate State, local, or Tribal emergency planning and response organizations the facility response plan, updated emergency contact information, and other information necessary for developing and implementing the local emergency response plan.

(c) Coordination shall include consulting with appropriate State, local, or Tribal emergency response officials to establish appropriate schedules and plans for drills and exercises required under § 118.13. The owner or operator shall request an opportunity to meet with the Local Emergency Planning Committee or Tribal Emergency Planning Committee (or equivalent) and/or local fire department as appropriate to review and discuss those materials.

(d) The owner or operator shall document coordination with appropriate State, local, or Tribal authorities and retain that documentation for the life of the facility, including:

(1) The names of individuals involved and their contact information (phone number, email address, and organizational affiliations), dates of coordination activities, and nature of coordination activities; and

(2) Signed agreements on activities and resources, identified by the facility, in the facility response plan to be performed by the appropriate State, local, or Tribal emergency response organizations.

(3) If a facility owner or operator is unable to coordinate with their State Emergency Response Commission or Tribal Emergency Response Commission, Local Emergency Planning Committee or Tribal Emergency Planning Committee, and/or local fire department, documentation must show a good faith effort to contact, coordinate, and consult with those bodies in the frequency described in this section.

§ 118.13 Facility response training, drills, and exercises.

(a) The owner or operator of any facility required to prepare a facility response plan under § 118.3 shall develop and implement a facility response training program and a drills and exercise program that satisfy the requirements of this section. The owner or operator shall describe the programs in the facility response plan as provided in § 118.11.

(b) The facility owner or operator shall develop a facility response training program to train facility and non-facility personnel involved in CWA hazardous substance response activities. Training shall be functional in nature according to job tasks for both supervisory and non-supervisory operational personnel.

(1) A facility owner or operator must identify the method to be used for training any volunteers or casual laborers used during a response to comply with the requirements of 29 CFR 1910.120.

(2) The facility owner or operator is responsible for ensuring that all private response personnel are trained to meet the Occupational Safety and Health Administration standards for emergency response operations in 29 CFR 1910.120.

(3) The facility response plan shall include a description of the training program as required in § 118.11.

(4) The facility response plan shall include records, including logs, of CWA hazardous substance facility response plan meetings and describe the type of response training and dates, review of personnel responsibilities during a response action, and drills and exercises. These records may be included in the facility response plan or kept as an annex to the facility response plan. Completed records will be kept for five years following each activity. Records required under this part kept under usual and customary business practices will suffice for purposes of this paragraph.

(c) The facility owner or operator shall develop a program of facility response drills and exercises, including evaluation procedures. A program that follows the National Preparedness for Response Exercise Program (PREP) will be deemed as compliant with the drill and exercise requirements of this section. An alternative program or deviations from the PREP exercise requirements may also be developed by the owner or operator and are subject to approval by the Regional Administrator.

(1) Drills and exercises shall, when appropriate, be coordinated with local public emergency response officials and these officials shall be invited to participate. If a facility owner or operator is unable to coordinate with local public emergency response officials, documentation must show a good faith effort to contact and coordinate with those bodies.

Appendix A to Part 118: Substantial Harm Certification Form

Facility Name:
Facility Address:
EPA Facility ID:
Facility Latitude/Longitude:
Facility Qualified Individual (Last name, First name):
Facility Contact (phone):
Facility Contact (email):
Parent Company:
Facility industry NAICS code: 1. Does the facility have a maximum quantity onsite of a CWA hazardous substance greater than or equal to the CWA Reportable Quantity (RQ)x 1,000?

Yes____ No____

If Yes, list names, CAS no., and maximum quantities (lbs) onsite for each CWA hazardous substance:

If No, you do not need to proceed. 2. Is the facility within one-half mile of navigable waters or a conveyance to navigable waters?

Yes____ No____

If Yes, list navigable waters and a description of conveyance(s).

If No, you do not need to proceed.

If the answers to both 1 and 2 are Yes, answer questions 3–6.3. Is the facility located at a distance such that a worst case discharge from the facility could cause injury to fish, wildlife, and sensitive environments? For further description of fish, wildlife, and sensitive environments (FWSE), see the applicable Area Contingency Plan (ACP). Attach documentation of the formulas, assumptions, ACP(s) consulted, and distances calculated.

Yes ____ No ____

4. Is the facility located at a distance such that a worst case discharge from the facility could cause injury to public receptors? Attach documentation of the formulas and distances calculated.

Yes ____ No ____

5. Would a worst case discharge from the facility cause substantial harm to a public water system by causing any one, or any combination of more than one, of the adverse impacts listed below?

(i) Violates any National Primary Drinking Water Standard or State Drinking Water Regulation, such as exceedance of a Maximum Contaminant Level;

(ii) Compromises the ability of the public water system to produce water that complies with any National Primary Drinking Water Standard or State Drinking Water Regulation;

(iii) Results in adverse health impacts in people exposed to the maximum concentration that could enter a drinking water distribution system;

(iv) Contaminates public water system infrastructure, including but not limited to intake structures, treatment facilities, and distribution systems, or premise plumbing systems to a degree that requires remediation to restore system components to acceptable performance; or

(v) Impairs the taste, odor, or other aesthetic characteristic of the water entering a drinking water distribution system to a degree that could make the water unacceptable to consumers and that could prompt the public water system to issue use restrictions.

Yes ____ No ____

Attach documentation of the methodology and assumptions used to evaluate the potential of a worst case discharge to cause each of the adverse impacts (i–v).

For each worst case discharge scenario list:

—CWA hazardous substance name, CAS no. and worst case discharge quantity (lbs)
—Worst case discharge scenario type (single container or interconnected containers)
—Name(s) of each FWSE receptor(s) and planning distance(s) to FWSE (feet or miles)
—Type(s) and description(s) of public receptor(s) and planning distance(s) to public receptor(s) (feet or miles)
—Adverse impacts (i–v) to a public water system

Attach documentation attesting to the required consultation with the applicable downstream public water system, including name of public water system, point of contact, and date of consultation for each potentially impacted public water system. If efforts to coordinate with the applicable downstream public water systems were unsuccessful, provide documentation to demonstrate the efforts to coordinate and provide the distance to the first downstream public water system intake.

6. Has the facility experienced a reportable CWA hazardous substance discharge to navigable waters within the last five years?

Yes ____ No ____

Attach relevant documentation of past reportable discharges.

For each reportable discharge identify:

Name of CWA hazardous substance, CAS no.

Date of discharge:

Duration of discharge (minutes):

Quantity discharged (lbs):

Navigable water(s) reached:

Injury caused to FWSE:

Injury caused to public receptors:

Adverse impacts to public water systems:

NRC report number:

Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature

Name (please type or print)

Title

Date

Phone/Email

Appendix B to Part 118—Toxicity Endpoints for Calculating Planning Distance for Fish, Wildlife and Sensitive Environments and Public Receptors

Category	RQ (lbs.)	Endpoints for public receptors LD50			Endpoints for fish, wildlife and sensitive environments using 96-hour LC50		
		Mammalian toxicity (oral) (mg/kg)		10% (mg/kg)	Aquatic toxicity (mg/liter)		10% (mg/L)
		Lower	Upper		Lower	Upper	
X	1	0	0.1	0.01	0	0.1	0.01
A	10	0.1	1	0.1	0.1	1	0.1
B	100	1	10	1	1	10	1
C	1,000	10	100	10	10	100	10
D	5,000	100	500	50	100	500	50

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

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

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 3. Amend § 300.185 by revising paragraph (a) to read as follows:

§ 300.185 Nongovernmental participation.

(a) Industry groups, academic organizations, and others are encouraged to commit resources for response operations. Specific commitments should be listed in the RCP and ACP. Those entities required to develop tank vessel and facility response plans under CWA section 311(j) must be able to respond to a worst case discharge to the maximum extent practicable, and shall commit sufficient resources to implement other aspects of those plans in accordance with the requirements of 30 CFR part 254, 33 CFR parts 150, 154, and 155; 40 CFR parts 112 and 118; and 49 CFR parts 171 and 194.

* * * * *

■ 4. Amend § 300.211 by revising paragraph (c) to read as follows:

§ 300.211 OPA facility and vessel response plans.

* * * * *

(c) For non-transportation-related onshore facilities, these regulations are codified in 40 CFR 112.20 and 40 CFR part 118;

* * * * *

■ 5. Add § 300.411 to read as follows:

§ 300.411 Response to CWA hazardous substance worst case discharges.

(a) If the investigation by the OSC shows that a discharge is a worst case discharge as defined in the ACP, or there is a substantial threat of such a discharge, the OSC shall:

(1) Notify the NSFCC;

(2) Require, where applicable, implementation of the worst case portion of an approved facility response plan required by CWA section 311(j)(5);

(3) Implement the worst case portion of the ACP required by CWA section 311(j)(4); and

(4) Take whatever additional response actions are deemed appropriate.

(b) Under the direction of the OSC, the NSFCC shall coordinate use of private and public personnel and equipment, including strike teams, to respond to a worst case discharge and mitigate or prevent a substantial threat of such a discharge.

[FR Doc. 2024–05870 Filed 3–27–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 89 Thursday,

No. 61 March 28, 2024

Part IV

Environmental Protection Agency

40 CFR Part 751

Asbestos Part 1; Chrysotile Asbestos; Regulation of Certain Conditions of Use Under the Toxic Substances Control Act (TSCA); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA–HQ–OPPT–2021–0057; FRL–8332–01–OCSPP]

RIN 2070–AK86

Asbestos Part 1; Chrysotile Asbestos; Regulation of Certain Conditions of Use Under the Toxic Substances Control Act (TSCA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is issuing this final rule under the Toxic Substances Control Act (TSCA) to address to the extent necessary the unreasonable risk of injury to health presented by chrysotile asbestos based on the risks posed by certain conditions of use. The injuries to human health include mesothelioma and lung, ovarian, and laryngeal cancers resulting from chronic inhalation exposure to chrysotile asbestos.

DATES: This final rule is effective on May 28, 2024.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0057, is available online at *https://www.regulations.gov.* Additional instructions for visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Peter Gimlin, Existing Chemicals Risk Management Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0515; email address: *gimlin.peter@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this final action if you manufacture (including import), process, distribute in commerce, use, or dispose of chrysotile asbestos. TSCA section 3(9) defines the term ''manufacture'' to mean to import into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), produce, or manufacture. Therefore, unless expressly stated otherwise, importers of chrysotile asbestos are subject to any provisions regulating manufacture of chrysotile asbestos. 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:

- Oil and Gas Extraction (NAICS code 211).
- Nuclear Electric Power Generation (NAICS code 221113).
- Chemical Manufacturing (NAICS code 325).
- Fabricated Metal Product Manufacturing (NAICS code 332).
- Transportation Equipment Manufacturing (NAICS code 336).
- Gasket, Packing, and Sealing Device Manufacturing (NAICS code 339991).
- Motor Vehicle and Motor Vehicle Parts and Supplies Merchant Wholesalers (NAICS code 4231).
- Motor Vehicle and Parts Dealers (NAICS code 441).
- Automotive Repair and Maintenance (NAICS code 8111).

This action may also affect certain entities through pre-existing import, including import certification, and export notification rules under TSCA. Persons who import any chemical substance in bulk form, as part of a mixture, or as part of an article (if required by rule) are also subject to TSCA section 13 import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this final rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR part 707, subpart D. Asbestos (including chrysotile asbestos) is already subject to TSCA section 6(a) (40 CFR part 763, subparts G and I) rules and a significant new use rule under TSCA section 5(a)(2) (40 CFR part 721.11095) that trigger the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b); see also 40 CFR 721.20). Any person who exports or intends to export asbestos (including chrysotile asbestos) must comply with the export notification requirements in 40 CFR part 707, subpart D.

If you have any questions regarding the applicability of this final action to a particular entity, consult the technical information contact listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

Under TSCA section 6(a) (15 U.S.C. 2605(a)), if the EPA determines through a TSCA section 6(b) risk evaluation that a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation, under the conditions of use, EPA must by rule apply one or more requirements to the extent necessary so that the chemical substance or mixture no longer presents such risk.

C. What action is the Agency taking?

Pursuant to TSCA section 6(b), EPA determined that chrysotile asbestos presents an unreasonable risk of injury to health, without consideration of costs or other non-risk factors, including an unreasonable risk to potentially exposed or susceptible subpopulations identified as relevant to the 2020 Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos by EPA, under the following conditions of use (Ref. 1):

- Processing and Industrial use of Chrysotile Asbestos Diaphragms in the Chlor-alkali Industry;
- Processing and Industrial Use of Chrysotile Asbestos-Containing Sheet Gaskets in Chemical Production;
- Industrial Use and Disposal of Chrysotile Asbestos-Containing Brake Blocks in the Oil Industry;
- Commercial Use and Disposal of Aftermarket Automotive Chrysotile Asbestos-Containing Brakes/Linings;
- Commercial Use and Disposal of Other Chrysotile Asbestos-Containing Vehicle Friction Products;
- Commercial Use and Disposal of Other Chrysotile Asbestos-Containing Gaskets;
- Consumer Use and Disposal of Aftermarket Automotive Chrysotile Asbestos-Containing Brakes/Linings; and
- Consumer Use and Disposal of Other Chrysotile Asbestos-Containing Gaskets.

A detailed description of the conditions of use that contribute to

EPA's determination that chrysotile asbestos presents an unreasonable risk is included in Unit II.C.2. Accordingly, to address the unreasonable risk, EPA is issuing this final rule under TSCA section 6(a) to:

(i) Prohibit the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, in the chlor-alkali industry and require interim workplace controls;

(ii) Prohibit the manufacture (including import), processing, use, distribution in commerce and commercial use of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for sheet gaskets in chemical production and require interim workplace controls for certain commercial uses;

(iii) Prohibit the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for oilfield brake blocks, aftermarket automotive brakes and linings, other vehicle friction products and other gaskets;

(iv) Prohibit the manufacture (including import), processing, and distribution in commerce of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for consumer use of aftermarket automotive brakes and linings and other gaskets; and

(v) Establish disposal and recordkeeping requirements.

D. Why is the Agency taking this action?

Under TSCA section 6(a), ''[i]f the Administrator determines in accordance with subsection (b)(4)(A) that the manufacture, processing, distribution in commerce, use or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Administrator shall by rule . . . apply one or more of the [section 6(a)] requirements to such substance or mixture to the extent necessary so that the chemical substance no longer presents such risk.'' Chrysotile asbestos was the subject of a risk evaluation under TSCA section 6(b)(4)(A) that was issued in December 2020 (Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos) (Ref. 1). On April 12, 2022, EPA issued a proposed rule (87 FR 21706) (FRL–8332–02–OCSPP) under TSCA section 6(a) to regulate those conditions of use evaluated in the 2020 Risk Evaluation for which EPA determined unreasonable risk, so that chrysotile asbestos does not present unreasonable risk as determined in the 2020 Risk Evaluation, and the Agency received public comment on the proposal. After the close of the public comment period for the proposed rule, EPA received comments and held meetings with stakeholders. EPA issued a Notice of Data Availability on March 17, 2023 (88 FR 16389) (FRL–8332–04–OCSPP), to request additional public comment on any information received during and after the proposed rule public comment period and how EPA should consider such information in the development of this final rule. With this action, EPA is finalizing with modifications the rule proposed on April 12, 2022 (87 FR 21706), so that conditions of use of chrysotile asbestos do not present unreasonable risk, as determined in the 2020 Risk Evaluation. The unreasonable risk is described in Unit II.C.1. and the conditions of use that are the subject of this final action are described in Unit II.C.2.

E. What are the estimated incremental impacts of this action?

EPA has prepared an Economic Analysis of the potential incremental impacts associated with this rulemaking. (Ref. 2).

1. Background

Asbestos use in the nation has been declining for decades and current domestic consumption of raw asbestos is less than 0.1% of peak consumption in the early 1970s. Chlor-alkali producers are the only industry in the U.S. known to fabricate products from raw chrysotile asbestos. In addition, EPA has concluded that imports of a few asbestos-containing products are intended, known, or reasonably foreseen to occur; while the total quantity of asbestos in those products is uncertain, it is believed to be relatively small (see Appendix C of the Risk Evaluation).

2. Costs

Three firms own a total of eight chlor-alkali facilities in the U.S. that still use asbestos diaphragms to produce chlorine and sodium hydroxide (also known as caustic soda). The eight facilities range in age from 42 to 83 years old, although some have had new capacity added as recently as 18 years ago, and others may have had recent refurbishments. The share of total chlorine and caustic soda production using asbestos diaphragm cells has been declining over time. The diaphragm cells in these facilities currently represent about one-third of U.S. chlor-alkali production capacity. EPA anticipates that firms will respond to the rule by converting their asbestos diaphragm cells to non-asbestos diaphragms or membrane cells, which do not use asbestos. A more detailed discussion of the expected impacts of conversion from asbestos-containing diaphragm cells to non-asbestos diaphragms or membrane cells is located in Unit VII.B.5.

Converting the facilities using asbestos diaphragm cells to non-asbestos technologies is predicted to require an investment of approximately $2.8 billion to $3.4 billion across all eight facilities. For a number of these facilities, the non-asbestos technologies, particularly membrane cells, are more energy efficient than asbestos diaphragm cells, so those conversions are expected to result in savings for the companies that would accrue over the lifetimes of the facilities. The dollar value of the expected change in energy usage (which is a net energy savings across all the facilities) is included in the estimated net annualized costs. Membrane cells also produce a higher grade of caustic soda that has historically commanded a higher price than the product from asbestos diaphragm cells, and which may continue to do so in the future. EPA anticipates that the conversions to non-asbestos diaphragms and membranes would occur in the coming decades even without this final rule, following existing trends in the chlor-alkali industry to transition away from asbestos. Compared to this baseline trend, the incremental net effect of the rule on the chlor-alkali industry over a 35-year period using a 3 percent discount rate is estimated to range from an annualized cost of $7 million per year to an annualized savings of $1 million per year, depending on whether the higher grade of caustic soda produced by membrane cells continues to command a premium price. Using a 7 percent discount rate, the incremental annualized net effect is a cost ranging from $34 million to $43 million per year, again depending on whether there are revenue gains from the caustic soda production.

EPA also estimates that approximately 1,800 sets of automotive brakes or brake linings containing asbestos may be imported into the U.S. each year, representing 0.002% of the total U.S. market for aftermarket brakes. The cost of a prohibition would be minimal due to the ready availability of alternative products that are only slightly more expensive (an average cost increase of about $5 per brake). The rule is estimated to result in total annualized costs for aftermarket automotive brakes

of approximately $300,000 per year using a 3% discount rate and $200,000 per year using a 7% discount rate.

EPA did not have information to estimate the costs of prohibiting asbestos for the remaining uses subject to the rule (sheet gaskets used in chemical production, including titanium dioxide production and nuclear material processing; brake blocks in the oil industry; other vehicle friction products; or other gaskets), so there are additional unquantified costs. EPA believes that the use of these asbestos-containing products has declined over time, and that, depending on which products, they are now either used in very small segments of the industries, or possibly not at all.

More information on the estimated costs is available in EPA's Economic Analysis for the rule (Ref. 2).

3. Benefits

EPA's Economic Analysis for the rule (Ref. 2), quantified the benefits from avoided cases of lung cancer, mesothelioma, ovarian cancer, and laryngeal cancer due to reduced asbestos exposures to workers, occupational non-users (ONUs), and do-it-yourselfers (DIYers) related to the rule's requirements for chlor-alkali diaphragms, aftermarket automotive brakes, and sheet gaskets used for titanium dioxide production. The combined national quantified benefits of avoided cancer cases associated with these products are approximately $6,000 per year using a 3% discount rate and $3,000 per year using a 7% discount rate, based on the cancer risk estimates from the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos. EPA did not estimate the aggregate avoided cancer benefits of the requirements for sheet gaskets used for other forms of chemical production, oilfield brake blocks, other vehicle friction products or other gaskets because the Agency did not have sufficient information on the number of individuals likely to be affected by the rule. To the extent that such products are still manufactured, processed, distributed in commerce, used, or disposed of, there would be additional benefits from reducing exposures from these use categories.

There are also unquantified benefits due to other avoided adverse health effects associated with asbestos exposure including respiratory effects (*e.g.,* asbestosis, non-malignant respiratory disease, deficits in pulmonary function, diffuse pleural thickening and pleural plaques). The rule will also generate unquantified benefits from other exposure pathways and life cycle stages for which exposures were not estimated. To the extent that the number of individuals exposed or exposure levels in the baseline were underestimated, EPA's analysis underestimates the benefits of the regulatory requirements.

In addition to the benefits of avoided adverse health effects associated with chrysotile asbestos exposure, the rule is expected to generate significant benefits from reduced air pollution associated with electricity generation. Chlor-alkali production is one of the most energy-intensive industrial operations in the United States. To the extent that alternative technologies are more energy efficient, converting asbestos diaphragm cells to non-asbestos technologies reduces overall electricity consumption and thus the total level of pollutants associated with electric power generation, including carbon dioxide, particulate matter, sulfur dioxide, and nitrogen oxides. Converting asbestos diaphragm cells to non-asbestos technologies could yield millions of dollars per year in environmental and health benefits from reduced emissions of these pollutants. EPA's Economic Analysis, which can be found in the rulemaking docket (Ref. 2), contains more information on the potential magnitude of these monetized benefits from reduced criteria air pollutants and carbon dioxide emissions.

4. Small Entity Impacts

As described in more detail in Unit X.C. and in section 6.2 of the Economic Analysis (Ref. 2), EPA estimates that 14 to 1,372 small entities would be subject to the rule.

Chlor-alkali facilities account for nearly all of the quantified costs of the rule, and none of the firms operating chlor-alkali facilities are small businesses.

Eleven to 1,369 of the affected small businesses perform brake replacements using aftermarket automotive brake linings and pads containing asbestos. The estimate of 11 affected small entities assumes that each affected business performs between 40 and 700 brake replacements per year using asbestos brake linings or pads. The estimate of 1,369 affected small entities assumes that each affected business installs a single set of asbestos brake linings or pads per year. Affected firms are expected to incur a cost of approximately $18 per brake replacement job for the additional expense of a set of four non-asbestos brake linings or pads, and about $1 for recordkeeping about their asbestos waste disposal activities. This results in annual costs between $20 and $14,000 per firm (depending on the number of brake replacements they perform). At the low-end estimate of 11 affected brake replacement firms, approximately 85% of firms would have cost impacts of less than 1% of their annual revenues, about 10% would have cost impacts between 1% and 3%, and around 6% would have cost impacts of greater than 3%. At the high-end estimate of 1,369 affected brake replacement firms, 100% of firms would have a cost impact of less than 1% of their annual revenues.

Two small businesses are assumed to manufacture sheet gaskets containing asbestos for titanium dioxide production. EPA does not have data on the cost to these businesses resulting from the prohibition on sheet gaskets containing asbestos. Therefore, EPA was unable to estimate the magnitude of the impacts for these small entities. Asbestos-free products in this application reportedly require more frequent replacement than items containing asbestos. As a result, the rule could increase revenues for the affected small business suppliers if they sell a larger volume of non-asbestos products to the end users as replacements.

One small business is known to import and distribute oilfield brake blocks containing asbestos. EPA does not have data on the cost for this use category resulting from the prohibition on products containing asbestos. Therefore, EPA was unable to estimate the magnitude of the impacts for this small entity. Asbestos-free products in this application reportedly require more frequent replacement than items containing asbestos. As a result, the rule could increase revenues for the affected small business supplier if it sells a larger volume of non-asbestos products to the end users as replacements.

No small businesses have been identified as using sheet gaskets for chemical production or brake blocks in the oil industry.

EPA has not identified specific firms (of any size) manufacturing, processing, distributing or using products containing asbestos for the aftermarket automotive brakes, other gaskets, and other vehicle friction products use categories. To the extent that there are any small businesses engaged in these activities, there are likely only a few firms facing a small cost increase for asbestos-free products.

5. Environmental Justice

This rule is expected to increase the level of environmental protection for all affected populations without having disproportionate and adverse health or environmental effects on any population, including any communities

with environmental justice concerns (Ref. 2). Most of the affected chlor-alkali facilities and one other chemical manufacturer affected by this rule are located in or near communities with high levels of polluting industrial activities, elevated disease risk, and a high proportion of people of color. For example, communities that contain affected chlor-alkali facilities have a cumulative baseline cancer risk from air toxics that is nearly twice the national average, and the share of Black/African American persons in these communities is almost three times the national average. This rule is not expected to increase these pre-existing environmental justice concerns. Units III.B. and X.J. discuss outreach conducted to advocates for communities with environmental justice concerns that might be subject to disproportionate exposure to chrysotile asbestos.

6. Children's Environmental Health

Consistent with Executive Order 13045 (62 FR 19885, April 23, 1997), EPA evaluated the health and safety effects of this action on children. This action is also subject to EPA's Policy on Children's Health (*https://www.epa.gov//childrens-health-policy-and-plan*) because the environmental health risk addressed by this action has a disproportionate effect on children.

Chrysotile asbestos has a disproportionate effect on children. The health effect of concern relates to exposures to chrysotile asbestos are mesothelioma, lung and other cancers, all of which have a long latency period following exposure. The risk evaluation (Ref. 1) demonstrated in sensitivity analyses that age at first exposure affected risk estimates, with earlier exposures in life resulting in greater risk. For children, exposures can be anticipated (1) as bystanders for consumer uses such as aftermarket brakes and (2) in consumer uses and occupational uses given that the risk evaluation presented information indicating that children as young as 16 years of age may engage in these activities. Furthermore, EPA recognizes it is possible that workers exposed to chrysotile asbestos at work may cause unintentional exposure to individuals in their residence, including children, due to take-home exposure from contaminated clothing or other items, although this additional pathway was not specifically evaluated in the risk evaluation. This rule protects children from these disproportionate environmental health risks.

The results of EPA's evaluation are contained in the risk evaluation (Ref. 1) and the Economic Analysis (Ref. 2).

7. Effects on State, Local, and Tribal Governments

As discussed in Unit X.E., this action has federalism implications because regulation under TSCA section 6(a) may preempt state law. It does not impose costs on small governments or have tribal implications.

II. Background

A. Overview of Chrysotile Asbestos

Asbestos is defined in section 202 of TSCA Title II as: ''Asbestiform varieties of six fiber types—chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite.'' EPA used this definition of asbestos at the onset of the asbestos risk evaluation in 2016. However, EPA determined that chrysotile asbestos is the only type of asbestos where import, processing, and distribution in commerce for use is known, intended, or reasonably foreseen in the U.S. As such, EPA assessed these non-legacy conditions of use of chrysotile asbestos in the December 2020 Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos (Ref. 1). Following a decision by the Ninth Circuit Court of Appeals (*Safer Chemicals Healthy Families* v. *EPA,* 943 F.3d 397 (9th Cir. 2019)) concerning legacy use and associated disposal of asbestos (conditions of use that were not included in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos), EPA began developing a supplemental risk evaluation to address legacy and associated disposal conditions of use. The Risk Evaluation for Asbestos, Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos will include evaluation of those conditions of use of chrysotile asbestos, the five amphibole fiber types identified in the TSCA Title II definition (crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite and actinolite) and Libby Amphibole Asbestos (mainly consisting of tremolite, winchite, and richterite). Additionally, some talc deposits and articles containing talc have been shown to contain asbestos. Thus, EPA recognizes that certain uses of talc may present the potential for asbestos exposure. Where EPA identifies reasonably available information demonstrating the presence of asbestos in talc, and where such talc applications fall under TSCA authority, those asbestos-containing talc conditions of use will be evaluated in Part 2 of the risk evaluation for asbestos. Once the Risk Evaluation for Asbestos, Part 2: Supplementary Evaluation Including Legacy Uses and Associated Disposals is complete, EPA intends to revisit the unreasonable risk determination issued in the 2020 Risk Evaluation for Asbestos Part 1, and, as appropriate, make an unreasonable risk determination for asbestos as a whole chemical substance.

In addition, on April 25, 2019, EPA finalized a significant new use rule for asbestos under TSCA section 5(a)(2) (40 CFR 721.11095) for manufacturing (including importing) or processing of asbestos for discontinued uses. This rule requires that persons notify EPA at least 90 days before commencing any manufacturing (including importing) or processing of asbestos (including as part of an article) for uses other than the uses evaluated under the Risk Evaluation for Asbestos, Part I: Chrysotile Asbestos and uses that are already prohibited under TSCA. The required notification would initiate EPA's evaluation of the risks associated with the intended significant new use. Manufacturing (including importing) and processing (including as part of an article) for the significant new use may not commence until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination. Also, on July 12, 1989, EPA issued a rule under TSCA section 6 entitled: Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions (54 FR 29460, July 12, 1989) (FRL–3476–2), that prohibited the manufacture (including import), processing and distribution of commerce of almost all asbestos-containing products. On October 18, 1991, in *Corrosion Proof Fittings* v. *EPA,* 947 F.2d 1201, the United States Court of Appeals for the Fifth Circuit vacated and remanded most of the 1989 rule. However, as a result of the Court's decision, certain asbestos-containing products remain banned including the manufacture, importation, processing, and distribution in commerce of corrugated paper, rollboard, commercial paper, specialty paper and flooring felt. Also, any ''new use'' remains banned—defined by that rule as uses of asbestos for which the manufacture, importation, or processing would be initiated for the first time after August 25, 1989.

This final rule applies only to chrysotile asbestos (Chemical Abstract Services Registry Number (CASRN) 132207–32–0). Chrysotile asbestos is a hydrated magnesium silicate mineral, with relatively long and flexible crystalline fibers that are capable of being woven. Chrysotile asbestos fibers used in most commercial applications consist of aggregates and usually contain a broad distribution of fiber

lengths. Chrysotile asbestos fiber bundle lengths usually range from a fraction of a millimeter to several centimeters, and diameters range from 0.1 to 100 micrometers. More information on the physical and chemical properties of chrysotile asbestos is in Section 1.1 of the Risk Evaluation (Ref. 1).

EPA evaluated the conditions of use associated with six ongoing use categories of chrysotile asbestos (chlor-alkali diaphragms, sheet gaskets used in chemical production, oilfield brake blocks, aftermarket automotive brakes/linings, other vehicle friction products, and other gaskets). There is no longer any domestic mining of asbestos. All imported raw asbestos is chrysotile asbestos, and it is used in the manufacture of chlor-alkali diaphragms. According to the United States Geological Survey (USGS), 152 metric tons of raw chrysotile asbestos were imported in 2022 (Ref. 3) from Brazil; however, as discussed in this preamble, public comments to the proposed rule indicate the importation of raw chrysotile asbestos for chlor-alkali use has ceased for now, while imports for the other use categories may be ongoing. EPA is also aware that Brazil's Federal Supreme Court banned asbestos mining, processing and export in 2022.

B. Regulatory Actions Pertaining to Chrysotile Asbestos

Because of its adverse health effects, chrysotile asbestos is subject to numerous State, Federal, and international regulations restricting and regulating its use. A summary of EPA regulations pertaining to chrysotile asbestos, as well other Federal, State, and international regulations, is in the docket (Ref. 1; Ref. 4).

C. Summary of EPA's Risk Evaluation Activities on Chrysotile Asbestos

In July 2017, EPA published a scope of the chrysotile asbestos risk evaluation (82 FR 31592, July 7, 2017) (FRL–9963–57), and after receiving public comment, published a problem formulation in June 2018 (83 FR 26998, June 11, 2018) (FRL–9978–40). In March 2020, EPA released a draft risk evaluation for asbestos (EPA–HQ–OPPT–2019–0501–0002), and in December 2020, following public comment and peer review by the Science Advisory Committee on Chemicals (SACC), EPA finalized the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos (Ref. 1).

In the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos, EPA evaluated risks associated with the conditions of use involving six non-legacy use categories of chrysotile asbestos including: Chlor-alkali diaphragms, sheet gaskets in chemical production, other gaskets, oilfield brake blocks, aftermarket automotive brake/linings, and other vehicle friction products. EPA evaluated the conditions of use within these categories, including manufacture (including import), processing, distribution, commercial use, consumer use, and disposal (Ref. 1). Descriptions of these conditions of use are included in Unit II.C.2.

The risk evaluation identified potential adverse health effects associated with exposure to chrysotile asbestos, including the risk of mesothelioma, lung cancer, and other cancers from chronic inhalation. A further discussion of the chrysotile asbestos hazards is included in Unit II.C.1. The chrysotile asbestos conditions of use that EPA determined contribute to the chemical substance's unreasonable risk to health include processing and industrial use of diaphragms in the chlor-alkali industry; processing and industrial use of sheet gaskets used in chemical production; industrial use and disposal of brake blocks in the oil industry; commercial use and disposal of aftermarket automotive brakes/linings; commercial use and disposal of other vehicle friction products; commercial use and disposal of other gaskets; consumer use and disposal of aftermarket automotive brakes/linings; and consumer use and disposal of other gaskets. This determination includes unreasonable risk of injury to health to both workers and occupational non-users (ONUs) during occupational exposures, and to consumers and bystanders during exposures to consumer uses.

EPA determined that ongoing uses of chrysotile asbestos do not present unreasonable risk to the environment (Ref. 1).

As previously discussed, following the November 2019 decision of the Ninth Circuit Court of Appeals in *Safer Chemicals Healthy Families* v. *EPA,* 943 F.3d 397, the agency is also conducting a Part 2 of the Asbestos Risk Evaluation: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos, which is occurring in parallel with its effort to pursue risk management to address unreasonable risk identified in the Risk Evaluation for Asbestos, Part 1. Legacy uses and associated disposals for asbestos are conditions of use for which manufacture (including import), processing, and distribution in commerce for a use no longer occur, but where use (*e.g.,* in situ building material) and disposal are still known, intended, or reasonably foreseen to occur.

The October 13, 2021, consent decree in the case *Asbestos Disease Awareness Organization et al* v. *Regan et al,* 4:21–cv–03716–PJH (N.D. Cal.) requires the agency to publish a final Part 2 asbestos risk evaluation on or before December 1, 2024. EPA published a draft scope for the Part 2 asbestos risk evaluation on December 29, 2021 (86 FR 74088) (FRL–9347–01–OCSPP), and a final scope for the Part 2 asbestos risk evaluation on June 29, 2022 (87 FR 38746) (FRL–9347–02–OCSPP).

As part of the problem formulation for the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos, EPA found that exposures to the general population may occur from the conditions of use considered. (Ref. 5). EPA determined, in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos, that exposure to the general population via surface water, drinking water, ambient air, and disposal pathways falls under the jurisdiction of other environmental statutes administered by EPA. The Agency, therefore, at that time explained that it was tailoring the scope of the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos using authorities in TSCA sections 6(b) and 9(b)(1). As such, EPA did not evaluate hazards or exposures to the general population, and the unreasonable risk determinations made in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos do not account for exposures to the general population. However, EPA expects that any potential exposures to the general population would be adequately addressed through the prohibition on the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos to address the unreasonable risk posed to workers, ONUs, consumers and bystanders. EPA does plan to evaluate exposures to the general population in the Risk Evaluation for Asbestos, Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos.

EPA also concluded that, based on the reasonably available information in the published literature provided by industries using asbestos and reporting to EPA databases, there are minimal or no releases of asbestos to surface water associated with the conditions of use that EPA evaluated in Part 1. Therefore, EPA concluded that there is low or no risk to aquatic and sediment-dwelling organisms from exposure to chrysotile asbestos. Terrestrial pathways, including biosolids from wastewater treatment plants, were excluded from the analysis at the problem formulation stage (Ref. 1; Ref. 5). However, EPA

expects that any potential exposures to terrestrial species, as with the general population, would be adequately addressed through the prohibition on the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos.

1. Description of Unreasonable Risk

The health endpoint driving EPA's determination of unreasonable risk for chrysotile asbestos under the conditions of use is cancer from inhalation exposure (Ref. 1). This unreasonable risk includes the risk of mesothelioma and lung, ovarian, and laryngeal cancers from chronic inhalation exposure. Inhalation unit risk (IUR) is typically defined as a plausible upper bound on the estimate of cancer risk per micrograms per cubic meter (μg/m^3) air breathed for 70 years. For asbestos, the IUR is expressed as cancer risk per fibers per cubic centimeter (f/cc) (in units of the fibers as measured by Phase Contrast Microscopy (PCM)). The IUR represents the total cancer incidence risk from chronic inhalation exposure of chrysotile asbestos and was based on epidemiological studies on mesothelioma and lung cancer in cohorts of workers using chrysotile asbestos in commerce. The inhalation unit risk for mesothelioma and lung cancer were directly estimated from the selected epidemiologic studies reporting exposure-response relationships between exposure to chrysotile asbestos and those cancers. Since there was no exposure-response data for ovarian and laryngeal cancer effects in the epidemiological literature, a direct estimate of risk from ovarian and laryngeal cancer could not be made for the inhalation unit risk calculation. An adjustment factor for ovarian and laryngeal cancer effects was applied to risk value estimates to correct for the underestimated total cancer risk derived from only lung cancer and mesothelioma that yielded an IUR for total cancer risk encompassing all four cancers known to be caused by exposure to chrysotile asbestos. And, as discussed in Section 4.2.1 of the Risk Evaluation (Ref. 1), for workers and ONUs exposed in a workplace, EPA used as a benchmark extra risk of 1 cancer per 10,000 people, that is, a risk level of 1×10^{-4} (or 1E–4). In addition, because non-cancer effects of asbestosis and pleural thickening may also contribute to overall health risk resulting from workplace exposures to chrysotile asbestos, the quantified health risks of chrysotile asbestos are underestimates because they are based on cancer risk alone.

For processing and industrial use of chrysotile asbestos diaphragms in the chlor-alkali industry, EPA found unreasonable risk to workers and ONUs from chronic inhalation exposure to chrysotile asbestos, based on industry data including personal air monitoring (*i.e.,* worker breathing zone results) and area air monitoring (*i.e.,* fixed location air monitoring results) that led to the high-end risk estimates exceeding the 1×10^{-4} risk benchmark (Section 5.2.1 of the Risk Evaluation).

For both the processing (*i.e.,* gasket cutting) and industrial use activities of chrysotile asbestos-containing sheet gaskets for chemical production, EPA found unreasonable risk to workers and ONUs from chronic inhalation exposure to chrysotile asbestos based on monitoring data provided by industry and data in the published literature (Section 5.2.1 of the Risk Evaluation).

For the industrial use and disposal of chrysotile asbestos-containing oilfield brake blocks, EPA found unreasonable risk to workers and ONUs from chronic inhalation exposure to chrysotile asbestos based on a published literature (Section 5.2.1 of the Risk Evaluation).

For the commercial use and disposal of aftermarket automotive chrysotile asbestos-containing brakes/linings and other vehicle friction products (except for the NASA Super Guppy Turbine aircraft use), EPA found unreasonable risk to workers from chronic inhalation exposure to chrysotile asbestos based on published literature and OSHA data (Section 2.3.1.8.1 of the Risk Evaluation). EPA determined, based on exposure data provided by NASA to EPA (Section 2.3.1.8.2 of the Risk Evaluation), that the use and disposal of chrysotile asbestos-containing brakes for NASA's Super Guppy Turbine aircraft did not present an unreasonable risk of injury to health or the environment.

For the commercial use and disposal of other chrysotile asbestos-containing gaskets, EPA found unreasonable risk to workers and ONUs from chronic inhalation exposure to chrysotile asbestos based on exposure scenarios from occupational monitoring data for asbestos-containing gasket replacement activities in vehicles.

For consumer use and disposal of aftermarket automotive chrysotile asbestos-containing brakes/linings and other chrysotile asbestos-containing gaskets, EPA found unreasonable risk to consumers and bystanders from chronic inhalation exposure to chrysotile asbestos, using as a benchmark cancer risk level of $1\text{x}10^{-6}$ (1E–6) for consumers and bystanders.

EPA also noted in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos that it is possible for industrial workers or consumers working with aftermarket automotive products or other types of asbestos-containing gaskets to cause unintentional exposure to individuals in their residence due to take-home exposure from contaminated clothing or other items.

The provisions of the final rule are described in Unit VI. and the health effects of chrysotile asbestos and the magnitude of the exposures to chrysotile asbestos are described in Unit VII.B.1.

2. Description of Conditions of Use

This unit describes the conditions of use subject to this final action. Although EPA identified both industrial and commercial uses in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos for purposes of distinguishing scenarios, the Agency clarified then and clarifies now that EPA interprets the authority over ''any manner or method of commercial use'' under TSCA section 6(a)(5) to apply to both industrial and commercial uses identified in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos.

The conditions of use for this final action do not include any legacy uses or associated disposal for chrysotile asbestos or other asbestos fiber types. EPA will consider legacy uses and associated disposals in Part 2 of the risk evaluation for asbestos (Ref. 1).

a. *Processing and industrial use of chrysotile asbestos diaphragms in the chlor-alkali industry.*

Chrysotile asbestos historically has been imported and used by the chlor-alkali industry for the fabrication of semi-permeable diaphragms. The chrysotile asbestos diaphragms are used in an industrial process for the production of chlorine and sodium hydroxide (caustic soda). Asbestos is chemically inert and able to effectively separate chlorine and sodium hydroxide in electrolytic cells. The chlor-alkali chemical production process involves the separation of the sodium and chloride atoms of salt in saltwater (brine) via electricity to produce sodium hydroxide (caustic soda), hydrogen, and chlorine. The electrolytic cell contains two compartments separated by a semi-permeable diaphragm, which is made mostly of chrysotile asbestos. The diaphragm prevents the reaction of the caustic soda with the chlorine and allows for the separation of both materials for further processing. Diaphragms are typically used for 1–3 years before they must be replaced (Ref. 1).

b. *Processing and industrial use of chrysotile asbestos-containing sheet gaskets in chemical production.*

Sheet gaskets are used to form a leakproof seal between fixed components. Chrysotile asbestos-containing gaskets are used primarily in industrial applications with extreme operating conditions, such as high temperatures, high pressures, and the presence of chlorine or other corrosive substances. Such extreme operating conditions are found in many chemical manufacturing and processing operations, including: the manufacture of titanium dioxide and chlorinated hydrocarbons; polymerization reactions involving chlorinated monomers; and steam cracking at petrochemical facilities. Chrysotile asbestos-containing gaskets used for titanium dioxide production are fabricated from sheets composed of 80% (minimum) chrysotile asbestos fully encapsulated in styrene butadiene rubber. The chrysotile asbestos-containing sheets are articles which are imported into the U.S. in large rolls where they are cut to shape by a fabricator and subsequently used at titanium dioxide manufacturing facilities. Installed gaskets typically remain in use anywhere from a few weeks to three years (Ref. 1). In addition to the industrial uses specifically identified in the risk evaluation, the use of sheet gaskets in the processing of nuclear material is also covered by this condition of use because it involves processing chemicals under extreme operating conditions, in this case operations involving radioactive materials.

c. *Industrial use and disposal of chrysotile asbestos-containing brake blocks in oil industry.*

The rotary drilling rig of an oil well uses a drawworks hoisting machine to raise and lower the traveling blocks during drilling. The drawworks is a permanently installed component of a mobile drilling rig. The drawworks consists of a large-diameter steel spool, a motor, a main brake, a reduction gear, and an auxiliary brake. The brake of the drawworks hoisting machine is an essential component that is engaged when no motion of the traveling block is desired. Chrysotile asbestos-containing brake blocks are imported articles for use in some drawworks, reportedly most often on larger drilling rigs. Spent brake blocks must periodically be replaced by workers in the oilfield industry who maintain the rig (Ref. 1).

d. *Commercial use and disposal of aftermarket automotive chrysotile asbestos-containing brakes/linings.*

The two primary types of automobile brakes are drum brakes and disc brakes, and chrysotile asbestos has been found in both, in linings for drum brake assemblies and pads in disc brake assemblies. Disc brakes are much more common today than drum brakes, but many passenger vehicles have a combination of disc brakes for the front wheels and drum brakes for the rear wheels. Chrysotile asbestos fibers offer many properties that are desired for brake linings and brake pads, and up through the 1990s many new automobiles manufactured in the United States had brake assemblies with asbestos-containing components. By 2000, asbestos was no longer used in the brakes of virtually any original equipment manufacturer (OEM) automobiles sold domestically; however, asbestos-containing brake products continue to be imported and sold in the United States. The quantity of asbestos-containing brake part articles imported is unknown. Therefore, asbestos could be found in the United States: (1) In vehicles on the road that have asbestos-containing brakes, whether from older and vintage vehicles or aftermarket parts; and (2) In vehicles that have new replacement asbestos-containing brakes installed by establishments or individuals that use certain imported products. Brakes must be repaired and replaced periodically, which involves activities that create dust and potential occupational exposure to asbestos (Ref. 1).

e. *Commercial use and disposal of other chrysotile asbestos-containing vehicle friction products.*

While EPA has verified that U.S. automotive manufacturers are not installing asbestos-containing brakes on new cars for domestic distribution, EPA identified a company that claimed to import asbestos-containing brakes and then install them on cars in the United States for export only. Following completion of the risk evaluation, and during the risk management phase following publication of the final risk evaluation, this company disavowed this practice (Ref. 6).

In addition, there is a limited use of asbestos-containing brakes for a special, large transport plane, the ''Super-Guppy'' Turbine (SGT) aircraft, owned and operated by the National Aeronautics and Space Administration (NASA). The SGT aircraft is a specialty cargo plane that transports oversized equipment, and it is considered a mission-critical vehicle. Only one SGT aircraft is in operation today, and NASA acquired it in 1997. The SGT aircraft averages approximately 100 flights per year. When not in use, it is hangered and maintained at a NASA facility in El Paso, Texas. The SGT aircraft has eight landing gear systems, and each system has 32 brake blocks, which contain chrysotile asbestos. Potential worker exposures are associated with servicing the brakes. As explained in the risk evaluation, the following two conditions of use do not present unreasonable risk, and therefore do not require mitigation by this final rule: Use of chrysotile asbestos-containing brakes for a specialized, large NASA transport plane; and the disposal of chrysotile asbestos-containing brakes for a specialized, large NASA transport plane (Ref. 1).

f. *Commercial use and disposal of other asbestos-containing gaskets.*

EPA also identified the use of chrysotile asbestos-containing gaskets in the exhaust system of a specific type of utility vehicle manufactured and available for purchase in the United States. The utility vehicle manufacturer purported at the time to receive the pre-cut gaskets which are then installed during manufacture of the vehicle. The gaskets may be removed during servicing of the exhaust system at utility vehicle dealerships and other repair and maintenance shops. Exhaust gasket installation and repair activities create asbestos exposure. (Ref. 1).

g. *Consumer use and disposal of aftermarket automotive chrysotile asbestos-containing brakes/linings.*

Asbestos could be found in the United States: (1) In vehicles on the road that have asbestos-containing brakes, whether from original manufacturers (primarily for older and vintage vehicles) or aftermarket parts; and (2) In vehicles that have new replacement asbestos-containing brakes installed by establishments or individuals that use certain imported products. Brakes must be repaired and replaced periodically, activities which create dust and exposure to asbestos for consumers and bystanders who perform their own do-it-yourself automobile maintenance and repairs on asbestos-containing components (Ref. 1).

h. *Consumer use and disposal of other asbestos-containing gaskets.*

EPA also identified the use of chrysotile asbestos-containing gaskets in the exhaust system of a specific type of utility vehicle manufactured and available for purchase in the United States. The gaskets may be removed during servicing of the exhaust system. EPA determined that do-it-yourself consumers who may repair these vehicles and bystanders are exposed to asbestos (Ref. 1).

III. EPA's Proposed Rule Under TSCA Section 6(a) for Chrysotile Asbestos

A. Description of TSCA Section 6(a) Requirements

Under TSCA section 6(a), if the Administrator determines through a TSCA section 6(b) risk evaluation that a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the Agency's risk evaluation, under the conditions of use, EPA must by rule apply one or more requirements to the extent necessary so that the chemical substance no longer presents such risk.

The TSCA section 6(a) requirements can include one or more of the following actions alone or in combination:

- Prohibit or otherwise restrict the manufacturing (including import), processing, or distribution in commerce of the substance or mixture, or limit the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce (TSCA section 6(a)(1)).
- Prohibit or otherwise restrict the manufacturing, processing, or distribution in commerce of the substance or mixture for a particular use or above a specific concentration for a particular use (TSCA section 6(a)(2)).
- Limit the amount of the substance or mixture which may be manufactured, processed, or distributed in commerce for a particular use or above a specific concentration for a particular use specified (TSCA section 6(a)(2)).
- Require clear and adequate minimum warning and instructions with respect to the substance or mixture's use, distribution in commerce, or disposal, or any combination of those activities, to be marked on or accompanying the substance or mixture (TSCA section 6(a)(3)).
- Require manufacturers and processors of the substance or mixture to make and retain certain records or conduct certain monitoring or testing (TSCA section 6(a)(4)).
- Prohibit or otherwise regulate any manner or method of commercial use of the substance or mixture (TSCA section 6(a)(5)).
- Prohibit or otherwise regulate any manner or method of disposal of the substance or mixture, or any article containing such substance or mixture, by its manufacturer or processor or by any person who uses or disposes of it for commercial purposes (TSCA section 6(a)(6)).
- Direct manufacturers or processors of the substance or mixture to give notice of the unreasonable risk determination to distributors, certain other persons, and the public, and to replace or repurchase the substance or mixture (TSCA section 6(a)(7)).

EPA analyzed how the TSCA section 6(a) requirements could be applied so that the unreasonable risk described in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos is no longer present. TSCA section 6(c)(2)(A) requires EPA, in proposing and promulgating TSCA section 6(a) rules, to include a statement of effects addressing certain issues, including the effects of the chemical substance on health and the environment; the magnitude of exposure of the chemical substance to humans and the environment; the benefits of the chemical substance for various uses; and the reasonably ascertainable economic consequences of the rule, including consideration of the likely effects of the rule on the national economy, small business, technological innovation, the environment and public health; and the costs and benefits and the cost effectiveness of the regulatory action and of the one or more primary alternative regulatory actions considered by the Administrator. As a result, EPA is finalizing a regulatory action and describing two primary alternative regulatory actions considered, which are discussed in Unit VI. and Unit VII.A., respectively.

Related to TSCA section 6(a) actions, TSCA section 6(c)(2)(C) requires that, in deciding whether to prohibit or restrict the chemical substance in a manner that substantially prevents a specific condition of use and in setting an appropriate transition period for such action, EPA consider, to the extent practicable, whether technically and economically feasible alternatives that benefit health or the environment will be reasonably available as a substitute when the prohibition or restriction takes effect. Unit VII.B.5. includes more information regarding EPA's consideration of alternatives.

Also as part of TSCA section 6(a) actions or separately, under the authority of TSCA section 6(g), EPA may consider granting by rule a time-limited exemption for a specific condition of use for which EPA finds: That the specific condition of use is a critical or essential use for which no technically and economically feasible safer alternative is available, taking into consideration hazard and exposure; that compliance with the proposed requirement would significantly disrupt the national economy, national security, or critical infrastructure; or that the specific condition of use of the chemical substance, as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety. EPA did not propose to grant and is not finalizing an exemption from the rule requirements under TSCA section 6(g).

B. Consultations and Other Stakeholder Outreach

EPA conducted consultations and outreach in preparing for the proposed regulatory action. The Agency held a federalism consultation on May 13, 2021, as part of this rulemaking process and pursuant to Executive Order 13132 (Ref. 7). On May 24, 2021, and June 3, 2021, EPA held tribal consultations for the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos (Ref. 8). EPA also conducted outreach to advocates of communities that might be subject to disproportionate exposure to chrysotile asbestos, such as communities with environmental justice concerns. EPA's environmental justice (EJ) consultation occurred from June 1 through August 13, 2021. On June 1 and 9, 2021, EPA held public meetings as part of this consultation. These meetings were held pursuant to Executive Orders 12898 and 14008 (Ref. 9). Units X.E., X.F., X.J. provide more information regarding the consultations.

In addition to the consultations described in Units X.E., X.F., and X.J. on February 3, 2021, EPA held a public webinar (Ref. 10) and also attended a Small Business Administration roundtable on February 5, 2021 (Ref. 11). Furthermore, EPA engaged in discussions with industry, non-governmental organizations, other national governments, asbestos experts and users of chrysotile asbestos. Summaries of external meetings held during the development of this rulemaking are in the docket.

C. Proposed Regulatory Action

On April 12, 2022, EPA issued a proposed rule under TSCA section 6(a) to regulate certain conditions of use, so that chrysotile asbestos does not present the unreasonable risk of injury to health as determined in the 2020 Risk Evaluation (87 FR 21706). EPA proposed pursuant to TSCA section 6(a) to prohibit manufacture (including import), processing, distribution in commerce, and commercial use of chrysotile asbestos in bulk form or as part of chrysotile asbestos diaphragms used in the chlor-alkali industry and chrysotile asbestos-containing sheet gaskets used in chemical production. EPA proposed that these prohibitions would take effect two years after the

effective date of the final rule. EPA also proposed pursuant to TSCA section 6(a) to prohibit manufacture (including import), processing, distribution in commerce, and commercial use of: chrysotile asbestos-containing brake blocks used in the oil industry, aftermarket automotive chrysotile asbestos-containing brakes/linings, other chrysotile asbestos-containing vehicle friction products and other chrysotile asbestos-containing gaskets. EPA proposed that these prohibitions would take effect 180 days after the effective date of the final rule. EPA further proposed pursuant to TSCA section 6(a) to prohibit manufacture (including import), processing, and distribution in commerce of: aftermarket automotive chrysotile asbestos-containing brakes/linings for consumer use, and other chrysotile asbestos-containing gaskets for consumer use. EPA proposed that these prohibitions would take effect 180 days after the effective date of the final rule. EPA also proposed disposal and recordkeeping requirements under which regulated parties would document compliance with the proposed disposal requirements. Disposal and recordkeeping requirements would take effect 180 days after the effective date of the final rule. EPA additionally proposed definitions of certain terms used in the proposed regulatory text.

D. Primary Alternative Regulatory Action Described in the Proposed Rule

As indicated by TSCA section 6(c)(2)(A), EPA must consider the cost and benefits and the cost effectiveness of the proposed regulatory action and one or more primary alternative regulatory actions. In the April 12, 2022, proposed rule (87 FR 21706), EPA's primary alternative regulatory action described in the proposed rule was to: prohibit manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos in bulk form or as part of: chrysotile asbestos diaphragms in the chlor-alkali industry and for chrysotile asbestos-containing sheet gaskets in chemical production, with prohibitions taking effect five years after the effective date of the final rule, and require, prior to the prohibition taking effect, compliance with an existing chemical exposure limit (ECEL) to reduce inhalation exposures for the processing and commercial use of chrysotile asbestos for these uses. The primary alternative regulatory action described in the proposed rule additionally included a prohibition on the manufacture (including import), processing, distribution in commerce, and commercial use of chrysotile asbestos-containing brake blocks in the oil industry; aftermarket automotive chrysotile asbestos-containing brakes/linings; and other vehicle friction products (with prohibitions taking effect two years after the effective date of the final rule and with additional requirements for disposal). The primary alternative regulatory action described in the proposed rule also included prohibitions on manufacture (including import), processing, and distribution in commerce of aftermarket automotive chrysotile asbestos-containing brakes/linings for consumer use and other chrysotile asbestos-containing gaskets for consumer use (with prohibitions taking effect two years after the effective date of the final rule). The primary alternative regulatory action described in the proposed rule also included a requirement to dispose of chrysotile asbestos-containing materials in a manner identical to the proposed regulatory action, with additional provisions for downstream notification and signage and labeling.

IV. Summary of Public Comments

A. Public Comments Regarding the Proposed Rule

EPA received a total of 10,847 public comments on the April 12, 2022, Proposed Rule titled ''*Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use Under Section 6(a) of the Toxic Substances Control Act (TSCA).*'' The comment period for the proposed rule was originally scheduled to end on June 13, 2022, but was extended until July 13, 2022, in response to public requests (87 FR 31814, FRL–8332–03–OCSPP). EPA received 158 unique comments from trade organizations, industry stakeholders, environmental groups, and non-governmental health advocacy organizations, among others. A separate document that summarizes all comments submitted and EPA's responses to those comments is available in the docket for this rulemaking (Ref. 12).

B. Notice of Data Availability and Request for Comment

After the close of the public comment period for the proposed rule, EPA received comments and held meetings with stakeholders, including affected industry and interested groups, related to the use of chrysotile asbestos diaphragms in the chlor-alkali industry and chrysotile asbestos-containing sheet gaskets used in chemical production. Topics of these comments and meetings included media reports regarding asbestos workplace practices in the chlor-alkali industry, the timing of any prohibition on the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos diaphragms and chrysotile asbestos-containing sheet gaskets, and the requirement, included in the primary regulatory alternative described in the preamble to the proposed rule, for processors and users of chrysotile asbestos diaphragms and chrysotile asbestos-containing sheet gaskets to comply with an ECEL as an interim inhalation exposure control measure prior to the effective date of a prohibition. Meetings were held with: ADAO (July 6 and October 13, 2022); Chlorine Institute (July 6, 2022); Dow Chemicals (October 28, 2022); Axial/Westlake (November 3, 2022); Olin Corporation (Olin) (November 14, 2022); OxyChem (November 16, 2022, December 7, 2022, and February 9, 2023), and Chemours (January 18, 2023). EPA received data as part of and following those stakeholder meetings and made the information available to the public in the rulemaking docket (EPA–HQ–OPPT–2021–0057) through a Notice of Data Availability (NODA) and Request for Comment (88 FR 16389, March 17, 2023) (FRL–8332–04–OCSPP).

In addition, EPA posted to the docket other information made available after the close of the public comment period, including several public comments submitted to EPA, including from state and local government officials, regarding the potential impacts of the proposed rule's compliance date for the prohibition on the commercial use of chrysotile asbestos diaphragms in the chlor-alkali industry on the supply of chlorine used for drinking water disinfection, wastewater treatment and potential impacts on state and local water supply systems; the timing of the prohibition on the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos-containing sheet gaskets in chemical production; and discussion of workplace monitoring strategies to comply with an asbestos ECEL during the interim period prior to a prohibition on the commercial use of chrysotile asbestos diaphragms.

EPA requested public comment on any data in the docket that was received during and after the proposed rule public comment period, and how EPA should consider it during the development of the final rule. EPA received 47 unique comments that were responsive to the Agency's request for

comments. Commenters included trade organizations, industry stakeholders, unions, and non-governmental health advocacy organizations. A separate document that summarizes all comments submitted regarding the NODA, and EPA's responses to those comments is available in the docket for this rulemaking (Ref. 13).

V. Changes From the Proposed Rule

This unit summarizes the main changes from the proposed rule to the final rule, based on the consideration of the public comments.

A. Chrysotile Asbestos Diaphragms for Use in the Chlor-Alkali Industry

TSCA section 6(d) requires EPA to specify mandatory compliance dates for all requirements of a TSCA section 6(a) rule. The mandatory compliance dates must be ''as soon as practicable'' and ''provide for a reasonable transition period.'' Except when EPA is imposing a ban or phase-out of a chemical substance, the mandatory compliance date for a requirement in a TSCA section 6(a) rule must be no later than five years after the date of promulgation of the final rule. If EPA is requiring a ban or phase-out of a chemical substance, EPA must specify a mandatory compliance date for the start of the ban or phase-out that is no later than five years after the date of promulgation of the final rule, and must specify mandatory compliance dates for full implementation of the ban or phase-out which are as soon as practicable. Pursuant to TSCA section 6(d)(2), EPA may establish different mandatory compliance dates for different persons.

EPA proposed to prohibit manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos for chrysotile asbestos diaphragms for use in the chlor-alkali industry, effective two years after the effective date of the final rule. In the proposed rule, EPA sought public comment ''to support or refute its assumption that [chlor-alkali] facilities using asbestos diaphragms will convert to non-asbestos technologies, and the timeframes required for such conversions,'' and as well as on a prohibition compliance date that would be both ''as soon as practicable'' and ''provide for a reasonable transition period'' (87 FR 21721, 21726). In the notice of data availability, EPA described comments and other information that the Agency had received regarding these issues and requested additional public comment on how EPA should consider this information in developing the final rule. 88 FR 16389, 16391. Based on public comments received in response to the proposed rule and notice of data availability, EPA concludes that the proposed mandatory compliance date for the prohibition on the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos for chrysotile asbestos diaphragms would not be ''as soon as practicable,'' and would not provide for a reasonable transition period, as required under TSCA section 6(d)(1). 15 U.S.C. 2605(d)(1). EPA is therefore finalizing mandatory compliance dates that differ from those in the proposed rule.

Specifically, EPA concludes that it is practicable to prohibit the manufacture (including import) of chrysotile asbestos for diaphragms in the chlor-alkali industry as of the effective date of the final rule. All chlor-alkali companies that currently use chrysotile asbestos already have a sufficient supply of chrysotile asbestos for foreseeable future operations prior to the prohibition compliance dates for processing, distribution in commerce and commercial use. The three chlor-alkali companies that use asbestos diaphragms provided comment to EPA that they all ceased importing raw asbestos and do not need or intend to resume importing raw asbestos. Therefore, EPA is prohibiting the manufacture (including import) of chrysotile asbestos for diaphragms for use in the chlor-alkali industry as of the effective date of the final rule.

With respect to the prohibition on the processing, distribution in commerce, and commercial use of chrysotile asbestos for chrysotile asbestos diaphragms, EPA concludes that five years after the effective date of this final rule is as soon as practicable for this prohibition to start. Additionally, EPA concludes that the date by which the full implementation of this prohibition is practicable varies for different persons affected by this prohibition. Therefore, as described in further detail below, EPA is finalizing multiple compliance dates for full implementation of this prohibition to provide a reasonable transition time.

EPA received significant comment on the timing of the proposed prohibition on use of chrysotile asbestos diaphragms in the chlor-alkali industry during the public comment period for the proposed rule, as well as in response to the notice of data availability. While EPA received comments supporting the proposed two-year prohibition timeline, many commenters argued the two-year timeline would not provide the chlor-alkali industry a reasonable transition period. Comments included information regarding the types of activities involved in the transition to non-asbestos diaphragms, the limited number of suppliers that are able to provide the necessary materials for the transition, the technical expertise needed and its scarcity, capital cost investments needed, projected chlorine production impacts from the expected transition, and time it generally takes to obtain permits, including environmental permits, required for the transition. Commenters requested that EPA provide additional time to allow the chlor-alkali industry to transition away from asbestos-containing diaphragms, and to allow for this transition to occur without causing economic disruptions or public health impacts resulting from potential disruption of drinking water disinfection and wastewater treatment supplies due to fluctuations in the production of chlorine and other chlor-alkali products. Other commenters also raised concerns of impacts to other chemical industries that use chlorine as their main feedstock for their processes. Some commenters also expressed concerns about the proposed alternative five-year timeline for similar reasons.

Regarding the timing of the prohibition on processing, distribution in commerce and commercial use of chrysotile asbestos for chrysotile asbestos-containing diaphragms, EPA concludes based on public comments that five years after the effective date of this final rule is as soon as practicable for this prohibition to begin, and that the practicable compliance dates for the full implementation of this prohibition vary for different affected persons and depend on the number of facilities a person is converting to membrane technology. Three companies own a total of eight chlor-alkali facilities in the United States that use chrysotile asbestos diaphragms; the number of facilities owned by each company varies from one to five, and the size of the asbestos diaphragm chlorine capacity at the eight facilities varies from 171 thousand metric tons to 981 thousand metric tons. Several factors affect the time needed for each individual chlor-alkali company to transition away from chrysotile asbestos diaphragm technology, including the number and size of facilities owned by the chlor-alkali company, the company's approach to transition away from asbestos (*e.g.,* a decision to either convert facilities to non-asbestos diaphragms or to membrane technologies), and technical differences in specific facility conversions. Comments received described the

different approaches to move away from chrysotile asbestos use given the different designs of chrysotile asbestos diaphragm technology, the type of intended conversion to a non-asbestos diaphragm technology or membrane technology, the limited availability of suppliers and technical expertise required for the conversion process, as well as differences regarding permits needed for the conversion of facilities and permitting timelines based on their location. In particular, comments explained that due to such issues, one company's conversion of multiple facilities to membrane technology cannot be performed simultaneously and can only be accomplished in a sequential conversion process. In the final rule, EPA is adopting an approach that can accommodate differences among facilities to provide a reasonable transition period for each remaining chlor-alkali facility still using chrysotile asbestos diaphragms, while ensuring the associated unreasonable risk is addressed as soon as practicable without anticipated disruption to the available supply of chlor-alkali chemicals needed to treat drinking water and wastewater.

The mandatory compliance dates for the prohibition on processing, distribution in commerce and commercial use of chrysotile asbestos for chrysotile asbestos diaphragms for use in the chlor-alkali industry included in this final rule are longer than the proposed regulatory action; however, the prohibition phase-in dates begin five years after the effective date of the final rule, which was the compliance date in the primary alternative regulatory option described in the proposed rule for this condition of use. The primary alternative regulatory option described in the proposed rule included a prohibition effective five years after the effective date of the final rule, as well as a requirement to comply with an existing chemical exposure limit (ECEL) before this prohibition would take effect and related monitoring and recordkeeping requirements. The final rule also includes a requirement to comply with interim controls before the prohibition takes effect. Unit V.B. describes the changes to these interim controls.

There are two main technologies that can be used to replace asbestos diaphragms in chlor-alkali production, non-asbestos diaphragm cells and membrane cells. Development of non-asbestos diaphragm cells began in the mid-1980s. Non-asbestos diaphragms operate in a similar manner to asbestos diaphragms. In a diaphragm cell, a diaphragm is placed between the anode and cathode of an electrolysis cell to separate the chlorine, hydrogen, and caustic soda products. The diaphragm ensures that the chlorine and hydrogen do not spontaneously ignite, and the chlorine and caustic soda do not form undesirable reactant products. Non-asbestos diaphragms generally last longer in service than asbestos diaphragms and can reduce energy consumption due to lower cell voltages. The process to convert a chlor-alkali facility from asbestos diaphragms to non-asbestos diaphragms is not as complex as the process to convert to membrane technology; it requires fewer design changes, less construction, and may be performed over several years without significant disruption of facility operations or product output. Significantly, the conversion to non-asbestos diaphragms can proceed concurrently at several facilities, subject to the availability of supplies of non-asbestos diaphragm cell components. Membrane cell technology was developed in the early 1970's; the membrane cell process is different from the diaphragm process in a number of significant ways and operates through the selective permeability of the membranes, which allow only specific components to pass through. Membrane technology conversions are more complicated than diaphragm technology conversions. Membrane technology conversions require new cells, as well as multiple other plant infrastructure changes, including changes to: brine processing, caustic soda handling, piping, storage tanks, and power supply. However, as compared to diaphragm technology, membrane technology uses less energy and produces a higher-quality product (containing less salt) for which there is greater market demand, and is therefore generally considered the current best available technology in the chlor-alkali industry.

Based on public comments and meetings with companies, EPA understands that at least four of eight chlor-alkali facilities, two operated by OxyChem and two operated by Olin, will be converted to non-asbestos diaphragm cell technology. A fifth facility, operated by Westlake, is being converted to an unspecified non-asbestos technology. As described in Unit IV.B., EPA issued a Notice of Data Availability (NODA) and Request for Comment (88 FR 16389, March 17, 2023), that, among other topics, provided additional information on and sought comment on the timing of any prohibition on the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos diaphragms. Based on this information, including public comment received in response to this notice, EPA concludes these five conversions to non-asbestos diaphragms (or alternative non-asbestos process) can be achieved in five years.

On April 4, 2023, during the public comment period for the March 2023 Notice of Data Availability, one chlor-alkali company, Olin, met with EPA and submitted a letter to EPA stating its support for ''an EPA action to ban the installation of any new or replacement asbestos-based diaphragms in two years, in combination with an additional five years to operate any existing asbestos-based diaphragm production cells.'' The comment suggested that this seven-year ban should apply to the entire chlor-alkali industry. The company also noted that during the proposed additional five-year window it ''would use an in-situ process to maintain the diaphragms which does not involve workers removing asbestos diaphragms from the closed process for repairs or constructing new asbestos diaphragms.'' (Ref. 14) No further written information was provided to support this comment during the public comment period, which ended April 17, 2023. In August 2023, Olin requested to meet again with EPA and provided a one-page slide with bullet-points on its plans to convert its two facilities using asbestos diaphragms to non-asbestos diaphragms within the seven-year timeline it had proposed in April. The company stated it has several thousand asbestos diaphragm cells and after an initial two-year period during which it would continue to install new asbestos diaphragms; it would require five additional years to replace all its asbestos diaphragms. (Ref. 15)

In the preamble to the proposed rule, EPA sought public comment on a compliance date for a prohibition on the use of chrysotile asbestos-containing diaphragms in chlor-alkali production, including ''specific and detailed timelines to build asbestos-free facilities or to convert existing asbestos-using facilities to asbestos-free technology'' and ''specific information regarding potential barriers to achieving the proposed prohibition date while considering the supply of chlor-alkali chemicals'' (87 FR 21726). Olin's comments do not provide EPA with adequate information to establish that seven years is as soon as practicable for the company to convert its two facilities to non-asbestos diaphragms or otherwise end the use of asbestos, or that this rule's five-year prohibition for non-membrane conversions does not provide the company with a reasonable transition period. For example, it is

unclear why two years are required for the company to continue installing new asbestos diaphragms before the company can begin converting cells, since the company did not provide supporting data to explain why waiting two years to start the conversion, is as soon as practicable for cell conversions. The company did not provide information indicating any difficulties with its expected ability to obtain replacement parts, including any information from or on suppliers; and no supporting information was provided to EPA to show that a higher conversion rate or beginning the conversion immediately rather than in two years could disrupt the company's ability to produce sufficient chlor-alkali chemicals for its customers. Additional information that would have been needed for EPA to assess whether the proposed seven-year compliance date is as soon as practicable includes: information regarding the types of activities involved in the transition to non-asbestos diaphragms, what suppliers provide the necessary materials, what type of technical expertise is needed and its availability, capital cost investments needed, projected chlorine production and impacts from the expected transition. In establishing the chrysotile asbestos diaphragm phase-out timeframes in the rule, EPA based its compliance timeframe on reasonably available information, including information provided in public comments, as well as in meetings with interested stakeholders. EPA took into consideration the technical differences in specific facility conversions and how those affect the time needed for each individual chlor-alkali company to transition away from chrysotile asbestos diaphragm technology, such as the different designs of chrysotile asbestos diaphragm technology, the type of intended conversion to a non-asbestos diaphragm technology or membrane technology, the limited availability of suppliers and technical expertise required for the conversion process, as well as differences regarding permits needed for the conversion of facilities and permitting timelines based on facility location.

Also, beyond a general description, Olin provided no additional information on its proposed chrysotile asbestos-containing slurry cell maintenance process, how it may or may not differ from previously described practices by the company, or to what extent this process would reduce exposure. Furthermore, EPA has no information on other companies' ability to implement such an asbestos-containing slurry process within two years, or its effect on national chlor-alkali production in the period after two years and before final phase-out.

While seven years was presented as being as soon as practicable to transition one company's operations to non-asbestos diaphragm technology, seven years was also presented to EPA as a chrysotile asbestos use ban date for the entire chlor-alkali industry. The proposal does not consider other companies' comments on their abilities to phase-out asbestos use as soon as practicable, or what is a reasonable transition time for those firms. Other companies have told EPA or provided information to EPA that leads EPA to conclude that they can complete all of their planned conversions to non-asbestos diaphragms within five years (Ref. 16; Ref. 17). Allowing all of the chlor-alkali companies seven years—an additional two years—to convert to non-asbestos diaphragms therefore would not be as soon as practicable given the information received from other companies.

Furthermore, EPA believes that Olin's suggested approach for conversion from asbestos diaphragms to non-asbestos diaphragms is not practical for other companies who are converting from diaphragm to membrane technology, and EPA believes that there would be adverse impacts on the availability of chlorine for drinking water should this approach be uniformly adopted. Regarding the plans of another company, OxyChem, to sequentially convert three facilities to membrane technology, EPA has received detailed information on the sequential conversion schedule. The company's first facility can be converted within five years; allowing seven years for its conversion would not be as soon as practicable. The second facility conversion is not scheduled to be complete for eight years. EPA has no basis to conclude this schedule could be shortened to seven years while still providing a reasonable transition period, given the limited global supply of essential metals, the limited capacity to produce electrode elements, the limited number of specialized electrochemical and technical experts for chlor-alkali facilities and the inability to concurrently schedule and procure for multiple, unique membrane facility conversions, as documented in extensive and detailed information provided to EPA by OxyChem. Finally, the third facility's membrane conversion will not be completed for 12 years; EPA has no basis to conclude seven years provides a reasonable transition period for this conversion; in fact, the conversion process is not scheduled to begin before eight years due to the need to complete the conversion of the second facility in advance of this third facility. A ban that is implemented in seven years would force the closure of this third facility for five years before chlor-alkali production could resume. EPA expects this forced closure would have deleterious impacts on the supply of chlor-alkali chemicals for water treatment as well as the chemicals industry, and also would have significant financial impacts for the company.

The issuance of this final rule does not preclude Olin from presenting additional information to EPA on its conversion plans in the future. For example, EPA has discretion under TSCA section 6(g) to grant an exemption from a requirement of a TSCA section 6(a) rule for a specific condition of use of a chemical substance, if EPA finds that, among other reasons, compliance with the requirement would significantly disrupt the national economy, national security, or critical infrastructure, or the condition of use provides a substantial benefit to health or public safety. EPA believes the provision of chlor-alkali chemicals for water treatment has potential implications for all these considerations. Information that would help EPA to evaluate an alternate transition time would include: Conversion plans and schedules; progress made; impediments to ending asbestos use in five years; impacts of the five-year end date on production output; impact on the company's customers; and the impact on the supply of chlor-alkali chemicals for water treatment. However, EPA currently has no basis to conclude that requiring compliance with the five-year period would significantly disrupt the national economy, national security, or critical infrastructure, or that a longer transition period for the conversion of asbestos diaphragms to non-asbestos diaphragms would provide a substantial benefit to public safety, such that a section 6(g) exemption may be appropriate. Similarly, EPA currently has no basis to conclude that the five-year period provided in this final rule is not as soon as practicable and does not provide a reasonable transition time for chlor-alkali companies to convert to non-asbestos diaphragms.

In regard to the remaining three chlor-alkali facilities, EPA has been provided detailed information on OxyChem's plans to sequentially convert all three facilities to membrane technology. Conversion work on one facility has

begun and is expected to be completed within five years; the other two facilities are planned to be converted in sequence to membrane technology after the first conversion project is finished. The final rule prohibits the processing, distribution in commerce, and commercial use of chrysotile asbestos for chrysotile asbestos diaphragms effective five years after the effective date of the final rule, but allows longer staggered phase-out periods of 8- and 12-years in order to provide companies with a reasonable transition period for the sequential conversion to membrane technology of up to three of their chlor-alkali facilities still using chrysotile asbestos diaphragms, provided certain conditions are met and progress toward initiating phase-out has been demonstrated. The 5-8-12 years staggered phase-out period allows for the required construction and required planning, permits and capital investment needed for the transition from chrysotile asbestos diaphragms to membrane technology. The final rule allows a company to continue to process, distribute in commerce and commercially use chrysotile asbestos for diaphragms in the chlor-alkali industry at no more than two of its facilities until eight years after the effective date of the final rule, to provide a reasonable period for sequential conversions of facilities from chrysotile asbestos diaphragm technology to membrane technology. In order to be eligible for this extended phase-out period under the final rule, a company must: own or operate more than one facility that uses chrysotile asbestos in chlor-alkali production as of the effective date of the final rule; be converting more than one of those facilities to membrane technology; have, by the date five years after the effective date of the final rule, ceased all processing, distribution in commerce and commercial use of chrysotile asbestos at one (or more) facilities that are undergoing or have undergone such conversion; and certify to EPA compliance with these provisions. A company that does this may then also continue to process, distribute in commerce and commercially use chrysotile asbestos for diaphragms in the chlor-alkali industry at not more than one facility until 12 years after the effective date of the final rule, so that it may continue to produce chlor-alkali chemicals during conversion to membrane technology, subject to similar conditions and the submission of a second certification to EPA by eight years after the effective date of the final rule. This means that by eight years after the effective date of the rule, a company must certify: that they own or operate more than two facilities that uses chrysotile asbestos in chlor-alkali production as of the effective date of the final rule; be converting more than two of those facilities to membrane technology; and have, by the date eight years after the effective date of the final rule, ceased all processing, distribution in commerce and commercial use of chrysotile asbestos at all facilities but one. In no situation may any facility continue to process, distribute in commerce or commercially use chrysotile asbestos for diaphragms in the chlor-alkali industry after 12 years after the effective date of the final rule.

B. Interim Controls

EPA's primary alternative regulatory action described in the proposed rule was to prohibit the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos in bulk form or as part of chrysotile asbestos diaphragms in the chlor-alkali industry and for chrysotile asbestos-containing sheet gaskets in chemical production (with prohibitions taking effect five years after the effective date of the final rule), which also included a requirement, prior to the prohibition taking effect, to comply with an ECEL for the processing and commercial use of chrysotile asbestos for these uses. The final rule includes interim control requirements developed from the ECEL provisions described in the preamble to the proposed rule with some modifications to address public comments regarding monitoring limitations which could impact the ability to implement an action level. The final rule does not include the ECEL action level of 0.0025 f/cc as an 8-hour time weighted average (TWA) described in the preamble to the proposed rule, in response to concerns raised in comments about the feasibility of accurately measuring to this level. Under the primary alternative regulatory action described in the proposed rule, the ECEL action level would have been used to determine how frequently periodic exposure monitoring would be required if initial exposure monitoring revealed concentrations of chrysotile asbestos below the ECEL: if exposure monitoring revealed concentrations of chrysotile asbestos below the ECEL action level, the owner or operator would be required to conduct periodic exposure monitoring every five years; however, if exposure monitoring revealed concentrations of chrysotile asbestos at or above the ECEL action level but below the ECEL, the owner or operator would be required to conduct periodic exposure monitoring every six months. Since an ECEL action level is not being included as part of the final rule due to concerns with accurately measuring down to the ECEL action level, EPA is requiring all persons subject to the interim control requirements to conduct exposure monitoring every six months if the most recent exposure monitoring shows exposure at or below the ECEL. This testing frequency is the same as the periodic exposure monitoring frequency under the primary alternative regulatory action described in the proposed rule where concentrations are at or above the ECEL action level but at or below the ECEL.

Some commenters proposed that an ECEL would be sufficient to eliminate the unreasonable risk, without a need for a ban on chrysotile asbestos. EPA considered all risk management approaches and the adverse health effects from chrysotile asbestos, including the risk of mesothelioma, lung cancer, and other cancers from chronic inhalation as well as who is exposed and how they are exposed to chrysotile asbestos and concluded that a prohibition is the only requirement that would ensure that chrysotile asbestos no longer presents an unreasonable risk. An ECEL is a requirement that can be used to minimize the exposure to the potentially exposed persons at the chlor-alkali facilities during the interim period before the prohibition takes effect, provided that a robust monitoring program and effective exposure controls, such as engineering controls, are in place. However, as explained in the proposed rule, and supported by public comment, monitoring to and below the ECEL, while achievable, may at times be problematic due to analytical and field sampling challenges, resulting in the modifications to the interim controls described earlier in this Unit. Therefore, owners or operators may be unable to reliably ensure with sufficient confidence that potentially exposed persons are not exposed to air concentrations above the ECEL. The feasibility of instituting additional engineering controls at chlor-alkali facilities is unlikely due to the nature of the tasks that require workers handling chrysotile asbestos. As such, compliance with the ECEL for workers is unlikely to be achieved without long-term reliance on the use of respirators. Respirators are the least effective means of ensuring worker protection in the hierarchy of controls, particularly in the case of protecting workers and ONUs against exposure to asbestos fiber

inhalation. As discussed in section 2.3.2.1 of the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos, based on studies investigating the performance of respirators, some workers and ONUs may have protection below the nominal applied protection factor for respirator use and would not be protected so that chrysotile asbestos does not present unreasonable risk. For these reasons, EPA believes that an ECEL cannot ensure that chrysotile asbestos does not present unreasonable risk to workers and, therefore, it is not a substitute for a ban as a long-term risk management solution.

C. Chrysotile Asbestos-Containing Sheet Gaskets in Chemical Production

EPA proposed to prohibit manufacture (including import), processing, distribution in commerce, and commercial use of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for sheet gaskets in chemical production, with these prohibitions taking effect two years after the effective date of the final rule. EPA is finalizing these prohibitions with several modifications based on public comment received in response to the proposed rule and notice of data availability.

First, commenters noted the proposed ban would prohibit the ongoing use of previously installed chrysotile asbestos-containing sheet gaskets in chemical production, which presented several concerns. They noted that the number of sheet gaskets remaining in use in chemical plants and refineries could be in the hundreds of thousands and potentially millions. This is a much larger universe than the asbestos-containing gasket use that EPA characterized in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos. Comments noted it would be impossible for facilities to be certain which older gaskets contain asbestos, and therefore to ensure compliance with the prohibition as proposed, the facilities would have to remove all older gaskets on the assumption that they may contain chrysotile asbestos. Such a replacement program would be expensive, it would disrupt production, including prolonged plant shutdowns, and would be difficult to accomplish even in two years. Commenters also noted that the ongoing use of installed gaskets does not present unreasonable risk: rather the risk is present during asbestos gasket removal and recommended that the most effective and safest strategy would be to replace asbestos gaskets when they reach the end of their service life. These comments are consistent with EPA's evaluation of exposure to in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos. The worker activities most relevant to chrysotile asbestos exposure include receiving new gaskets, removing old gaskets, bagging old gaskets for disposal, and inserting replacement gaskets into flanges and other process equipment. Outside of these activities, EPA did not find the ongoing use of installed gaskets presented unreasonable risk. In response to these comments, EPA is specifying in the final rule that any chrysotile asbestos-containing sheet gaskets for chemical production which are already installed and in use prior to the compliance date for the prohibitions are not subject to the distribution in commerce and commercial use prohibitions. Allowing distribution in commerce of installed chrysotile asbestos-containing sheet gaskets will permit the sale of equipment and facilities that may contain such gaskets.

Second, EPA is finalizing a prohibition on the commercial use of chrysotile asbestos sheet gaskets for titanium dioxide production with a modified mandatory compliance date of five years after the effective date of the final rule. This provision responds to information provided by a titanium dioxide producer that it requires additional time to replace asbestos gaskets that are used in specialized equipment for titanium dioxide production. The company provided information that it is actively working on a transition to non-asbestos gaskets at its two large titanium dioxide production facilities in the United States; however, the replacement of asbestos gaskets in the oxidation reaction area of the process, which are subject to high temperature, pressure, and corrosive chemicals, is a complicated engineering project that will require the redesign and replacement of specialized reactor vessel flanges. (Ref. 18; Ref. 19) Due to the specialized nature of the project, the need to continue titanium dioxide production, and safety concerns, EPA has concluded that five years is as soon as practicable and provides a reasonable transition period for the implementation of a ban on the commercial use of asbestos gaskets for titanium dioxide production. Consistent with the proposed primary regulatory alternative, to address worker exposure to asbestos during this five-year period, interim workplace controls of chrysotile asbestos exposures will be required for the commercial use of sheet gaskets for titanium dioxide production. The titanium dioxide producer did not request additional time to import or process asbestos for this use, and the manufacture (including import), processing, and distribution in commerce of chrysotile asbestos sheet gaskets for titanium dioxide production has an unmodified mandatory compliance date of two years after the effective date of the final rule while use can continue until five years after the effective date of the final rule.

Finally, after publication of the proposed rule, EPA received a comment from a Department of Energy contractor, Savannah River Nuclear Solutions, stating that there is an ongoing use of chrysotile asbestos sheet gaskets in the processing of nuclear material at the Savannah River Site, which EPA has determined falls within the sheet gaskets in chemical production category of use, based on the information provided by the commenter (Ref. 20). The commenter states they have been unable to identify non-asbestos substitute materials that are as durable in the radioactive environment associated with the use. EPA met with the commenter and gathered additional information on the use, which also includes some use of chrysotile asbestos sheet gaskets for steam systems in low or no radiation areas at the nuclear facility.

The comment stated that the use of less durable, non-asbestos, gasket material would require more frequent gasket replacements, which in turn increases the frequency of radiation exposure for the workers who perform this task in radioactive areas. In addition, the comment indicated that the protective clothing, gloves, and respiratory equipment required to minimize exposure to the radiological hazards associated with the nuclear material also protects workers in radioactive areas from exposures to chrysotile asbestos. At this facility, there is also some use of asbestos gaskets in low or no radiation areas, but removal and replacement of asbestos gaskets is performed in compliance with OSHA 29 CFR 1926.1101 (Class III work) at a minimum. In addition, minimum respiratory protection used by workers for this task is a full-face air purifying respirator with a P–100 (HEPA) cartridge which has an APF of 50. In high radiation areas, respirators with APF of 1,000 or 10,000 are used, depending on the protective suit required.

In response to this comment, EPA reached out to the Department of Energy for additional information regarding any ongoing use of chrysotile asbestos sheet gaskets at its nuclear facilities and confirmed that additional DOE nuclear

facilities do still use such gaskets. EPA received additional information on use of chrysotile asbestos sheet gaskets in the processing of nuclear material from the Department of Energy during OMB interagency review, regarding DOE operations at its Savannah River Site. DOE explained that chrysotile asbestos sheet gaskets are used at SRS in the H-Canyon, F and H Tank Farms, Defense Waste Processing Facility, and at the Savannah River National Laboratory. DOE stated that the greatest impacts of this rule would be on the operations of H-Canyon; this facility is the sole nuclear separations facility in the nation and is integral to DOE's mission to safely dispose of nuclear materials from across the DOE complex. H-Canyon is used to help process certain materials for disposition, such as spent nuclear fuel—used fuel from nuclear reactors—some of which contains highly enriched uranium. DOE also explained that asbestos gaskets provide the most robust protection against potential leaks or radiological contamination events, they are the longest lasting material for these environments, and they continue to be the only usable gasket for some specialized infrastructure. Further, SRS was added to the National Priorities List (NPL) on December 21, 1989, and the site is subject to the SRS Federal Facility Agreement (FFA) signed by DOE, EPA, South Carolina Department of Health and Environmental Control (SCDHEC) in 1993 pursuant to Section 120 of CERCLA Section 120 and Sections 3008(h) and 6001 of RCRA (Ref. 21). Under the FFA, DOE, EPA Region 4 and the SCDHEC have entered into a *2022 High Level Waste Milestone Agreement* that specifies completion of the liquid waste program at SRS by the end of 2037 (Ref. 22). Even if a suitable replacement could be identified for this use of asbestos gaskets, DOE explained, the time required to replace the asbestos gaskets, incur an outage of waste processing, and restart facilities would result in a significant delay in the completion of the liquid waste program. Thus, EPA has determined that compliance with a two or five year prohibition on the use of chrysotile asbestos sheet gaskets at SRS is not practicable, and does not provide for a reasonable transition period, as required under TSCA section 6(d). Rather, in order to provide SRS with a reasonable transition period to move away from asbestos gaskets without disruption of its existing commitments to complete the liquid waste program, EPA has determined that 2037 is as soon as practicable for the full implementation of the ban on the use of chrysotile asbestos sheet gaskets in chemical processing at SRS.

EPA also contacted the Nuclear Energy Institute (NEI), which reported that some commercial nuclear facilities continue to use chrysotile asbestos sheet gaskets, while many do not. NEI also stated that its largest supplier of specialty gaskets for nuclear applications does not provide asbestos gaskets. EPA spoke to the commenter's supplier of asbestos gaskets, who informed EPA that, while there is ongoing difficulty finding suitable substitutes for asbestos in specific nuclear applications, they have been unable to find sources of asbestos cloth to produce new asbestos gaskets and are phasing out of this market.

Although the current workplace controls described by the commenter, Savannah River Nuclear Solutions, potentially reduce the risk posed to some workers, because the use of chrysotile asbestos sheet gaskets in the processing of nuclear material was first identified to EPA by public comment received after publication of the proposed rule, which followed publication of the Risk Evaluation, EPA was unable to evaluate this industry's specific work practices in the Risk Evaluation. Therefore, in the Risk Evaluation, EPA does not present information specific to risk to workers and ONUs for the use of chrysotile asbestos sheet gaskets in the processing of nuclear material; however, information received after the Risk Evaluation describes the current workplace controls for processing of nuclear material and the related challenges to transition to a substitute material. EPA does not have sufficient information to determine that unreasonable risk can be eliminated with PPE and current workplace controls alone; therefore, a prohibition is necessary to address the unreasonable risk. In consideration of the information received, EPA is providing additional time for the use of chrysotile asbestos-containing sheet gaskets for processing nuclear material. Under the final rule, persons may continue to manufacture (including import), process and distribute in commerce chrysotile asbestos-containing sheets gaskets for two years after the effective date of the final rule and commercially use chrysotile asbestos-containing sheet gaskets for processing nuclear material for five years after the effective date of the final rule, and until the end of 2037 for the Savanah River Site.

Similar to the primary alternative regulatory action described in the proposed rule, to address worker exposure to asbestos during this five-year period of commercial use, interim workplace controls of chrysotile asbestos exposures will be required for the commercial use of sheet gaskets. In the case of the chrysotile asbestos-containing sheet gaskets used in the processing of nuclear material, EPA is incorporating the current worker protection practices identified by the commenter as part of the interim controls for that use to reduce chrysotile asbestos exposures until the prohibition compliance date. This includes ongoing compliance with the OSHA Asbestos Safety and Health Regulations for Construction (29 CFR 1926.1101) and minimum respiratory protection of a full-face air purifying respirator with a P–100 (HEPA) cartridge with an APF of 50 for potentially exposed persons. A respirator with an APF 50 is a higher level of PPE than would be needed to reduce worker exposure to below the cancer benchmark for general sheet gasket use (replacing gaskets) in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos (Ref. 1). However, as discussed in section 2.3.2.1 of the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos, based on studies investigating the performance of respirators, some workers and ONUs may have protection below the nominal applied protection factor for respirator use and would not be protected; EPA would need additional information to determine if the unreasonable risk can be eliminated without a prohibition for the use of asbestos gaskets in the processing of nuclear material. The commenter also requested an exemption from the final rule since the asbestos gaskets are integral to the safe operation of the process. TSCA section 6(g)(2) requires EPA to analyze the need for the exemption, and to make public the analysis and statement on how the analysis was considered when proposing an exemption under TSCA section 6(g). EPA is considering a separate action to provide a future time-limited exemption under TSCA section 6(g) for the processing of nuclear material.

D. Other Conditions of Uses

EPA proposed to prohibit all persons from the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for commercial use of: (1) Oilfield brake blocks; (2) Aftermarket automotive brakes and linings; (3) Other vehicle friction products; and (4) Other gaskets, beginning 180 days after the effective date of the final rule. Public comments noted the difficulty in

identifying asbestos components previously installed in vehicles; that it is not possible to tell by visual inspection whether previously installed aftermarket brake pads or shoes contain asbestos, and that very few aftermarket brake pads and shoes contain asbestos. Without existing records, it may not be possible to establish that a vehicle's brakes do not contain asbestos unless they are replaced. This is also the situation for other vehicle friction products and gaskets in vehicles. Based on this information, EPA is finalizing the proposed prohibition, with modifications to specify that any aftermarket automotive brakes and linings, and other gaskets which are already installed and in use before the prohibition is effective are not subject to the distribution in commerce and commercial use prohibitions. Allowing the continued use of these installed products for their useful life will not increase repair and replacement worker activity or related exposure or risk for these uses.

EPA received similar comments regarding the proposed prohibition on the manufacturing (including importing), processing, and distribution in commerce of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for consumer use of aftermarket automotive brakes and linings and other gaskets; namely that it would be difficult to determine if previously installed components of a vehicle contain asbestos, as it is not possible to tell by visual inspection whether previously installed aftermarket brake pads or shoes contain asbestos or not. Therefore, EPA is finalizing the proposed prohibition, with modifications to specify that any aftermarket automotive brakes and linings, and other gaskets which are already installed and in consumer use by 180 days after the effective date of the final rule are not subject to this distribution in commerce prohibition. This will permit the resale of vehicles that contain already-installed asbestos brakes and linings, or other gaskets. This prohibition does not apply to the consumer use of any aftermarket automotive brakes and linings, and other gaskets, so it is not necessary to modify the proposal to permit the continued consumer use of these asbestos-containing components, including consumer use in vehicles that may contain these components. This modification will not increase repair and replacement workers' exposure or risk for these uses.

E. Recordkeeping

EPA is also finalizing modified recordkeeping provisions. The recordkeeping provisions included in the proposed rule addressed retention of disposal records. The final rule includes additional recordkeeping requirements to reflect additional provisions of the final rule. Specifically, EPA's final recordkeeping provisions include additional requirements to maintain records regarding interim workplace controls of chrysotile asbestos exposures, as well as records of certifications of compliance for the chlor-alkali industry. Full description of the recordkeeping requirements is in Unit VI.F.

F. Definitions

In the final rule, EPA is adding definitions in § 751.503 for ''Authorized person,'' ''Membrane technology,'' ''Nuclear material,'' ''Regulated area,'' and ''Savannah River Site.'' These new definitions are being added to address provisions that were not in the proposed regulatory text, such as the interim controls and phased-in compliance dates for the chlor-alkali industry prohibitions.

VI. Provisions of the Final Rule

This final rule sets certain restrictions on the manufacture (including import), processing, distribution in commerce, and commercial use and disposal of chrysotile asbestos to prevent unreasonable risk of injury to health in accordance with TSCA section 6(a), 15 U.S.C. 2605(a). Pursuant to TSCA section 12(a)(2), this rule applies to chrysotile asbestos even if being manufactured, processed, or distributed in commerce solely for export from the United States because EPA has determined that chrysotile asbestos presents an unreasonable risk to health within the United States or to the environment of the United States.

A. Manufacturing, Processing, Distribution in Commerce and Commercial Use of Chrysotile Asbestos Diaphragms in the Chlor-Alkali Industry

Provisions regulating the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos diaphragms in the chlor-alkali industry are specified in §§ 751.505 and 751.507. As of the effective date of the final rule, all persons are prohibited from the manufacture (including import) of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for diaphragms in the chlor-alkali industry. Additionally, beginning five years after the effective date of the final rule, all persons are prohibited from processing, distribution in commerce and commercial use of chrysotile asbestos for diaphragms in the chlor-alkali industry, except as provided in §§ 751.505(c) and (d).

Section 751.505(c) permits a person to process, distribute in commerce and commercially use chrysotile asbestos for diaphragms in the chlor-alkali industry at no more than two facilities until eight years after the effective date of the final rule, provided that: (1) On the effective date, the person owns or operates more than one facility that uses chrysotile asbestos in chlor-alkali production; (2) The person is converting more than one facility that the person owns or operates that, as of the effective date, uses chrysotile asbestos in chlor-alkali production from the use of chrysotile asbestos diaphragms to non-chrysotile asbestos membrane technology; (3) By the date five years after the effective date of the final rule, the person has ceased all processing, distribution in commerce and commercial use of chrysotile asbestos at one (or more) facility that is undergoing or has undergone such conversion; and (4) The person certifies to EPA compliance with the provisions of the paragraph, in accordance with certification provisions in § 751.507.

Section 751.505(d) permits a person who meets all of the criteria of that paragraph to process, distribute in commerce and commercially use chrysotile asbestos for diaphragms in the chlor-alkali industry at not more than one facility until 12 years after the effective date of the final rule, provided that: (1) On the effective date of the final rule, the person owns or operates more than two facilities that use chrysotile asbestos in chlor-alkali production; (2) The person is converting more than two facilities that the person owns or operates that, as of the effective date of the final rule, use chrysotile asbestos in chlor-alkali production, from the use of chrysotile asbestos diaphragms to non-chrysotile asbestos membrane technology; (3) By five years after the effective date of the final rule, the person has ceased all processing, distribution in commerce and commercial use of chrysotile asbestos at one (or more) facility that is undergoing or has undergone such conversion, and by eight years after the effective date of the final rule, the person has ceased all processing, distribution in commerce and commercial use of chrysotile asbestos at two (or more) facilities that are undergoing or have undergone such conversion; and (4) The person certifies to EPA compliance with the provisions

of the paragraph, in accordance with the certification provisions of § 751.507.

B. Certification of Compliance for Chlor-Alkali Industry

Requirements for certifications of compliance for the chlor-alkali industry are specified in § 751.507. A person who processes, distributes in commerce or commercially uses chrysotile asbestos for diaphragms in the chlor-alkali industry between five years and eight years after the effective date of the final rule must certify to EPA their compliance with all requirements of § 751.505(c) and provide the following information to EPA: (1) Identification of the facility (or facilities) at which, by five years after the effective date of the final rule, the person has ceased all processing, distribution in commerce and commercial use of chrysotile asbestos, including the facility name, location, and mailing address; the name of facility manager or other contact, with title, phone number and email address; and the date the person ceased all processing, distribution in commerce and commercial use of chrysotile asbestos at the facility; and (2) The identification of the one or two facilities (no more than two facilities) at which the person will after five years after the effective date of the final rule, continue to process, distribute in commerce and commercially use chrysotile asbestos diaphragms while the facility or facilities are being converted to non-chrysotile asbestos membrane technology, including for each facility, the facility name, location, and mailing address; and (3) The name of facility manager or other contact, with title, phone number and email address.

A person who processes, distributes in commerce or commercially uses chrysotile asbestos for diaphragms in the chlor-alkali industry between 8 and 12 years after the effective date of the final rule must certify to EPA their compliance with all requirements of § 751.505(d) and provide the following information to EPA: (1) Identification of the facility at which the person has ceased all processing, distribution in commerce and commercial use of chrysotile asbestos after five years after the effective date of the final rule but no later than eight years after the effective date of the final rule, including the facility name, location, and mailing address; the name of facility manager or other contact, with title, phone number and email address; and the date the person has ceased all processing, distribution in commerce and commercial use of chrysotile asbestos at the facility; (2) The identification of the facility at which the person will between eight years after the effective date of the final rule and no later than 12 years after the effective date of the final rule, continue to process, distribute in commerce and commercially use chrysotile asbestos diaphragms while the facility is being converted to non-chrysotile asbestos membrane technology pursuant to § 751.505(d), including the facility name, location, and mailing address; and (3) The name of facility manager or other contact, with title, phone number and email address.

Such certification must be signed and dated by a responsible corporate officer, which means: a president, secretary, treasurer, or vice-president of the corporation in charge of chlor-alkali operations, or any other person who performs similar policy or decision-making functions for the corporation. The certification must include the statement:

> ''I certify under penalty of law that this document was prepared under my direction or supervision, and the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware it is unlawful to knowingly submit incomplete, false and/or misleading information and there are criminal penalties for such conduct.''

Certifications must be submitted to the Director of the Office of Pollution Prevention and Toxics in Washington, DC, no later than 10 business days after the date five years after the effective date of the final rule, or 10 business days after the date 8 years after the effective date of the final rule, as appropriate.

C. Other Prohibitions of, and Restrictions on the Manufacturing, Processing, Distribution in Commerce and Commercial Use of Chrysotile Asbestos

1. Prohibition on manufacture (including import), processing, distribution in commerce, and commercial use of chrysotile asbestos for chrysotile asbestos-containing sheet gaskets in chemical production.

Provisions regulating the manufacturing, processing, distribution in commerce and commercial use of chrysotile asbestos-containing sheet gaskets in chemical production are specified in § 751.509, specifically paragraphs (a) through (c), of this rule. Beginning two years after the effective date of the final rule, all persons are prohibited from manufacturing (including importing), processing, distributing in commerce, and commercial use of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for use in sheet gaskets for chemical production, except as provided in § 751.509(b) and (c). However, any sheet gaskets for chemical production which are already installed and in use as of the applicable compliance date, are not subject to this distribution in commerce and commercial use prohibition.

Section 751.509(b) allows the commercial use of chrysotile asbestos sheet gaskets for titanium dioxide production past the general two-year prohibition; any person may use chrysotile asbestos sheet gaskets for titanium dioxide production until five years after the effective date of the final rule. This provision only applies to commercial use; manufacturing (including import), processing and distribution in commerce must cease after two years, pursuant to § 751.509(a).

Section 751.509(c) allows the commercial use of chrysotile asbestos sheet gaskets for processing of nuclear material past the general two-year prohibition: any person who meets the applicable criteria in the paragraph may commercially use chrysotile asbestos sheet gaskets for processing nuclear material until five years after the effective date of this final rule; at the Department of Energy's Savannah River Site, use may continue until the end of 2037. This provision only applies to commercial use; manufacturing (including import), processing and distribution in commerce must cease after two years, pursuant to § 751.509(a). Section 751.509(c) requires that, beginning 180 days after the effective date of the final rule, all persons commercially using chrysotile asbestos sheet gaskets for processing nuclear material must have in place exposure controls (*i.e.,* engineering controls, work practices, or a combination of both) expected to reduce exposure of potentially exposed persons to asbestos, and provide potentially exposed persons in the regulated area where chrysotile asbestos sheet gasket replacement is being performed with a full-face air purifying respirator with a P–100 (HEPA) cartridge (providing an assigned protection factor of 50), or other respirators that provide a similar or higher level of protection to the wearer.

EPA did not consider workplace practices in the nuclear industry during the development of the primary alternative interim workplace controls in the proposed rule, and EPA has concerns about unintended consequences were those controls to be imposed for this specific use. In the case of the processing of nuclear material, EPA is not adopting an ECEL to avoid imposing requirements that could

increase asbestos air monitoring beyond what is currently required under the OSHA Asbestos Safety and Health Regulations for Construction—(29 CFR 1926.1101). This is to ensure that this final rule does not have the unintended consequence of increasing persons exposure to radiation from nuclear material and the risk of any associated health effects. Aside from additional worker exposure to radiation that may result from additional sample collection activities (such as would be required under interim workplace controls with an ECEL under § 751.511), air sampling in radioactive environments presents special technical challenges: first, the equipment used to collect samples may become contaminated and unfit for further use, and second, the collected samples may be too radioactive for laboratories to accept for analysis.

EPA expects that during the interim period before the full-ban compliance date, existing measures under the OSHA asbestos standards, as well as radiological control protocols under Department of Energy regulations at 10 CFR part 835, will adequately mitigate asbestos risk in relation to the cancer benchmark. EPA notes that the OSHA requirements clearly delineate a regulated area in which the gasket replacement work is occuring that has strict access controls, while access is further restricted to radioactive areas, such that no one is permitted in the workspace without full PPE, which includes respirators of APF 50 or higher, in accordance with industry practices. Respirators with APF 50 is a higher level of PPE than would be needed to reduce exposure to workers below the cancer benchmark as identified in the TSCA risk evaluation for general sheet gasket use (replacing gaskets). (Table 4–19 in section 4.2.2.3. of the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos). However, as explained before, EPA also recognizes that respirators are the least effective means of ensuring worker protection in the hierarchy of controls, particularly in the case of protecting workers against exposure to asbestos fiber inhalation. As discussed in section 2.3.2.1 of the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos, some workers may have protection below the nominal applied protection factor for respirator use and would not be protected. Therefore, while respirators with APF of 50 reduce exposures to workers, only a prohibition on use ensures no unreasonable risk. By requiring facilities to continue using the current respiratory protection with an assigned protection factor of 50 or higher, EPA is reducing the risk to potentially exposed persons from the unreasonable risk presented by chrysotile asbestos while ensuring a reasonable transition period until the relevant prohibition goes into effect. During the development of any future TSCA section 6(g) exemption for this specific use of chrysotile asbestos sheet gaskets, should one be proposed, EPA could give more consideration to the need for a chrysotile asbestos monitoring program beyond asbestos monitoring that is already required by OSHA under the Asbestos Safety and Health Regulations for Construction at 29 CFR 1926.1101.

2. Prohibition on manufacture (including import), processing, distribution in commerce, and commercial use of: chrysotile asbestos-containing brake blocks in the oil industry; aftermarket automotive chrysotile asbestos-containing brakes/linings; asbestos-containing vehicle friction products; and other asbestos-containing gaskets.

Provisions regulating the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos-containing brake blocks in the oil industry; aftermarket automotive chrysotile asbestos-containing brakes/linings; other asbestos-containing vehicle friction products; and other asbestos-containing gaskets are specified in § 751.509(d). Beginning 180 days after the effective date of the final rule, all persons are prohibited from manufacturing (including importing), processing, distribution in commerce and commercial use of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for commercial use of: (1) Oilfield brake blocks; (2) Aftermarket automotive brakes and linings; (3) Other vehicle friction products; and (4) Other gaskets. However, any aftermarket automotive brakes and linings, other vehicle friction products and other gaskets which are already installed and in use as of 180 days after the effective date of the final rule, are not subject to this distribution in commerce and commercial use prohibition.

3. Prohibition on manufacture (including import), processing, and distribution in commerce for aftermarket automotive chrysotile asbestos-containing brakes/linings and other asbestos-containing gaskets for consumer use.

Provisions regulating the manufacture (including import), processing, and distribution in commerce for aftermarket automotive chrysotile asbestos-containing brakes/linings and other asbestos-containing gaskets for consumer use are specified in § 751.509(e). Beginning 180 days after the effective date of the final rule, all persons are prohibited from the manufacturing (including importing), processing, and distribution in commerce of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for consumer use of: aftermarket automotive brakes and linings; and other gaskets. However, any aftermarket automotive brakes and linings, and other gaskets which are already installed and in consumer use as of 180 days after the effective date of the final rule are not subject to this distribution in commerce prohibition.

This prohibition does not apply to the consumer use of any chrysotile asbestos-containing aftermarket automotive brakes and linings, and other gaskets. EPA's authority to regulate commercial use under TSCA section 6(a)(5) does not extend to consumer use of chemical substances or mixtures. The prohibition on the upstream manufacturing, processing and distribution of chrysotile asbestos aftermarket automotive brakes and linings, and other gaskets for consumer use will remove these products from the consumer market and over time eliminate their use as these products wear out and are replaced, or the vehicles in which they are components are retired from use.

D. Interim Workplace Controls of Chrysotile Asbestos Exposures

1. Overview

For most of the conditions of use where, pursuant to this final rule, the prohibition on processing and industrial use will take effect in five or more years after the effective date of this final rule, EPA is requiring that owners or operators comply with an eight-hour existing chemical exposure limit (ECEL), beginning six months after the effective date of the final rule. Specifically, this requirement applies to the following conditions of use: (1) Processing and industrial use of chrysotile asbestos in bulk form or as part of chrysotile asbestos diaphragms used in the chlor-alkali industry; and (2) Industrial use of chrysotile asbestos sheet gaskets for titanium dioxide production. Once a facility has completed the phase-out of chrysotile asbestos and no longer uses chrysotile asbestos in their operations, the interim requirements no longer apply.

EPA uses the term ''potentially exposed person'' in this Unit and in the regulatory text to include workers, occupational non-users, employees, independent contractors, employers,

and all other persons in the work area where chrysotile asbestos is present and who may be exposed to chrysotile asbestos under the conditions of use for which these interim workplace controls apply. EPA's intention is to require interim workplace controls that address the unreasonable risk from chrysotile asbestos to workers directly handling the chemical or in the area where the chemical is being used until the relevant prohibitions go into effect. The 2020 Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos did not distinguish between employers, contractors, or other legal entities or businesses that manufacture, process, distribute in commerce, use, or dispose of chrysotile asbestos. For this reason, EPA uses the term ''owner or operator'' to describe the entity responsible for implementing the interim workplace controls in any workplace where an applicable condition of use described in Units III.B.2.a. and III.B.2.b. and subject to the interim workplace controls is occurring. The term includes any person who owns, leases, operates, controls, or supervises such a workplace. EPA has proposed to amend 40 CFR 751.5 to add a definition of ''owner or operator'' consistent with this description as part of its proposed TSCA section 6(a) rules to regulate methylene chloride (88 FR 28284) and perchloroethylene (88 FR 39652). In this final rule, EPA is using the same definition of ''owner or operator'' to apply to where it appears in the regulatory text for chrysotile asbestos.

As mentioned in the proposed rule (87 FR 21706), TSCA risk management requirements could incorporate and reinforce requirements in OSHA standards. For chrysotile asbestos, EPA's approach for interim controls seeks to align, to the extent possible, with certain elements of the existing OSHA standard for regulating asbestos under 29 CFR 1910.1001 and 29 CFR 1926.1101. The OSHA PEL and ancillary requirements have established a long-standing precedent for exposure limit threshold requirements within the regulated community. However, EPA is applying a lower, more protective exposure limit or ECEL derived from the TSCA 2020 Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos. However, in this final rule, EPA is not establishing medical surveillance requirements based on the ECEL to align with those under 29 CFR 1910.1001. Companies must continue to follow the medical surveillance requirements established by OSHA at 0.1 fiber per cubic centimeter of air as an eight (8)-hour time-weighted average (TWA) level.

This unit includes a summary of the interim controls, including a description of the ECEL; and the implementation requirements such as monitoring and notification requirements; regulated area; exposure control plan; respiratory protection; and additional requirements for workplace information and training. The recordkeeping associated with the interim controls is included under the recordkeeping requirements (Unit VI.F). This Unit also describes compliance timeframes for these requirements.

2. Existing Chemical Exposure Limit (ECEL)

EPA calculated the ECEL to be 0.005 fibers (f)/cubic centimeter (cc), for inhalation exposure to chrysotile asbestos as an eight-hour time-weighted average (TWA) for use in workplace settings based on incidence of lung cancer, mesothelioma and other cancers. (Ref. 23).

As part of the primary regulatory alternative included in the proposed rule (87 FR 21706), EPA considered an ECEL-action level of 0.0025 f/cc as an eight-hour TWA, which would initiate certain required activities such as more frequent periodic monitoring of exposures to chrysotile asbestos. However, as discussed above in Unit V.B., after public comments regarding the difficulties of measuring asbestos at such low concentrations, EPA has decided not to finalize an ECEL-action level in this final rule. Instead, EPA is finalizing more frequent periodic monitoring requirements when exposure monitoring shows levels below the ECEL than those that were described in the primary regulatory alternative in the proposed rule. In the proposed rule, periodic exposure monitoring results below the ECEL but above the ECEL action-level would trigger an increase in periodic exposure monitoring to every six months. Due to the difficulties expressed in public comments of effectively measuring asbestos to the ECEL action level and to be health protective in the absence of reliable test results to the ECEL action level, the final rule will require periodic monitoring every six months when measurements are at or below the ECEL and periodic monitoring every three months when the ECEL is exceeded.

Commenters also expressed concerns with being able to effectively measure asbestos to the ECEL, citing complicating factors such analytical limitations, sample equipment, contributions from background sources, and typical worker task exposure scenarios. While EPA in this final rule will not include an ECEL action level due to the analytical concerns raised in public comment, EPA believes that current analytical methods and modern air sampling equipment allow for air monitoring with a detection limit that allows for comparison with the ECEL level, and the feasibility of the ECEL level is further demonstrated through the personal air monitoring data submitted to EPA by the chlor-alkali industry. However, for scenarios in which a sufficient limit of detection cannot be achieved for comparison to the ECEL, owners and operators may elect to use increased respiratory protection with an appropriate Assigned Protection Factor (APF) to demonstrate compliance with the ECEL as an interim workplace control, discussed more in Unit VI.D.6.

In addition, in the proposed rule, EPA indicated that implementation of an ECEL would require time and resources and therefore did not propose to include it for the two-year period prior to the proposed prohibition date. However, since this final rule's prohibition dates for the processing and industrial use of chrysotile asbestos in bulk form or as part of chrysotile asbestos diaphragms used in the chlor-alkali industry and processing and industrial use of chrysotile asbestos-containing sheet gaskets for titanium dioxide production are at least five years, or potentially longer for certain entities meeting EPA's requirements, EPA finds it necessary to issue interim controls to reduce worker exposures for the period prior to the prohibition taking effect. As part of an interim control measure, requirements to implement the ECEL start six months after the effective date of the rule. Specifically, owners or operators are required to ensure that no person in the workplace is exposed to an airborne concentration of chrysotile asbestos in excess of 0.005 f/cc as an eight-hour TWA beginning six months after the effective date of the final rule. EPA is also requiring owners or operators to comply with additional requirements that are needed to ensure successful implementation of the ECEL.

3. Monitoring

Monitoring requirements are a key component of implementing EPA's interim workplace controls. Initial monitoring for chrysotile asbestos is critical for establishing a baseline of exposure for potentially exposed persons; similarly, periodic exposure monitoring assures continued compliance over time so that potentially exposed persons are not exposed to levels above the ECEL. In some cases, a change in workplace conditions with

the potential to impact exposure levels would warrant additional monitoring, which is also described.

EPA is requiring that owners or operators determine the 8-hour TWA exposure of each potentially exposed person's exposure by taking one or more personal breathing zone air samples that are representative of the full-shift exposures for each potentially exposed person in each job classification in each work area. These requirements are a modification of the requirements described in the proposed regulation, which allowed for sampling only some of the potentially exposed persons. The requirements in this final rule align with the approach taken for characterization of employee exposure in the OSHA standard for asbestos (see 29 CFR 1910.1001(d)(1)(i) and (ii)) and allow for multiple samples to fully represent the exposures during a full shift, based on the job classification in each work area of the potentially exposed person.

Exposure samples must be analyzed using analytical methods described in Appendix A to 29 CFR 1910.1001, or as referenced in Appendix A to 29 CFR 1910.1001 (Appendix B to 29 CFR 1910.1001, OSHA method ID–160, or the NIOSH 7400 method). In the proposed rule, the primary regulatory alternative would have required use of a laboratory that complies with the Good Laboratory Practice Standards in 40 CFR part 792; however, in this final rule, and based on public comment, EPA is aligning the laboratory quality standards with the OSHA general asbestos standard. The OSHA method ID–160 and NIOSH 7400 analytical methods are the required methods in the OSHA general asbestos standard at 29 CFR 1910.1001 and the OSHA asbestos construction standard at 29 CFR 1926.1101. In addition, 29 CFR 1910.1001 Appendix A includes the quality control procedures that must be implemented by laboratories performing the analysis. Owners and operators subject to this final rule are already familiar with the use of these methods since they are used to comply with the OSHA asbestos standards. By incorporating the use of these standards in this final rule, EPA is aligning with existing analytical practice.

In the event that the owner or operator needs to use an equivalent method to the OSHA reference method, EPA also is allowing use of such equivalent method if the owner or operator ensures the equivalency of the method by ensuring that replicate exposure data used to establish equivalency are collected in side-by-side field and laboratory comparisons, and the comparison indicates that 90% of the samples collected in the range 0.5 to 2 times the ECEL have an accuracy range of plus or minus 25% of the OSHA reference method at 95% confidence level as demonstrated by a statistically valid protocol. These requirements align with the approach taken in the OSHA standard for asbestos (see 29 CFR 1910.1001(d)(6)(ii) and (iii)).

In addition, and as supported by commentors, the NIOSH 7402 analytical method may be applied to adjust the analytical result to include only chrysotile asbestos. PCM analysis does not differentiate between asbestos and other fibers. The NIOSH 7402 analytical method uses a TEM microscope to determine the fraction of fibers that are asbestos from a filter prepared and analyzed following NIOSH 7400. To ensure consistency across both methods, airborne fibers analyzed using TEM under the NIOSH 7402 analytical method align with those specified in the NIOSH 7400 PCM method. The NIOSH 7402 method is not designed for the quantification of the air concentration of asbestos fibers and therefore should be used in conjunction with NIOSH 7400 under this final rule for asbestos fiber identification.

a. *Initial exposure monitoring.*

In this final rule, each owner or operator of a facility engaged in one or more of the conditions of use listed earlier in Unit VI.D.1. is required to perform initial exposure monitoring no later than 180 days after the effective date of the final rule to determine the extent of exposure of potentially exposed persons to chrysotile asbestos. Initial monitoring will notify owners and operators of the magnitude of possible exposures to potentially exposed persons with respect to their work conditions and environments. Based on the magnitude of possible exposures in the initial exposure monitoring, the owner or operator may need to increase the frequency of future periodic monitoring, and/or adopt new exposure controls (such as engineering controls, administrative controls, and/or a respiratory protection program).

In the primary regulatory alternative included as part of the proposed regulation, EPA stated that if the regulated entity had existing monitoring data less than five years old that followed the initial exposure monitoring criteria described in the preamble to the proposed rule, and where a process change was not implicated, the owner or operator could choose to use this existing data as the initial exposure monitoring instead of conducting initial exposure monitoring. However, given the lower exposure limit set by the ECEL compared to the current monitoring practices, and given the expected changes at the chlor-alkali and chemical production facilities transitioning to non-asbestos technologies, EPA has decided to require all owners or operators to conduct new initial monitoring. Owners and operators may not use data collected before the publication of this final rule to comply with the initial monitoring requirement.

b. *Periodic exposure monitoring.*

EPA's final rule is aligned with elements of the existing OSHA asbestos standard (29 CFR 1910.1001(d)(3) through (5)) to the extent possible. Based on the results from the initial exposure monitoring, or the most recent monitoring, EPA is requiring the following periodic monitoring for owners or operators:

- If one or more samples representing full-shift exposures from the most recent exposure monitoring exceeds the ECEL (>0.005 f/cc 8-hour TWA), periodic exposure monitoring will be required within three months of the most recent exposure monitoring.
- Otherwise, periodic exposure monitoring will be required within six months of the most recent exposure monitoring.

In the primary alternative regulatory action described in the proposed rule, EPA based the exposure monitoring frequency on both the ECEL-action level and the ECEL. However, since EPA is not finalizing an ECEL action level due to the comments received regarding effectively measuring asbestos to the ECEL action level, the exposure monitoring frequency under the final rule is based only on the comparison of the monitoring results with the ECEL. Because EPA is not finalizing an ECEL action level, the final rule requires owners and operators to conduct periodic exposure monitoring every six months if the most recent exposure monitoring indicates airborne exposure is at or below the ECEL. This exposure monitoring frequency is consistent with the exposure monitoring described in the primary alternative regulatory action in the proposed rule associated with exposure monitoring results revealing a concentration of chrysotile asbestos above the ECEL action level but at or below the ECEL. Further, since EPA is not finalizing an ECEL action level, EPA could not finalize an option to terminate exposure monitoring if all samples taken during initial exposure monitoring were at or below the ECEL action level, as was described in the primary regulatory alternative action described in the proposed rule.

In addition, under the primary regulatory alternative described in the proposed regulation, if an owner or operator did not use chrysotile asbestos during an exposure monitoring period, the owner or operator would not need to conduct exposure monitoring until the next exposure monitoring period. Further, the proposed primary regulatory alternative provided that an owner or operator had to conduct exposure monitoring at minimum every five years. However, EPA expects continued use of chrysotile asbestos in the limited number of conditions of use subject to the interim workplace control requirements and, as discussed above, is requiring all persons engaged in these conditions of use to conduct exposure monitoring at least every six months. EPA has therefore concluded there is no need to include provisions in the final rule to suspend monitoring or conduct monitoring only every five years.

c. *Additional exposure monitoring.*

In addition to initial and periodic monitoring, EPA is requiring that the owner or operator complying with the interim workplace controls carry out additional exposure monitoring (analogous to those requirements outlined in 29 CFR 1910.1001(d)(5)) after any changes in production, process, control equipment, personnel, or work practices that may reasonably be anticipated to result in new or additional exposures above the ECEL, or when the owner or operator has any reason to suspect that the change may result in new or additional exposures above the ECEL. This additional exposure monitoring event may result in an increased frequency of periodic monitoring. The required additional exposure monitoring should be conducted within a reasonable timeframe after there has been a change to ensure that it is representative of the new procedures. In cases of malfunctions and other incidents, the monitoring should not delay implementation of any necessary corrective actions to restore malfunctioning processes, necessary emergency response, cleanup or other remedial action to reduce the exposures to potentially exposed persons.

d. *Notification of exposure monitoring results.*

In this final rule, EPA is requiring that the owner or operator must, within 15 working days after receipt of the results of any exposure monitoring, notify each potentially exposed person in writing, either individually to each potentially exposed person or by posting the information in an appropriate and accessible location, such as public spaces or common areas, consistent with 29 CFR 1910.1001(d)(7).

The notification is required to include a description of any action taken by the owner or operator to reduce inhalation exposures to or below the ECEL or refer to a document available to the potentially exposed persons which identifies the actions to be taken to reduce exposures. For example, the owner or operator may notify a worker (or other potentially exposed person) of the results as follows: ''Based on the monitoring conducted on [date], the exposure to chrysotile asbestos by workers installing gaskets was [0.03 f/cc]. This concentration is above the limit set by EPA of 0.005 f/cc as an 8-hour time weighted average to protect workers, and therefore the company is requiring use of half-mask supplied-air respirator (SAR), or airline respirator operated in a demand mode to ensure exposure prevention. Workers can access the exposure control plans, exposure monitoring records, and respiratory program implementation and documentation at the office during regular business hours.''

4. Regulated Areas

Analogous to the OSHA Standard (29 CFR 1910.1001(e)), EPA is requiring that 6 months after the effective date of the rule, the owner or operator demarcate any area where airborne concentrations of chrysotile asbestos are reasonably expected to exceed the ECEL. This regulated area must be demarcated in a manner that minimizes the number of persons who will be exposed to chrysotile asbestos, *e.g.,* establishing boundaries for the area, using highly visible signifiers, in multiple languages as appropriate, placed in conspicuous areas to clearly mark the boundary of such regulated area. The owner or operator is required to restrict access to the regulated area only to those authorized to enter.

EPA is also requiring that the owner or operator must supply a respirator that complies with the requirements described in Unit VI.D.6.5. and ensure that all persons within the regulated area are using the provided respirators whenever chrysotile asbestos exposures may exceed the ECEL. Finally, the owner or operator must ensure that, within a regulated area, persons do not engage in non-work activities which may increase chrysotile asbestos exposure, such as eating, drinking, smoking, chewing tobacco or gum, or applying cosmetics.

5. Exposure Control Plan

EPA recommends and encourages the use of pollution prevention as a means of controlling exposures whenever practicable. Pollution prevention, also known as source reduction, is any practice that reduces, eliminates, or prevents pollution at its source (*e.g.,* elimination and substitution), as described in the hierarchy of controls. In the proposed rule (87 FR 21706), EPA's primary alternative regulatory action included a requirement to document efforts to implement the hierarchy of controls, specifically, the use of elimination and substitution, followed by the use of engineering controls, administrative controls, or work practices prior to requiring the use of respirators as a means of controlling inhalation exposures to chrysotile asbestos below EPA's ECEL. In this final rule, EPA recognizes that the owners and operators subject to the requirements are already taking steps to eliminate the use of chrysotile asbestos, and therefore the requirement in this final rule is to institute and maintain engineering controls and work practices that reduce chrysotile asbestos to or below the ECEL. When the engineering controls and work practices (such as clean-up of accumulated asbestos) cannot reduce chrysotile asbestos exposures to or below the ECEL, owners and operators are required to reduce chrysotile asbestos exposures to the lowest level achievable by these controls and supplement them using respiratory protection. The respirators must be supplied in accordance with the requirements outlined in Unit VI.D.6.

The final requirements state that, as of one year after the effective date of the final rule, an owner or operator subject to the interim workplace control requirements has to demonstrate the consideration of engineering controls and/or work practices to reduce the airborne chrysotile asbestos concentrations to the lowest levels achievable. If the resulting chrysotile asbestos concentrations are not at or below the ECEL, adequate respiratory protection must be given to potentially exposed persons, in accordance with Unit VI.D.6. Owners or operators must not implement a schedule of personnel rotation as a means of compliance with the ECEL. Finally, owners and operators must document their exposure control strategy in an exposure control plan. The exposure control plan must be reviewed and updated as necessary, but at least annually, to reflect any significant changes in the approach taken to reduce the chrysotile asbestos airborne concentrations.

Similar to the primary regulatory alternative described in the proposed rule, in this final rule EPA is requiring

that owners or operators document their efforts in an exposure control plan. Such plan could be part of any existing documentation of the facility's safety and health program developed as part of meeting OSHA requirements or other safety and health standards. EPA is requiring that the owner or operator document in the exposure control plan the following:

- Identification of all engineering and work practices or administrative controls that were considered.
- For each engineering and administrative control identified, a rationale for why the control was selected or not selected, based on feasibility, effectiveness, and other relevant considerations;
- Any actions the owner or operator must take to implement the engineering and administrative controls selected, including proper installation, maintenance, training or other steps taken. In addition, the owner or operator must indicate the estimated timeline for implementing the controls selected.
- Descriptions of the activities conducted by the owner or operator during the review and annual update of the exposure control plan to ensure effectiveness of the exposure controls, identify any necessary updates to the exposure controls, and confirm that all persons are implementing the exposure controls correctly. These activities could consist of regular inspections or other type of evaluations of the exposure controls; and
- Description of procedures for responding to any change that may reasonably be expected to introduce additional exposures of chrysotile asbestos or result in increased exposures to chrysotile asbestos. The plan should also describe the corrective actions taken to mitigate the exposures to chrysotile asbestos.

6. Respiratory Protection

a. *In general.*

Six months after the effective date of this rule, EPA is requiring owners or operators to supply a respirator selected in accordance with the requirements of this Unit and ensure that all potentially exposed persons are using the provided respirators whenever chrysotile asbestos exposures exceed or can reasonably be expected to exceed the ECEL. EPA's requirements are compatible with OSHA's Respiratory Protection standard at 29 CFR 1910.134, and the respiratory protection provision of the OSHA Asbestos standard for general industry at 29 CFR 1910.1001(g).

In this final rule, EPA is requiring that owners or operators must provide, ensure use of, and maintain (in a sanitary, reliable, and undamaged condition) respirators that are of safe design and construction for the work to be performed. These requirements are consistent with the requirements of 29 CFR 1910.134(g) through (j), 1910.134 App. B–1 to B–2. Owners and operators must select respirators that properly fit each affected person and communicate respirator selections to each affected person. These requirements are consistent with the requirements of 29 CFR 1910.134(f), 1910.134 App. A.

EPA is also requiring that owners and operators provide training in accordance with 29 CFR 1910.134(k) to all persons required to use respirators prior to or at the time of initial assignment to a job involving potential exposure to chrysotile asbestos. Such training must be repeatedly at least annually or whenever the owner or operator has reason to believe that a previously trained person does not have the required understanding and skill to properly use the respirator, or when changes in the workplace or in the required respirator render the previous training obsolete.

b. *Respirator selection.*

EPA is requiring that owners and operators select and provide all potentially exposed persons with respirators, based on the most recent monitoring results. The following represents the minimum respiratory protection that must be provided based on the most recent monitoring results, such that any respirator affording the same or higher degree of protection than the following requirements may be used.

- If the most recent exposure monitoring indicates that the exposure concentration is at or below 0.005 f/cc (the ECEL): no respiratory protection is required.
- If the most recent exposure monitoring indicates that the exposure concentration is above 0.005 f/cc (the ECEL) and less than or equal to 0.05 f/cc (10 times the ECEL): (i) a half-mask supplied-air respirator (SAR) or airline respirator operated in demand mode; or (ii) a half-mask self-contained breathing apparatus (SCBA) respirator operated in demand mode (APF 10).
- If the most recent exposure monitoring indicates that the exposure concentration is above 0.05 f/cc (10 times the ECEL) and less than or equal to 0.125 f/cc (25 times the ECEL): a loose fitting facepiece supplied-air respirator (SAR) or airline respirator operated in continuous flow mode (APF 25).
- If the most recent exposure monitoring indicates that the exposure concentration is above 0.125 f/cc (25 times the ECEL) and less than or equal to 0.25 f/cc (50 times the ECEL): (i) a full facepiece supplied-air respirator (SAR) or airline respirator operated in demand mode; or (ii) a half-mask supplied-air respirator (SAR) or airline respirator operated in continuous flow mode; or (iii) a half-mask supplied-air respirator (SAR) or airline respirator operated in pressure-demand or other positive-pressure mode; or (iv) a full facepiece self-contained breathing apparatus (SCBA) respirator operated in demand mode; or (v) a helmet/hood self-contained breathing apparatus (SCBA) respirator operated in demand mode (APF 50).
- If the most recent exposure monitoring indicates that the exposure concentration is above 0.25 f/cc (50 times the ECEL) and less than or equal to 5 f/cc (1,000 times the ECEL): a full-facepiece supplied-air respirator (SAR) or airline respirator operated in pressure-demand or other positive-pressure mode (APF 1,000).
- If the most recent exposure monitoring indicates that the exposure concentration is above 5 f/cc (1,000 times the ECEL) and less than or equal to 50 f/cc (10,000 times the ECEL): (i) a full-facepiece self-contained breathing apparatus (SCBA) respirator operated in pressure-demand or other positive-pressure mode; or (ii) a helmet/hood self-contained breathing apparatus (SCBA) respirator operated in pressure-demand or other positive-pressure mode (APF 10,000).

The respirator requirements have been updated from the primary regulatory alternative described in the proposed regulation to make them compatible with the OSHA's Asbestos standard for general industry at 29 CFR 1910.1001(g)(2)(i). The respiratory protection requirements in this final rule represent the minimum respiratory protection requirements; therefore, owners or operators may provide respirators affording a higher degree of protection than the required respirator. However, in situations where a sufficient limit of detection cannot be reached for comparison to the ECEL, owners and operators may elect to use the lowest measurable concentration possible as their basis for the selection of the respirators, and use an increased respiratory protection with an appropriate APF to demonstrate compliance with the ECEL as an interim control measure. For example, if the lowest measurable concentration possible is 0.1 f/cc, then, the owner or operator should assume that the measured exposure concentration is above 0.05 f/cc and less than or equal to 0.125 f/cc or 25 times the ECEL, and

provide a loose fitting facepiece supplied-air respirator (SAR) or airline respirator in continuous flow mode.

7. Workplace Information and Training

In the proposed rule primary regulatory alternative (87 FR 21706), EPA described requirements to ensure worker participation. In this final rule, EPA is requiring specific information to be provided to potentially exposed persons and associated training to ensure that potentially exposed persons are taking the necessary steps to reduce exposure to chrysotile asbestos.

Six months after the effective date of the final rule EPA is requiring that owners or operators provide information and training for each person prior to or at the time of potential exposure to chrysotile asbestos and repeat the training annually. The information and training must be presented in a manner that is understandable to each person required to be trained.

In this final rule, EPA is requiring that the information and training that must be provided to all persons potentially exposed to chrysotile asbestos is based on the most recent public information available from EPA, OSHA, NIOSH, and/or CDC, and include:

- The health effects associated with exposure to chrysotile asbestos;
- The quantity, location, manner of use, release, and storage of chrysotile asbestos and the specific operations in the workplace that could result in exposure to chrysotile asbestos, particularly noting where each regulated area is located;
- The specific procedures implemented by the owner or operator to protect persons potentially exposed to chrysotile asbestos, such as engineering controls, work practices and personal protective equipment to be used; and
- The requirements associated with the interim controls, as described in Unit VI.D., as well as how to access or obtain a copy of these regulations in the workplace.

The training must be conducted as necessary to ensure that each person maintains understanding of the principles of safe use and handling of chrysotile asbestos in the workplace, but at minimum, the training must be given annually. The owner or operator will need to develop a training program that is conducted in a manner that allows each person potentially exposed to understand the information, in an understandable manner (*i.e.,* plain language) and in multiple languages as appropriate (*e.g.,* based on languages spoken by potentially exposed persons). The owner or operator would consider factors such as the skills required to perform the work activity, the existing skill level of the staff performing the work. Finally, whenever there are changes in the workplace, such as modification of tasks or procedures, or institution of new tasks or procedures, or when airborne concentrations of chrysotile asbestos increase, or when the exposure control plan has been updated according to Unit VI.D.5, the owner or operator must update the training to reflect any additional steps that are needed to maintain the procedures implemented to reduce exposures to chrysotile asbestos in the workplace, and re-train each potentially exposed person.

E. Disposal

EPA is finalizing the disposal provisions in the proposed rule without significant changes. These disposal provisions at § 751.513 cross reference existing EPA and OSHA regulations that address asbestos-containing waste disposal. By following these existing regulations, worker and ONU exposure to chrysotile asbestos during disposal can be prevented. For this rule, EPA is requiring that for the chrysotile asbestos diaphragm condition of use, as well as oilfield brake blocks, other vehicle friction products, and any commercial use of other gaskets and aftermarket automotive brakes and linings conditions of use, regulated entities must adhere to waste disposal requirements described in OSHA's Asbestos General Industry Standard in 29 CFR 1910.1001, including 1910.1001(k)(6), which requires waste, scrap, debris, bags, containers, equipment, and clothing contaminated with asbestos that are consigned for disposal to be disposed of in sealed impermeable bags or other closed, impermeable containers. For the chrysotile asbestos sheet gaskets in chemical production condition of use, regulated entities must adhere to waste disposal requirements described in OSHA's Asbestos Safety and Health Regulations for Construction in 29 CFR 1926.1101.

Additionally, for the chrysotile asbestos diaphragm condition of use, as well as oilfield brake blocks, other vehicle friction products, and any commercial use of other gaskets and aftermarket automotive brakes and linings, EPA is cross-referencing the disposal requirements of Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) (40 CFR part 61, subpart M) at 40 CFR 61.150. The asbestos NESHAP reduces exposure to airborne asbestos by generally requiring sealing of asbestos-containing waste material from regulated activities in a leak-tight container and disposing of it in a landfill permitted to receive asbestos waste. EPA is not cross-referencing this same NESHAP waste disposal provision for the disposal of chrysotile asbestos-containing waste from sheet gasket processing and use because EPA did not find unreasonable risk for the disposal of sheet gaskets.

EPA is also requiring that each manufacturer (including importer), processor, and distributor of chrysotile asbestos, including as part of products and articles, for consumer uses subject to this proposed regulation, dispose of regulated products and articles in accordance with specified disposal provisions. These consumer uses are aftermarket automotive brakes and linings, and other gaskets. These consumer use supply chain disposal requirements are consistent with those for disposers of aftermarket automotive brakes and linings, and other gaskets, intended for commercial use. EPA does not generally have TSCA section 6(a) authority to directly regulate consumer use and disposal, but under TSCA section 6(a) EPA may nonetheless regulate the disposal activity of suppliers of these products, including importers, wholesalers and retailers of asbestos-containing aftermarket automotive brakes and linings, and other gaskets.

The disposal requirements at § 751.513 will take effect 180 days after the effective date of the final rule, as was proposed.

F. Recordkeeping

This final rule establishes recordkeeping provisions. A general records provision at § 751.515(a) of the final rule, requires that, beginning 180 days after the effective date of the final rule, all persons who manufacture (including import), process, or distribute in commerce or engage in industrial or commercial use of chrysotile asbestos must maintain ordinary business records, such as invoices and bills-of-lading related to compliance with the prohibitions, restrictions, and other provisions of this rulemaking and must make them available to EPA for inspection.

Section 751.515(b) of the final rule addresses recordkeeping for certifications of compliance for the chlor-alkali industry required under § 751.507 of the rule: persons must retain records for five years to substantiate certifications required under that provision and must make them available to EPA for inspection.

Section 751.515(c) of the final rule requires retention of records for interim workplace controls of chrysotile asbestos exposures. For each monitoring event, owners or operators subject to the exposure monitoring provisions of § 751.511(c) must document and retain records of:

(1) The dates, duration, and results of each sample taken;

(2) The quantity, location(s) and manner of chrysotile asbestos use at the time of each monitoring event;

(3) All measurements that may be necessary to determine the sampling conditions that may have affected the monitoring results, such as humidity or ventilation rates, based on the expertise of the person conducting the sampling;

(4) The name, address, work shift, job classification, work area, and type of respiratory protection (if any) of each person monitored;

(5) Sampling and analytical methods used and compliance with the Good Laboratory Practice Standards or laboratory quality standards required under the OSHA general asbestos standard described in § 751.511(c)(5)(i); and

(6) Notification of monitoring results as required by § 751.511(c)(6).

Additionally, § 751.515(c) of the final rule requires that owners or operators subject to the interim workplace controls described in § 751.511 must retain records of:

(1) The exposure control plan and its implementation as required by § 751.511(e), which must be available to persons exposed to chrysotile asbestos;

(2) Respiratory protection used and program implementation as described in § 751.511(f); and

(3) Information and training provided by the owner or operator as required by § 751.511(g).

Section 751.515(d) of the final rule requires the retention of disposal records. It specifies that each person, except a consumer, who disposes of any chrysotile asbestos and any chrysotile asbestos-containing products or articles subject to § 751.513, beginning 180 days after the effective date of the final rule, must retain in one location at the headquarters of the company, or at the facility for which the records were generated: any records related to any disposal of chrysotile asbestos and any chrysotile asbestos-containing products or articles generated pursuant to, or otherwise documenting compliance with, regulations specified in § 751.513. All records under this rule must be retained for five years from the date of generation.

VII. Other TSCA Considerations

A. Primary Alternative Regulatory Actions Considered

Pursuant to TSCA section 6(c)(2)(A), EPA considered the cost and benefits and the cost effectiveness of the final regulatory action and one or more primary alternative regulatory actions. EPA considered two primary alternative regulatory actions for chrysotile asbestos diaphragms in the chlor-alkali industry. One is to prohibit manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos in bulk form or as part of: chrysotile asbestos diaphragms in the chlor-alkali industry, with prohibitions taking effect five years after the effective date of the final rule, without exception, and require, prior to the prohibition taking effect, compliance with an existing chemical exposure limit (ECEL) for the processing and commercial use of chrysotile asbestos for this use. The other was to prohibit manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos in bulk form or as part of: chrysotile asbestos diaphragms in the chlor-alkali industry, with prohibitions taking effect twelve years after the effective date of the final rule, without exception, and require, prior to the prohibition taking effect, compliance with an ECEL for the processing and commercial use of chrysotile asbestos for this use.

The primary alternative regulatory action for sheet gaskets used in chemical production is to prohibit manufacture (including import), processing, distribution in commerce and commercial use, with prohibitions taking effect five years after the effective date of the final rule, and require, prior to the prohibition taking effect, compliance with an ECEL for the processing and commercial use of chrysotile asbestos for this use.

The primary alternative regulatory action additionally includes a prohibition on the manufacture (including import), processing, distribution in commerce, and commercial use of chrysotile asbestos-containing brake blocks in the oil industry; aftermarket automotive chrysotile asbestos-containing brakes/linings; and other vehicle friction products, with prohibitions taking effect two years after the effective date of the final rule. The primary alternative regulatory action also included prohibitions on manufacture (including import), processing, and distribution in commerce of aftermarket automotive chrysotile asbestos-containing brakes/linings for consumer use and other chrysotile asbestos-containing gaskets for consumer use, with prohibitions taking effect two years after the effective date of the final rule.

The primary alternative regulatory actions also include recordkeeping and disposal requirements identical to those in the final action.

B. TSCA Section (c)(2) Considerations

The following is EPA's statement of effects, as required by TSCA section 6(c)(2)(A), with respect to this final rule.

1. Effects of chrysotile asbestos on health and the magnitude of the exposure of human beings to chrysotile asbestos under TSCA section 6(c)(2)(A)(i).

EPA's analysis of the health effects of and magnitude of exposure to chrysotile asbestos is in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos (Ref. 1). A summary is presented here. Many authorities have established causal associations between asbestos exposures and lung cancer and mesothelioma in humans based on epidemiologic studies. EPA identified in the literature a causal association between exposure to asbestos and cancer of the larynx and cancer of the ovary and suggestive evidence of a positive association between asbestos and cancer of the pharynx, stomach, and colorectum. EPA also identified increases in lung cancer and mesothelioma mortality in both workers and residents exposed to various asbestos fiber types, including chrysotile asbestos, as well as fiber mixtures. Mesothelioma tumors arise from the thin membranes that line the chest and abdominal cavities and surround internal organs.

Asbestos exposure is known to cause various non-cancer health outcomes as well, including asbestosis, non-malignant respiratory disease, deficits in pulmonary function, diffuse pleural thickening, and pleural plaques. Various immunological and lymphoreticular effects are suggested but not well-established.

For the conditions of use that contribute to unreasonable risk, populations exposed to chrysotile asbestos (including potentially exposed or susceptible subpopulations) include workers, ONUs, consumer users, and bystanders to consumers using products containing chrysotile asbestos. For these conditions of use EPA estimates that, annually, at least 256 workers and 222 ONUs are exposed to chrysotile asbestos at over 49 operations either processing or using products containing chrysotile asbestos. Additional workers and ONUs are exposed to oilfield brake blocks and

may potentially be exposed to other vehicle friction products and other gaskets. Each year, approximately 400 consumers are potentially exposed to asbestos through the use of products containing chrysotile asbestos subject to this rule. The number of exposed bystanders is unknown to EPA. The breakdown by category of use is as follows:

- Diaphragms—80 workers and 80 ONUs at 8 sites;
- Sheet gasket stamping—at least 4 workers and 8 ONUs at 4 sites;
- Sheet gasket use (non-nuclear)—at least 18 workers and 119 ONUs at 4 sites;

Sheet gasket use (nuclear)—up to 139 workers at 1 site; number of workers and ONUs at approximately 20 additional sites is unknown;

- Oilfield brake blocks—Unknown;
- Aftermarket automotive brakes—15 to 1,400 workers and 15 to 1,400 ONUs at 12 to 1,400 sites;
- Other vehicle friction products—Unknown;
- Other gaskets—Unknown; and
- DIY mechanics—400 consumers and unknown bystanders.

More information on the derivation of these estimates is provided in the Economic Analysis for this rulemaking that can be found in the rulemaking docket (Ref. 2).

As discussed in Unit II.C., EPA did not evaluate hazards or exposures to the general population in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos.

2. Effects of the chrysotile asbestos on the environment and the magnitude of the exposure of the environment under TSCA section 6(c)(2)(A)(ii).

EPA's analysis of the environmental effects of and the magnitude of exposure of the environment to chrysotile asbestos are in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos (Ref. 1). A summary is presented here.

Chrysotile asbestos may be released to the environment through industrial or commercial activities, such as processing raw chrysotile asbestos, fabricating/processing asbestos-containing products, or the dispersing of friable chrysotile asbestos during use, disturbance and disposal of asbestos-containing products.

Although this action is focused on chrysotile asbestos fiber type, some of the information in this unit pertains to asbestos fibers in general. Asbestos is a persistent mineral fiber that can be found in soil, sediments, in the air and windblown dust, surface water, ground water and biota. Asbestos fibers are largely chemically inert in the environment. They may undergo minor physical changes, such as changes in fiber length or leaching of surface minerals, but do not react or dissolve in most environmental conditions.

In water, chrysotile asbestos will eventually settle into sediments (or possible biosolids) and can enter wastewater treatment plants. EPA's review of aquatic vertebrate and invertebrate studies indicated that chronic exposure to waterborne chrysotile asbestos at a concentration range of 10^4–10^8 fibers/L, which is equivalent to 0.01 to 100 million fibers per liter (MFL), may result in reproductive, growth and/or sublethal effects to fish and clams. In addition, acute exposure of clams to waterborne chrysotile asbestos at a concentration range of 10^2–10^8 fibers/L demonstrated reduced siphoning activity.

EPA has determined that there are minimal or no releases of asbestos to surface water associated with the conditions of use that EPA evaluated in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos and that are the subject of this action.

3. Benefits of chrysotile asbestos for various uses under TSCA section 6(c)(2)(A)(iii).

The only form of asbestos manufactured (including imported), processed, or distributed for use in the United States today is chrysotile asbestos. The United States Geological Survey (USGS) estimated that 152 metric tons of raw chrysotile asbestos were imported into the United States in 2022 (Ref. 3). This raw asbestos is used exclusively by the chlor-alkali industry, and imported amounts between 2018 and 2022 ranged from 41 to 681 metric tons during a given year (Ref. 3).

In addition to the use of raw imported chrysotile asbestos by the chlor-alkali industry, EPA is also aware of imported asbestos-containing products; however, the imported volumes of those products are not fully known. The asbestos-containing products that EPA has identified as potentially being imported and used are sheet gaskets (which are imported in large sheets and cut to size domestically by a fabricator), oilfield brake blocks, aftermarket automotive brakes/linings, other vehicle friction products, and other gaskets. Chrysotile asbestos is chemically inert, durable, and able to effectively separate the anode and cathode chemicals in the electrolytic cells used in the chlor-alkali process. Asbestos-containing gaskets have been used in chemical production because they are resistant to cyclical high temperatures and immense pressure. During the manufacture of titanium dioxide, temperatures can exceed 1850 degrees Fahrenheit and pressures can be greater than 50 pounds per square inch. For processing of nuclear material, asbestos-containing sheet gaskets are preferred for their durability in radioactive environments. The physical properties of chrysotile asbestos including heat resistance make asbestos a useful material for uses where friction is produced and extreme heat is generated, including its application in brakes, gaskets and other vehicle friction product uses considered in this rule.

4. Reasonably ascertainable economic consequences of the rule under TSCA section 6(c)(2)(A)(iv).

The reasonably ascertainable economic consequences of this rule include several components, all of which are described in the economic analysis for this rule and summarized here (Ref. 2).

a. *The likely effect of this Part 1: Chrysotile Asbestos rule on the national economy, small business, technological innovation, the environment, and public health (TSCA section 6(c)(2)(A)(iv)(I)).*

With respect to the anticipated effects of this rule on the national economy, the economic impact of a regulation on the national economy generally only becomes measurable if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP) (Ref. 24). Given the current GDP of $27.62 trillion, this is equivalent to a cost of $69 billion to $138 billion which is considerably higher than the estimated cost of this rule. EPA considered the number of businesses and workers that would be affected and the costs and benefits to those businesses and workers and society at large and did not find that there would be a measurable effect on the national economy. In addition, EPA considered the employment impacts of this rule. While EPA assumes that chlor-alkali facilities currently using asbestos diaphragms will convert to non-asbestos technologies, some facilities may not do so before the effective prohibition date in the rule. As a result, even with the extended compliance dates in the final action, it is possible that the rule may result in facility closures and job losses, at least temporarily, at some chlor-alkali facilities as well as at facilities that use chlorine, caustic soda, or their derivatives as intermediates, and may result in shortages or price increases for chlorine, caustic, and their derivatives. There may be similar employment effects at chemical facilities using asbestos gaskets. However, the extended compliance dates in the final rule reduce the likelihood and potential magnitude of such impacts compared to the proposed rule. There may also be

increased temporary employment associated with new construction as firms convert their facilities to replace asbestos diaphragms and asbestos gaskets with substitute technologies. There may also be increases in employment at facilities that currently use asbestos-free technologies (Ref. 2).

EPA has determined that the rule will not have a significant impact on a substantial number of small entities; EPA estimates that the rule will affect 11 to 1,369 small businesses supplying aftermarket brakes, incurring costs between $20 and $14,000 per firm (depending on the number of brake replacements they perform). At the low-end estimate of the number of affected brake replacement firms, approximately 85% of firms would have cost impacts of less than 1% of their annual revenues, about 10% would have cost impacts between 1% and 3%, and around 6% would have cost impacts of greater than 3%. At the high-end estimate of the number of affected brake replacement firms, 100% of firms would have a cost impact of less than 1% of the annual revenue. An additional three small entities that do not supply aftermarket brakes are estimated to be affected by the rule; two are assumed to manufacture sheet gaskets for titanium dioxide production, and one imports oilfield brake blocks. EPA did not have the information necessary to estimate the cost impacts on these other four small entities (Ref. 2).). EPA found no literature that described the costs of converting to asbestos-free products for either sheet gaskets used in titanium dioxide production or oilfield brake blocks. Moreover, there were no public comments in response to the proposed rule or the subsequent notice of data availability that provided information on the costs for these use categories.

The uses of asbestos subject to the rule are all in mature industries and the amount of asbestos consumed in them has been declining for some time. There is no evidence of innovative applications of asbestos in these uses in recent years, nor is there any expectation that such innovations would occur in the future in the absence of a prohibition on these uses of asbestos.

The effects of this rule on public health are estimated to be positive, due to the avoided incidence of adverse health effects attributable to asbestos exposure, including lung cancer, mesothelioma, and cancers of the larynx and ovary (Ref. 2). Despite the uncertainties about possible greater use and release of PFAS discussed in Unit VII.B.5., EPA believes the benefits of removing chrysotile asbestos, a known human carcinogen that causes cancer (mesothelioma, lung, ovarian, and laryngeal cancers), from continued use in the United States, are significant enough to outweigh the potential additional exposure to PFAS that might result from this action.

Converting chlor-alkali diaphragm cells to non-asbestos technology is expected to reduce total electricity consumption by the chlor-alkali industry and thus the level of air pollution associated with electric power generation. This reduction in air pollution would provide environmental benefits as well as health benefits (Ref. 2).

b. *Costs and benefits of the regulatory action and of the primary alternative regulatory actions considered by the Administrator.*

i. *Regulatory action.*

EPA was able to quantify the costs of the rule for the chlor-alkali industry and the aftermarket automotive brake industry, as well as a portion of the costs for firms using sheet gaskets. Nearly all of the quantified costs are due to the requirements for the chlor-alkali industry. The rule is predicted to require an investment of $2.8 billion to $3.4 billion to convert chlor-alkali facilities using asbestos diaphragm cells to cells using non-asbestos diaphragms or membranes. The rule accelerates existing trends in the industry to transition away from asbestos diaphragms, and EPA expects that these conversions would eventually occur in the baseline even without the rule, although more slowly than with the prohibition deadlines in the rule. For a number of these facilities the non-asbestos technologies are more energy efficient than asbestos diaphragm cells, resulting in cost savings that would accrue over the lifetimes of the facilities. Membrane cells also produce a higher grade of caustic soda that has historically commanded a higher price than the product from asbestos diaphragm cells; that price differential may or may not continue in the future. If some facilities are unable to complete their conversions to non-asbestos technology by the mandatory compliance dates in the rule, the unconverted portions of those facilities would need to close until the conversions are completed. Such temporary closures would result in lost producer surplus (as well as lost consumer surplus, which EPA was unable to quantify) until the conversions are completed. The incremental net annualized costs of the rule to the chlor-alkali industry are calculated by combining conversion costs, changes in energy usage, potential revenue gains from increased production of membrane-grade caustic soda, and the lost producer surplus from possible temporary facility closures (all compared to the baseline), and annualizing the results over the 35-year expected lifetime of new chlor-alkali facility equipment.

Compared to this baseline trend, the net cost of the rule to the chlor-alkali industry over a 35-year period using a 3 percent discount rate is estimated to range from an annualized cost of $7 million per year (if the additional membrane grade caustic soda that is produced sells for the same price as diaphragm grade caustic soda) to an annualized savings of $1 million per year (if the higher grade of caustic soda produced by membrane cells continues to command a premium price, as it has in the past). Using a 7 percent discount rate, the incremental net cost of the rule to the chlor-alkali industry ranges from a cost of $34 million per year (if there is a premium for membrane-grade caustic soda) to $43 million per year (if there is no premium for membrane-grade caustic soda).

EPA also estimates that approximately 1,800 sets of automotive brakes or brake linings containing asbestos may be imported into the U.S. each year, representing 0.002% of the total U.S. market for aftermarket brakes. The cost of a prohibition would be minimal due to the ready availability of alternative products that are only slightly more expensive (an average cost increase of about $5 per brake). The rule is estimated to result in total annualized costs for aftermarket automotive brakes of approximately $300,000 per year using a 3% discount rate and $200,000 per year using a 7% discount rate.

EPA estimated a lower bound of the cost of the ECEL and disposal requirements for titanium dioxide producers using sheet gaskets containing asbestos. These annualized costs are estimated at approximately $44,000 per year using a 3% discount rate or $65,000 per year using a 7% rate. However, EPA was unable to estimate the potential cost to sheet gasket users of substituting non-asbestos products.

EPA also did not have information to estimate all of the costs of prohibiting asbestos in brake blocks in the oil industry, and any other vehicle friction products or other gaskets. (EPA believes that the use of these asbestos-containing products has declined over time, and that they are now used in at most small segments of the relevant industries.) Since EPA could not quantify all of the costs of the rule for all of the use categories, the quantified estimates of the total costs of the rule are an upper

bound estimate of total cost savings and a lower bound estimate of total costs. Thus, the total net incremental costs of the rule are estimated to range from an annualized cost of greater than $7 million per year to an annualized savings of less than $1 million per year using a 3 percent discount rate. Using a 7 percent discount rate, these costs range from greater than $34 million per year to more than $43 million per year.

EPA quantified the benefits from avoided cases of cancer due to reduced asbestos exposures attributable to the rule's requirements for chlor-alkali diaphragms and aftermarket brakes, and sheet gaskets used for titanium dioxide production. The combined total national quantified benefits of avoided cancer cases associated with these use categories are approximately $6,000 per year using a 3% discount rate and $3,000 per year using a 7% discount rate. EPA did not estimate the avoided cancer benefits of the requirements for sheet gaskets used for other forms of chemical production, oilfield brake blocks, other vehicle friction products or other gaskets, in part because the Agency did not have sufficient information to accurately characterize the number of individuals whose exposures are likely to be affected by the rule. To the extent that products in these use categories are still manufactured, processed, distributed in commerce, used, or disposed of, the rule will generate additional benefits from reducing the exposures associated with these uses.

There are also unquantified benefits due to other avoided adverse non-cancer health effects associated with asbestos exposure, such as respiratory effects (*e.g.,* asbestosis, non-malignant respiratory disease, deficits in pulmonary function, diffuse pleural thickening and pleural plaques). The rule will also generate unquantified benefits from other exposure pathways and life cycle stages for which exposures were not estimated in the risk evaluation.

In addition to the benefits of avoided adverse health effects associated with chrysotile asbestos exposure, the rule is expected to generate benefits from reduced air pollution associated with electricity generation. Chlor-alkali production is one of the most energy-intensive industrial operations. Converting asbestos diaphragm cells to non-asbestos technologies will reduce overall electricity consumption and thus the total level of pollutants resulting from electric power generation, including carbon dioxide, particulate matter, sulfur dioxide, and nitrogen oxides. Converting asbestos diaphragm cells to non-asbestos technology could yield millions of dollars per year in environmental and health benefits from reduced emissions of criteria air pollutants and greenhouse gases (Ref. 2). The decreased air pollution resulting from the rule was not the driver for the decision making under TSCA section 6(a).

EPA's Economic Analysis, which can be found in the rulemaking docket (Ref. 2), contains more information on the estimated costs and benefits of the regulatory action.

ii. *Primary alternative regulatory actions.*

EPA considered two primary regulatory alternatives to the requirements that are being finalized in this action for chrysotile asbestos diaphragms in the chlor-alkali industry. Under one alternative, the prohibitions on the processing, distribution in commerce and commercial use of asbestos diaphragms at chlor-alkali facilities would take effect at all facilities after five years; the prohibitions on sheet gaskets for chemical production would take effect after two years for sheet gaskets used to produce titanium dioxide or to process nuclear materials, and two years for all other sheet gaskets used for chemical production; and after 180 days for the remaining use categories subject to the rule. Under the other alternative, these prohibitions would take effect at all chlor-alkali facilities after 12 years; after 5 years for all sheet gaskets used in chemical production; and after 2 years for the remaining use categories.

Under the alternative regulatory action with a 5-year prohibition on asbestos diaphragms for all chlor-alkali facilities, the total cost of the rule using a 3 percent discount rate is estimated to range from an annualized costs of more than $14 million per year (if the additional membrane-grade caustic soda that is produced sells for the same price as diaphragm grade caustic soda) to an annualized cost of more than $5 million per year (if the higher grade of caustic soda produced by membrane cells continues to command a premium price, as it has in the past). Using a 7 percent discount rate, the estimates range from a cost of more than $42 million per year (if there is a premium for membrane-grade caustic soda) to a cost of more than $51 million per year (if there is no premium for membrane-grade caustic soda).

Under the alternative regulatory action with a 12-year prohibition on asbestos diaphragms for all chlor-alkali facilities, the total cost of the rule using a 3 percent discount rate ranges from a savings of less than $1 million per year (if the higher grade of caustic soda produced by membrane cells continues to command a premium price) to a cost of greater than $7 million per year (if the additional membrane grade caustic soda that is produced receives the same price as diaphragm grade caustic soda). Using a 7 percent discount rate, the cost ranges from more than $31 million per year (if there is a premium for membrane-grade caustic soda) to more than $38 million per year (if there is no premium for membrane-grade caustic soda).

The alternative option with a 12-year prohibition deadline for all chlor-alkali facilities has estimated annualized incremental costs that are similar to those for the final rule, and are slightly lower than the final rule when using a 7% discount rate. These differences are due to how the timing of expenditures affects the annualized cost estimates. The vast majority of the quantified costs of the rule are associated with the chlor-alkali industry. Converting all eight plants using asbestos diaphragm cells to non-asbestos technologies is predicted to require an investment of approximately $2.8 billion to $3.4 billion, and these costs are assumed to be the same regardless of how quickly the conversions occur. Where the incremental cost of a 12-year prohibition deadline is less than the incremental cost of the final rule, part of the reason is that the rate of conversion to non-asbestos technologies under the alternative option is closer to the baseline conversion rate. (The incremental cost estimate compares the costs and savings associated with conversions under each option to the costs and savings that would be incurred each year in the absence of the rule). This means that the chlor-alkali companies are incurring the same actual costs under both options (since the conversions have the same costs and savings per ton of chlorine and caustic soda produced under all of the options), but under the 12-year option some of those costs are not attributed to the rule. In addition, some of the compliance costs are incurred at later points in time under the 12-year option than under the final rule, and expenditures that occur at later dates result in smaller annualized costs than those that occur sooner. These factors can make the alternative option with a 12-year prohibition deadline for all chlor-alkali facilities appear slightly less costly than the final rule, despite the fact that same facility conversions eventually occur under all the regulatory alternatives.

c. *Cost effectiveness of the regulatory action and primary alternative regulatory actions considered by the Administrator.*

The regulatory action reflected in the final rule and the alternative regulatory actions all reduce risks to the extent necessary such that unreasonable risk would no longer be present after such actions were implemented. The estimated costs of achieving this result differ across the possible regulatory actions and can be compared in terms of their cost-effectiveness. The measure of cost-effectiveness considered is the annualized net incremental cost of each regulatory option per micro-risk reduction in cancer cases estimated to occur as a result of the option, where a micro-risk refers to a one in one million reduction in the risk of a cancer case. The estimated cost-effectiveness of the final rule ranges from a cost of $185 to a savings of $35 per micro-risk reduction at a 3% discount rate, and a cost of $860 to $1,075 per micro-risk reduction at a 7% discount rate (where a micro-risk represents a one in a million chance of the adverse health outcome, which in this case is cancer). The estimated cost-effectiveness of the alternative regulatory action with a 5-year prohibition on asbestos diaphragms for all chlor-alkali facilities ranges from a cost of $128 to $348 per micro-risk reduction at a 3% discount rate, and a cost of $1,044 to $1,259 per micro-risk reduction at a 7% discount rate. The estimated cost-effectiveness of the alternative regulatory action with a 12-year prohibition on asbestos diaphragms for all chlor-alkali facilities ranges from a cost of $172 to a savings of $13 per micro-risk reduction at a 3% discount rate, and a cost of $779 to $953 per micro-risk reduction at a 7% discount rate.

The alternative option with a 12-year prohibition deadline for all chlor-alkali facilities appears to be somewhat more cost effective than the final rule when using a 7 percent discount rate. But as noted previously, these differences are due to how the timing of expenditures affects the annualized cost estimates.

5. Consideration of alternatives under TSCA section 6(c)(2)(C).

Under TSCA section 6(c)(2)(C), and based on the information published under TSCA section 6(c)(2)(A), in deciding whether to prohibit or restrict in a manner that substantially prevents a specific condition of use of a chemical substance or mixture, and in setting an appropriate transition period for such action, EPA must also consider, to the extent practicable, whether technically and economically feasible alternatives that benefit health or the environment will be reasonably available as a substitute when the prohibition or other restriction takes effect.

a. *Health and environmental effects of the chemical alternatives or substitute methods.*

In considering the potential chemical alternatives or substitute methods for chrysotile asbestos for the conditions of use evaluated in the risk evaluation, EPA notes that chrysotile asbestos is not currently the primary substance most commonly used in these conditions of use, nor has it been for the last decade. Chlor-alkali asbestos diaphragms, sheet gaskets for chemical production, aftermarket automotive breaks, oilfield brake blocks, other gaskets and other friction products containing chrysotile asbestos are relatively uncommon in the market space, as described in the risk evaluation. There are a number of alternatives to asbestos in these conditions of use that make up the majority of the market share and have been preferentially used for some time, in part as a result of the known severe and adverse health effects related to asbestos exposure. Based on the information published under TSCA section 6(c)(2)(A), EPA does not expect any adverse impacts to human health and the environment to result from the further reduction of asbestos in these conditions of use when compared to the continued use of asbestos.

EPA acknowledges that substitute technologies for asbestos-containing diaphragms in chlor-alkali production use an increased concentration of per- and polyfluoroalkyl substances (PFAS) relative to the amount of PFAS compounds contained in asbestos-containing diaphragms. As discussed in the Economic Analysis, the three types of chlor-alkali production technologies commonly used in the United States vary in their use of PFAS. Non-asbestos diaphragms have a higher concentration of polytetrafluoroethylene (PTFE, a polymeric perfluorinated substance) than asbestos-containing diaphragms, and non-asbestos membranes are made of PTFE, perfluorinated carboxylic acids and perfluorosulfonic acids. However, the impact of the transition away from asbestos-containing diaphragms on the quantities of PFAS compounds used and released is uncertain. Although they contain a higher concentration of PFAS compounds than diaphragms made with asbestos, non-asbestos diaphragms and membranes have a typical lifespan that can be several times longer than that for asbestos diaphragms. Therefore, it is unclear how increased use of non-asbestos technologies will affect the total production, usage, or releases of PFAS compounds, or exposures to such compounds. Despite these uncertainties about the use and release of PFAS, EPA believes the benefits of removing chrysotile asbestos from continued use in the United States are significant even though there are uncertainties regarding the potential changes in exposure to PFAS that might result from this action. Still, when possible, EPA recommends a transition to safer alternatives. Additional information on PFAS, including Agency guidance, is available at *https://www.epa.gov/*.

To the extent that alternative technologies are more energy efficient, converting asbestos diaphragm cells to non-asbestos technologies reduces overall electricity consumption and thus the total level of pollutants associated with electric power generation, including carbon dioxide, particulate matter, sulfur dioxide, and nitrogen oxides.

b. *Technically and economically feasible and reasonably available chemical alternatives or substitute methods.*

As mentioned, there are a number of alternatives to asbestos in these conditions of use that make up the majority of the market share and have been preferentially used for some time. EPA received input from stakeholders regarding their concerns about alternatives to chrysotile asbestos. EPA expects non-asbestos diaphragms and membrane cells will be the likely substitutes to asbestos diaphragms. Prior to the proposed rule, the chlor-alkali industry expressed concerns to EPA about the economic feasibility of transitioning to asbestos free technology in general (Ref. 25; Ref. 26; Ref. 27; Ref. 28; Ref. 29) and indicated that it would take a significant amount of time. Subsequent public comments and information from the chlor-alkali industry obtained after the proposed rule was published indicates that conversion to asbestos-free technology is commercially viable, but that the conversion can take a significant amount of time, depending on the technology adopted and the number of facilities to be converted (Ref. 12; Ref. 13).

Several stakeholders provided feedback on alternatives to chrysotile asbestos for the sheet gasket use in chemical production. Generally, these stakeholders described how the transition from asbestos use for titanium dioxide production would require modifications to the facilities that would be time consuming. One stakeholder noted in 2021 that they had a titanium dioxide production facility located in Taiwan that uses asbestos-free gaskets. The stakeholder, however, stated at that time that the technology used in the Taiwan facility would not suit certain domestic titanium dioxide

facilities because the large diameter flanges in the domestic facilities result in performance issues with the asbestos-free gaskets (Ref. 25). The same stakeholder subsequently informed EPA in 2023 that they could transition to the use of non-asbestos gaskets in their domestic facilities by re-engineering the flanges, although that process will require several years to complete (Ref. 18). Non-asbestos technologies already dominate the market for other gaskets, oilfield brake blocks, brakes and other friction products. Although, stakeholders indicated the advantages of using asbestos (*e.g.,* asbestos in automotive drum brakes advantages include thermal stability, flexibility, resistance to wear, and low cost), and limitations of the non-asbestos replacements (*e.g.,* non-asbestos replacements in brake blocks have a useful life half that of products containing asbestos, are more expensive than asbestos-containing products, and are subject to sudden failure) (Ref. 2). Non-asbestos aftermarket automotive brakes are estimated to cost an average of $4 more than brakes containing asbestos. EPA was unable to identify any companies currently supplying or using other gaskets or other friction products containing asbestos, so the Agency does not have information on the cost differentials between products that contain asbestos and those that are asbestos-free. Additional information is available in the risk evaluation (Ref. 1) and economic analysis (Ref. 2).

6. Replacement parts under TSCA section 6(c)(2)(D).

TSCA section 6(c)(2)(D) states that EPA shall exempt from TSCA section 6(a) rules replacement parts for complex durable goods and complex consumer goods that are designed prior to the publication of a final risk management rule, unless such replacement parts contribute significantly to the risk, identified in a risk evaluation conducted under TSCA section 6(b)(4)(A), to the general population or to an identified potentially exposed or susceptible subpopulation. TSCA section 6(c)(2)(D) defines complex consumer goods as electronic or mechanical devices composed of multiple manufactured components, with an intended useful life of three or more years, where the product is typically not consumed, destroyed, or discarded after a single use, and the components of which would be impracticable to redesign or replace. The term ''complex durable goods'' means manufactured goods composed of 100 or more manufactured components, with an intended useful life of five or more years, where the product is typically not consumed, destroyed or discarded after a single use. Several of the conditions of use addressed by this final rule impact these replacement part categories. Aftermarket automotive brakes/linings are replacement parts for automobiles and other vehicles. Other asbestos-containing gaskets may be available as both new and replacement parts on utility and other vehicles. Oilfield brake blocks are replacement parts for the drilling rigs used in the oil industry. These vehicles and drilling rigs are composed of numerous components, manufactured separately and assembled together into a machine designed for a useful life of at least three years if properly maintained. By their nature, EPA believes these meet the TSCA definition of complex durable goods. In the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos, however, EPA found unreasonable risk from use and disposal of chrysotile asbestos-containing brake blocks in the oil industry; aftermarket automotive chrysotile asbestos-containing brakes/linings; and other asbestos-containing gaskets. EPA's risk evaluation evaluated scenarios involving these replacement parts, and EPA finds that the replacement parts contribute significantly to the identified unreasonable risk for these conditions of use to the potentially exposed or susceptible subpopulations identified in the risk evaluation. Accordingly, EPA is not exempting replacement parts from regulation in this final rule.

7. Article considerations under TSCA section 6(c)(2)(E).

Under this final rule, EPA is regulating the manufacture, processing, and distribution in commerce of articles containing chrysotile asbestos. TSCA section 6(c)(2)(E) states: ''In selecting among prohibitions and other restrictions, the Administrator shall apply such prohibitions or other restrictions to an article or category of articles containing the chemical substance or mixture only to the extent necessary to address the identified risks from exposure to the chemical substance or mixture from the article or category of articles so that the substance or mixture does not present an unreasonable risk of injury to health or the environment identified in the risk evaluation conducted in accordance with section 6(b)(4)(A).'' TSCA does not define ''article,'' but EPA proposed to define ''article'' and is now finalizing that definition. Based on this definition, the conditions of use subject to this regulation include articles, *e.g.,* sheet gaskets, brake blocks, brake/linings, other gaskets and other vehicle friction products.

Except for bulk chrysotile asbestos imported for use in asbestos diaphragms, all of the other conditions of use that are the subject of this regulation involve the use and/or disposal of products or articles containing chrysotile asbestos. For each condition of use, the article is subject to circumstances during use that change or alter the article as a direct result of the use. Releases of chrysotile asbestos, and the associated unreasonable risk from exposure to chrysotile asbestos identified in the risk evaluation, result from use of the articles. The articles themselves include sheet gaskets, other gaskets, brake blocks, brakes and linings, which wear down during use and release asbestos fibers. The risk evaluation determined that exposure to workers, ONUs, consumers and bystanders can occur when these items are replaced or repaired, resulting in harmful exposures. These identified risks from articles containing asbestos could result from exposure of any kind and, as a result, EPA had no feasible option to prevent these risks other than a complete prohibition. In particular, without effective respiratory protection to reduce asbestos exposure, no other restriction EPA researched could sufficiently prevent unreasonable risk to ONUs, consumers, and bystanders who were not expected to wear respiratory protection. For example, EPA does not assume consumers who replace their own automobile brakes will consistently use appropriate respiratory protection, nor can EPA in this rule require respirator use for consumers. Accordingly, EPA's final regulatory action sets requirements for articles only to the extent necessary to address the identified risks from exposure to chrysotile asbestos from the article so that chrysotile asbestos does not present an unreasonable risk to health.

C. TSCA Section 9 Analysis

1. TSCA section 9(a) analysis.

Section 9(a) of TSCA provides that, if the Administrator determines in the Administrator's discretion that an unreasonable risk may be prevented or reduced to a sufficient extent by an action taken under a Federal law not administered by EPA, the Administrator must submit a report to the agency administering that other law that describes the risk and the activities that present such risk. TSCA section 9(a) describes additional procedures and requirements to be followed by EPA and the other federal agency after submission of the report. As discussed in this Unit, the Administrator does not determine that unreasonable risk from the conditions of use of chrysotile

asbestos may be prevented or reduced to a sufficient extent by an action taken under a Federal law not administered by EPA.

TSCA section 9(d) instructs the Administrator to consult and coordinate TSCA activities with other Federal agencies for the purpose of achieving the maximum enforcement of TSCA while imposing the least burden of duplicative requirements. For this rule, EPA has consulted with other appropriate Federal executive departments and agencies including OSHA and NIOSH.

OSHA requires that employers provide safe and healthful working conditions by setting and enforcing standards and by providing training, outreach, education and assistance. OSHA has three separate health standards for asbestos covering employers in General Industry (29 CFR 1910.1001); Shipyards (29 CFR 1915.1001); and Construction (29 CFR 1926.1101). These standards include a permissible exposure limit (PEL) for asbestos of 0.1 fibers per cubic centimeter (cc) of air as an eight-hour time weighted average (TWA), and an excursion limit of 1.0 asbestos fibers per cubic centimeter over a 30-minute period. The standards apply to all occupational exposures to asbestos and require exposure monitoring to determine employee exposure. Exposure monitoring includes both initial monitoring of employees who are, or may reasonably be expected to be, exposed to airborne concentrations at or above the TWA PEL or excursion limit, as well as additional monitoring. Monitoring frequency depends on work classification exposure while additional monitoring may be required based on changes in the workplace environment that may result in new or additional exposures above the TWA PEL or excursion limit.

This rule addresses risk from exposure to chrysotile asbestos in both workplace and consumer settings (*e.g.,* do-it-yourself automobile maintenance). With the exception of TSCA, there is no Federal law that provides authority to prevent or sufficiently reduce these cross-cutting exposures. No other Federal regulatory agency can evaluate and address the totality of the risk that EPA is addressing in this rule. For example, OSHA may set exposure limits for workers, but its authority is limited to the workplace and does not extend to consumer uses of hazardous chemicals (while EPA does not regulate consumer use directly under TSCA 6(a)(5), it has authority to regulate the upstream supply of chemicals for consumer uses). Further, OSHA does not have direct authority over state and local employees, and it has no authority at all over the working conditions of state and local employees in states that have no OSHA-approved State Plan under 29 U.S.C. 667. Other individuals that may not be covered by OSHA requirements include university students, volunteers, and self-employed persons. CPSC is charged with protecting the public from unreasonable risks of injury or death associated with the use of the thousands of types of consumer products under the agency's jurisdiction, CPSC has the authority to regulate chrysotile asbestos in such consumer products, but not in automobiles, trucks and motorcycles, which are not under its jurisdiction.

Moreover, the 2016 amendments to TSCA, Public Law 114–182, alter both the manner of identifying unreasonable risk under TSCA and EPA's authority to address unreasonable risk under TSCA, such that risk management under TSCA is increasingly distinct from analogous provisions of the Consumer Product Safety Act (CPSA), the Federal Hazardous Substances Act (FHSA), or the OSH Act. These changes to TSCA reduce the likelihood that an action under the CPSA, FHSA, or the OSH Act would sufficiently prevent or reduce the unreasonable risk of chrysotile asbestos. In a TSCA section 6 rule, following an unreasonable risk determination, EPA must apply risk management requirements to the extent necessary so that the chemical no longer presents unreasonable risk and only consider costs to the extent practicable, 15 U.S.C. 2605(a) and (c)(2), subject to time-limited conditional exemptions, 15 U.S.C. 2605(g). By contrast, a consumer product safety rule under the CPSA must include a finding that ''the benefits expected from the rule bear a reasonable relationship to its costs.'' 15 U.S.C. 2058(f)(3)(E). Additionally, the 2016 amendments to TSCA reflect Congressional intent to ''delete the paralyzing 'least burdensome' requirement,'' 162 Cong. Rec. S3517 (June 7, 2016), a reference to TSCA section 6(a) as originally enacted, which required EPA to use ''the least burdensome requirements'' that protect ''adequately'' against unreasonable risk, 15 U.S.C. 2605(a) (1976). However, a consumer product safety rule under the CPSA must impose ''the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.'' 15 U.S.C. 2058(f)(3)(F). Analogous requirements, also at variance with recent revisions to TSCA, affect the availability of action CPSC may take under the FHSA relative to action EPA may take under TSCA. 15 U.S.C. 1262. Gaps also exist between OSHA's authority to set workplace standards under the OSH Act and EPA's obligations to sufficiently address chemical risks under TSCA. To set PELs for chemical exposure, OSHA must first establish that the new standards are economically feasible and technologically feasible (79 FR 61387, October 10, 2014). But under TSCA, EPA's substantive burden under TSCA section 6(a) is to demonstrate that, as regulated, the chemical substance no longer presents an unreasonable risk, with unreasonable risk being determined under TSCA section 6(b)(4).

EPA therefore concludes that: TSCA is the only regulatory authority able to prevent or reduce risks of chrysotile asbestos to a sufficient extent across the range of conditions of use, exposures and populations of concern; these risks can be addressed in a more coordinated, efficient and effective manner under TSCA than under different laws implemented by different agencies, and there are key differences between the finding requirements of TSCA and those of the OSH Act. For these reasons, in the Administrator's discretion, the Administrator does not determine that unreasonable risk from the conditions of use of chrysotile asbestos may be prevented or reduced to a sufficient extent by an action taken under a Federal law not administered by EPA.

More than 10 comments were received regarding issues generally related to TSCA section 9. Some commenters supported EPA's decision to not make a determination and submit a report to another agency under TSCA section 9(a). Other commenters contended that the OSHA regulation that relates to reducing worker exposure sufficiently mitigates the unreasonable risk and that EPA lacks authority to regulate worker exposures because OSHA is better positioned to enforce both safety measures and occupational exposures. EPA's response to these comments is available in the docket for this rulemaking (Ref. 12).

2. TSCA section 9(b) analysis.

If EPA determines that actions under other Federal laws administered in whole or in part by EPA could eliminate or sufficiently reduce a risk to health or the environment, TSCA section 9(b) instructs EPA to use these other authorities unless the Administrator determines in the Administrator's discretion that it is in the public interest to protect against such risk under TSCA. In making such a public interest finding, TSCA section 9(b)(2) states: ''the Administrator shall consider, based on information reasonably available to the

Administrator, all relevant aspects of the risk . . . and a comparison of the estimated costs and efficiencies of the action to be taken under this title and an action to be taken under such other law to protect against such risk.''

Although several EPA statutes have been used to limit chrysotile asbestos exposure (Ref. 4), regulations under those EPA statutes have limitations because they largely regulate releases to the environment, rather than direct human exposure. The Clean Air Act generally focuses on releases of asbestos to the ambient air. Under the Resource Conservation and Recovery Act (RCRA) Subtitle D, the disposal of chrysotile asbestos is regulated as a non-hazardous solid waste; RCRA does not address exposures during manufacturing, processing, distribution and use of products containing chrysotile asbestos. Only TSCA provides EPA the authority to regulate the manufacture (including import), processing, distribution in commerce, commercial use and commercial disposal of chemicals substances to be able to address chrysotile asbestos direct exposure to humans.

For these reasons, the Administrator does not determine that unreasonable risk from the conditions of use of chrysotile asbestos could be eliminated or reduced to a sufficient extent by actions taken under other Federal laws administered in whole or in part by EPA.

D. TSCA Section 26(h) Considerations

In accordance with TSCA section 26(h), EPA has used scientific information, technical procedures, measures, methods, protocols, methodologies, and models consistent with the best available science. The unreasonable risk determination was based on a risk evaluation, which was subject to peer review and public comment, was developed in a manner consistent with the best available science and based on the weight of the scientific evidence. The extent to which the various information, procedures, measures, methods, protocols, methodologies or models, as applicable, used in EPA's decision have been subject to independent verification or peer review is adequate to justify their use, collectively, in the record for this rule. In particular, the ECEL value incorporated into the interim workplace controls is derived from the analysis in the 2020 Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos; it likewise represents decisions based on the best available science and the weight of the scientific evidence (Ref. 23). The ECEL value of 0.005 f/cc as an 8-hour TWA is based incidence of lung cancer, mesothelioma and other cancers. Additional information on the peer review and public comment process, such as the peer review plan, the peer review report, and the Agency's response to comments, can be found at EPA's risk evaluation docket at EPA–HQ–OPPT–2019–0501 (Ref. 30).

E. TSCA Section 14 Requirements

EPA is also providing notice to manufacturers, processors, and other interested parties about potential impacts to confidential business information that may occur with this final rule. Under TSCA section 14(b)(4), if EPA promulgates a rule pursuant to TSCA section 6(a) that establishes a ban or phase-out of a chemical substance, the protection from disclosure of any confidential business information regarding that chemical substance and submitted pursuant to TSCA will be ''presumed to no longer apply,'' subject to the limitations identified in TSCA section 14(b)(4)(B)(i) through (iii). Pursuant to TSCA section 14(b)(4)(B)(iii), the presumption against protection from disclosure would apply only to information about the specific conditions of use that this rule would prohibit. Manufacturers or processors seeking to protect such information would be able to submit a request for nondisclosure as provided by TSCA sections 14(b)(4)(C) and 14(g)(1)(E). Any request for nondisclosure would need to be submitted within 30 days after receipt of notice from EPA under TSCA section 14(g)(2)(A). EPA anticipates providing such notice via the Central Data Exchange (CDX).

F. TSCA Section 18(c)(3) Federal Preemption

TSCA section 18(c)(3) defines the scope of federal preemption with respect to any final rule EPA issues under TSCA section 6(a). That provision provides that federal preemption of ''statutes, criminal penalties, and administrative actions'' applies to ''the hazards, exposures, risks, and uses or conditions of use of such chemical substances included in any final action the Administrator takes pursuant to [TSCA section 6(a)].'' With respect to this final TSCA section 6(a) rule for chrysotile asbestos, federal preemption applies to the COUs evaluated in the TSCA Risk Evaluation for Asbestos, Part 1. Federal preemption as a result of this section 6(a) rule does not apply to COUs that are being evaluated in EPA's Risk Evaluation for Asbestos, Part 2, including legacy uses and associated disposals, other types of asbestos fibers in addition to chrysotile, and conditions of use of asbestos-containing talc.

VIII. Severability

EPA intends that each provision of this rulemaking be severable. In the event of litigation staying, remanding, or invalidating all or a portion of EPA's risk management approach for one or more conditions of use (COUs) in this rule, EPA intends to preserve the risk management approach in the rule for all other portions of the risk management approach for a COU and all other COUs to the fullest extent possible. The Agency evaluated the risk management options in TSCA section 6(a)(1) through (7) for each COU and generally EPA's regulation of a COU to address the unreasonable risk from chrysotile asbestos functions independently from EPA's regulation of other COUs, which may have different characteristics leading to EPA's risk management decisions. Further, the Agency crafted this rule so that different risk management approaches are reflected in different provisions or elements of the rule that are capable of operating independently. Accordingly, the Agency has organized the rule so that if any provision or element of this rule is determined by judicial review or operation of law to be invalid, that partial invalidation will not render the remainder of this rule invalid.

There are many permutations of the above. Accordingly, rather than walking through each one, EPA is providing the following two representative examples for illustrative purposes. The first example of how the regulation of one COU is independent of another COU is based on the following COU examples of: the commercial use of chrysotile asbestos for use in sheet gaskets for chemical production, which EPA prohibited in § 751.509(a), and the commercial use of chrysotile asbestos for oilfield brake blocks, which EPA prohibited in § 751.509(d)(1). To the extent that a court were to find EPA lacked substantial evidence to support its prohibition of the commercial use of chrysotile asbestos for use in sheet gaskets for chemical production or otherwise found flaw with EPA's approach to that COU, it would have no bearing on other COUs, such as the commercial use of chrysotile asbestos for oilfield brake blocks, unless the specific flaw also applies to the particular facts associated with the commercial use of chrysotile asbestos for oilfield brake blocks. This is reflected in the structure of the rule, which does not intertwine the prohibitions for commercial use of chrysotile asbestos for use in sheet

gaskets for chemical production and the commercial use of chrysotile asbestos for oilfield brake blocks, but rather separately prohibits each of these COUs.

Another example of how different risk management approaches are reflected in different provisions or elements of the rule that are capable of operating independently is the regulatory provisions for the commercial use of chrysotile asbestos sheet gaskets for titanium dioxide production. EPA's risk management approach includes two elements: (1) a prohibition on the commercial use of chrysotile asbestos sheet gaskets for titanium dioxide production under § 751.509(b) and (2) interim workplace controls to reduce risk to workers until the prohibition takes effect under § 751.511. To the extent that a court were to find that EPA lacked substantial evidence to support the interim workplace controls for the commercial use of sheet gaskets for titanium dioxide production, or otherwise found flaw with EPA's approach with respect to this aspect of the risk management for this COU, it would have no bearing on EPA's decision to prohibit the commercial use of sheet gaskets for titanium dioxide production. This is reflected in the structure of the rule, which does not make the prohibition of the commercial use of sheet gaskets for titanium dioxide production contingent on the application of interim workplace controls.

IX. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos. December 2020. Office of Chemical Safety and Pollution Prevention. Washington, DC. December 2020. (EPA Docket Document Number EPA–HQ–OPPT–2021–0057–0007). *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0007.*
2. EPA. 2023. Economic Analysis of the TSCA Section 6 Final Rule for Asbestos Risk Management, Part 1. March 2024.
3. U.S. Geological Survey. (2023). Minerals Yearbook. *Asbestos. 2022 tables-only release.*
4. EPA. Regulatory History of Asbestos. March 2024.
5. EPA. Problem Formulation for the Risk Evaluation of Asbestos. May 2018. (EPA–HQ–OPPT–2016–0736–0131). *https://www.regulations.gov/document/EPA-HQ-OPPT-2016-0736-0131.*
6. EPA. Email Exchange with Mobis and EPA on the presence of Asbestos in its Brake and Friction Products. March to June, 2021. (EPA–HQ–OPPT–2021–0057–0016). *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0016.*
7. EPA. Section 6(a) Rulemakings under the Toxic Substances Control Act (TSCA) Chrysotile Asbestos Rulemakings E.O. 13132: Federalism Consultation. May 13, 2021 (EPA–HQ–OPPT–2021–0057–0239). *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0239.*
8. EPA. Notification of Consultation and Coordination on Proposed Rulemakings under the Toxic Substances Control Act for Asbestos Part 1: Chrysotile Asbestos. May 24, 2021 and June 3, 2021. Tribal Consultation. (EPA–HQ–OPPT–2021–0057–0013). *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0013.*
9. EPA. Environmental Justice Consultation on Forthcoming Proposed Rulemakings under TSCA Section 6(a). May 12, 2021. (EPA–HQ–OPPT–2021–0057–0242). *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0242.*
10. EPA. Part 1. Asbestos (Chrysotile) Public Webinar Slides. February 3, 2021. (EPA–HQ–OPPT–2021–0057–0003. *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0003.*
11. EPA. Part 1. Asbestos (Chrysotile) Small Business Administration roundtable slides on February 5, 2021. (EPA–HQ–OPPT–2021–0057–0004). *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0004.*
12. EPA. Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use Under Section 6(a) of the Toxic Substances Control Act (TSCA); Proposed Rule. Docket EPA–HQ–OPPT–2021–0057. Response to Public Comments. March 2024.
13. EPA. Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use Under Section 6(a) of the Toxic Substances Control Act (TSCA); Notice of Data Availability and Request for Comment EPA–HQ–OPPT–2021–0057. Response to Comments. March 2024.
14. Olin Corporation. Comment submitted by Olin Corporation. EPA–HQ–OPPT–2021–0057–0475. *https://www.regulations.gov/comment/EPA-HQ-OPPT-2021-0057-0475.*
15. EPA. Meeting with Olin Corporation, August 17, 2023.
16. EPA. Meeting with OxyChem Corporation on Risk Management under TSCA section 6, Asbestos Part 1: Chrysotile Asbestos. February 9, 2023. EPA–HQ–OPPT–2021–0057–0445. *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0445.*
17. EPA. Meeting with Westlake Corporation on Risk Management under TSCA section 6, Asbestos Part 1: Chrysotile Asbestos. November 3, 2022. EPA–HQ–OPPT–2021–0057–0446. *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0446.*
18. EPA. Meeting with Chemours Corporation on Risk Management under TSCA section 6, Asbestos Part 1: Chrysotile Asbestos. January 18, 2023. EPA–HQ–OPPT–2021–0057–0442. *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0442.*
19. The Chemours Company. Comment submitted by The Chemours Company, EPA–HQ–OPPT–2021–0057–0366. *https://www.regulations.gov/comment/EPA-HQ-OPPT-2021-0057-0366.*
20. Savannah River Nuclear Solutions. Comment submitted by Savannah River Nuclear Solutions. EPA–HQ–OPPT–2021–0057–0478. *https://www.regulations.gov/comment/EPA-HQ-OPPT-2021-0057-0478.*
21. EPA, DOE, SCDHEC. Federal Facility Agreement for the Savannah River Site, Administrative Docket No. 89–05–FF. August 16, 1993.
22. EPA, DOE, SCDHEC. 2022 High Level Waste Tank Milestones Agreement; Savannah River Site Federal Facilities Agreement Modification. December 2022.
23. EPA. Existing Chemical Exposure Limit (ECEL) for Occupational Use of Chrysotile Asbestos. March 2, 2021. EPA–HQ–OPPT–2021–0057–0017. *https://www.regulations.gov/document/EPA-HPA-HQ-OPPT-2021-0057-0017.*
24. Office of Management and Budget. Memorandum for the Heads of Executive Departments and Agencies (M–95–09). Guidance for Implementing Title II of S. 1. March 31, 1995. *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/1995-1998/m95-09.pdf.* Accessed December 14, 2021.
25. EPA. Meeting with Chemours Corporation on Risk Management under TSCA section 6, Asbestos Part 1: Chrysotile Asbestos. March 29, 2021. (EPA–HQ–OPPT–2021–0057–0018). *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0018.*
26. EPA. Meeting with Olin Corporation on Risk Management under TSCA section 6, Asbestos Part 1: Chrysotile Asbestos. June 2, 2021. (EPA–HQ–OPPT–2021–0057–0019). *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0019.*
27. EPA. Meeting with OxyChem Corporation on Risk Management under TSCA section 6, Asbestos Part 1: Chrysotile Asbestos. May 27, 2021. (EPA–HQ–OPPT–2021–0057–0020). *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0020.*
28. EPA. Meeting with Westlake Corporation on Risk Management under TSCA section 6, Asbestos Part 1: Chrysotile Asbestos. May 20, 2021. (EPA–HQ–OPPT–2021–0057–0021). *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0021.*
29. EPA. Meeting and Correspondence with The Chlorine Institute on Risk

Evaluation and Risk Management for Part 1: Chrysotile Asbestos. May 18, 2021. (EPA–HQ–OPPT–2021–0057–0024). *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0024.*

30. EPA. Summary of External Peer Review and Public Comments and Disposition for Chrysotile Asbestos. May 2020 (EPA–HQ–OPPT–2019–0501).
31. EPA. Information Collection Request (ICR) for the Regulation of Part 1: Chrysotile Asbestos under TSCA Section 6(a) (Final Rule). EPA ICR No. 2707.02; OMB No. 2070–0220. March 2024.
32. EPA. Unfunded Mandates Reform Act Statement. Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use under TSCA Section 6(a). March 2024.
33. Asbestos Disease Awareness Organization. Comments submitted at the Environmental Justice Webinar. June 1, 2021. EPA–HQ–OPPT–2021–0057–0005. *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0005.*

X. Statutory and Executive Order Reviews

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

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

This action is a ''significant regulatory action'' as defined under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023). 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 Executive Order 12866 review is available in the docket.

As summarized in Unit I.E., EPA prepared an analysis of the potential costs and benefits associated with this action (Ref. 2), a copy of which is available in the docket and discussed in Unit VII.B.

B. Paperwork Reduction Act (PRA)

The information collection requirements in this final rule have been submitted to OMB for approval under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR No. 2707.02 and OMB Control No. 2070–0220. You can find a copy of the ICR in the docket for this rule (Ref. 31), and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information collection activities required under this rule include reporting and recordkeeping requirements. As explained in Unit VI.F. and specified at § 751.511, companies that manufacture (including import), process, distribute in commerce and use chrysotile asbestos would be required to retain certain information at the company headquarters for five years from the date of generation. These information collection activities are necessary to provide EPA with information upon inspection. EPA believes that these information collection activities would not significantly impact the regulated entities. As further explained in the ICR document:

- Four (4) titanium dioxide manufacturing facilities that use sheet gaskets and 8 chlor-alkali facilities are estimated to incur costs associated with the ECEL (specifically, developing the exposure control plan, conducting exposure monitoring, and the associated notifications and recordkeeping). Each firm is predicted to an incur an average burden of 182.98 hours per year.
- Five (5) chemical manufacturing facilities that use sheet gaskets and 12 to 1,400 companies installing aftermarket automotive brakes are estimated to incur additional recordkeeping costs associated with their disposal activities. Firms are predicted to incur a burden of ranging from 0.03 hours to 4.42 hours per year.
- For the remaining industry sectors and recordkeeping activities required by the rule, records that comply with the requirements are assumed to already be maintained as part of ordinary business records. Therefore, EPA estimates that such respondents would incur no additional incremental paperwork burdens due to the rule.

Respondents/affected entities: Chrysotile asbestos manufacturers (including importers), processors, distributors, and users.

Respondent's obligation to respond: Mandatory. TSCA section 6(a) and the final rule.

Estimated number of respondents: 721.

Frequency of response: On occasion.

Total estimated burden: 2,269 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $370,973 (per year), includes $233,425 annualized capital or operation & maintenance costs.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action manufacture (including import), process, distribute in commerce and use chrysotile asbestos in the conditions of use covered by this rule. As described in more detail in section 6.2 of the Economic Analysis (Ref. 2), EPA has determined that 14 to 1,372 small entities would be subject to the rule. The available information about the magnitude of the small entity impacts for each use category are summarized below:

Chlor-alkali facilities: None of the three affected firms are small businesses.

Sheet gasket manufacturing for chemical production: EPA does not have the information to calculate the costs of the rule to small businesses in this sector, so small business impacts have not been estimated. EPA is aware of the identity of a small business that manufactures sheet gaskets containing asbestos for chemical production (including titanium dioxide production), and the Agency assumes that there may be a second small business providing sheet gaskets containing asbestos for similar uses. While EPA lacks the information to estimate the compliance cost and the resulting impact on firms in this sector, the one firm EPA is aware of supplying this sector sells a diverse line of products (including non-asbestos gaskets and many products other than gaskets) serving several different industries, and it operates several sites that do not manufacture gaskets containing asbestos. This suggests that asbestos-containing gaskets are not a primary source of revenue for the firm. EPA assumes that if there is another manufacturer of asbestos gaskets for similar uses, that it also sells non-asbestos gaskets. Since asbestos gaskets are such a niche portion of the gasket industry, EPA believes this is a reasonable assumption. If the customers using gaskets containing asbestos are able to convert entirely to asbestos-free gaskets, the affected gasket manufacturers could likely provide the

substitute products. These customers consist of chemical manufacturers that are all large businesses as far as EPA is aware. To the extent that asbestos-free gaskets do not last as long as those containing asbestos, the rule could potentially increase revenues for the affected gasket manufacturers. Asbestos-free products in these applications reportedly require more frequent replacement than items containing asbestos. As a result, the rule could increase revenues for the affected small business suppliers if they sell a larger volume of non-asbestos products to the end users as replacements.

Sheet gasket end users (chemical production): None of the 4 firms known to be affected are small businesses. It is possible there may be other unknown small businesses that may be affected.

Oilfield brake block importer: EPA does not have the information to calculate the costs of the rule to small businesses in this sector, so small business impacts have not been estimated. There is one firm known to import and distribute oilfield brake blocks containing asbestos and it is a small business. While EPA was not able to estimate the compliance cost and its impact on this firm, if the customers (which may include other small businesses) with older drilling rigs currently using brake blocks containing asbestos continue to use those rigs, the importer could likely provide the asbestos-free brake blocks used as substitutes. To the extent that asbestos-free brake blocks are more expensive and do not last as long as those containing asbestos, the rule could potentially increase revenues for the affected brake block importer. A less durable product might be less profitable for the customers, but selling a product that has to be replaced more often could increase revenues for the importer if it sells a larger volume of non-asbestos products to the end users as replacements.

Oilfield brake block—end users: EPA has not identified any small businesses using oilfield brake blocks containing asbestos. If there are such small businesses, EPA does not have the information needed to calculate the costs of the rule to them. Industry sources have indicated that the use of asbestos-containing brake blocks has declined over time because the type of drilling rigs that use them have been replaced by equipment that does not require the use of brake blocks containing asbestos, or that do not use brake blocks at all. Since there is only one known importer and it is small, there are likely few companies still using asbestos-containing brake blocks.

Aftermarket automotive brakes: 11 to 1,369 small businesses are estimated to be affected by the rule. The estimate of 11 affected small entities assumes that each affected business performs between 40 and 700 brake replacements per year using asbestos brake linings or pads. The estimate of 1,369 affected small entities assumes that each affected business installs a single set of asbestos brake linings or pads per year. Affected firms are expected to incur a cost of approximately $18 per brake replacement job for the additional expense of a set of four non-asbestos brake linings or pads, and about $1 for recordkeeping for their waste disposal activities. This results in annual costs between $20 and $14,000 per firm (depending on the number of brake replacements they perform). At the low-end of 11 affected brake replacement firms, approximately 85% would have cost impacts of less than 1% of their annual revenues, about 10% would have cost impacts between 1% and 3%, and roughly 6% would have cost impacts over 3%. At the high-end estimate of 1,369 affected brake replacement firms affected, 100% of firms would have a cost impact of less than 1% of their annual revenue. As described in the Economic Analysis (Ref. 2), aftermarket automobile brakes containing asbestos are estimated to have a very small share (0.002%) of the total market. EPA did not estimate any costs for these businesses associated with finding suppliers of non-asbestos brakes because EPA assumes that these businesses already sell non-asbestos brakes as well as brakes containing asbestos.

Other gaskets: EPA is not aware of any firms that would be affected for this use category, since the one firm that previously indicated that it used these products subsequently stated that it does not do so. Therefore, no impacts are predicted on this use category as a result of the rule.

Other vehicle friction products: EPA is not aware of any firms impacted for this use category because the one firm that previously indicated to EPA that it used products in this use category subsequently stated that it does not do so. Therefore, no impacts are predicted on this use category as a result of the rule. To the extent there are ongoing uses, it is likely that the effects of the rule would be similar to those for aftermarket auto brakes (a few firms facing a small cost increase for asbestos-free products that probably can be passed on to consumers).

Details of this analysis are presented in the Economic Analysis (Ref. 2).

D. Unfunded Mandates Reform Act (UMRA)

This action contains a federal mandate under UMRA, 2 U.S.C. 1531–1538, that may result in expenditures of more than the inflation-adjusted UMRA threshold of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, the EPA has prepared a written statement required under UMRA section 202. The statement is included in the docket for this action and briefly summarized here. (Ref. 32)

Total annual net compliance costs per year over the first 12 years of this rule are estimated to range from a cost of $342 million to a savings of $126 million, depending on the year. (This does not include costs for sheet gaskets used in chemical production, brake blocks in the oil industry, other vehicle friction products, or other gaskets, which were not quantified). Thus, the cost of the rule in any one year can exceed $177 million, the inflation-adjusted UMRA threshold. When longer term savings in the chlor-alkali industry are accounted for over a 35-year period (the estimated useful lifespan of facilities in the chlor-alkali industry), the quantified incremental costs of the rule using a 3% discount rate range from savings of less than $1 million per year to costs of more than $7 million per year. Using a 7% discount rate, the incremental costs range from more than $34 million per year to greater than $43 million per year.

The economic impact of a regulation on the national economy is generally considered to be measurable only if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP) (Ref. 24). Given the current GDP of $27.62 trillion, this is equivalent to a cost of $69 billion to $138 billion. Therefore, EPA has concluded that this rule is highly unlikely to have any measurable effect on the national economy.

The quantified benefits of avoided cancer incidence due to the requirements for chlor-alkali facilities, sheet gaskets in chemical production, and aftermarket automobile brakes total approximately $6,000 per year using a 3% discount rate and $3,000 per year using a 7% discount rate. There are also benefits due to the reduction in pollutants generated by electric utilities that supply power to the chlor-alkali facilities, as well as various unquantified benefits.

UMRA section 205 requires that before promulgating any rule for which a written statement is required under

UMRA section 202, the agency shall identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the head of the affected agency publishes with the final rule an explanation of why the least costly, most cost-effective or least burdensome method of achieving the objectives of the rule was not adopted; or the provisions are inconsistent with law.

EPA considered two primary regulatory alternatives to the requirements that are being finalized in this action for chrysotile asbestos diaphragms in the chlor-alkali industry. Under one alternative the prohibitions on the processing, distribution in commerce and commercial use of asbestos diaphragms at chlor-alkali facilities would take effect at all facilities five years after the effective date of the final rule. Under the other alternative these prohibitions would take effect at all facilities after 12 years. The 12-year option has slightly lower estimated annualized costs than the final rule in EPA's Economic Analysis (Ref. 2) when using a 7 percent discount rate. However, as described in Unit VII.B.4.b.ii., this is an artifact of how the time at which costs are incurred affects the incremental annualized cost estimates of the rule. Moreover, neither alternative option is consistent with the statute or the objectives of the rule.

EPA has concluded that the regulatory alternatives it considered are not consistent with the statute or the objectives of the rule. TSCA requires that EPA specify mandatory compliance dates for all requirements of a TSCA section 6(a) rule, and that the dates be ''as soon as practicable'' and ''provide for a reasonable transition period.'' As described in Unit V., given the differences among chlor-alkali facilities, EPA has concluded that a compliance deadline of five years for the processing, distribution in commerce and commercial use at all facilities would not provide a reasonable transition period without anticipated disruption to the available chlorine supply for water treatment. But allowing the processing, distribution in commerce and commercial use of asbestos diaphragms to continue for 12 years at all facilities would not be as soon as practicable, since some facilities will be able to complete their conversion to non-asbestos technology in less than 12 years. Therefore, neither of the alternative options considered would be consistent with the statute or the objectives of the rule. Instead, EPA is finalizing requirements that provide longer staggered phase-out periods to provide a reasonable period for companies to sequentially convert some facilities from chrysotile asbestos diaphragm technology to membrane technology that is still as quickly as is practicable.

Additional information on EPA's estimates of the benefits and costs of this action are provided in Units I.E. and VII.B.4. and in the Economic Analysis (Ref. 2). Information on the authorizing legislation is provided in Unit I.B. Information on prior consultations with affected State, local, and Tribal governments is provided in Units X.E and X.F.

This action is not subject to the requirements of UMRA section 203 because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

As discussed in Unit I.E.7., EPA has concluded that this action has federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because regulation under TSCA section 6(a) may preempt state law. EPA provides the following federalism summary impact statement. The Agency consulted with state and local officials early in the process of developing the proposed action to facilitate their meaningful and timely input into its development. EPA invited the following national organizations representing state and local elected officials to a meeting on May 13, 2021, in Washington, DC: National Governors Association, National Conference of State Legislatures, Council of State Governments, National League of Cities, U.S. Conference of Mayors, National Association of Counties, International City/County Management Association, National Association of Towns and Townships, County Executives of America, and Environmental Council of States. A summary of the meeting with these organizations, including the views that they expressed, is available in the docket (Ref. 7). EPA provided an opportunity for these organizations to provide follow-up comments in writing but did not receive any such comments.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rulemaking would not have substantial direct effects on tribal government because chrysotile asbestos is not manufactured, processed, or distributed in commerce by tribes and would not impose substantial direct compliance costs on tribal governments. Thus, Executive Order 13175 does not apply to this action. EPA nevertheless consulted with tribal officials during the development of this action, consistent with the EPA Policy on Consultation and Coordination with Indian Tribes.

EPA met with tribal officials via teleconferences on May 24, 2021, and June 3, 2021, concerning the prospective regulation of chrysotile asbestos under TSCA section 6 (Ref. 8). Tribal officials were given the opportunity to meaningfully interact with EPA risk managers concerning the current status of risk management. EPA received questions during both meetings held during the consultation period concerning potential risks to workers, consumers, and general population. Participants in the consultations expressed interest in the conditions of use where EPA found unreasonable risk and how EPA would address that unreasonable risk. EPA responded by providing the suite of options provided the agency under TSCA section 6 to address the unreasonable risk (Ref. 8).

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

Executive Order 13045 (62 FR 19885, April 23, 1997) directs federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is subject to Executive Order 13045 because it is a significant regulatory action under section 3(f)(1) of Executive Order 12866, and, as discussed in Unit I.E.6., EPA believes that the environmental health or safety risk addressed by this action has a disproportionate effect on children. The health effects of concern related to exposures to chrysotile asbestos are mesothelioma, lung and other cancers, all of which have long latency periods following exposure. Accordingly, we have evaluated the environmental health or safety effects of asbestos on children.

The Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos (Ref. 1) demonstrated in sensitivity analyses that age at first exposure affected risk estimates, with earlier exposures in life resulting in greater risk. For children, exposures can be anticipated (1) as bystanders for consumer uses such as aftermarket brakes and (2) in consumer uses and occupational uses given that

the risk evaluation presented information indicating that children 16 years of age may engage in these activities.

The results of EPA's evaluation are contained in the risk evaluation (Ref. 1) and the Economic Analysis (Ref. 2). Copies of these documents have been placed in the public docket for this action.

This action is preferred over other regulatory options analyzed because this action prohibits the manufacture (including import), processing, commercial use, and distribution in commerce of chrysotile asbestos for the regulated conditions of use as soon as practicable while providing for a reasonable transition period.

Furthermore, as discussed in Unit I.E.6., EPA's Policy on Children's Health also applies to this action. Information on how the Policy was applied is available under ''Children's Environmental Health'' in the **SUPPLEMENTARY INFORMATION** unit of this preamble.

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

This action is not a ''significant energy action'' under Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The action is predicted to reduce energy use and is not expected to reduce energy supply or increase energy prices.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards under NTTAA, 15 U.S.C. 272.

J. Executive Orders 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and 14096: Revitalizing our Nation's Commitment to Environmental Justice for All

In accordance with Executive Orders 12898 (59 FR 7629, February 16, 1994) and 14096 (88 FR 25251, April 26, 2023), EPA considered the environmental justice (EJ) conditions that exist prior to this action, and the likely effects of this action. EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with EJ concerns. As summarized in Unit I.E.5. and described more fully in the Economic Analysis (Ref. 2), the firms that will be subject to regulation, particularly for the chlor-alkali and sheet gasket use categories, are often located in areas with a high concentration of industrial activities that pose a variety of environmental hazards to surrounding populations. It is not possible to separate potential EJ concerns currently posed by the use categories being regulated from other risks in the community that are unrelated to chrysotile asbestos. Although data are not available on the worker demographics at specific companies, chemical workers in communities with chlor-alkali facilities are more likely to be Hispanic, less likely to be a race other than White or Black, and have higher incomes on average than chemical workers nationally. Workers in communities with other affected chemical producers are more likely to be Black and less likely to be Hispanic or a race other than White or Black than chemical workers nationally.

EPA believes that this action is likely to reduce existing disproportionate and adverse effects on communities with EJ concerns. Any disproportionate impacts related to the conditions of use that are subject to this rule will be reduced, and ultimately eliminated once all of the prohibitions in the rule take effect. Thus, EJ concerns will be mitigated compared to the baseline.

EPA conducted outreach to advocates of communities with EJ concerns that might be subject to disproportionate exposure to chrysotile asbestos. EPA's EJ consultation occurred from June 1 through August 13, 2021. On June 1 and 9, 2021, EPA held public meetings as part of this consultation (Ref. 9). See also Unit III.A.1. These meetings were held pursuant to and in compliance with Executive Order 12898 and Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619, February 1, 2021). EPA received several comments following the EJ meetings. Commenters expressed concerns that consumers who live near chlor-alkali facilities and Do-It-Yourself (DIY) auto workers could be exposed unless chrysotile asbestos is banned (Ref. 33). EPA also acknowledges that there are pre-existing EJ concerns in communities surrounding some of the affected chlor-alkali facilities and one other chemical manufacturer in Louisiana and Texas due to high levels of polluting industrial activities and high proportions of residents who are people of color (described in more detail in the Economic Analysis (Ref. 2)). This rule is not expected to affect all of these pre-existing EJ concerns, since some of the EJ concerns in these communities result from pollutants other than chrysotile asbestos from facilities that are not affected by this rule.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* 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 751

Environmental protection, Chemicals, Export certification, Hazardous substances, Import certification, Recordkeeping.

Michael S. Regan,

Administrator.

Therefore, for the reasons set forth in the preamble, 40 CFR chapter I is amended as follows:

PART 751—REGULATION OF CERTAIN CHEMICAL SUBSTANCES AND MIXTURES UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

■ 1. The authority citation for part 751 continues to read as follows:

Authority: 15 U.S.C. 2605, 15 U.S.C. 2625(l)(4).

■ 2. Add a subpart F, consisting of §§ 751.501 through 751.515, to read as follows:

Subpart F—Chrysotile Asbestos

Sec.

751.501 General.
751.503 Definitions.
751.505 Manufacturing, processing and commercial use of chrysotile asbestos diaphragms in the chlor-alkali industry.
751.507 Certification of compliance for the chlor-alkali industry.
751.509 Other prohibitions and restrictions of the manufacturing, processing and commercial use of chrysotile asbestos.
751.511 Interim workplace controls of asbestos exposures.
751.513 Disposal.
751.515 Recordkeeping.

§ 751.501 General.

This subpart sets certain restrictions on the manufacture (including import), processing, distribution in commerce, and commercial use and disposal of chrysotile asbestos (CASRN 132207–32–0) to prevent unreasonable risk of injury to health in accordance with TSCA section 6(a), 15 U.S.C. 2605(a).

§ 751.503 Definitions.

The definitions in subpart A of this part apply to this subpart unless otherwise specified in this section. In

addition, the following definitions apply to this subpart:

Aftermarket automotive brakes and linings means any automotive friction brake articles sold in the secondary market as replacement parts (*e.g.,* brake pads, linings and shoes) used in disc and drum brake systems on automobiles and trucks.

Article means a manufactured item:

(1) Which is formed to a specific shape or design during manufacture;

(2) Which has end use function(s) dependent in whole or in part upon its shape or design during end use; and

(3) Which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design.

Authorized person means any person specifically authorized by the owner or operator to enter, and whose duties require the person to enter, a regulated area.

Chrysotile asbestos is the asbestiform variety of a hydrated magnesium silicate mineral, with relatively long and flexible crystalline fibers that are capable of being woven.

Disposal means to discard, throw away, or otherwise complete or terminate the useful life of chrysotile asbestos, including any chrysotile asbestos-containing products or articles.

Distribution in commerce has the same meaning as in section 3 of the Act, but the term does not include distribution of chrysotile asbestos waste solely for purposes of disposal in accordance with this Subpart.

Diaphragms means semipermeable diaphragms, which separate the anode from the cathode chemicals in the production of chlorine and sodium hydroxide (caustic soda).

Gasket means an article used to form a leakproof seal between fixed components.

Membrane technology means a chlor-alkali production technology that uses chlorine production cells in which the anode and the cathode are separated by an ion-exchange membrane that is designed to allow only sodium ions and some water to pass through it.

Nuclear material means any source material, special nuclear material, or byproduct material (as such terms are defined in the Atomic Energy Act of 1954, as amended, and regulations issued under such Act).

Oilfield brake blocks means the friction brake blocks component in drawworks used in the hoisting mechanism for oil well drilling rigs.

Other gaskets means gaskets other than *sheet gaskets in chemical production,* to include gaskets used in the exhaust systems of utility vehicles.

Other vehicle friction products means friction articles such as brakes and clutches, other than *aftermarket automotive brakes and linings,* installed on any vehicle, including on off-road vehicles, trains, planes, etc. *Other vehicle friction products* does not include articles used in the NASA Super Guppy Turbine aircraft, a specialty cargo plane used for the transportation of oversized equipment that is owned and operated by the National Aeronautics and Space Administration (NASA).

Owner or operator means any person who owns, leases, operates, controls, or supervises a workplace covered by this subpart.

Potentially exposed person means any person who may be occupationally exposed to a chemical substance or mixture in a workplace as a result of a condition of use of that chemical substance or mixture.

Processing has the same meaning as in section 3 of the Act, but the term does not include processing of chrysotile asbestos waste solely for purposes of disposal in accordance with this subpart.

Regulated area means an area established by the regulated entity to demarcate where airborne concentrations of a specific chemical substance exceed, or there is a reasonable possibility they may exceed, the ECEL.

Savannah River Site means the Department of Energy's nuclear waste management and related national defense operations at its Savannah River Site in Aiken, Barnwell and Allendale counties in South Carolina, including operations at H-Canyon, F and H Tank Farms, Defense Waste Processing Facility, Savannah River National Laboratory and any on-site facility managed by Savannah River Nuclear Solutions.

Sheet gaskets in chemical production means gaskets cut from sheeting, including asbestos-containing rubberized sheeting, that are used in facilities for extreme condition applications such as titanium dioxide manufacturing, or processing nuclear material.

§ 751.505 Manufacturing, processing, distribution in commerce and commercial use of chrysotile asbestos diaphragms in the chlor-alkali industry.

(a) After May 28, 2024, all persons are prohibited from manufacture (including import) of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for diaphragms in the chlor-alkali industry.

(b) After May 28, 2029, all persons are prohibited from processing, distribution in commerce and commercial use of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for diaphragms in the chlor-alkali industry, except as provided in paragraphs (c) through (d) of this section.

(c) Any person who meets all of the criteria of this paragraph (c) may process, distribute in commerce and commercially use chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for diaphragms in the chlor-alkali industry at no more than two facilities until May 25, 2032:

(1) On May 28, 2024, the person owns or operates more than one facility that uses chrysotile asbestos in chlor-alkali production;

(2) The person is converting more than one facility that the person owns or operates that as of May 28, 2024 uses chrysotile asbestos in chlor-alkali production from the use of chrysotile asbestos diaphragms to non-chrysotile asbestos membrane technology, and by May 28, 2029, the person has ceased all processing, distribution in commerce and commercial use of chrysotile asbestos at one (or more) facility undergoing or that has undergone conversion to non-chrysotile asbestos membrane technology; and

(3) The person certifies to EPA compliance with the provisions of this paragraph, in accordance with § 751.507.

(d) Any person who meets all of the criteria of this paragraph (d) may process, distribute in commerce and commercially use chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for diaphragms in the chlor-alkali industry at not more than one facility until May 26, 2036:

(1) On May 28, 2024, the person owns or operates more than two facilities that use chrysotile asbestos in chlor-alkali production; and

(2) The person is converting more than two facilities that the person owns or operates that as of May 28, 2024 use chrysotile asbestos in chlor-alkali production from the use of chrysotile

asbestos diaphragms to non-chrysotile asbestos membrane technology:

(i) By May 28, 2029, the person has ceased all processing, distribution in commerce and commercial use of chrysotile asbestos at one (or more) facility undergoing or that has undergone such conversion; and

(ii) By May 25, 2032 the person has ceased all processing, distribution in commerce and commercial use of chrysotile asbestos at two (or more) facilities undergoing or that have undergone conversion to non-chrysotile asbestos membrane technology; and

(3) The person certifies to EPA compliance with the provisions of this paragraph, in accordance with § 751.507.

§ 751.507 Certification of compliance for the chlor-alkali industry.

(a) In addition to meeting the requirements of §§ 751.505(c), any person who processes, distributes in commerce or commercially uses chrysotile asbestos for diaphragms in the chlor-alkali industry between May 28, 2029 and May 25, 2032 must:

(1) Certify to EPA their compliance with all requirements of § 751.505(c); and

(2) Provide the following information to EPA to support their compliance with the requirements of § 751.505(c):

(i) Identification of the facility for which, by May 28, 2029, the person has ceased all processing, distribution in commerce and commercial use of chrysotile asbestos, pursuant to § 751.505(c)(2), including:

(A) facility name, location, and mailing address;

(B) name of facility manager or other contact, title, phone number and email address; and

(C) date the person ceased all processing, distribution in commerce and commercial use of chrysotile asbestos at the facility.

(ii) Identification of the facility or facilities (no more than two facilities) for which the person will after May 28, 2029, continue to process, distribute in commerce and commercially use chrysotile asbestos diaphragms while the facility or facilities are being converted to non-chrysotile asbestos membrane technology, pursuant to § 751.505(c), including for each facility:

(A) facility name, location, and mailing address; and

(B) name of facility manager or other contact, title, phone number and email address.

(b) In addition to meeting the requirements of paragraph (a) of this section and §§ 751.505(d), any person who processes, distributes in commerce or commercially uses chrysotile asbestos for diaphragms in the chlor-alkali industry between May 25, 2032 and May 26, 2036 must:

(1) Certify to EPA their compliance with all requirements of § 751.505(d); and

(2) Provide the following information to EPA to support their compliance with the requirements of § 751.505(d):

(i) Identification of the facility identified in § 751.505(d)(2)(ii) at which as of May 25, 2032, the person has ceased all processing, distribution in commerce and commercial use of chrysotile asbestos, including:

(A) facility name, location, and mailing address;

(B) name of facility manager or other contact, title, phone number and email address; and

(C) date the person has ceased all processing, distribution in commerce and commercial use of chrysotile asbestos at the facility.

(ii) Identification of the facility at which the person will between May 25, 2032 and no later than May 26, 2036, continue to process, distribute in commerce and commercially use chrysotile asbestos diaphragms while the facility is being converted to non-chrysotile asbestos membrane technology pursuant to § 751.505(d), including:

(A) facility name, location, and mailing address; and

(B) name of facility manager or other contact, title, phone number and email address.

(c) The certification required by paragraphs (a) and (b) of this section must be signed and dated by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of chlor-alkali operations, or any other person who performs similar policy or decision-making functions for the corporation.

(d) Any person signing a document under paragraph (c) of this section shall also make the following certification:

> ''I certify under penalty of law that this document was prepared under my direction or supervision, and the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware it is unlawful to knowingly submit incomplete, false and/or misleading information and there are criminal penalties for such conduct.''

(e) This certification must be submitted to the Director, Office of Pollution Prevention and Toxics (OPPT), using the address specified at 40 CFR 700.17(a).

(1) The certification under paragraph (a) of this section must be submitted no later than 10 business days after May 28, 2029; and

(2) The certification under paragraph (b) of this section must be submitted no later than 10 business days after May 25, 2032.

§ 751.509 Other prohibitions and restrictions on the manufacturing, processing, distribution in commerce and commercial use of chrysotile asbestos.

(a) After May 27, 2026, all persons are prohibited from manufacturing (including importing), processing, distributing in commerce, and commercial use of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for use in sheet gaskets for chemical production, except as provided in paragraphs (b) and (c) of this section. Any sheet gaskets for chemical production which are already installed for use on May 27, 2026 are not subject to the distribution in commerce and commercial use prohibitions.

(b) Any person may commercially use chrysotile asbestos sheet gaskets for titanium dioxide production until May 28, 2029.

(c)(1)(i) Any person may commercially use chrysotile asbestos sheet gaskets for processing nuclear material until May 28, 2029.

(ii) Any person may commercially use chrysotile asbestos sheet gaskets for processing nuclear material at the Savannah River Site until December 31, 2037.

(2) After November 25, 2024, any person commercially using chrysotile asbestos sheet gaskets for processing nuclear material pursuant to (c)(1)(i) and (ii) must have in place exposure controls expected to reduce exposure of potentially exposed persons to asbestos, and provide potentially exposed persons in the regulated area where chrysotile asbestos sheet gasket replacement is being performed a full-face air purifying respirator with a P–100 (HEPA) cartridge (providing an assigned protection factor of 50), or other respirator that provides a similar or higher level of protection to the wearer.

(3)(i) Any sheet gaskets for processing nuclear material which are already installed for use on May 28, 2029 are not subject to the distribution in commerce and commercial use prohibitions in paragraphs (a) of this section.

(ii) Any sheet gaskets for processing nuclear material at the Savannah River Site which are already installed for use on December 31, 2037, are not subject

to the distribution in commerce and commercial use prohibitions in paragraphs (a) of this section.

(d) After November 25, 2024, all persons are prohibited from manufacturing (including importing), processing, distribution in commerce and commercial use of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for commercial use of:

(1) Oilfield brake blocks;

(2) Aftermarket automotive brakes and linings;

(3) Other vehicle friction products; and

(4) Other gaskets.

(e) After November 25, 2024, all persons are prohibited from the manufacturing (including importing), processing, and distribution in commerce of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for consumer use of:

(1) Aftermarket automotive brakes and linings; and

(2) Other gaskets.

(f) On November 25, 2024:

(1) Any aftermarket automotive brakes and linings, other vehicle friction products, and other gaskets which are already installed for commercial use are not subject to the prohibitions on distribution in commerce and commercial use under paragraph (d) of this section.

(2) Any aftermarket automotive brakes and linings, and other gaskets which are already installed for consumer use are not subject to the distribution in commerce prohibition under paragraph (e) of this section.

§ 751.511 Interim workplace controls of chrysotile asbestos exposures.

(a) *Applicability.* This section applies to processing and commercial use of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for chrysotile asbestos diaphragms in the chlor-alkali industry; and to the commercial use of chrysotile asbestos sheet gaskets for titanium dioxide production.

(b) *Interim Existing Chemical Exposure Limit (ECEL).* Beginning November 25, 2024, the owner or operator must ensure that no person is exposed to an airborne concentration of chrysotile asbestos in excess of the interim ECEL for chrysotile asbestos of 0.005 fibers (f)/cubic centimeter (cc) as an eight (8)-hour time-weighted average (TWA). Where an owner or operator cannot demonstrate exposure at or below the ECEL, including through the use of all technically feasible engineering controls or work practices as described in paragraph (e)(1) of this section, and has not demonstrated that it has appropriately supplemented with respiratory protection that complies with the requirements of paragraph (f) of this section, this will constitute a failure to comply with the ECEL.

(c) *Exposure monitoring*—(1) *In general.* (i) Owners or operators must determine each potentially exposed person's exposure from personal breathing zone air samples that are representative of the 8-hour TWA exposure of each potentially exposed person.

(ii) Representative 8-hour TWA of a potentially exposed person's exposure must be determined on the basis of one or more samples representing full-shift exposures for each shift for each potentially exposed person in each job classification in each work area.

(2) *Initial exposure monitoring.* No later than November 25, 2024 each owner or operator covered by paragraph (a) of this section as of May 28, 2024, must perform initial exposure monitoring of all potentially exposed persons.

(3) *Periodic exposure monitoring.* The owner or operator must establish an exposure monitoring program for periodic monitoring of exposure to chrysotile asbestos. If one or more samples representing full-shift exposures from the most recent exposure monitoring exceeds the ECEL (>0.005 f/cc 8-hour TWA), periodic exposure monitoring is required within three months of the most recent exposure monitoring. Otherwise, periodic exposure monitoring is required within six months of the most recent exposure monitoring.

(4) *Additional exposure monitoring.* The owner or operator must conduct additional exposure monitoring within a reasonable timeframe after there has been a change in the production, process, control equipment, personnel or work practices that may result in new or additional exposures above the ECEL or the owner or operator has any reason to suspect that a change may result in new or additional exposures above the ECEL.

(5) *Method of monitoring.* (i) Exposure monitoring samples must be personal breathing zone samples collected and analyzed using methods and quality control procedures described in Appendix A to 29 CFR 1910.1001, or as referenced in Appendix A to 29 CFR 1910.1001 (Appendix B to 29 CFR 1910.1001, OSHA method ID–160, or the NIOSH 7400 method).

(ii) Owners or operators must use exposure monitoring methods that conform with the OSHA Reference Method specified in Appendix A of 29 CFR 1910.1001 or an equivalent method. If an equivalent method is used, the owner or operator must ensure that the method meets the following criteria:

(A) Replicate exposure data used to establish equivalency are collected in side-by-side field and laboratory comparisons; and

(B) The comparison indicates that 90% of the samples collected in the range 0.5 to 2.0 times the ECEL or the lowest concentration possible have an accuracy range of plus or minus 25 percent of the OSHA Reference Method specified in Appendix A of 29 CFR 1910.1001 at a 95 percent confidence level as demonstrated by a statistically valid protocol. The NIOSH 7402 analytical method may be applied to adjust the analytical result to include only chrysotile asbestos.

(6) *Notification of exposure monitoring results.* (i) The owner or operator must, within 15 business days of receipt of monitoring results, notify each potentially exposed person of these results either individually in writing or by posting the results in an appropriate location that is accessible to all potentially exposed persons. The notice must be in plain language and understandable to all potentially exposed persons.

(ii) The written notification required by paragraph (c)(6)(i) of this section must include the corrective action being taken by the owner or operator to reduce exposure to or below the ECEL, wherever monitoring results indicated that the ECEL had been exceeded.

(d) *Regulated areas*—(1) *Establishment.* Beginning November 25, 2024 the owner or operator must establish regulated areas wherever airborne concentrations of chrysotile asbestos exceed, or there is a reasonable possibility that they may exceed, the ECEL.

(2) *Demarcation.* The owner or operator must demarcate regulated areas from the rest of the workplace in a manner that minimizes the number of persons who will be exposed to chrysotile asbestos.

(3) *Access.* The owner or operator must limit access to regulated areas to authorized persons or other persons required by work duties to be present in regulated areas.

(4) *Provision of respirators.* The owner or operator must supply a respirator selected in accordance with paragraph (f) of this section to each person entering a regulated area and must require the use of such respirator.

(5) *Prohibited activities.* The owner or operator must ensure that persons do

not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in the regulated area.

(e) *Exposure Control Procedures and Plan*—(1) *Exposure Controls.* (A) The owner or operator must institute engineering controls and work practices to reduce and maintain airborne chrysotile asbestos concentrations to or below the ECEL, except to the extent that the owner or operator can demonstrate that such controls are not feasible.

(B) Wherever the feasible engineering controls and work practices that can be instituted are not sufficient to reduce airborne chrysotile asbestos concentrations to or below the ECEL, the owner or operator must use them to reduce exposures to the lowest levels achievable by these controls. If the feasible engineering controls and work practices cannot reduce exposures to or below the ECEL, the owner or operator must supplement the controls by providing and requiring the use of respiratory protection that complies with the requirements of paragraph (f) of this section.

(2) *Exposure Control Plan Requirements.* (i) Beginning March 28, 2025, when the airborne chrysotile asbestos concentrations exceed the ECEL, or are reasonably expected to exceed the ECEL, owners and operators must establish and implement an exposure control plan to reduce exposures to all potentially exposed persons to or below the ECEL by means of engineering controls and work practices, and by the use of respiratory protection where required under paragraph (e)(1)(B) of this section. The exposure control plan must be available to persons exposed to chrysotile asbestos.

(ii) The exposure control plan must be reviewed and updated as necessary, but at least annually, to reflect any significant changes in the status of the owner or operator's compliance with the requirements of this section.

(iii) The owner or operator must not implement a schedule of personnel rotation as a means of compliance with the ECEL.

(iv) The exposure control plan must include:

(A) An explanation of the exposure controls considered, a rationale for why exposure controls were selected or not selected, based on feasibility, effectiveness, and other relevant considerations;

(B) Descriptions of actions the owner or operator must take to implement the exposure controls selected, including proper installation, maintenance, training, or other actions, and the estimated timeline for implementing such controls;

(C) Description of activities conducted by the owner or operator to review and update the exposure control plan to ensure effectiveness of the exposure controls, identify any necessary updates to the exposure controls, and confirm that all persons are properly implementing the exposure controls; and

(D) An explanation of the procedures for responding to any change that may reasonably be expected to introduce additional sources of exposure to chrysotile asbestos, or otherwise result in increased exposure to chrysotile asbestos, including procedures for implementing corrective actions to mitigate exposure to chrysotile asbestos.

(f) *Respiratory protection*—(1) *Method of Compliance.* Beginning November 25, 2024, if an owner or operator is required to provide respiratory protection pursuant to paragraphs (d)(4) or (e)(1)(B) of this section, the owner or operator must provide each potentially exposed person with a respirator according to the requirements of this section.

(2) *Respirator program.* For purposes of this paragraph (f)(2), the cross-referenced provisions in 29 CFR 1910.134 applying to an ''employee'' also apply equally to potentially exposed persons, and provisions applying to an ''employer'' also apply equally to owners or operators.

(i) Owners and operators must select respiratory protection that properly fits each affected person and communicate respirator selections to each affected person consistent with the requirements of 29 CFR 1910.134(f) and 1910.134 App. A.

(ii) Owners and operators must provide, ensure use of, and maintain (in a sanitary, reliable, and undamaged condition) respiratory protection that is of safe design and construction for the applicable condition of use consistent with the requirements of 29 CFR 1910.134(g) through (j) and 1910.134 App. B–1 to B–2.

(iii) Prior to or at the time of initial assignment to a job involving potential exposure to chrysotile asbestos, owners and operators must provide training and retraining to all persons required to use respiratory protection consistent with 29 CFR 1910.134(k).

(3) *Respirator selection.* Owners or operators must select and provide appropriate respirators based on the most recent exposure monitoring. The minimum respiratory protection that must be provided is as follows:

(i) If the most recent exposure monitoring indicates that the exposure concentration is at or below the 0.005 f/cc (ECEL): no respiratory protection is required.

(ii) If the most recent exposure monitoring indicates that the exposure concentration is above 0.005 f/cc (ECEL) and less than or equal to 0.05 f/cc (10 times the ECEL):

(A) A half-mask supplied-air respirator (SAR) or airline respirator operated in demand mode; or

(B) A half-mask self-contained breathing apparatus (SCBA) respirator operated in demand mode (Assigned Protection Factor 10).

(iii) If the most recent exposure monitoring indicates that the exposure concentration is above 0.05 f/cc (10 times the ECEL) and less than or equal to 0.125 f/cc (25 times the ECEL): A loose fitting facepiece supplied-air respirator (SAR) or airline respirator operated in continuous flow mode (Assigned Protection Factor 25).

(iv) If the most recent exposure monitoring indicates that the exposure concentration is above 0.125 f/cc (25 times the ECEL) and less than or equal to 0.25 f/cc (50 times the ECEL):

(A) A full facepiece supplied-air respirator (SAR) or airline respirator operated in demand mode; or

(B) A half-mask supplied-air respirator (SAR) or airline respirator operated in continuous flow mode; or

(C) A half-mask supplied-air respirator (SAR) or airline respirator operated in pressure-demand or other positive-pressure mode; or

(D) A full facepiece self-contained breathing apparatus (SCBA) respirator operated in demand mode; or

(E) A helmet/hood self-contained breathing apparatus (SCBA) respirator operated in demand mode (Assigned Protection Factor 50).

(v) If the most recent exposure monitoring indicates that the exposure concentration is above 0.25 f/cc (50 times the ECEL) and less than or equal to 5 f/cc (1,000 times the ECEL): A full-facepiece supplied-air respirator (SAR) or airline respirator operated in pressure-demand or other positive-pressure mode (Assigned Protection Factor 1,000).

(vi) If the most recent exposure monitoring indicates that the exposure concentration is above 5 f/cc (1,000 times the ECEL) and less than or equal to 50 f/cc (10,000 times the ECEL):

(A) A full-facepiece self-contained breathing apparatus (SCBA) respirator operated in pressure-demand or other positive-pressure mode; or

(B) A helmet/hood self-contained breathing apparatus (SCBA) respirator operated in pressure-demand or other positive-pressure mode (Assigned Protection Factor 10,000).

(vii) The respiratory protection requirements in paragraph (f)(3) of this section represent the minimum respiratory protection requirements, such that any respirator affording a higher degree of protection than the required respirator may be used.

(g) *Workplace information and training.* (1) By November 25, 2024, the owner or operator must institute a training program and ensure that persons potentially exposed to chrysotile asbestos participate in the program according to the requirements of this paragraph (g).

(2) The owner or operator must train each potentially exposed person prior or at the time of a potential exposure to chrysotile asbestos and at least annually thereafter.

(3) The owner or operator must ensure that information and training is presented in a manner that is understandable to each person required to be trained.

(4) The following information and training must be provided to all persons potentially exposed to chrysotile asbestos:

(i) The health effects associated with exposure to chrysotile asbestos, based on the most recent publication by EPA, OSHA, NIOSH, and/or CDC;

(ii) The quantity, location, manner of use, release, and storage of chrysotile asbestos and the specific operations in the workplace that could result in exposure to chrysotile asbestos, noting where each regulated area is located;

(iii) The specific procedures implemented to control exposures and manage occupational risks to persons potentially exposed to chrysotile asbestos, such as engineering controls, work practices and personal protective equipment to be used; and

(iv) The requirements of this section, as well as how to access or obtain a copy of these regulations.

(5) Whenever there are workplace changes, such as modifications of tasks or procedures or the institution of new tasks or procedures, or when the airborne concentration of chrysotile asbestos increases, or when the exposure control plan is updated according to paragraph (e)(2)(ii) of this section, the owner or operator must update the training and re-train each potentially exposed person.

§ 751.513 Disposal.

(a) After November 25, 2024, all persons disposing of chrysotile asbestos and any chrysotile asbestos-containing products or articles subject to § 751.505, must dispose of chrysotile asbestos and any chrysotile asbestos-containing products or articles, as applicable:

(1) In accordance with the Asbestos General Industry Standard—(29 CFR 1910.1001(k)).

(2) In conformance with the asbestos waste disposal requirements at 40 CFR 61.150.

(b) After November 25, 2024, all persons disposing of chrysotile asbestos and any chrysotile asbestos-containing products or articles subject to paragraphs (a) through (c) of § 751.509 must dispose of chrysotile asbestos and any chrysotile asbestos-containing products or articles, as applicable:

(1) In accordance with the Asbestos Safety and Health Regulations for Construction—(29 CFR 1926.1101)

(2) [Reserved]

(c) After November 25, 2024, all persons disposing of chrysotile asbestos and any chrysotile asbestos-containing products or articles subject to § 751.509(d) must dispose of chrysotile asbestos and any chrysotile asbestos-containing products or articles, as applicable:

(1) In accordance with the Asbestos General Industry Standard—(29 CFR 1910.1001).

(2) In conformance with the asbestos waste disposal requirements at 40 CFR 61.150.

(d) After November 25, 2024, each manufacturer (including importer), processor, and distributor of chrysotile asbestos, including any chrysotile asbestos-containing products or articles, for consumer use, disposing of chrysotile asbestos and any chrysotile asbestos-containing products or articles subject to § 751.509(e), must dispose of chrysotile asbestos and any chrysotile asbestos-containing products or articles, as applicable:

(1) In accordance with the Asbestos General Industry Standard at 29 CFR 1910.1001(k).

(2) In conformance with the asbestos waste disposal requirements at 40 CFR 61.150.

§ 751.515 Recordkeeping.

(a) *General records.* After November 25, 2024, all persons who manufacture (including import), process, or distribute in commerce or engage in commercial use of chrysotile asbestos must maintain ordinary business records, such as invoices and bills-of-lading related to compliance with the prohibitions, restrictions, and other provisions of this subpart.

(b) *Certification of compliance for chlor-alkali industry records.* Persons required pursuant to § 751.507 to certify compliance with § 751.505 must:

(1) Retain records of certifications prepared to comply with § 751.507 and records to substantiate such certifications; and

(2) Make the records retained pursuant to paragraph (b)(1) of this section available to EPA for inspection.

(c) *Interim workplace controls of chrysotile asbestos exposures records*—(1) *Exposure monitoring.* For each monitoring event, owners or operators subject to the exposure monitoring required by § 751.511(c) must document, retain records of the following and make them available to EPA for inspection:

(i) Dates, duration, and results of each sample taken;

(ii) The quantity, location(s) and manner of chrysotile asbestos use at the time of each monitoring event;

(iii) All measurements that may be necessary to determine sampling conditions that may have affected the monitoring results;

(iv) Name, address, work shift, job classification, work area, and type of respiratory protection (if any) of each monitored person;

(vi) Sampling and analytical methods used and documentation of compliance with the quality control procedures described in § 751.511(c)(5)(i) and (ii); and

(vii) Notification of exposure monitoring results in accordance with § 751.511(c)(6).

(2) *Other requirements.* Owners or operators subject to the interim workplace controls described in § 751.511 must retain records and make them available to EPA for inspection of:

(i) The exposure control plan and its implementation as required by § 751.511(e).

(ii) Respiratory protection used and program implementation as described in § 751.511(f); and

(iii) Information and training provided by the owner or operator as required by § 751.511(g).

(d) *Disposal records.* Each person, except a consumer, who disposes of any chrysotile asbestos and any chrysotile asbestos-containing products or articles subject to § 751.513, after November 25, 2024 must retain in one location at the headquarters of the company, or at the facility for which the records were generated, documentation showing any records related to any disposal of chrysotile asbestos and any chrysotile asbestos-containing products or articles generated pursuant to, or otherwise documenting compliance with, regulations specified in § 751.513.

(e) *Retention.* The documentation in this section must be retained for 5 years from the date of generation.

[FR Doc. 2024–05972 Filed 3–27–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 89 Thursday,

No. 61 March 28, 2024

Part V

International Trade Commission

19 CFR Parts 201, 206, 207, et al.

Practice and Procedure: Rules of General Application, Safeguards, Antidumping and Countervailing Duty Investigations, and Section 337 Adjudication and Enforcement; Proposed Rule

INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201, 206, 207, and 210

Practice and Procedure: Rules of General Application, Safeguards, Antidumping and Countervailing Duty Investigations, and Section 337 Adjudication and Enforcement

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States International Trade Commission (''Commission'') proposes to amend its Rules of Practice and Procedure concerning rules of general application, safeguards, antidumping and countervailing duty investigations, and section 337 adjudication and enforcement. The amendments are necessary to make certain technical corrections, to clarify certain provisions, to harmonize different parts of the Commission's rules, and to address concerns that have arisen in Commission practice. The intended effect of the proposed amendments is to facilitate compliance with the Commission's Rules and improve the administration of agency proceedings.

DATES: To be assured of consideration, written comments must be received by 5:15 p.m. on May 20, 2024.

ADDRESSES: You may submit comments, identified by docket number MISC–049, by any of the following methods:

—*Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

—*Agency website: https://www.usitc.gov.* Follow the instructions for submitting comments on the website at *https://www.usitc.gov/secretary/edis.htm.*

—*Email: cathy.chen@usitc.gov.* Include docket number MISC–049 in the subject line of the message.

—*Mail:* For paper submission. U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436.

—*Hand Delivery/Courier:* U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, from the hours of 8:45 a.m. to 5:15 p.m.

Instructions: All submissions received must include the agency name and docket number (MISC–049), along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking. All comments received will be posted without change to *https://www.usitc.gov,* including any personal information provided. For paper copies, a signed original and fourteen (14) copies of each set of comments should be submitted to Lisa R. Barton, Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436.

Docket: For access to the docket to read background documents or comments received, go to *https://www.usitc.gov* and/or the U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, telephone 202–205–2392, Office of the General Counsel, United States International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

SUPPLEMENTARY INFORMATION: The preamble below is designed to assist readers in understanding these proposed amendments to the Commission Rules. This preamble provides background information, a regulatory analysis of the proposed amendments, a section-by-section explanation of the proposed amendments to parts 201, 206, 207, and 210, and a description of the proposed amendments to the rules. The Commission encourages members of the public to comment on whether the language of the proposed amendments is sufficiently clear for users to understand, in addition to any other comments they wish to make on the proposed amendments.

If the Commission decides to proceed with this rulemaking after reviewing the comments filed in response to this notice, the proposed rule revisions will be promulgated in accordance with the applicable requirements of the Administrative Procedure Act (''APA'') (5 U.S.C. 553) and will be codified in 19 CFR parts 201, 206, 207, and 210.

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. This rulemaking seeks to improve provisions of the Commission's existing Rules of Practice and Procedure, including increasing the efficiency of its proceedings and reducing the burdens and costs on the parties and the agency. The Commission proposes amendments to its rules governing proceedings conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as well as Title VII of the Tariff Act of 1930, which comprises 19 U.S.C. 1671–1677n, sections 201–202, 204, and 406 of the Trade Act of 1974 (19 U.S.C. 2251–2252, 2254, and 2436), and sections 301–302 of the United States-Mexico-Canada Implementation Act (19 U.S.C. 4551–4552).

This rulemaking was undertaken to make certain technical corrections, to clarify certain provisions, to harmonize different parts of the Commission's rules, and to address concerns that have arisen in Commission practice. The intended effect of the proposed amendments is to facilitate compliance with the Commission's Rules and improve the administration of agency proceedings. The Commission is concurrently considering additional amendments to its rules to be reflected in future Notices of Proposed Rulemaking.

The current notice of proposed rulemaking is consistent with the Commission's plan to ensure that the Commission's rules are effective, as detailed in the Commission's Plan for Retrospective Analysis of Existing Rules, published February 14, 2012, and found at 77 FR 8114. This plan was issued in response to Executive Order 13579 of July 11, 2011, and established a process under which the Commission will periodically review its significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives. This process includes a general review of existing regulations in 19 CFR parts 201, 206, 207, and 210.

The Commission invites the public to comment on all of these proposed rule amendments. In any comments, please consider addressing whether the language of the proposed amendments is sufficiently clear for users to understand. Please also consider addressing how the proposed rules amendments could be improved and offering specific constructive alternatives where appropriate. Because some of the provisions in the proposed amendments are similar to certain provisions in the Federal Rules of Civil Procedure, the Commission is interested in comments concerning the relevance of any variances between the proposals and similar provisions in the Federal Rules of Civil Procedure.

Consistent with its ordinary practice, the Commission is issuing these proposed amendments in accordance with the applicable requirements of

section 553 of the APA. This procedure entails the following steps: (1) publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of public comments on the proposed amendments; and (4) publication of final amendments at least thirty days prior to their effective date.

Regulatory Analysis of Proposed Amendments to the Commission's Rules

The Commission has determined that the proposed rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of final rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice of proposed rulemaking, these proposed regulations are ''agency rules of procedure and practice,'' and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These proposed rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the proposed rules will not result in expenditure in the aggregate by State, local, and tribal governments, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments, as defined in 5 U.S.C. 601(5).

The proposed rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)).

Part 201—Rules of General Application

Subpart A—Miscellaneous

Section 201.3a

Section 201.3a provides for the inclusion of missing children information in Commission mailings pursuant to 39 U.S.C. 3220. There are several sentences throughout part 201 of the Commission's Rules of Practice and Procedure that contain gender-specific language, including in paragraph 201.3a(c). Because this is inconsistent with the Commission's ongoing commitment to inclusiveness, the Commission proposes to replace this language with gender-neutral terminology. No substantive change is intended. Thus, in paragraph 201.3a(c) the Commission intends to revise ''The Director of Administration shall make such changes in the procedure as he deems appropriate'' to read ''The Chief Administrative Officer shall make such changes in the procedure as the Officer deems appropriate.'' The Commission also proposes to correct a typographical error, changing ''childern'' to ''children.''

Subpart B—Initiation and Conduct of Investigations

Section 201.8

Section 201.8 provides for the filing of documents with the Commission. Due to the global COVID–19 pandemic, the Commission previously published temporary changes to its filing procedures. *See* 85 FR 15798 (Mar. 19, 2020). The temporary changes waived and amended certain of the Commission's rules that require the filing of paper copies, CD–ROMs, and other physical media in section 337 investigations. In particular, the Commission eliminated the requirement for paper-based filings, including paper copies, and allowed for electronic filing and service of confidential and public documents via the Commission's Electronic Document Information System (EDIS) in section 337 investigations, safeguard investigations, and antidumping and countervailing duty investigations and reviews.

Both the International Trade Commission Trial Lawyers Association (ITCTLA) and the Customs and International Trade Bar Association (CITBA) request that the Commission permanently adopt the temporary e-filing rules. The CITBA states that by adopting the existing temporary e-filing rules as final rules, the Commission can modernize its existing filing procedures, eliminate paper-based filings and paper copies in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and save taxpayer money. EDIS Doc. ID No. 722134. The ITCTLA states that permanently adopting the existing temporary waivers of the paper-based filings and paper copy requirements and permitting electronic filing and service of confidential and public documents is in the public interest, promotes administrative efficiencies, and saves taxpayer money. EDIS Doc. ID No. 723747.

The Commission proposes to permanently adopt certain of the temporary changes to its filing procedures. In particular, the Commission proposes to add a requirement that all documents be filed electronically in paragraph (d)(1). The Commission also proposes to eliminate the requirement for submission of paper copies in most cases. For proceedings under section 337, as discussed below with respect to section 210.4, the Commission proposes to eliminate the requirement for submission of paper copies except for complaints and supplements and amendments thereto. For proceedings under other Commission authorities, the Commission proposes to revise section 201.8 (applicable to proceedings other than under section 337) to eliminate the requirement for submission of paper copies in paragraph (d)(1), except as required by the Secretary pursuant to existing paragraph (d)(6), renumbered herein as paragraph (d)(3).

The Commission also proposes to amend paragraphs (a), (c), (f), and (g) to reflect the requirement for electronic filing, while recognizing that there might be situations where paper filings are necessary. Paragraphs (d)(2), (d)(3), and (d)(5) have been removed and paragraphs (d)(4), (d)(6), and (d)(7) have been renumbered as paragraphs (d)(2), (d)(3), and (d)(4), respectively.

The Commission also proposes to replace ''agent'' in paragraph (e) of section 201.8 with ''corporate representative.'' The proposed change discourages misrepresentations that a person is an attorney or acting as counsel without appropriate qualifications as set forth in paragraph 201.15(a). The rule continues to permit inventors and small businesses to appear *pro se* but requires corporations to be represented by counsel or a corporate representative, similar to the practice in federal district court.

For the reasons noted above under paragraph 201.3a(c), the Commission proposes to change certain gender-specific language in section 201.8 from ''his address'' to ''a current address,'' ''he had'' to ''the person has,'' and ''his'' to ''that person's.'' No substantive change is intended.

Section 201.12

Section 201.12 provides authorization for any party to a nonadjudicative investigation to request the Commission to take particular action with respect to that investigation. For the reasons noted above under paragraph 201.3a(c), the Commission proposes to change certain gender-specific language in section 201.12 from ''shall be placed by him in the record'' to ''shall be placed by the Secretary in the record.'' No substantive change is intended. The Commission also proposes to eliminate the requirement for submission of paper copies of the request consistent with the proposed amendments to section 201.8. The removal of the requirement for electronic filing from this rule is in light of the requirement in 201.8 that all documents be filed electronically.

Section 201.13

Section 201.13 provides the general provisions for the conduct of nonadjudicative hearings. This includes hearings in antidumping and countervailing duty investigations and reviews under Title VII. For the reasons noted above under paragraph 201.3a(c), the Commission proposes to change certain gender-specific language in paragraph 201.13(d) from ''a list of the witnesses he intends to call'' to ''a list of the witnesses that person intends to call.'' No substantive change is intended. The Commission proposes to amend paragraph 201.13(f) to require that the supplementary materials be filed no later than the day of the hearing. The Commission also proposes to clarify that supplementary materials do not include witness testimony, which are addressed in sections 207.15 and 207.24.

Section 201.14

Section 201.14 provides for the computation of time, additional hearings, postponements, continuances, and extensions of time. The Commission proposes to eliminate the requirement for submission of paper copies of the request in paragraph (b)(3) consistent with the proposed amendments to section 201.8. The removal of the requirement for electronic filing from this rule is in light of the requirement in 201.8 that all documents be filed electronically.

Section 201.15

Section 201.15 provides general provisions for attorneys and others practicing and appearing before the Commission. The proposed rule would revise paragraph (a) to indicate that no separate application for admission to practice before the Commission is required. It would also revise the paragraph to provide that attorneys practicing or desiring to practice before the Commission must maintain a bar membership in good standing in any State of the United States or the District of Columbia and must report any change in status including, but not limited to, disbarment or suspension by any bar association, court, or agency. The Commission welcomes comments on whether these requirements should be mandatory or permissive. If it is mandatory, please explain how the Commission should use this information. Non-attorneys desiring to appear before the Commission may be required to show that they are acceptable in the capacity in which they seek to appear.

The proposed rule would also revise paragraph (b) to clarify that the restrictions on a former officer or employee of the Commission from practicing or appearing before the Commission in connection with a matter which was pending in any manner or form in the Commission during that person's employment applies to both former attorney and non-attorney employees of the Commission.

Additionally, for the reasons noted above under paragraph 201.3a(c), the Commission proposes to change certain gender-specific language in paragraphs (a) and (b) of section 201.15 to remove several references to ''he,'' ''him,'' and ''his.'' No substantive changes are intended.

Section 201.16

Section 201.16 provides the general provisions for service of process and other documents. The proposed rule would amend paragraphs (d) and (e) of section 201.16 by clarifying that the calculation of additional time after service by mail or express delivery in Commission proceedings conducted under section 337 is governed by the provisions of section 210.6. The Commission also proposes removing the parenthetical authority citation at the end of the section and incorporating it into the Authority statement at the beginning of part 201.

Subpart C—Availability of Information to the Public Pursuant to 5 U.S.C. 552

Section 201.20

Section 201.20 provides the general provisions for payment of fees to the Commission. For the reasons noted above under paragraph 201.3a(c), the Commission proposes to change certain gender-specific language in paragraphs 201.20(d)(2)(iii), 201.20(e), and 201.20(g)(2) to remove several references to ''he,'' ''him,'' and ''his.'' No substantive change is intended. The Commission also proposes to change ''30 days'' to ''thirty (30) days'' in paragraph (g)(2) for clarity.

Subpart D—Safeguarding Individual Privacy Pursuant to 5 U.S.C. 552a

Section 201.32

Section 201.32 contains provisions regarding records that are exempted from paragraphs (c)(3), (d), (e)(1), (e)(4)(G) through (I) and (f) of the Privacy Act of 1974, 5 U.S.C. 552a. For the reasons noted above under paragraph 201.3a(c), the Commission proposes to change certain gender-specific language in paragraph 201.32(b) from ''to which he is otherwise entitled'' to ''to which that individual is otherwise entitled.'' No substantive change is intended.

Part 206—Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, Trade Diversion, and Review of Relief Actions

Subpart A—General

Section 206.2

Section 206.2 provides for investigations to commence on the basis of a petition, request, resolution, or motion as provided for in the statutory provisions listed in sections 206.1 and 206.31. The Commission proposes to amend this section to direct parties to section 201.8, which includes the general requirement for electronic filing, and to remove the paper-filing requirement.

Section 206.8

Section 206.8 provides for the service, filing, and certification of documents in certain proceedings including bilateral and global safeguard investigations. Consistent with the proposed amendments to section 201.8, the Commission proposes to eliminate the requirement for submission of paper copies of briefs in paragraph (d).

Part 207—Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States

Subpart B—Preliminary Determinations

Section 207.10

Section 207.10 provides filing requirements for petitions before the Commission. The Commission proposes removing paper filing requirements for petitions from paragraph (a) and deeming the filing date as the date when the petition is filed electronically. The Commission also proposes to remove

the requirement for facsimile notifications from paragraph (b)(1)(i).

Section 207.15

Section 207.15 provides for written briefs and a conference in preliminary phase antidumping and countervailing duty investigations. Consistent with the proposed amendments to section 201.8, the Commission proposes to eliminate the requirement for submission of paper copies of briefs. The Commission proposes to only require submission of paper copies of written witness testimony when it is provided on the day of the conference, but not when it is filed electronically prior to the date of the conference. For the reasons noted above under paragraph 201.3a(c), the Commission proposes to change certain gender-specific language to remove a reference to ''he.'' No substantive change is intended. The Commission also proposes to remove language related to electronic filing since that requirement is in section 201.8 and to replace the term ''Director'' with ''presiding official'' for consistency.

Subpart C—Final Determinations, Short Life Cycle Products

Section 207.23 and Section 207.25

Sections 207.23 and 207.25 provide for prehearing briefs and posthearing briefs, respectively, in final phase antidumping and countervailing duty investigations. Consistent with the proposed amendments to section 201.8, the Commission proposes to eliminate the requirement for submission of paper copies of prehearing briefs and posthearing briefs. The Commission proposes to remove language related to electronic filing since that requirement is in section 201.8.

Section 207.24

Section 207.24 provides procedures for hearings. The Commission proposes to only require submission of paper copies of written witness testimony when it is provided on the day of the hearing, but not when it is filed electronically prior to the date of the hearing. The Commission proposes to delete the reference to paragraph 201.13(f), consistent with the clarifications proposed for that section.

Section 207.28

Section 207.28 provides for statements filed by persons regarding anticircumvention matters under Title VII. Consistent with the proposed amendments to section 201.8, the Commission proposes to eliminate the requirement for submission of paper copies of such submissions. The Commission proposes to remove language related to electronic filing since that requirement is in section 201.8. The Commission also proposes to refer to ''submissions'' throughout the section for consistency.

Section 207.30

Section 207.30 provides for final comments on information in final phase antidumping and countervailing duty investigations. Consistent with the proposed amendments to section 201.8, the Commission proposes to eliminate the requirement for submission of paper copies of such comments. The Commission proposes to remove language related to electronic filing since that requirement is in section 201.8.

Subpart E—Five-Year Reviews

Section 207.61

Section 207.61 provides for responses to notices of institution of five-year reviews. Consistent with the proposed amendments to section 201.8, the Commission proposes to eliminate paragraph (e), including the requirement for submission of paper copies of responses and the language related to electronic filing since that requirement is in section 201.8.

Section 207.62

Section 207.62 provides for rulings on adequacy and nature of Commission review in five-year reviews. Consistent with the proposed amendments to section 201.8, the Commission proposes to eliminate the requirement for submission of paper copies for comments filed under this section. The Commission proposes to remove language related to electronic filing since that requirement is in section 201.8.

Section 207.65 and Section 207.67

Sections 207.65 and 207.67 provide for prehearing briefs and posthearing briefs, respectively, in five-year reviews. Consistent with the proposed amendments to section 201.8, the Commission proposes to eliminate the requirement for submission of paper copies of prehearing briefs and posthearing briefs. The Commission proposes to remove language related to electronic filing since that requirement is in section 201.8.

Section 207.68

Section 207.68 provides for final comments on information in five-year reviews. Consistent with the proposed amendments to section 201.8, the Commission proposes to eliminate the requirement for submission of paper copies for comments filed under this section. The Commission proposes to remove language related to electronic filing since that requirement is in section 201.8.

Subchapter C—Investigations of Unfair Practices in Import Trade (Section 337)

Part 210—Adjudication and Enforcement

Subpart A—Rules of General Applicability

Section 210.4

Section 210.4 provides for written submissions, representations, and sanctions in section 337 proceedings. The proposed rule makes several amendments to the existing rule. Specifically: For the reasons discussed in connection with section 201.8, the Commission proposes to replace ''agent'' in paragraph (b) with ''corporate representative.''

The Commission also proposes to correct a typographical error in paragraph 210.4(d)(1)(i), which should refer to ''paragraph (i) of this section'' rather than to ''paragraph (g) of this section.''

Consistent with the proposed amendments to sections 201.8, 206, 207, 201.12, and 201.14, the Commission proposes to require electronic filing of all documents filed under this part by adding new paragraph (f)(2) and to eliminate the requirements provided under existing paragraph (f)(2) (renumbered as paragraph (f)(3)) for submission of paper copies for all filings. The Commission proposes to remove existing paragraphs (f)(3) through (f)(6) and renumber the remaining paragraphs accordingly. Renumbered paragraphs (f)(4) and (f)(5) (current paragraphs (f)(7) and (f)(8)) remain unchanged. The Commission also proposes to revise existing paragraphs (f)(9) (renumbered paragraph (f)(6)), (g), and (h)(1) to remove a disallowed paragraph heading and to remove language related to paper filings, while also recognizing that paper copies might be necessary in certain situations. The Secretary retains discretion to make exceptions or modifications to the filing requirements per existing paragraph (f)(8) (renumbered paragraph (f)(5)), including requiring or authorizing paper copies.

There are several sentences throughout part 210 of the Commission's Rules of Practice and Procedure that contain gender-specific language, including in paragraph 210.4(b) to change ''his'' to ''a'' and 210.4(h)(2) to change ''he'' to ''the administrative law judge.'' For the reasons noted above under paragraph

201.3a(c), the Commission proposes to replace gender-specific language with gender-neutral terminology. No substantive changes are intended.

Section 210.7

Section 210.7 provides for the service of process and other documents and for the publication of notices. In particular, paragraph (a)(2) identifies documents issued by or on behalf of the Commission or an administrative law judge that shall be served by express delivery on a private party. The Commission proposes to amend paragraph 210.7(a)(2) by revising the list of documents to add show cause orders issued under paragraph 210.16(b)(1)(i). Such orders direct a respondent that has failed to respond or appear in the manner described in paragraph (a)(1) of section 210.16 to show cause why it should not be found in default. The revision is a clarification of existing practice rather than a substantive change in Commission procedures.

Subpart B—Commencement of Preinstitution Proceedings and Investigations

Section 210.8

Section 210.8 generally provides for the filing of a complaint, enforcement complaint, supplement, or pre-institution amendment under paragraph 210.14(a) thereto, and for filings by complainants, respondents, and members of the public concerning public interest issues raised by the complaint. The Commission proposes to remove the requirement for paper filings in section 337 investigations and to require filing of the documents listed above in accordance with section 210.4. The proposed rule amends paragraph (a)(1) to allow the complainant until the close of the next business day to deliver to the Secretary paper service copies of the complaint, enforcement complaint, supplement, or pre-institution amendment under paragraph 210.14(a) thereto, and electronic copies of the exhibits on a CD ROM, DVD, or other portable electronic media approved by the Secretary. The amendment to paragraph (a)(1) also proposes adding the provision that failure to timely provide service copies may result in a delay or denial of institution of an investigation under section 210.10 for failure to properly file the complaint. The Commission also clarifies that the rule applies to original complaints, enforcement complaints, supplements, or amendments thereto and adds a new heading to paragraph (a).

For original complaints, enforcement complaints, supplements, or pre-institution amendments thereto requesting temporary relief, the Commission proposes to remove paper filing requirements. The proposed rule amends paragraph (a)(2) to allow the complainant until the close of the next business day to deliver to the Secretary paper service copies of the motion and electronic copies of the exhibits on a CD ROM, DVD, or other portable electronic media approved by the Secretary. Nothing in the amendments waives the requirement that complainant serve a motion for temporary relief on respondents under section 210.54.

The proposed rule amends paragraph 210.8(c) to allow a member of the public, interested government agencies, or proposed respondents to file comments that address not only the public interest but other issues, for example whether the Commission should place a pending investigation into the 100-day program pursuant to paragraph 210.10(b)(3) for early disposition of a potentially dispositive issue, or provision of information regarding prior relationships between proposed respondents and/or the complainant. If a confidential version of such comments is filed, the proposed rule requires the filer to concurrently provide a public version of the submission to both the Secretary to the Commission and the complainant. This ensures that a complainant will be promptly notified of submissions even when the publication of the public version of such filings on EDIS is delayed.

The Commission notes that paragraph 210.8(c)(2) currently provides that a complainant's reply to any submissions received under paragraph (c)(1) of this section is due within three (3) calendar days following the filing of the submissions. The Commission proposes to clarify that, while these three (3) calendar days commence on the first business day following the day on which submissions under paragraph (c)(1) are due, they will include subsequent Saturdays, Sundays, and Federal legal holidays, notwithstanding the language of section 201.14. If the last day of the period so computed is a Saturday, Sunday, or Federal legal holiday, the period will run until the end of the next business day. This reflects the Commission's current practice, and the proposed amendment to paragraph 210.8(c)(2) is merely intended to eliminate any perceived ambiguity regarding this deadline. Paragraph (c)(2) is also amended to clarify that such public interest filings may be submitted by interested government agencies.

The proposed rule further amends paragraph 210.8(c) by adding an additional paragraph (3) to clarify that no additional submissions beyond those already contemplated by paragraph 210.8(c) will be accepted unless requested by the Commission.

Finally, the Commission proposes to specify numerically and in words the time periods and page limits in paragraph (c) for clarity. This change is seen throughout the proposed rules. No substantive change is intended.

Section 210.10

Section 210.10 provides the general provisions for institution of an investigation. The proposed rule amends paragraph (a)(1) of this section to add that the Commission will not institute an investigation within thirty (30) days after the complaint is filed if the Commission determines that the complaint or any exhibits or attachments thereto contain excessive designations of confidentiality that are not warranted under paragraph 201.6(a) and section 210.5 of this chapter. Proposed paragraph (a)(7) explains that, under such circumstances, the Commission may require the complainant to file new nonconfidential versions of the aforesaid submissions in accordance with section 210.8 and may determine that the thirty (30) day period for deciding whether to institute an investigation shall begin to run anew from the date that the new nonconfidential versions are filed with the Commission. This is consistent with existing paragraph 210.55(b) of this chapter, which contains similar provisions pertaining to complaints accompanied by a motion for temporary relief and is also proposed to be added to section 210.75.

Section 210.11

Section 210.11 provides the general provisions for the service of the complaint and notice of investigation. The proposed rule removes the phrase ''[u]nless the Commission institutes temporary relief proceedings'' from paragraph (a)(1) to require that the paper service copies be provided to the Secretary in every investigation that is instituted. The proposed rule also indicates that the requirements of paragraph (a)(2) are in addition to paragraph (a)(1) and removes paragraph (a)(2)(ii) as duplicative of paragraph (a)(1)(ii). The proposed rule also removes paragraph (a)(3) in light of proposed revisions to paragraph 210.14(b)(i), which memorialize the Commission's practice regarding amended complaints that name an additional respondent.

Subpart C—Pleadings

Section 210.12

Section 210.12 contains the provisions governing the content, sufficiency, and submission of a complaint alleging a violation of section 337. The proposed rule makes several amendments to the existing rule. Specifically:

For the reasons discussed in connection with section 201.8, the Commission proposes to replace ''agent'' in paragraph (a)(1) with ''corporate representative'' and to amend certain gender-specific language in paragraphs (a)(1) and (j). The proposed rule amends paragraph 210.12(a)(1) to require a complaint to include email addresses for the complainant and its duly authorized officer, attorney, or corporate representative who has signed the complaint. The proposed rule amends paragraph 210.12(a)(3) to remove reference to the Tariff Schedules of the United States that applied prior to January 1, 1989. The proposed rule amends paragraph 210.12(a)(5) to expand the required disclosure to include information about arbitrations concerning the alleged unfair methods of competition and unfair acts, or the subject matter thereof.

The proposed rule amends paragraph 210.12(a)(6)(i) by reorganizing the rule to more clearly distinguish between the information required to support a complaint based on an alleged domestic industry that exists and the information required to support a complaint based on an alleged domestic industry in the process of being established for complaints that allege a violation based on infringement of a U.S. patent, or a federally registered copyright, trademark, mask work, or vessel hull design. The proposed rule also corrects typographical errors in spacing and punctuation in paragraphs 210.12(a)(6)(ii) and 210.12(a)(6)(iii).

The proposed rule amends paragraph 210.12(a)(7) by removing an extraneous ''and'' at the end of paragraph (a)(7).

The proposed rule amends paragraphs 210.12(a)(8)(i) and (ii) to clarify that, for complaints based on an unfair act or method of competition under section 337(a)(1)(A), the complaint's statement of facts should include factual allegations that would show the existence of each element of the cause of action underlying the unfair act or method of competition. The purpose of these amendments is to make clear that bare assertions of unfair acts or methods of competition without factual allegations supporting all elements of a cognizable legal theory do not meet the requirements of paragraph 210.12(a)(2). For example, if a complaint is based on trade secret misappropriation, it must include factual allegations sufficient to establish every element of a trade secret misappropriation claim. The proposed rule also corrects the terminal punctuation for paragraph 210.12(a)(8)(ii) and requires that the complaint state the elements of the proposed theory.

The proposed rule amends paragraph 210.12(a)(9)(v) by adding a requirement to disclose known domestic patent applications that correspond to the patents asserted in the investigation in addition to the existing required disclosure of foreign patent applications. The Commission is interested in comments from the public regarding the burden this amendment would place on complainants.

The proposed rule corrects the terminal punctuation for paragraph 210.12(a)(9)(xi) and adds an ''and'' at the end of paragraph 210.12(a)(10)(i) for grammatical purposes.

The proposed rule amends paragraph 210.12(a)(11) by adding a requirement that a complaint seeking a general exclusion order must plead factual allegations sufficient to show that such an order is available under the requirements of paragraph 337(d)(2). The Commission notes that this information has been voluntarily included in various complaints filed under the current rules. This proposed amendment would formalize the requirement to include such information in complaints going forward. The Commission believes this amendment will lead to greater efficiency in investigations where general exclusion orders are requested. The proposed rule also adds an ''and'' at the end of paragraph 210.12(a)(11)(ii) for grammatical purposes.

The proposed rule amends paragraph 210.12(b) to change the word ''all'' to ''exemplary.'' It might not be feasible to submit all imports.

The proposed rule amends paragraphs 210.12(c) through (h) to remove the reference to the ''original'' complaint because the rules propose to remove paper filings. The proposed rule amends paragraph 210.12(c)(2) by eliminating the requirement that the complaint be accompanied by the applicable pages of each technical reference mentioned in the prosecution history of each involved U.S. patent. The Commission believes that this requirement is no longer necessary given the availability of such materials online. The proposed rule also amends paragraph 210.12(c) by removing the requirement in paragraph (2) for four (4) copies of the patent, because it is duplicative of paragraph 210.12(a)(9)(i), and by adding new paragraph (2) requiring one copy of each prosecution history of any priority applications for the asserted patents to accompany a patent-based complaint.

Section 210.13

Section 210.13 provides the general provisions for filing a response to a complaint. For the reasons discussed in connection with section 201.8, the Commission proposes to replace ''agent'' in paragraph (b) with ''corporate representative'' and to amend certain gender-specific language in paragraph (b) to eliminate a reference to ''his'' duly authorized officer. The Commission also proposes requiring an email address for each respondent.

Section 210.14

Section 210.14 generally provides for amendments to the pleadings and notice of investigation. Paragraph (a) provides for preinstitution amendments to the complaint and notice of investigation, while paragraph (b) provides for post-institution amendments.

The Commission proposes amending the heading of this section to indicate the existing severance provision under paragraph (h). The Commission further proposes to add the requirement that amended complaints, exhibits, and supplements thereto, filed under this section shall be filed electronically with the Secretary pursuant to section 210.4.

The Commission further proposes to amend paragraphs (a) and (b)(1) to clarify that any proposed amendment to the complaint and notice of investigation that introduces an additional unfair act or an additional respondent must comply with the content requirements of paragraph 210.12(a). *See Certain Skin Rejuvenation Resurfacing Devices, Components Thereof, and Products Containing the Same,* Inv. No. 337–TA–1262, Notice of Commission Decision to Review, and on Review to Vacate and Remand, an Initial Determination Granting Complainants' Motion to Amend the Complaint and Notice of Investigation (Sept. 22, 2021). For example, an amendment to add a cause of action under section 337(a)(1)(A) of the Tariff Act of 1930 to an investigation instituted under section 337(a)(1)(B) of that Act would be required to contain all of the information required in the relevant portions of paragraph 210.12(a) of the Commission's Rules. The purpose of the amendment is to ensure that the public, all affected parties, and/or new respondents have adequate notice of the scope of any substantive amendment to

the complaint and notice of investigation.

For paragraph 210.14(b)(1), the requirement is also intended to provide the presiding administrative law judge and the Commission with the information needed to determine whether good cause exists to allow the proposed amendment after institution. This section is also amended to make clear that the complainant shall serve the motion to amend the complaint and notice of investigation on the new respondent and on all current respondents. It also is amended to require the Commission to serve the amended complaint and notice of investigation on any new respondent and the embassies of the relevant foreign countries after the Commission determines to affirm or not review an initial determination granting the motion. Further, this section is amended to require complainants to file service copies of the complaint and exhibits, including paper service copies of the amended complaint, for each new respondent and for the embassy of the country in which the respondent is located by the close of the next business day after the amended complaint is filed.

Paragraph 210.14(b)(1) currently lacks any indication of whether and when a response to an amended complaint and notice of investigations is required. The absence of such guidance has led to inconsistent practice across investigations. Accordingly, the Commission proposes to amend paragraph 210.14(b)(1) by clarifying that responses from respondents currently in the investigation are required and that they shall be due within ten (10) days of the service of the order, or of the Commission determination affirming or not reviewing an initial determination, as applicable, that grants a motion to amend the complaint and/or notice of investigation. The Commission intends that any response to an amended complaint and/or notice of investigation should conform to the same content requirements applicable to a response to an initial complaint and notice of investigation, as provided in paragraph 210.13(b).

The proposed rule also specifies that if any additional respondents are added to the investigation, they shall have twenty (20) days from the date of service of the amended complaint and notice of investigation to file a written response.

Paragraph 210.14(g) currently allows two or more investigations to be consolidated in two circumstances: (1) the Commission may consolidate the investigations; or (2) the presiding administrative law judge may consolidate investigations before that judge. There is no mechanism under the current rule for investigations before different administrative law judges to be consolidated, absent Commission intervention. The proposed amendment to paragraph 210.14(g) would address this by providing that the Chief Administrative Law Judge may consolidate investigations that are before different presiding administrative law judges and assign an administrative law judge to preside over the consolidated investigations.

Subpart D—Motions

Section 210.15

Section 210.15 contains the general provisions regarding motion practice at the Commission. For the reasons noted above under section 210.4, the Commission proposes to amend certain gender-specific language in paragraph (a)(2) to replace ''Chairman'' with ''Chair'' and in paragraph (c) to replace ''shall respond or he may be deemed to have consented'' with ''shall respond or may be deemed to have consented.'' In paragraph (c), the Commission also proposes to change ''10 days'' to ''ten (10) days'' for clarity. No substantive change is intended.

Section 210.16

Sections 210.16 and 210.17 govern the procedures to be followed when a party defaults or otherwise fails to act during an investigation. Paragraph (b)(3) of section 210.16 governs a respondent's ability to elect to default by notice when the respondent has failed to respond to the complaint and notice of investigation, while paragraph (h) of section 210.17 governs a respondent's ability to elect to default by notice after having responded to the complaint and notice of investigation. The similarity in the language of the two sections, however, has caused confusion about whether and how to default at different stages of an investigation, with parties often citing to the wrong rule in their submissions. Accordingly, the Commission proposes to amend paragraph 210.16(b)(3) by moving certain language from paragraph 210.17(h) into a new paragraph 210.16(b)(3)(i) and adding language common to both current sections in new paragraph 210.16(b)(3)(ii). The undesignated language after paragraph (h) would be redesignated paragraph (h) under this proposal.

For the reasons noted above under section 210.4, the Commission also proposes to amend certain gender-specific language in paragraphs 210.16(b)(1)(i) and 210.16(b)(2) by replacing ''upon his own initiative'' and ''on his own initiative,'' respectively, with ''*sua sponte*.'' No substantive change is intended. The Commission also proposes adding a reference to section 210.33 in paragraph 210.16(b)(2) relating to the failure to make or cooperate in discovery.

Section 210.17

As noted above, sections 210.16 and 210.17 govern the procedures to be followed when a party defaults or otherwise fails to act during an investigation. For the reasons described above, the Commission proposes to move certain language from paragraph 210.17(h) into paragraph 210.16(b), and to otherwise delete paragraph (h) from section 210.17.

Section 210.18

Section 210.18 governs the procedures to be followed with regard to motions for summary determination. For clarity, the Commission proposes to replace ''10 days'' with ''ten (10) days'' in the first sentence of paragraph 210.18(b). For the reasons noted above under section 210.4, the Commission also proposes to amend certain gender-specific language in paragraph (b) to remove a reference to ''his'' discretion. No substantive change is intended.

Section 210.20

Section 210.20 contains provisions regarding the declassification of confidential information. For the reasons noted above under section 210.4, the Commission proposes to amend certain gender-specific language in paragraph (a) by replacing ''he'' with ''the chief administrative law judge.'' No substantive change is intended.

Section 210.25

Section 210.25 contains general provisions for the imposition of sanctions. The Commission proposes to revise paragraph (d) of section 210.25 by eliminating the statement that the period for filing petitions of an administrative law judge's initial determination concerning sanctions will be specified in a Commission notice. The purpose of this change is to eliminate confusion, as some parties have believed that they must wait for the Commission to set a briefing schedule before petitioning an initial determination on sanctions. The Commission proposes to amend the rule to clarify that the period for filing a request for an interlocutory appeal of a sanctions order is governed by paragraph 210.24(b)(1), and that, if an interlocutory appeal of a previously issued order is denied or if the sanctions

order is issued concurrently with the initial determination concerning violation of section 337, the period for filing a petition for review of a sanctions order is governed by the period in which a petition for review of the initial determination terminating the investigation may be filed in paragraph 210.43(a). If the administrative law judge defers adjudication of a motion for sanctions until after the issuance of a final initial determination concerning violation of section 337, the Commission also proposes to set deadlines of ten (10) days for comments and five (5) days for responses.

For the reasons noted above under section 210.4, the Commission proposes to amend certain gender-specific language in paragraph (f) of section 210.25 by replacing references to ''he'' and ''his.'' In the same paragraph, the Commission also proposes to change ''30 days'' to ''thirty (30) days'' for clarity. No substantive change is intended.

Subpart E—Discovery and Compulsory Process

Section 210.27

Paragraph 210.27(b) is similar to Federal Rule of Civil Procedure 26(b)(1) and provides that the scope of discovery in section 337 investigations includes any matter, not privileged, that is relevant to a claim or defense of any party. The rule currently provides that a person may not object to a discovery request as seeking inadmissible evidence if the request appears reasonably calculated to lead to the discovery of admissible evidence. In 2013, the Commission amended section 210.27 by adding paragraph (d), among others. Paragraph (d) introduced general discovery limits intended to curb the use of discovery that is disproportionate to the needs of the particular investigation in which it is requested. Paragraph (d) tracked similar proportionality requirements then effective under Federal Rule of Civil Procedure 26(b). At that time, the Commission left in place the language in paragraph 210.27(b) indicating that discovery is not objectionable if it appears reasonably calculated to lead to the discovery of admissible evidence. That language paralleled similar language then in Federal Rule of Civil Procedure 26(b). Thereafter, in 2015, Federal Rule of Civil Procedure 26 was amended to remove the ''reasonably calculated to lead to the discovery of admissible evidence'' language in favor of language that emphasizes the importance of conducting discovery in a way that is proportional to the needs of each case. The Advisory Committee Notes to the amendment of Federal Rule of Civil Procedure 26 indicate that the change in language was not intended to change already existing requirements to consider proportionality in the conduct of discovery. *See* Fed. R. Civ. P. 26 Advisory Committee Notes—2015 Amendment. Rather, the change was intended to ''restore[] the proportionality factors to their original place in defining the scope of discovery.'' *Id.*

The Commission proposes to similarly amend section 210.27(b) by deleting the reference to information that ''appears reasonably calculated to lead to the discovery of admissible evidence'' and inserting language emphasizing that discovery must be proportional to the needs of the investigation. The Commission also proposes to incorporate the sentence ''[a]ll discovery is subject to the limitations of paragraph (d) of this section'' into the beginning of paragraph (b). Unenumerated paragraphs are no longer permitted. No substantive change is intended.

Paragraph 210.27(e) concerns the procedures for claiming privilege or work product protection over information, including information already produced in discovery. Paragraph (e)(2)(ii), specifically, provides the procedure for resolving a disagreement about the basis for a claim of privilege or protection as attorney work product. As currently written, however, that paragraph could be read to require the parties to meet and confer even if there is no dispute about the claim of privilege or work product protection. The Commission thus proposes to amend paragraph 210.27(e) to make clear that the requirement to meet and confer is applicable only when the parties have a disagreement about the basis for claim of privilege or work product protection.

The proposed rule also corrects a typographical error by renumbering the phrase ''(iii) Identify assumptions that the party's attorney provided'' as ''(C) Identify assumptions that the party's attorney provided'' in paragraph 210.27(e)(5)(ii).

Section 210.28

Section 210.28 concerns the procedures governing depositions taken during Commission investigations. Current paragraph 210.28(a) limits the number of fact depositions that each party, including the Commission investigative attorney, may take in an investigation. The Commission is aware that disputes have arisen over whether depositions of non-party witnesses count towards the limits in paragraph 210.28(a). In response to those disputes, the Commission proposes to amend the rule by adding a sentence clarifying that party and third-party depositions, alike, count toward the limits recited in paragraph (a). A notice for a corporation to designate deponents, however, shall continue to count as only one deposition and shall include all corporate representatives so designated to respond.

The Commission further proposes to change the limit for complainants as a group from five (5) fact depositions per respondent to a total of twenty (20) fact depositions, regardless of the number of respondents. This amendment effects a simplification of the current rule, which permits a complainant group to take the greater of either twenty depositions or five per respondent. It also provides for the same number of fact depositions for complainants as a group and respondents as a group. The amendment does not abrogate the presiding administrative law judge's authority to increase the number of fact depositions allowed on a showing of good cause by any party. Thus, the Commission does not anticipate that the proposed amendment will foreclose a complainant group from taking additional depositions if good cause to do so exists.

While current section 210.28 limits the number of depositions that may be taken, there is no provision specifying the maximum permissible length of a deposition. By contrast, Federal Rule of Civil Procedure 30 presumptively limits depositions to one (1) day of seven (7) hours. The Committee Notes to the 2000 Amendments to Federal Rule of Civil Procedure 30(d) explain that the one-day limitation was designed to restrain undue cost and delay that can result from overlong depositions. Fed. R. Civ. P. 30(d) (2000 Advisory Committee Note). The Committee Notes explain that the rule contemplates reasonable breaks throughout the day and that only time occupied by the actual deposition will be counted. They further explain that, for purposes of the durational limit, the deposition of each person designated in response to a deposition noticed under Federal Rule of Civil Procedure 30(b)(6) should be considered a separate deposition. *Id.*

The Commission proposes to amend section 210.28 by adding a new paragraph (b), which includes a presumptive durational limitation of one (1) day of seven (7) hours to depositions conducted under that section consistent with Federal Rule of Civil Procedure 30. The Commission intends for the limitation to control in

the absence of an agreement among the parties or an order of the presiding administrative law judge otherwise. The amended rule requires the presiding administrative law judge to grant additional time as needed, to the extent consistent with the provisions of paragraphs 210.27(b) through 210.27(d), which govern the scope of and limitations on discovery, respectively. The reference to those paragraphs is intended to ensure that additional time is only granted in proportion to the needs of the investigation. The Commission intends for the same computational rules to apply as are laid out in the Committee Notes to the 2000 Amendments to Federal Rule of Civil Procedure 30. Specifically, only time actually spent conducting the deposition will count towards the seven (7) hour limit, and for the purpose of the durational limit each individual designated in response to a deposition directed to a party will be considered a separate deponent. Nothing in this proposed rule should be construed to alter the provision in paragraph (a) that specifies that each notice of deposition to a party is counted as a single deposition for purposes of calculating the total number of depositions that may be taken by a party.

Due to the addition of new paragraph (b), the Commission proposes to redesignate current paragraphs (b) through (i) as paragraphs (c) through (j), respectively.

Current paragraph (f), which in the proposed rule would be redesignated as paragraph (g), requires the party taking a deposition to promptly serve a copy of the deposition transcript on the Commission investigative attorney. As written, current paragraph (f) could be read as not requiring service of exhibits marked during the deposition. In order to remove that ambiguity, the Commission proposes amending current paragraph (f), redesignated as paragraph (g), to make clear that copies of the deposition exhibits must be included when the transcript is served on the Commission investigative attorney.

For the reasons noted above under section 210.4, the Commission also proposes to amend certain gender-specific language in current paragraphs (c) and (h)(4), redesignated as paragraphs (d) and (i)(4), respectively, by replacing references to ''he'' and ''him.'' The Commission also proposes to add that testimony may be taken by ''videoconference'' to current paragraph (c) (renumbered as (d)).

Section 210.30

Section 210.30 is similar to Federal Rule of Civil Procedure 34 and provides procedures governing requests for production or inspection of documents and things, as well as entry upon land, during discovery. Section 210.30, like Federal Rule of Civil Procedure 34, includes provisions permitting a party from whom information is requested to object to the request. Current section 210.30 differs from Federal Rule of Civil Procedure 34, however, in that it does not require an objecting party to state whether it is withholding any responsive materials on the basis of its objection. As explained in the Committee Notes to the 2015 amendments to Federal Rule of Civil Procedure 34, which added the requirement, the purpose of the amendment was to ''end the confusion that frequently arises when a producing party states several objections and still produces information, leaving the requesting party uncertain whether any relevant and responsive information has been withheld on the basis of the objections.'' Fed. R. Civ. P. 34 Advisory Committee Notes—2015 Amendment. For similar reasons, the Commission proposes to amend paragraph 210.30(b)(2) to include a requirement that any objection to a request to provide information must state whether any responsive materials are being withheld on the basis of that objection and that the party must permit inspection of any other materials not being withheld.

For the reasons noted above under section 210.4, the Commission proposes to amend certain gender-specific language in paragraph (a)(1) by replacing ''his behalf'' with ''that party's behalf.'' In paragraph (b)(2) of section 210.30, the Commission also proposes to change ''10 days'' to ''ten (10) days'' for clarity. No substantive change is intended.

Section 210.31

Section 210.31 is similar to Federal Rule of Civil Procedure 36 and provides procedures governing requests for admission of the truth of matters relevant to an investigation. For the reasons noted above under section 210.4, the Commission proposes to amend certain gender-specific language in paragraphs (b), (c), and (d) to remove various references to ''he'' and ''him.'' No substantive changes are intended. In paragraph (b) of section 210.31, the Commission also proposes to change ''10 days'' to ''ten (10) days'' for clarity. No substantive change is intended.

Section 210.32

Section 210.32 governs the use of subpoenas in Commission investigations. Paragraph (a) deals specifically with the application for subpoenas seeking testimony and things. Paragraph (3) of that paragraph currently provides that the administrative law judge shall rule on and issue subpoenas applied for under that paragraph when warranted. While not explicitly stated in the paragraph, it is generally understood that an administrative law judge's authority to issue subpoenas does not extend to foreign discovery. Rather, a party seeking foreign discovery typically does so either through negotiated agreements with the discovery holder or through a request for judicial assistance from the appropriate foreign judicial authority. Concerning the latter approach, such requests are typically made by a United States district court at the request of the party seeking discovery and with the administrative law judge's recommendation. In rare situations, however, the party seeking discovery asks the Commission to make the request for assistance on the Commission's own authority. Because the current rule is silent on whether the administrative law judge can grant such a request, the Commission proposes to amend paragraph (a)(3) of this section to make clear that an administrative law judge may do so. The Commission believes the amendment will provide greater clarity and guidance concerning the disposition of such requests. The Commission anticipates the effect of these amendments to be minimal as they are only intended to address the infrequent instance where the Commission is asked to seek assistance directly from a foreign judicial authority on its own authority.

For the reasons noted above under section 210.4, the Commission also proposes to amend certain gender-specific language in paragraph (c)(2) by replacing ''and he'' with ''who.''

Section 210.33

Section 210.33 relates to sanctions for failure to make or cooperate in discovery. Paragraph (b) of that section provides for the imposition of non-monetary sanctions when a party fails to comply with an order compelling discovery. The Commission proposes to amend that paragraph to make it coextensive with Federal Rule of Civil Procedure 37, which similarly governs sanctions for failure to make or cooperate in discovery. Among the proposed changes is the deletion of the phrase ''as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence'' in paragraph (b)(6). This language was in dispute in *Organik Kimya,* in which the U.S. Court of

Appeals for the Federal Circuit affirmed the Commission's imposition of sanctions and held that, under this section of the Commission's rules, an administrative law judge may order any non-monetary sanction available under Rule 37(b) of the Federal Rules of Civil Procedure as appropriate, without first considering the availability or efficacy of lesser sanctions. *See Organik Kimya, San. VE. Tic. A.S.* v. *Int'l Trade Comm'n,* 848 F.3d 994, 1002–03 (Fed. Cir. 2017). For the same reason, the Commission also proposes to remove the language ''for the purpose of permitting resolution of relevant issues and disposition of the investigation without unnecessary delay despite the failure to comply'' in paragraph (b). As the Federal Circuit noted, valid purposes for imposing sanctions also include ''to penalize a party's sanctionable conduct and to deter future parties from repeating such conduct.'' *Id.* at 1004 (citing *Nat'l Hockey League* v. *Metro. Hockey Club, Inc.,* 427 U.S. 639, 643 (1976)). The Commission also proposes to make clear that the administrative law judge may issue, based on a party's motion or *sua sponte,* non-monetary sanctions for failure to comply with an order compelling discovery, including failure of a party, or an officer or corporate representative of a party, to comply with an oral or written order. The Commission also proposes to move up from paragraph (b)(6) the statement that any such sanction may be ordered in the course of the investigation or concurrently with the administrative law judge's final initial determination on violation. The Commission also proposes to make the last sentence in paragraph (b)(6), which relates to certifying a request to the Commission for judicial enforcement, a separate paragraph to clarify that it applies generally, not just to paragraph (b)(6).

For the reasons discussed in connection with section 201.8, the Commission proposes to replace ''agent'' in paragraph (b)(3) with ''corporate representative.'' And for the reasons noted above under section 210.4, the Commission proposes to amend certain gender-specific language in paragraph (b)(3) by replacing ''his'' with ''the party's.'' No substantive change is intended.

Section 210.34

Section 210.34 provides for the issuance of protective orders to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense during discovery. For the reasons noted above under section 210.4, the Commission proposes to amend certain gender-specific language in paragraphs (a), (c)(2), (d), and (d)(5) to remove various references to ''he,'' ''his,'' and ''him.'' No substantive change is intended.

Subpart F—Prehearing Conferences and Hearings

Section 210.35

Section 210.35 governs the conduct of prehearing conferences before an administrative law judge. For the reasons noted above under section 210.4, the Commission proposes to amend certain gender-specific language in paragraph (a) by replacing ''him'' with ''the administrative law judge.'' No substantive change is intended.

Section 210.37

Section 210.37 governs the admissibility and receipt of evidence in administrative hearings at the Commission. For the reasons noted above under section 210.4, the Commission proposes to amend certain gender-specific language in paragraph (g) by removing references to ''he'' and ''his.'' No substantive change is intended.

Section 210.38

Section 210.38 governs the definition and certification of the record in administrative hearings at the Commission. For the reasons noted above under section 210.4, the Commission proposes to amend certain gender-specific language in paragraph (d) by changing ''upon his filing'' to ''at the time of filing'' in that paragraph. No substantive change is intended.

Section 210.40

Section 210.40 provides for the submission of proposed findings of fact and conclusions of law, as well as briefs in support of those proposed findings and conclusions, to the administrative law judge. Parties may do so following a motion for summary determination under paragraph 210.18(a) or a motion for termination under section 210.21(a), when it is found that a party is in default under section 210.16, at the close of the reception of evidence in any hearing held pursuant to this part (except as provided in section 210.63), or within a reasonable time thereafter fixed by the administrative law judge.

In the past, there has been some confusion as to whether proposed findings of fact and conclusions of law must be in a separate document or whether they may be part of the substantive briefs filed with the administrative law judge. The Commission proposes to clarify that all proposed findings of fact and conclusions of law, and submissions in support thereof, should be set forth in those briefs. Accordingly, the Commission proposes to amend section 210.40 by eliminating any requirement that proposed findings of fact and conclusions of law be set forth in a separate document.

The Commission proposes to further amend section 210.40 by adding a new paragraph (b) providing that a party may file a notice of supplemental authority with the administrative law judge. Such a notice may be filed if pertinent and significant authorities come to the party's attention after all briefs have been filed but before the administrative law judge issues a final initial determination. The notice must be served on all other parties and must describe the relevance of the supplemental citations, with reference to specific pages in either the party's briefs or the transcript of the evidentiary hearing. While parties have filed similar submissions in the past on an *ad hoc* basis, the amendment to section 210.40 expressly authorizes such submissions and provides that responses may be filed by other parties within five (5) business days after service of the notice of supplemental authority.

For the reasons noted above under section 210.4, the Commission's proposed amendment also eliminates certain gender-specific language by removing a reference to ''his consideration.'' No substantive change is intended.

Subpart G—Determinations and Actions Taken

Section 210.42

Section 210.42 governs initial determinations. Paragraph (c)(1) of that section identifies the types of motions that an administrative law judge must grant by initial determination and deny by order.

The Commission proposes to amend paragraph (c)(1) by deleting the word ''formal'' before ''enforcement proceeding.'' As the Commission no longer conducts informal enforcement proceedings, there is no need to distinguish between formal and informal enforcement proceedings.

The Commission also proposes to amend paragraph (h)(3) to clarify that an initial determination filed pursuant to paragraph (c)(1) shall become the determination of the Commission thirty (30) days after the date of service of the initial determination except as provided in newly designated paragraph (h)(5) (current paragraph (h)(6)). An initial determination filed pursuant to paragraph (c)(2) shall be governed by a

new paragraph (h)(6) as explained below.

The proposed rule also eliminates current paragraph (h)(5), redesignates current paragraph (h)(6) as paragraph (h)(5), and amends the newly designated paragraph (h)(5) to clarify that an initial determination granting a motion for summary determination under 210.18 that would terminate the investigation in its entirety shall become the final determination of the Commission forty-five (45) days after the date of service of the initial determination, unless the Commission has ordered review of the initial determination or certain issues therein, or the Commission has ordered a different deadline for determining whether to review the initial determination.

The Commission proposes to include the language eliminated from current paragraph (h)(5) in a new paragraph (h)(6). This new paragraph clarifies that an initial determination filed pursuant to paragraph (2) of paragraph 210.42(c), concerning either possible forfeiture or return of respondents' bonds as governed by paragraph 210.50(d) or possible forfeiture or return of a complainant's temporary relief bond as governed by paragraph 210.70(c), shall become the final determination of the Commission forty-five (45) days after the date of service of the initial determination, unless the Commission has ordered review of the initial determination or certain issues therein, or by order has changed the effective date of the initial determination.

Finally, the Commission proposes to specify numerically and in words the time periods in paragraphs (c) and (h) for clarity. No substantive change is intended.

Section 210.43

Section 210.43 governs petitions for review of initial determinations on matters other than temporary relief. The Commission proposes to clarify the relevant deadlines relating to a petition for review of an initial determination concerning declassification of information and an order concerning sanctions. Specifically, the Commission proposes to specify that a petition for review of an initial determination issued under paragraph 210.42(a)(2) concerning declassification of information must be filed within ten (10) days after service of the initial determination and that a petition for review of any sanctions order issued under paragraph 210.25(d) must be filed within twelve (12) days after service of the order.

The Commission also proposes to correct two typographical errors in paragraph (a)(1), which should refer to ''210.75(a)(3)'' and to ''210.42(a),'' rather than to ''210.75(b)(3)'' or ''210.42(a)(1),'' respectively.

The Commission further proposes to specify numerically and in words the time periods in paragraph (a)(1) for clarity. No substantive change is intended.

Section 210.45

Section 210.45 governs review of initial determinations on matters other than temporary relief. The proposed rule replaces ''set aside'' with ''vacate'' in paragraph (c). The Commission's previous use of the terms ''set aside'' and ''vacate'' interchangeably in its determinations has led to unnecessary confusion. Courts routinely use the term ''vacate'' when nullifying the legal effect of an opinion or judgment. The Commission finds that the term ''set aside'' is used in areas of law that are not relevant to section 337 proceedings, and the term, as used in those areas, does not have the same legal meaning as ''vacate.'' Therefore, the Commission believes that use of the term ''vacate'' with respect to initial determinations and orders will avoid confusion and is more appropriate in circumstances where the Commission determines to nullify the legal effect of all or part of an initial determination or order. The Commission's previous use of the term ''set aside'' in respect of initial determinations will be interpreted to mean ''vacate,'' unless the context clearly indicates some other meaning.

Section 210.48

Section 210.48 governs disposition of petitions for reconsideration. For reasons similar to those noted above concerning section 210.45, the Commission proposes to replace ''affirm, set aside, or modify'' with ''affirm, reverse, modify, or vacate.'' The proposed rule also clarifies that the Commission may remand the determination via an order to the administrative law judge, specifying any necessary additional findings, determinations, or recommendations.

Section 210.49

Section 210.49 governs the implementation of Commission actions. For the reasons noted above under section 210.4, the Commission proposes to amend certain gender-specific language in paragraph (d) by removing references to ''he'' and ''his'' when referring to the President. No substantive change is intended.

Section 210.51

Section 210.51 governs the period for concluding an investigation under section 337. The Commission proposes to amend the introduction to paragraph (a) and paragraph (a)(2) by deleting the instances of the word ''formal'' before ''enforcement proceeding'' therein. As the Commission no longer conducts informal enforcement proceedings, there is no need to distinguish between formal and informal enforcement proceedings. The Commission also proposes to specify numerically and in words the time periods in paragraph (a) for clarity. The Commission also proposes to remove the language ''before the formal enforcement proceeding is certified to the Commission'' from paragraph (a)(2) as unnecessary. No substantive change is intended.

Subpart H—Temporary Relief

Section 210.63

Section 210.63 provides that the administrative law judge shall determine whether and to what extent submissions described in section 210.40 shall be permitted in adjudication of a motion for temporary relief. The Commission proposes to conform section 210.63 to the language of the proposed amendment to section 210.40 by eliminating the reference to separate findings of fact and conclusions of law.

Section 210.65

Section 210.65 governs certification of the record upon which an initial determination concerning temporary relief pursuant to paragraph 210.66(a) is based. For the reasons noted above under section 210.4, the Commission proposes to amend certain gender-specific language in this section by replacing ''he'' with ''the administrative law judge.'' No substantive change is intended.

Section 210.66

Section 210.66 governs initial determinations concerning temporary relief. For the reasons noted above under section 210.45, the Commission proposes to replace ''set aside'' with ''vacate'' in paragraphs (c) and (f). The Commission also proposes to specify numerically and in words the time periods and pages in paragraph (c) for clarity.

Section 210.67

Section 210.67 governs the procedure for arriving at the Commission's determination regarding the appropriate form of temporary relief, whether the statutory public interest factors preclude such relief, and the amount of the bond

under which respondents' merchandise will be permitted to enter the United States while a Commission temporary relief order is in effect. For the reasons noted above under section 210.4, the Commission proposes to amend certain gender-specific language in paragraph (a) by replacing ''he'' with ''the administrative law judge.'' No substantive change is intended.

Subpart I—Enforcement Procedures and Advisory Opinions

Section 210.75

Section 210.75 governs the conduct of proceedings for enforcement of Commission exclusion orders, cease and desist orders, consent orders, and other Commission orders. The proposed rule amends paragraph (a)(1) to indicate that the filing of an enforcement complaint must also follow section 210.4 and paragraph 210.8(a), but that no paper copies of enforcement complaints or exhibits thereto are required for the government of the foreign country in which each alleged violator is located. The proposed rule also specifies that the Commission shall serve copies of the nonconfidential version of the enforcement complaint, the nonconfidential exhibits, and the notice of investigation upon each alleged violator. The proposed rule also amends paragraph (a)(1)(i) of this section to add that the Commission will not institute an investigation within thirty (30) days after the complaint is filed if the Commission determines that the complaint or any exhibits or attachments thereto contain excessive designations of confidentiality that are not warranted under sections 201.6(a) and 210.5 of this chapter. Proposed paragraph (1)(v) explains that, under such circumstances, the Commission may require the complainant to file new nonconfidential versions of the aforesaid submissions in accordance with section 210.8 and may determine that the thirty (30) day period for deciding whether to institute an investigation shall begin to run anew from the date that the new nonconfidential versions are filed with the Commission. This is consistent with existing paragraph 210.55(b) of this chapter and with the proposed changes to 210.10 of this chapter.

Section 210.76

Section 210.76 governs the conduct of proceedings for modification or rescission of Commission exclusion orders, cease and desist orders, consent orders, and seizure and forfeiture orders. Previous amendments to this section added the words ''seizure and forfeiture orders'' to the section heading but neglected to add those words to the heading of paragraph (a). The Commission proposes amending the heading of paragraph (a) to correct that oversight and maintain consistency with the heading of the section.

For reasons similar to those noted above under section 210.45, the Commission proposes to replace ''set aside'' with ''rescinded'' in paragraph (a)(1).

The proposed rule also replaces ''request'' in paragraph (a)(1) with ''petition'' to conform with the language used in the heading of paragraph (a).

The proposed rule further replaces ''an opposition'' in paragraph (a)(1) with ''a response.'' This change is meant to clarify that a response to a petition under this paragraph need not necessarily oppose the petition.

The proposed rule also amends paragraph (a)(3) by replacing the word ''motion'' with ''petition'' in the penultimate sentence. This amendment is appropriate to conform with the language used in the heading of paragraph (a) and because paragraph (a)(3) is directed to petitions for modification or rescission, not motions.

Appendix A to Part 210—Adjudication and Enforcement

Appendix A to part 210 summarizes the deadlines for petitions for review of initial determinations issued by administrative law judges, responses to such petitions, and deadlines for the Commission to determine whether to review the specified initial determinations. The Commission proposes to amend rows 2 and 3 to clarify that the initial determinations indicated in those rows are issued pursuant to paragraph 210.42(c)(1). The Commission proposes to add a new row 4 containing the relevant deadlines relating to an initial determination concerning declassification of information issued pursuant to paragraph 210.42(a)(2). The Commission further proposes to add a new row 5 containing the relevant deadlines relating to initial determinations on potentially dispositive issues issued pursuant to paragraph 210.42(a)(3). Current rows 4 through 6 would be redesignated as rows 6 through 8.

The Commission further proposes to amend current row 6 (redesignated as row 8) of Appendix A by deleting the word ''formal'' before ''enforcement proceedings'' therein. As the Commission no longer conducts informal enforcement proceedings, there is no need to distinguish between formal and informal enforcement proceedings. The Commission also proposes to correct a typographical error in that row in the citation of the relevant section by replacing paragraph ''210.75(b)'' with paragraph ''210.75(a)(3).''

List of Subjects in 19 CFR Parts 201, 206, 207, and 210

Administration practice and procedure, Business and industry, Customs duties and inspection, Imports, Investigations Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the United States International Trade Commission proposes to amend 19 CFR parts 201, 206, 207, and 210 as follows:

PART 201—RULES OF GENERAL APPLICATION

■ 1. The authority citation for part 201 is revised to read as follows:

Authority: 19 U.S.C. 1335; 19 U.S.C. 2482; the Administrative Procedure Act (5 U.S.C. 551, *et seq.*), unless otherwise noted.

Subpart A—Miscellaneous

■ 2. Amend § 201.3a by revising paragraph (c) to read as follows:

§ 201.3a Missing children information.

* * * * *

(c) The procedure established in paragraph (b) of this section will result in missing children information being inserted in an estimated 25 percent of the Commission's penalty mail and will cost an estimated $1,500 for the first year of implementation. The Chief Administrative Officer shall make such changes in the procedure as the Officer deems appropriate to maximize the use of missing children information in the Commission's mail.

Subpart B—Initiation and Conduct of Investigations

■ 3. Amend § 201.8 by revising paragraphs (a) and (c), revising and republishing paragraph (d), and revising paragraphs (e) through (g) to read as follows:

§ 201.8 Filing of documents.

(a) *Applicability; where to file; date of filing.* This section applies to all Commission proceedings except, notwithstanding any other section of this chapter, those conducted under 19 U.S.C. 1337, which are covered by requirements set out in part 210 of this chapter. Documents shall be filed with the office of the Secretary through the Commission's Electronic Document Information System (EDIS) website at *https://edis.usitc.gov.* If a paper filing is

required or authorized under paragraphs (d)(2) and (3) of this section, documents shall be filed at the office of the Secretary in Washington, DC. Such documents, if properly filed within the hours of operation specified in § 201.3(c), will be deemed to be filed on the date on which they are actually received by the Commission.

* * * * *

(c) *Specifications for documents.* Each document filed under this chapter shall be signed, double-spaced, clear and legible, except that a document of two pages or less in length need not be double-spaced. All submissions shall be in letter-sized format (8.5 x 11 inches), except copies of documents prepared for another agency or a court (*e.g.,* pleadings papers). The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

(d) *Filing.* (1) All documents filed with the Commission shall be filed electronically. All filings shall comply with the procedures set forth in the Commission's Electronic Document Information System website at *https://edis.usitc.gov. See also https://www.usitc.gov/press_room/edissupport.htm.* Failure to comply with the requirements of this chapter and the Handbook on Filing Procedures that apply to the filing of a document may result in the rejection of the document as improperly filed.

(2) Supplementary material and witness testimony provided for under § 201.13 or § 207.15 or § 207.24 of this chapter shall also be filed in accordance with the provisions of the applicable section.

(3) The Secretary may provide for exceptions and modifications to the filing requirements set out in this chapter. A person seeking an exception should consult the Handbook on Filing Procedures.

(4) During any period in which the Commission is closed, deadlines for filing documents electronically and by other means are extended so that documents are due on the first business day after the end of the closure.

(e) *Identification of party filing document.* Each document filed with the Commission for the purpose of initiating any investigation shall show on the first page thereof the name, address, and telephone number of the party or parties by whom or on whose behalf the document is filed and shall be signed by the party filing the document or by a duly authorized officer, attorney, or corporate representative of such party. Also, any attorney or corporate representative filing the document shall give a current address, electronic mail address, and telephone number. The signature of the person signing such a document constitutes a certification that the person has read the document, that to the best of that person's knowledge and belief the statements contained therein are true, and that the person signing the document was duly authorized to sign it.

(f) *Nonconfidential copies.* In the event that confidential treatment of a document is requested under § 201.6(b), a nonconfidential version of the document shall be filed, in which the confidential business information shall have been deleted and which shall have been conspicuously marked ''nonconfidential'' or ''public inspection.'' The nonconfidential version shall be filed electronically. In the event that confidential treatment is not requested for a document under § 201.6(b), the document shall be conspicuously marked ''No confidential version filed,'' and the document shall be filed in accordance with paragraph (d) of this section. The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

(g) *Cover sheet.* For documents that are filed electronically, parties must complete the cover sheet form for such filing on-line at *https://edis.usitc.gov* at the time of the electronic filing. When making a paper filing, parties must complete the cover sheet form on-line at *https://edis.usitc.gov* and print out the cover sheet for submission to the Office of the Secretary with the paper filing. The party submitting the cover sheet is responsible for the accuracy of all information contained in the cover sheet, including, but not limited to, the security status and the investigation number, and must comply with applicable limitations on disclosure of business proprietary information or confidential information under § 201.6 and §§ 206.8, 206.17, 207.3, and 207.7 of this chapter.

■ 4. Revise § 201.12 to read as follows:

§ 201.12 Requests.

Any party to a nonadjudicative investigation may request the Commission to take particular action with respect to that investigation. Such requests shall be filed by letter addressed to the Secretary, shall be placed by the Secretary in the record, and shall be served on all other parties. The Commission shall take such action or make such response as it deems appropriate.

■ 5. Amend § 201.13 by revising paragraphs (d) and (f) to read as follows:

§ 201.13 Conduct of nonadjudicative hearings.

* * * * *

(d) *Witness list.* Each person who files a notice of participation pursuant to paragraph (c) of this section shall simultaneously file with the Secretary a list of the witnesses that person intends to call at the hearing.

* * * * *

(f) *Supplementary material.* (1) A party to the investigation may file with the Secretary supplementary material for acceptance into the record. The party shall file any such material with the Secretary no later than the day of the hearing. Supplementary materials must be marked with the name of the organization submitting it. As used herein, the term *supplementary material* refers to:

(i) Additional graphic material such as charts and diagrams used to illuminate an argument or clarify a position; and

(ii) Information not available to a party at the time its prehearing brief was filed.

(2) Supplementary material does not include witness statements which are addressed in §§ 207.15 and 207.24 of this chapter.

* * * * *

■ 6. Amend § 201.14 by revising paragraph (b)(3) to read as follows:

§ 201.14 Computation of time, additional hearings, postponements, continuances, and extensions of time.

* * * * *

(b) * * *

(3) A request that the Commission take any of the actions described in this section shall be filed with the Secretary and served on all parties to the investigation.

■ 7. Revise § 201.15 to read as follows:

§ 201.15 Attorneys and others practicing or appearing before the Commission.

(a) *In general.* No register of attorneys who may practice before the Commission is maintained. No separate application for admission to practice before the Commission is required. Attorneys practicing before the Commission, or desiring to so practice, must maintain a bar membership in good standing in any State of the United States or the District of Columbia. Persons practicing before the Commission must report any discipline or suspension by any bar association, court, or agency. Non-attorneys desiring to appear before the Commission may be required to show to the satisfaction of the Commission that they are acceptable in the capacity in which they seek to appear. Any person practicing or

appearing before the Commission, or desiring to do so, may for good cause shown be suspended or barred from practicing or appearing before the Commission, or may be subject to such lesser sanctions as the Commission deems appropriate, but only after having been afforded an opportunity to present that person's views in the matter.

(b) *Former officers or employees.* No former officer or employee of the Commission who personally and substantially participated in a matter which was pending in any manner or form in the Commission during that person's employment shall be eligible to practice or appear before the Commission in connection with such matter. No former officer or employee of the Commission shall be eligible to practice or appear before the Commission in connection with any matter which was pending in any manner or form in the Commission during that person's employment without first obtaining written consent from the Commission.

■ 8. Amend § 201.16 by:

■ a. Revising paragraphs (d) and (e); and

■ b. Removing the parenthetical authority citation at the end of the section.

The revisions read as follows:

§ 201.16 Service of process and other documents.

* * * * *

(d) *Additional time after service by mail.* Whenever a party or Federal agency or department has the right or is required to perform some act or take some action within a prescribed period after the service of a document upon it and the document is served upon it by mail, three (3) calendar days shall be added to the prescribed period, except that when mailing is to a person located in a foreign country, ten (10) calendar days shall be added to the prescribed period. Computation of additional time for Commission proceedings conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) is set out in § 210.6 of this chapter.

(e) *Additional time after service by express delivery.* Whenever a party or Federal agency or department has the right or is required to perform some act or take some action within a prescribed period after the service of a document upon it and the document is served by express delivery, one (1) calendar day shall be added to the prescribed period if the service is to a destination in the United States, and five (5) calendar days shall be added to the prescribed period if the service is to a destination outside the United States. ''Service by express delivery'' refers to a method that would provide delivery by the next business day within the United States and refers to the equivalent express delivery service when the delivery is to a foreign location. Computation of additional time for Commission proceedings conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) is set out in § 210.6 of this chapter.

* * * * *

Subpart C—Availability of Information to the Public Pursuant to 5 U.S.C. 552

■ 9. Amend § 201.20 by revising paragraphs (d)(2)(iii), (e), and (g)(2) to read as follows:

§ 201.20 Fees.

* * * * *

(d) * * *

(2) * * *

(iii) *The contribution of an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to ''public understanding.''* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications—*e.g.,* expertise in the subject area and ability and intention to effectively convey information to the general public—shall be considered. It will be presumed that a representative of the news media (as defined in paragraph (j)(8) of this section) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that that person actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

* * * * *

(e) *Notice of anticipated fees in excess of $25.00.* Where the Secretary determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the Secretary shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the Secretary shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice of the requester pursuant to this paragraph (e) shall offer the opportunity to confer with agency personnel in order to reformulate the request to meet the requester's needs at a lower cost.

* * * * *

(g) * * *

(2) Where a requester has previously failed to pay a records access fee within thirty (30) days of the date of billing, the Secretary may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before beginning to process a new request or continuing to process a pending request from that requester.

* * * * *

Subpart D—Safeguarding Individual Privacy Pursuant to 5 U.S.C. 552a

■ 10. Amend § 201.32 by revising paragraph (b) to read as follows:

§ 201.32 Specific exemptions.

* * * * *

(b) Pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), records contained in the system entitled ''Freedom of Information Act and Privacy Act Records'' have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4)(G) through (I) and (f) of the Privacy Act. Pursuant to section 552a(k)(1) of the Privacy Act, the Commission exempts records that contain properly classified information pertaining to national defense or foreign policy. Application of exemption (k)(1) may be necessary to preclude individuals' access to or amendment of such classified information under the Privacy Act. Pursuant to section 552a(k)(2) of the Privacy Act, and in order to protect the effectiveness of Inspector General investigations by preventing individuals who may be the subject of an investigation from obtaining access to the records and thus obtaining the opportunity to conceal or destroy evidence or to intimidate witnesses, the Commission exempts records insofar as they include investigatory material compiled for law enforcement purposes. However, if any individual is denied any right, privilege, or benefit to which that individual is otherwise entitled under Federal law due to the maintenance of this material, such material shall be provided to such individual except to the extent that the

disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

PART 206—INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, TRADE DIVERSION, AND REVIEW OF RELIEF ACTIONS

■ 11. The authority citation for part 206 continues to read as follows:

Authority: 19 U.S.C. 1335, 2112 note, 2251–2254, 2436, 3805 note, 4051–4065, 4101, and 4551–4552.

Subpart A—General

■ 12. Revise § 206.2 to read as follows:

§ 206.2 Identification of type of petition or request.

An investigation under this part may be commenced on the basis of a petition, request, resolution, or motion as provided for in the statutory provisions listed in §§ 206.1 and 206.31. Each petition or request, as the case may be, filed by an entity representative of a domestic industry under this part shall state clearly on the first page thereof ''This is a [petition or request] under section [citing the statutory provision] and Subpart [B, C, D, E, F, or G] of part 206 of the rules of practice and procedure of the United States International Trade Commission.'' The petition or request, along with all exhibits, appendices, and attachments, must be filed in accordance with § 201.8.

■ 13. Amend § 206.8 by revising paragraph (d) to read as follows:

§ 206.8 Service, filing, and certification of documents.

* * * * *

(d) *Briefs.* All briefs filed in proceedings subject to this part shall be filed in accordance with § 201.8.

PART 207—INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

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

Authority: 19 U.S.C. 1335, 1671–1677n, 2482, 3513, 4582.

Subpart B—Preliminary Determinations

■ 15. Amend § 207.10 by revising paragraphs (a) and (b)(1)(i) to read as follows:

§ 207.10 Filing of petition with the Commission.

(a) *Filing of the petition.* Any interested party who files a petition with the administering authority pursuant to section 702(b) or section 732(b) of the Act in a case in which a Commission determination under title VII of the Act is required, shall file copies of the petition and all exhibits, appendices, and attachments thereto, pursuant to § 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. If the petition complies with the provisions of § 207.11, it shall be deemed to be properly filed on the date on which the electronic filing of the petition is received by the Secretary, provided that, if the petition is filed with the Secretary after 12 noon, eastern time, the petition shall be deemed filed on the next business day. Notwithstanding § 207.11, a petitioner need not file an entry of appearance in the investigation instituted upon the filing of its petition, which shall be deemed an entry of appearance.

(b) * * *

(1)(i) The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 207.7(a)(4), he or she approves an application under § 207.7(a). A copy of the petition including all business proprietary information shall then be served by petitioner on those approved applicants in accord with § 207.3(b) within two (2) calendar days of the time notification is made by the Secretary.

* * * * *

■ 16. Revise § 207.15 to read as follows:

§ 207.15 Written briefs and conference.

Each party may submit to the Commission on or before a date specified in the notice of investigation issued pursuant to § 207.12 a written brief containing information and arguments pertinent to the subject matter of the investigation. Briefs shall be signed, shall include a table of contents, and shall contain no more than fifty (50) pages of textual material. Any person not a party may submit a brief written statement of information pertinent to the investigation within the time specified and the same manner specified for the filing of briefs. In addition, the presiding official may permit persons to file within a specified time answers to questions or requests made by the Commission's staff. If the presiding official deems it appropriate, the presiding official shall hold a conference. The conference, if any, shall be held in accordance with the procedures in § 201.13 of this chapter, except that in connection with its presentation a party may provide written witness testimony at the conference. The party shall file the written testimony in accordance with § 201.8(d) of this chapter no later than the date of the conference. If the written testimony is filed on the day of the conference, the party shall also file with the Secretary on that day nine (9) true paper copies of any such written testimony. The presiding official may request the appearance of witnesses, take testimony, and administer oaths.

Subpart C—Final Determinations, Short Life Cycle Products

■ 17. Amend § 207.23 by revising the first and second sentences to read as follows:

§ 207.23 Prehearing brief.

Each party who is an interested party shall submit to the Commission, no later than five (5) business days prior to the date of the hearing specified in the notice of scheduling, a prehearing brief. Prehearing briefs shall be signed and shall include a table of contents. * * *

■ 18. Amend § 207.24 by revising paragraph (b) to read as follows:

§ 207.24 Hearing.

* * * * *

(b) *Procedures.* Any hearing shall be conducted after notice published in the **Federal Register**. The hearing shall not be subject to the provisions of 5 U.S.C. subchapter II, chapter 5, or to 5 U.S.C. 702. Each party shall limit its presentation at the hearing to a summary of the information and arguments contained in its prehearing brief, an analysis of the information and arguments contained in the prehearing briefs described in § 207.23, and information not available at the time its prehearing brief was filed. Unless a portion of the hearing is closed, presentations at the hearing shall not include business proprietary information. In connection with its presentation, a party may provide written witness testimony at the hearing. The party shall file the written testimony in accordance with § 201.8(d) of this chapter no later than the date of the hearing. If the written testimony is filed on the day of the hearing, the party shall also file with the Secretary on that day nine (9) true paper copies of any such written testimony. In the case of testimony to be presented at a closed session held in response to a request under paragraph (d) of this section, confidential and non-confidential versions shall be filed in accordance with § 207.3. Any person not a party may make a brief oral statement of

information pertinent to the investigation.

* * * * *

■ 19. Revise § 207.25 to read as follows:

§ 207.25 Posthearing briefs.

Any party may file a posthearing brief concerning the information adduced at or after the hearing with the Secretary within a time specified in the notice of scheduling or by the presiding official at the hearing. No such posthearing brief shall exceed fifteen (15) pages of textual material. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

■ 20. Revise § 207.28 to read as follows:

§ 207.28 Anticircumvention.

Prior to providing advice to the administering authority pursuant to section 781(e)(3) of the Act, the Commission shall publish in the **Federal Register** a notice that such advice is contemplated. Any person may file one written submission concerning the matter described in the notice no later than fourteen (14) days after publication of the notice. The submission shall contain no more than fifty (50) pages of textual material. The Commission shall by notice provide for additional submissions as it deems necessary.

■ 21. Amend § 207.30 by revising paragraph (b) to read as follows:

§ 207.30 Comment on information.

* * * * *

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.25. Comments shall only concern such information, and shall not exceed 15 pages of textual material. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to investigations subject to the provisions of section 771(7)(G)(iii) of the Act, and with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3(c).

Subpart F—Five-Year Reviews

■ 22. Amend § 207.61 by removing paragraph (e).

§ 207.61 [Amended]

■ 23. Amend § 207.62 by revising paragraph (b)(2) to read as follows:

§ 207.62 Rulings on adequacy and nature of Commission review.

* * * * *

(b) * * *

(2) Comments shall be submitted within the time specified in the notice of institution. In a grouped review, only one set of comments shall be filed per party. Comments shall not exceed fifteen (15) pages of textual material. Comments containing new factual information shall be disregarded.

* * * * *

■ 24. Amend § 207.65 by revising the first and second sentences to read as follows:

§ 207.65 Prehearing briefs.

Each party to a five-year review may submit a prehearing brief to the Commission on the date specified in the scheduling notice. A prehearing brief shall be signed and shall include a table of contents. * * *

■ 25. Amend § 207.67 by revising paragraph (a) to read as follows:

§ 207.67 Posthearing briefs and statements.

(a) *Briefs from parties.* Any party to a five-year review may file with the Secretary a posthearing brief concerning the information adduced at or after the hearing within a time specified in the scheduling notice or by the presiding official at the hearing. No such posthearing brief shall exceed fifteen (15) pages of textual material. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

* * * * *

■ 26. Amend § 207.68 by revising paragraph (b) to read as follows:

§ 207.68 Final comments on information.

* * * * *

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.67. Comments shall only concern such information, and shall not exceed 15 pages of textual material. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3(c).

PART 210—ADJUDICATION AND ENFORCEMENT

■ 27. The authority citation for part 210 continues to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

Subpart A—Rules of General Applicability

■ 28. Amend § 210.4 by revising paragraphs (b) and (d)(1)(i), revising and republishing paragraph (f), and revising paragraphs (g) and (h) to read as follows:

§ 210.4 Written submissions; representations; sanctions.

* * * * *

(b) *Signature.* Every pleading, written motion, and other paper of a party or proposed party who is represented by an attorney in an investigation or a related proceeding under this part shall be signed by at least one attorney of record in the attorney's individual name. A party or proposed party who is not represented by an attorney shall sign, or a duly authorized officer or corporate representative of that party or proposed party shall sign, the pleading, written motion, or other paper. Each paper shall state the signer's address and telephone number, if any. Pleadings, written motions, and other papers need not be under oath or accompanied by an affidavit, except as provided in § 210.12(a)(1), § 210.13(b), § 210.18, § 210.52(d), § 210.59(b), or another section of this part or by order of the administrative law judge or the Commission. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after omission of the signature is called to the attention of the submitter.

* * * * *

(d) * * *

(1) * * *

(i) *By motion.* A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate paragraph (c) of this section. It shall be served as provided in paragraph (i) of this section, but shall not be filed with or presented to the presiding administrative law judge or the Commission unless, within seven (7) days after service of the motion (or such other period as the administrative law judge or the Commission may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. See also § 210.25(a) through (c). If warranted, the administrative law judge or the Commission may award to the party or proposed party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

* * * * *

(f) *Filing of documents.* (1) Written submissions that are addressed to the Commission during an investigation or a related proceeding shall comply with the Commission's Handbook on Filing Procedures, which is issued by and available from the Secretary and posted on the Commission's Electronic Document Information System website at *https://edis.usitc.gov.* Failure to comply with the requirements of this chapter and the Handbook on Filing Procedures in the filing of a document may result in the rejection of the document as improperly filed.

(2) All documents filed under this part shall be filed electronically.

(3) Sections 210.8 and 210.12 set out additional requirements for a complaint filed under § 210.8. Additional requirements for a complaint filed under § 210.75 are set forth in § 210.75.

(4)(i) If a complaint, a supplement or amendment to a complaint, a motion for temporary relief, or the documentation supporting a motion for temporary relief contains confidential business information as defined in § 201.6(a) of this chapter, the complainant shall file nonconfidential copies of the complaint, the supplement or amendment to the complaint, the motion for temporary relief, or the documentation supporting the motion for temporary relief concurrently with the requisite confidential copies, as provided in § 210.8(a). A nonconfidential copy of all exhibits, appendices, and attachments to the document shall be filed in electronic form on one CD–ROM, DVD, or other portable electronic media approved by the Secretary, separate from the media used for the confidential version.

(ii)(A) Persons who file the following submissions that contain confidential business information covered by an administrative protective order, or that are the subject of a request for confidential treatment, must file nonconfidential copies and serve them on the other parties to the investigation or related proceeding within 10 calendar days after filing the confidential version with the Commission:

(*1*) A response to a complaint and all supplements and exhibits thereto;

(*2*) All submissions relating to a motion to amend the complaint or notice of investigation; and

(*3*) All submissions addressed to the Commission.

(B) Other sections of this part may require, or the Commission or the administrative law judge may order, the filing and service of nonconfidential copies of other kinds of confidential submissions. If the submitter's ability to prepare a nonconfidential copy is dependent upon receipt of the nonconfidential version of an initial determination, or a Commission order or opinion, or a ruling by the administrative law judge or the Commission as to whether some or all of the information at issue is entitled to confidential treatment, the nonconfidential copies of the submission must be filed within 10 calendar days after service of the Commission or administrative law judge document in question. The time periods for filing specified in this paragraph (f)(4)(ii)(B) apply unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

(5) The Secretary may provide for exceptions and modifications to the filing requirements set out in this chapter. A person seeking an exception should consult the Handbook on Filing Procedures.

(6) Documents shall be filed with the Office of the Secretary through the Commission's Electronic Document Information System (EDIS) website at *https://edis.usitc.gov.* If a paper filing is required or authorized under paragraph (f)(5) of this section, documents shall be filed at the office of the Secretary in Washington, DC. Such documents, if properly filed within the hours of operation specified in § 201.3(c) of this chapter, will be deemed to be filed on the date on which they are actually received by the Commission.

(7) Each document filed with the Commission for the purpose of initiating any investigation shall be considered properly filed if it conforms with the pertinent rules prescribed in this chapter. Substantial compliance with the pertinent rules may be accepted by the Commission provided good and sufficient reason is stated in the document for inability to comply fully with the pertinent rules.

(8) During any period in which the Commission is closed, deadlines for filing documents electronically and by other means are extended so that documents are due on the first business day after the end of the closure.

(g) *Cover sheet.* For documents that are filed electronically, parties must complete the cover sheet form for such filing on-line at *https://edis.usitc.gov* at the time of the electronic filing. When making a paper filing, parties must complete the cover sheet form online at *https://edis.usitc.gov* and print out the cover sheet for submission to the Office of the Secretary with the paper filing. The party submitting the cover sheet is responsible for the accuracy of all information contained in the cover sheet, including, but not limited to, the security status and the investigation number, and must comply with applicable limitations on disclosure of confidential information under § 210.5.

(h) *Specifications.* (1) Each document filed under this chapter shall be double-spaced, clear and legible, except that a document of two pages or less in length need not be double-spaced. All submissions shall be in letter-sized format (8.5 x 11 inches), except copies of documents prepared for another agency or a court (*e.g.,* patent file wrappers or pleadings papers). Typed matter shall not exceed 6.5 x 9.5 inches using 11-point or larger type and shall be double-spaced between each line of text using the standard of 6 lines of type per inch. Text and footnotes shall be in the same size type. Quotations more than two lines long in the text or footnotes may be indented and single-spaced. Headings and footnotes may be single-spaced.

(2) The presiding administrative law judge may impose any specifications the administrative law judge deems appropriate for submissions that are addressed to the administrative law judge.

* * * * *

■ 29. Amend § 210.7 by revising paragraph (a)(2) to read as follows:

§ 210.7 Service of process and other documents; publication of notices.

(a) * * *

(2) The service of all initial determinations as defined in § 210.42, all cease and desist orders as set forth in § 210.50(a)(1), all show cause orders issued under § 210.16(b)(1)(i), and all documents containing confidential business information as defined in § 201.6(a) of this chapter, issued by or on behalf of the Commission or the administrative law judge on a private party, shall be effected by serving a copy of the document by express delivery, as defined in § 201.16(e) of this chapter, on the person to be served, on a member of the partnership to be served, on the president, secretary, other executive officer, or member of the board of directors of the corporation, association, or other organization to be served, or, if an attorney represents a person or entity to be served in connection with an investigation under part 210, by serving a copy by express delivery on such attorney.

* * * * *

Subpart B—Commencement of Preinstitution Proceedings and Investigations

■ 30. Amend § 210.8 by revising the introductory text and paragraphs (a), (b) introductory text, (c)(1) introductory text, and (c)(2) and adding paragraph (c)(3) to read as follows:

§ 210.8 Commencement of preinstitution proceedings.

A preinstitution proceeding is commenced by filing with the Secretary a signed complaint.

(a) *Filing and Service Copies.* (1)(i) A complaint, enforcement complaint, supplement, or amendment under § 210.14(a) thereto, filed under this section shall be filed with the Secretary pursuant to § 210.4. By close of business the next business day following official receipt of the complaint, complainant must deliver copies to the Secretary for service by the Secretary as follows:

(A) For each proposed respondent, one (1) true paper copy of the nonconfidential version of the complaint, one (1) true paper copy of the confidential version of the complaint, if any, and one (1) true paper copy of any supplements or amendments under § 210.14(a), along with one (1) true copy of the nonconfidential exhibits and one (1) true copy of the confidential exhibits in electronic form on a CD ROM, DVD, or other portable electronic media approved by the Secretary; and

(B) For the government of the foreign country in which each proposed respondent is located as indicated in the complaint, one (1) true paper copy of the nonconfidential version of the complaint.

(ii) Failure to timely provide service copies may result in a delay or denial of institution of an investigation under § 210.10 for failure to properly file the complaint.

(2) If the complaint, enforcement complaint, supplement, or amendment under § 210.14(a) thereto, is seeking temporary relief, the complainant must also by close of business the next business day following official receipt of the complaint, deliver copies to the Secretary for service as follows: for each proposed respondent, one (1) true paper copy of the nonconfidential version of the motion and one (1) true paper copy of the confidential version of the motion along with one (1) true copy of the nonconfidential exhibits and one (1) true copy of the confidential exhibits filed with the motion in electronic form on a CD ROM, DVD, or other portable electronic media approved by the Secretary.

(b) *Provide specific information regarding the public interest.* Complainant must file, concurrently with the complaint, a separate statement of public interest, not to exceed five (5) pages, inclusive of attachments, addressing how issuance of the requested relief, *i.e.,* a general exclusion order, a limited exclusion order, and/or a cease and desist order, in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. If the complainant files a confidential version of its submission on public interest, it shall file a public version of the submission no later than one business day after the deadline for filing the submission. In particular, the submission should:

* * * * *

(c) * * *

(1) When a complaint is filed, the Secretary to the Commission will publish a notice in the **Federal Register** inviting comments from the public, interested government agencies, and proposed respondents on any issues arising from the complaint and potential exclusion and/or cease and desist orders. In response to the notice, members of the public, interested government agencies, and proposed respondents may provide specific information regarding the public interest and other issues in a written submission not to exceed five (5) pages, inclusive of attachments, to the Secretary to the Commission within eight (8) calendar days of publication of notice of the filing of a complaint. Members of the public, interested government agencies, and proposed respondents may address how issuance of the requested exclusion order and/or a cease and desist order in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. If a member of the public, interested government agency, or proposed respondent files a confidential version of its submission, it shall file a public version of the submission with the Secretary to the Commission and provide a copy of the public version of the submission to complainant no later than one (1) business day after the deadline for filing the submission. Submissions addressing the public interest should:

* * * * *

(2) Complainant may file a reply to any submissions received under paragraph (c)(1) of this section not to exceed five (5) pages, inclusive of attachments, to the Secretary to the Commission within three (3) calendar days following the filing of the submissions. Notwithstanding § 201.14(a) of this chapter, computation of the reply time period will begin with the first business day following the day on which submissions under paragraph (c)(1) are due, but will include subsequent Saturdays, Sundays, and Federal legal holidays. If the complainant files a confidential version of its submission, it shall file a public version of the submission no later than one (1) business day after the deadline for filing the submission.

(3) No further submissions will be accepted unless requested by the Commission.

* * * * *

■ 31. Amend § 210.10 by revising paragraphs (a)(1)(iii) and (iv) and adding paragraphs (a)(1)(v) and (a)(7) to read as follows:

§ 210.10 Institution of investigation.

(a)(1) * * *

(iii) The complainant requests that the Commission postpone the determination on whether to institute an investigation;

(iv) The complainant withdraws the complaint; or

(v) The complaint or any exhibits or attachments thereto contain excessive designations of confidentiality that are not warranted under § 201.6(a) of this chapter and § 210.5.

* * * * *

(7) If the Commission determines that the complaint or any exhibits or attachments thereto contain excessive designations of confidentiality that are not warranted under § 201.6(a) of this chapter and § 210.5, the Commission may require the complainant to file new nonconfidential versions of the aforesaid submissions in accordance with § 210.4(f)(7)(i) and may determine that the thirty (30) day period for deciding whether to institute an investigation shall begin to run anew from the date the new nonconfidential versions are filed with the Commission in accordance with § 210.4(f)(7)(i).

* * * * *

■ 32. Amend § 210.11 by:

■ a. Revising paragraphs (a)(1) and (2);

■ b. Removing paragraph (a)(3); and

■ c. Redesignating paragraph (a)(4) as paragraph (a)(3).

The revisions read as follows:

§ 210.11 Service of complaint and notice of investigation upon institution.

(a)(1) Upon institution of an investigation, the Commission shall serve:

(i) Copies of the nonconfidential version of the complaint, the nonconfidential exhibits, and the notice of investigation upon each respondent; and

(ii) Copies of the nonconfidential version of the complaint and the notice of investigation upon the embassy in Washington, DC, of the country in which each proposed respondent is located as indicated in the complaint.

(2) If the Commission institutes temporary relief proceedings, upon institution of an investigation, the Commission shall also serve copies of the nonconfidential version of the motion for temporary relief, the nonconfidential version of the complaint, and the notice of investigation upon each respondent.

* * * * *

Subpart C—Pleadings

■ 33. Revise and republish § 210.12 to read as follows:

§ 210.12 The complaint.

(a) *Contents of the complaint.* In addition to conforming with the requirements of §§ 210.4 and 210.5, the complaint shall—

(1) Be under oath and signed by the complainant or the complainant's duly authorized officer, attorney, or corporate representative, with the name, address, email address, and telephone number of the complainant and any such officer, attorney, or corporate representative given on the first page of the complaint, and include a statement attesting to the representations in § 210.4(c)(1) through (3).

(2) Include a statement of the facts constituting the alleged unfair methods of competition and unfair acts.

(3) Describe specific instances of alleged unlawful importations or sales, and shall provide the Harmonized Tariff Schedule of the United States item number(s) for such importations.

(4) State the name, address, and nature of the business (when such nature is known) of each person alleged to be violating section 337 of the Tariff Act of 1930.

(5) Include a statement as to whether the alleged unfair methods of competition and unfair acts, or the subject matter thereof, are or have been the subject of any court or agency litigation, or of any arbitration, and, if so, include a brief summary of such proceeding.

(6)(i) If the complaint alleges a violation of section 337 based on infringement of a U.S. patent, or a federally registered copyright, trademark, mask work, or vessel hull design, under section 337(a)(1)(B), (C), (D), or (E) of the Tariff Act of 1930, include a statement as to whether an alleged domestic industry exists or is in the process of being established as defined in section 337(a)(2). Include the following information with the statement:

(A) For complaints alleging that a domestic industry exists, a detailed description of the relevant domestic industry as defined in section 337(a)(3) that allegedly exists including facts showing significant/substantial investment and employment, and also including the relevant operations of any licensees;

(B) For complaints alleging a domestic industry that is in the process of being established, a detailed description of the relevant domestic industry that is in the process of being established including facts showing that complainant is actively engaged in the steps leading to the exploitation of its intellectual property rights and that there is a significant likelihood that an industry will be established in the future, and also including the relevant operations of any licensees; and

(C) Relevant information that should be included in the statements pursuant to paragraphs (a)(6)(i)(A) and (B) of this section includes but is not limited to:

(*1*) Significant investment in plant and equipment;

(*2*) Significant employment of labor or capital; or

(*3*) Substantial investment in the exploitation of the subject patent, copyright, trademark, mask work, or vessel hull design, including engineering, research and development, or licensing;

(ii) If the complaint alleges a violation of section 337 of the Tariff Act of 1930 based on unfair methods of competition and unfair acts in the importation or sale of articles in the United States that have the threat or effect of destroying or substantially injuring an industry in the United States or preventing the establishment of such an industry under section 337(a)(1)(A)(i) or (ii), include a detailed statement as to whether an alleged domestic industry exists or is in the process of being established (*i.e.,* for the latter, facts showing that there is a significant likelihood that an industry will be established in the future), and include a detailed description of the domestic industry affected, including the relevant operations of any licensees; or

(iii) If the complaint alleges a violation of section 337 of the Tariff Act of 1930 based on unfair methods of competition or unfair acts that have the threat or effect of restraining or monopolizing trade and commerce in the United States under section 337(a)(1)(A)(iii), include a description of the trade and commerce affected.

(7) Include a description of the complainant's business and its interests in the relevant domestic industry or the relevant trade and commerce. For every intellectual property based complaint (regardless of the type of intellectual property right involved), include a showing that at least one complainant is the owner or exclusive licensee of the subject intellectual property.

(8) If the alleged violation involves an unfair method of competition or an unfair act other than those listed in paragraph (a)(6)(i) of this section:

(i) Include in the statement of facts required by paragraph (a)(2) of this section factual allegations that would show the existence of each element of the cause of action underlying the unfair act or method of competition; and

(ii) State a specific theory, and elements thereof, and provide supporting factual allegations concerning the existence of a threat or effect to destroy or substantially injure a domestic industry, to prevent the establishment of a domestic industry, or to restrain or monopolize trade and commerce in the United States. The information that should ordinarily be provided includes the volume and trend of production, sales, and inventories of the involved domestic article; a description of the facilities and number and type of workers employed in the production of the involved domestic

article; profit-and-loss information covering overall operations and operations concerning the involved domestic article; pricing information with respect to the involved domestic article; when available, volume and sales of imports; and other pertinent data.

(9) Include, when a complaint is based upon the infringement of a valid and enforceable U.S. patent—

(i) The identification of each U.S. patent and a certified copy thereof (a legible copy of each such patent will suffice for each required copy of the complaint);

(ii) The identification of the ownership of each involved U.S. patent and a certified copy of each assignment of each such patent (a legible copy thereof will suffice for each required copy of the complaint);

(iii) The identification of each licensee under each involved U.S. patent;

(iv) A copy of each license agreement (if any) for each involved U.S. patent that complainant relies upon to establish its standing to bring the complaint or to support its contention that a domestic industry as defined in section 337(a)(3) exists or is in the process of being established as a result of the domestic activities of one or more licensees;

(v) When known, a list of each foreign patent, each foreign or domestic patent application (not already issued as a patent), and each foreign or domestic patent application that has been denied, abandoned or withdrawn, corresponding to each involved U.S. patent, with an indication of the prosecution status of each such patent application;

(vi) A nontechnical description of the invention of each involved U.S. patent;

(vii) A reference to the specific claims in each involved U.S. patent that allegedly cover the article imported or sold by each person named as violating section 337 of the Tariff Act of 1930, or the process under which such article was produced;

(viii) A showing that each person named as violating section 337 of the Tariff Act of 1930 is importing or selling the article covered by, or produced under the involved process covered by, the specific, asserted claims of each involved U.S. patent. The complainant shall make such showing by appropriate allegations, and when practicable, by a chart that applies each asserted independent claim of each involved U.S. patent to a representative involved article of each person named as violating section 337 of the Tariff Act or to the process under which such article was produced;

(ix) A showing that an industry in the United States, relating to the articles protected by the patent exists or is in the process of being established. The complainant shall make such showing by appropriate allegations, and when practicable, by a chart that applies an exemplary claim of each involved U.S. patent to a representative involved domestic article or to the process under which such article was produced;

(x) Drawings, photographs, or other visual representations of both the involved domestic article or process and the involved article of each person named as violating section 337 of the Tariff Act of 1930, or of the process utilized in producing the imported article, and, when a chart is furnished under paragraphs (a)(9)(viii) and (ix) of this section, the parts of such drawings, photographs, or other visual representations should be labeled so that they can be read in conjunction with such chart; and

(xi) The expiration date of each patent asserted.

(10) Include, when a complaint is based upon the infringement of a federally registered copyright, trademark, mask work, or vessel hull design—

(i) The identification of each licensee under each involved copyright, trademark, mask work, and vessel hull design; and

(ii) A copy of each license agreement (if any) that complainant relies upon to establish its standing to bring the complaint or to support its contention that a domestic industry as defined in section 337(a)(3) exists or is in the process of being established as a result of the domestic activities of one or more licensees.

(11) Contain a request for relief, including a statement as to whether a limited exclusion order, general exclusion order, and/or cease and desist orders are being requested, and if temporary relief is requested under section 337(e) and/or (f) of the Tariff Act of 1930, a motion for such relief, which shall either accompany the complaint as provided in § 210.52(a) or follow the complaint as provided in § 210.53(a). Complaints requesting issuance of a general exclusion order shall include a statement of factual allegations that would satisfy the requirements of section 337(d)(2), including, for example:

(i) factual allegations showing that a general exclusion order is necessary to prevent circumvention of a limited exclusion order; or

(ii) factual allegations showing a pattern of violation of section 337 and difficulty in identifying the source of infringing products.

(12) Contain a clear statement in plain English of the category of products accused. For example, the caption of the investigation might refer to ''certain electronic devices,'' but the complaint would provide a further statement to identify the type of products involved in plain English such as mobile devices, tablets, or computers.

(b) *Submissions of articles as exhibits.* At the time the complaint is filed, if practicable, the complainant shall submit both the domestic article and exemplary imported articles that are the subject of the complaint.

(c) *Additional material to accompany each patent-based complaint.* There shall accompany the submission of each complaint based upon the alleged unauthorized importation or sale of an article covered by, or produced under a process covered by, the claims of a valid U.S. patent the following:

(1) One (1) certified copy of the U.S. Patent and Trademark Office prosecution history for each involved U.S. patent, plus three additional copies thereof; and

(2) One (1) copy of the prosecution histories of any priority applications for each involved U.S. patent.

(d) *Additional material to accompany each registered trademark-based complaint.* There shall accompany the submission of each complaint based upon the alleged unauthorized importation or sale of an article covered by a federally registered trademark, one certified copy of the Federal registration and three additional copies, and one certified copy of the prosecution history for each federally registered trademark.

(e) *Additional material to accompany each complaint based on a non-federally registered trademark.* There shall accompany the submission of each complaint based upon the alleged unauthorized importation or sale of an article covered by a non-federally registered trademark the following:

(1) A detailed and specific description of the alleged trademark;

(2) Information concerning prior attempts to register the alleged trademark; and

(3) Information on the status of current attempts to register the alleged trademark.

(f) *Additional material to accompany each copyright-based complaint.* There shall accompany the submission of each complaint based upon the alleged unauthorized importation or sale of an article covered by a copyright one

certified copy of the Federal registration and three additional copies.

(g) *Additional material to accompany each registered mask work-based complaint.* There shall accompany the submission of each complaint based upon the alleged unauthorized importation or sale of a semiconductor chip in a manner that constitutes infringement of a federally registered mask work, one certified copy of the Federal registration and three additional copies.

(h) *Additional material to accompany each vessel hull design-based complaint.* There shall accompany the submission of each complaint based upon the alleged unauthorized importation or sale of an article covered by a vessel hull design, one certified copy of the Federal registration (including all deposited drawings, photographs, or other pictorial representations of the design), and three additional copies.

(i) *Initial disclosures.* Complainant shall serve on each respondent represented by counsel who has agreed to be bound by the terms of the protective order one copy of each document submitted with the complaint pursuant to paragraphs (c) through (h) of this section within five days of service of a notice of appearance and agreement to be bound by the terms of the protective order.

(j) *Duty to supplement complaint.* Complainant shall supplement the complaint prior to institution of an investigation if complainant obtains information upon the basis of which complainant knows or reasonably should know that a material legal or factual assertion in the complaint is false or misleading.

■ 34. Amend § 210.13 by revising the first sentence of paragraph (b) introductory text to read as follows:

§ 210.13 The response.

* * * * *

(b) * * * In addition to conforming to the requirements of §§ 210.4 and 210.5, each response shall be under oath and signed by respondent or by respondent's duly authorized officer, attorney, or corporate representative with the name, address, email address, and telephone number of the respondent and any such officer, attorney, or corporate representative given on the first page of the response. * * *

* * * * *

■ 35. Amend § 210.14 by:

■ a. Revising the section heading;

■ b. Adding introductory text; and

■ c. Revising paragraphs (a), (b)(1), and (g).

The revisions and addition read as follows:

§ 210.14 Amendments to pleadings and notice; supplemental submissions; counterclaims; severance and consolidation of investigations.

Amended complaints, exhibits, and supplements thereto, filed under this section shall be filed with the Secretary pursuant to § 210.4.

(a) *Preinstitution amendments.* The complaint may be amended at any time prior to the institution of the investigation. Any amendment that introduces an additional unfair act or additional respondent shall be in the form of an amended complaint that complies with the requirements of § 210.12(a). If, prior to institution, the complainant seeks to amend a complaint to add a respondent or to assert an additional unfair act not in the original complaint, including asserting a new patent or patent claim, then the complaint shall be treated as if it had been filed on the date the amendment is filed for purposes of §§ 210.8(b) and (c), 210.9, and 210.10(a).

(b) * * *

(1) After an investigation has been instituted, the complaint or notice of investigation may be amended only by leave of the Commission for good cause shown and upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation. A motion for amendment must be made to the presiding administrative law judge. Complainant shall serve one (1) copy of any motion to amend the complaint and notice of investigation to name an additional respondent after institution on the proposed respondent and on all other respondents. If the proposed amendment of the complaint would introduce an additional unfair act or an additional respondent, the motion shall be accompanied by a proposed amended complaint that complies with the requirements of § 210.12(a). If the proposed amendment of the complaint would require amending the notice of investigation, the presiding administrative law judge may grant the motion only by filing with the Commission an initial determination. All other dispositions of such motions shall be by order. Respondents shall have ten (10) calendar days from the date of service of an order granting the motion or, in cases where the amendment requires amending the notice of investigation, a Commission determination affirming or not reviewing an initial determination granting the motion, to file a written response to the amended complaint and/or notice of investigation. The contents of such response shall be governed by § 210.13(b).

(i) If the amended complaint and notice of investigation name an additional respondent, the Commission shall serve one (1) copy of the amended complaint and notice of investigation on the additional respondent and the embassies of the relevant foreign countries, in the manner specified in § 201.16(b) of this chapter, after a Commission determination affirming or not reviewing an initial determination granting the motion.

(ii) By close of business the next business day following official receipt of the amended complaint, Complainant must deliver copies to the Secretary for service by the Secretary as follows:

(A) For each proposed additional respondent, one (1) true paper copy of the nonconfidential version of the amended complaint and one (1) true paper copy of the confidential version of the amended complaint, if any, along with one (1) true copy of the nonconfidential exhibits and one (1) true copy of the confidential exhibits in electronic form on a CD ROM, DVD, or other portable electronic media approved by the Secretary; and

(B) For the government of the foreign country in which each proposed respondent is located as indicated in the amended complaint, one (1) true paper copy of the nonconfidential version of the complaint shall be filed.

(iii) Unless otherwise ordered in the notice of investigation or by the presiding administrative law judge, an additional respondent named in the amended complaint and notice of investigation shall have twenty (20) days from the date of service of the amended complaint and notice of investigation to file a written response in the manner specified in § 210.13.

* * * * *

(g) *Consolidation of investigations.* The Commission may consolidate two or more investigations. If the investigations are currently before the same presiding administrative law judge, he or she may consolidate the investigations. If the investigations are not currently before the same presiding administrative law judge, the chief administrative law judge may consolidate the investigations and assign an administrative law judge to preside over the consolidated investigations. The investigation number in the caption of the consolidated investigation will include the investigation numbers of the investigations being consolidated. The investigation number in which the

matter will be proceeding (the lead investigation) will be the first investigation number named in the consolidated caption.

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Subpart D—Motions

■ 36. Amend § 210.15 by revising paragraphs (a)(2) and (c) to read as follows:

§ 210.15 Motions.

(a) * * *

(2) When an investigation or related proceeding is before the Commission, all motions shall be addressed to the Chair of the Commission. All such motions shall be filed with the Secretary and shall be served upon each party. Motions may not be filed with the Commission during preinstitution proceedings except for motions for temporary relief pursuant to § 210.53.

* * * * *

(c) *Responses to motions.* Within ten (10) days after service of any written motions, or within such longer or shorter time as may be designated by the administrative law judge or the Commission, a nonmoving party, or in the instance of a motion to amend the complaint or notice of investigation to name an additional respondent after institution, the proposed respondent, shall respond or may be deemed to have consented to the granting of the relief asked for in the motion. The moving party shall have no right to reply, except as permitted by the administrative law judge or the Commission.

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■ 37. Amend § 210.16 by revising paragraphs (b)(1)(i) and (b)(2) and (3) to read as follows:

§ 210.16 Default.

* * * * *

(b) * * *

(1)(i) If a respondent has failed to respond or appear in the manner described in paragraph (a)(1) of this section, a party may file a motion for, or the administrative law judge may issue *sua sponte,* an order directing the respondent to show cause why it should not be found in default.

* * * * *

(2) Any party may file a motion for issuance of, or the administrative law judge may issue *sua sponte,* an initial determination finding a party in default for abuse of process under § 210.4(c) or failure to make or cooperate in discovery under § 210.33. A motion for a finding of default as a sanction for abuse of process or failure to make or cooperate in discovery shall be granted by initial determination or denied by order.

(3)(i) A proposed respondent may file a notice of intent to default under this section with the administrative law judge at any time before the issuance of the final initial determination.

(ii) Upon the filing of a notice of intent to default under paragraph (b)(3)(i) of this section, the administrative law judge shall issue an initial determination finding the respondent in default without first issuing the show-cause order of paragraph (b)(1)(i) of this section. Such default will be treated in the same manner as any other default under this section.

* * * * *

■ 38. Amend § 210.17 by:

■ a. Revising paragraph (h); and

■ b. Removing the undesignated text at the end of the section.

The revision reads as follows:

§ 210.17 Other failure to act and default.

* * * * *

(h) The presiding administrative law judge or the Commission may take action under this rule *sua sponte* or in response to the motion of a party.

■ 39. Amend § 210.18 by revising paragraph (b) to read as follows:

§ 210.18 Summary determinations.

* * * * *

(b) *Opposing affidavits; oral argument; time and basis for determination.* Any nonmoving party may file opposing affidavits within ten (10) days after service of the motion for summary determination. At the discretion of the administrative law judge or at the request of any party, the administrative law judge may set the matter for oral argument and call for the submission of briefs or memoranda. The determination sought by the moving party shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.

* * * * *

■ 40. Amend § 210.20 by revising paragraph (a) to read as follows:

§ 210.20 Declassification of confidential information.

(a) Any party may move to declassify documents (or portions thereof) that have been designated confidential by the submitter but that do not satisfy the confidentiality criteria set forth in § 201.6(a) of this chapter. All such motions, whether brought at any time during the investigation or after conclusion of the investigation shall be addressed to and ruled upon by the presiding administrative law judge, or if the investigation is not before a presiding administrative law judge, by the chief administrative law judge or such administrative law judge as the chief administrative law judge may designate.

* * * * *

■ 41. Amend § 210.25 by revising paragraphs (d) and (f) to read as follows:

§ 210.25 Sanctions.

* * * * *

(d) If an administrative law judge's order concerning sanctions is issued before the initial determination concerning violation of section 337 of the Tariff Act of 1930 or termination of the investigation, it may be appealed under § 210.24(b)(1) with leave from the administrative law judge, if the requirements of that section are satisfied. If the order is issued concurrently with the initial determination, or if the administrative law judge denies leave to appeal a previously issued order under § 210.24(b)(1), the order may be appealed by filing a petition meeting the requirements of § 210.43(b) within the same time period specified in § 210.43(a) in which a petition for review of the initial determination terminating the investigation may be filed. The Commission will determine whether to adopt the order after disposition of the initial determination concerning violation of section 337 or termination of the investigation.

* * * * *

(f) If a motion for sanctions is filed with the administrative law judge during an investigation, the administrative law judge may defer adjudication of the motion until after the administrative law judge has issued a final initial determination concerning violation of section 337 of the Tariff Act of 1930 or termination of investigation. If the administrative law judge defers adjudication in such a manner, the administrative law judge's ruling on the motion for sanctions must be in the form of a recommended determination and shall be issued no later than thirty (30) days after issuance of the Commission's final determination on violation of section 337 or termination of the investigation. Parties may submit comments on the recommended determination within ten (10) days from the service of the recommended determination. Parties may submit responses thereto within five (5)

business days from service of any comments.

Subpart E—Discovery and Compulsory Process

■ 42. Amend § 210.27 by:
■ a. Revising and republishing paragraph (b);
■ b. Revising paragraph (e)(2)(ii); and
■ c. Redesignating paragraph (e)(5)(iii) as (e)(5)(ii)(C).

The revisions read as follows:

§ 210.27 General provisions governing discovery.

* * * * *

(b) *Scope of discovery.* Regarding the scope of discovery for the temporary relief phase of an investigation, see § 210.61 and the limitations of paragraph (d) of this section. For the permanent relief phase of an investigation, unless otherwise ordered by the administrative law judge, a party may obtain discovery, subject to the limitations of paragraph (d) of this section, regarding any matter, not privileged, that is proportional to the needs of the investigation and relevant to the following:

(1) The claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things;

(2) The identity and location of persons having knowledge of any discoverable matter;

(3) The appropriate remedy for a violation of section 337 of the Tariff Act of 1930 (see § 210.42(a)(1)(ii)(A)); or

(4) The appropriate bond for the respondents, under section 337(j)(3) of the Tariff Act of 1930, during Presidential review of the remedial order (if any) issued by the Commission (see § 210.42(a)(1)(ii)(B)).

* * * * *

(e) * * *

(2) * * *

(ii) If there exists a disagreement about the basis for the claim of privilege or protection as attorney work product, within seven (7) days of service of the notice, the claimant and the parties shall meet and confer in good faith to resolve the claim of privilege or protection. If, after meeting and conferring there continues to be a disagreement, within five (5) days after the conference, a party may file a motion to compel the production of the document and may, in the motion to compel, use a description of the document from the notice produced under this paragraph (e)(2). In connection with the motion to compel, the party may submit the document *in camera* for consideration by the administrative law judge. The person that produced the document must preserve the document until the claim of privilege or protection is resolved.

* * * * *

■ 43. Amend § 210.28 by:
■ a. Revising paragraph (a);
■ b. Redesignating paragraphs (b) through (i) as paragraphs (c) through (j);
■ c. Adding new paragraph (b); and
■ d. Revising newly redesignated paragraph (d), the last sentence of newly redesignated paragraph (e), and newly redesignated paragraphs (g) and (i)(4).

The revisions and addition read as follows:

§ 210.28 Depositions.

(a) *When depositions may be taken.* Following publication in the **Federal Register** of a Commission notice instituting the investigation, any party may take the testimony of any person, including a party, by deposition upon oral examination or written questions. The presiding administrative law judge will determine the permissible dates or deadlines for taking such depositions. Unless stipulated otherwise by the parties, the complainants as a group and the respondents as a group may each take a maximum of twenty (20) fact depositions. If the Office of Unfair Import Investigations is a party, the Commission investigative attorney may take a maximum of ten (10) fact depositions and is permitted to participate in all depositions taken by any parties in the investigation. The presiding administrative law judge may set the maximum number of depositions permitted to be taken by an intervenor. Depositions of party witnesses and non-party witnesses alike shall count towards the limits on fact depositions. A notice for a corporation to designate deponents shall count as only one deposition and shall include all corporate representatives so designated to respond. The presiding administrative law judge may increase or limit the number of depositions on written motion for good cause shown.

(b) *Duration.* Unless otherwise ordered by the presiding administrative law judge or stipulated by the parties, including, when participating in the investigation, the Commission investigative attorney, a deposition is limited to one (1) day of seven (7) hours. The presiding administrative law judge must allow additional time, in a manner consistent with § 210.27(b) through (d), if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

* * * * *

(d) *Notice of examination.* A party desiring to take the deposition of a person shall give notice in writing to every other party to the investigation. The administrative law judge shall determine the appropriate period for providing such notice. A party upon whom a notice of deposition is served may make objections to a notice of deposition and state the reasons therefor within ten (10) days of service of the notice of deposition. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. A notice may provide for the taking of testimony by telephone or videoconference, but the administrative law judge may, on motion of any party, require that the deposition be taken in the presence of the deponent. The parties may stipulate in writing, or the administrative law judge may upon motion order, that the testimony at a deposition be recorded by other than stenographic means. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(e) * * * See paragraph (j) of this section concerning the effect of errors and irregularities in depositions.

* * * * *

(g) *Service of deposition transcripts on the Commission staff.* The party taking the deposition shall promptly serve one copy of the deposition transcript and exhibits on the Commission investigative attorney.

* * * * *

(i) * * *

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part that ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

* * * * *

■ 44. Amend § 210.30 by revising paragraphs (a)(1) and (b)(2) to read as follows:

§ 210.30 Requests for production of documents and things and entry upon land.

(a) * * *

(1) To produce and permit the party making the request, or someone acting on that party's behalf, to inspect and

copy any designated documents (including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained), or to inspect and copy, test, or sample any tangible things that are in the possession, custody, or control of the party upon whom the request is served; or

* * * * *

(b) * * *

(2) The party upon whom the request is served shall serve a written response within ten (10) days or the time specified by the administrative law judge. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest. The party submitting the request may move for an order under § 210.33(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request.

* * * * *

■ 45. Amend § 210.31 by revising paragraphs (b) through (d) to read as follows:

§ 210.31 Requests for admission.

* * * * *

(b) *Answers and objections to requests for admissions.* A party answering a request for admission shall repeat the request for admission immediately preceding the answer to the request. The matter may be deemed admitted unless, within ten (10) days or the period specified by the administrative law judge, the party to whom the request is directed serves upon the party requesting the admission a sworn written answer or objection addressed to the matter. If objection is made, the reason therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter as to which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party has made reasonable inquiry and states that the information known to or readily obtainable by that party is insufficient to enable the party to admit or deny. A party who considers that a matter as to which an admission has been requested presents a genuine issue for a hearing may not object to the request on that ground alone; the party may deny the matter or set forth reasons why it cannot be admitted or denied.

(c) *Sufficiency of answers.* The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objecting party sustains the burden of showing that the objection is justified, the administrative law judge shall order that an answer be served. If the administrative law judge determines that an answer does not comply with the requirements of this section, the administrative law judge may order either that the matter is admitted or that an amended answer be served. The administrative law judge may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to a hearing under this part.

(d) *Effect of admissions; withdrawal or amendment of admission.* Any matter admitted under this section may be conclusively established unless the administrative law judge on motion permits withdrawal or amendment of the admission. The administrative law judge may permit withdrawal or amendment when the presentation of the issues of the investigation will be subserved thereby and the party who obtained the admission fails to satisfy the administrative law judge that withdrawal or amendment will prejudice that party in maintaining its position on the issue of the investigation. Any admission made by a party under this section is for the purpose of the pending investigation and any related proceeding as defined in § 210.3.

■ 46. Amend § 210.32 by revising paragraphs (a)(3) and (c)(2) to read as follows:

§ 210.32 Subpoenas.

(a) * * *

(3) The administrative law judge shall rule on all applications filed under paragraph (a)(1) or (2) of this section and may issue subpoenas when warranted. The administrative law judge shall also rule on any motion seeking foreign judicial assistance to obtain testimony or documents outside the United States.

* * * * *

(c) * * *

(2) *Ruling.* Such applications shall be ruled upon by the administrative law judge, who may issue such subpoenas when warranted. To the extent that the motion is granted, the administrative law judge shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the official or employee as may appear necessary and appropriate for the protection of the public interest.

* * * * *

■ 47. Amend § 210.33 by revising paragraphs (b) introductory text and (b)(3) and (6) to read as follows:

§ 210.33 Failure to make or cooperate in discovery; sanctions.

* * * * *

(b) *Non-monetary sanctions for failure to comply with an order compelling discovery.* The administrative law judge may issue, based on a party's motion or *sua sponte,* non-monetary sanctions for failure to comply with an order compelling discovery. Such failure to comply may include failure of a party, or an officer or corporate representative of a party, to comply with an oral or written order including, but not limited to, an order for the taking of a deposition or the production of documents, an order to answer interrogatories, an order issued pursuant to a request for admissions, or an order to comply with a subpoena. Any such sanction may be ordered in the course of the investigation or concurrently with the administrative law judge's final initial determination on violation. The administrative law judge may take such action in regard to a failure to comply with an order compelling discovery as is just, including, but not limited to the following:

* * * * *

(3) Rule that the party may not introduce into evidence or otherwise rely upon testimony by the party, officer, or corporate representative, or documents, or other material in support of the party's position in the investigation;

* * * * *

(6) Order any other non-monetary sanction available under Rule 37(b) of the Federal Rules of Civil Procedure.

* * * * *

■ 48. Amend § 210.34 by revising paragraphs (a) introductory text, (c)(2), (d) introductory text, and (d)(5) to read as follows:

§ 210.34 Protective orders; reporting requirement; sanctions and other actions.

(a) *Issuance of protective order.* Upon motion by a party or by the person from whom discovery is sought or by the administrative law judge *sua sponte,* and for good cause shown, the administrative law judge may make any order that may appear necessary and appropriate for the protection of the public interest or that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

* * * * *

(c) * * *

(2) If the breach occurs while the investigation is before an administrative law judge, any determination on sanctions of the type enumerated in paragraphs (c)(3)(i) through (iv) of this section shall be in the form of a recommended determination. The Commission may then consider both the recommended determination and any related orders in making a determination on sanctions. When the motion is addressed to the administrative law judge for sanctions of the type enumerated in paragraph (c)(3)(v) of this section, the administrative law judge shall grant or deny a motion by issuing an order.

* * * * *

(d) *Reporting requirement.* Each person who is subject to a protective order issued pursuant to paragraph (a) of this section shall report in writing to the Commission immediately upon learning that confidential business information disclosed to that person pursuant to the protective order is the subject of:

* * * * *

(5) Any other written request, if the request or order seeks disclosure, by that person or any other person, of the subject confidential business information to a person who is not, or may not be, permitted access to that information pursuant to either a Commission protective order or § 210.5(b).

* * * * *

Subpart F—Prehearing Conferences and Hearings

■ 49. Amend § 210.35 by revising paragraph (a) introductory text to read as follows:

§ 210.35 Prehearing conferences.

(a) *When appropriate.* The administrative law judge in any investigation may direct counsel or other representatives for all parties to meet with the administrative law judge for one or more conferences to consider any or all of the following:

* * * * *

■ 50. Amend § 210.37 by revising paragraph (g) to read as follows:

§ 210.37 Evidence.

* * * * *

(g) *Excluded evidence.* When an objection to a question propounded to a witness is sustained, the examining party may make a specific offer of what that party expects to prove by the answer of the witness, or the administrative law judge may as a matter of discretion receive and report the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained with the record so as to be available for consideration by any reviewing authority.

■ 51. Amend § 210.38 by revising paragraph (d) to read as follows:

§ 210.38 Record.

* * * * *

(d) *Certification of record.* Any record created, including all physical exhibits entered into evidence or such photographic reproductions thereof as the administrative law judge approves, shall be certified to the Commission by the administrative law judge at the time the administrative law judge files an initial determination, or a recommended determination, or at such earlier time as the Commission may order.

■ 52. Revise § 210.40 to read as follows:

§ 210.40 Briefs and notices of supplemental authority.

(a) At the time a motion for summary determination under § 210.18(a) or a motion for termination under § 210.21(a) is made, or when it is found that a party is in default under § 210.16, or at the close of the reception of evidence in any hearing held pursuant to this part (except as provided in § 210.63), or within a reasonable time thereafter fixed by the administrative law judge, any party may file briefs in support of that party's positions, in the form specified by the administrative law judge, for the administrative law judge's consideration. Such briefs shall be in writing, shall be served upon all parties in accordance with § 210.4(g), and shall contain adequate references to the record and the authorities on which the submitter is relying.

(b) If pertinent and significant authorities come to a party's attention after the party's brief has been filed but before the final initial determination has issued, the party may promptly advise the administrative law judge by filing a written notice of supplemental authority, no more than two (2) double-spaced pages in length. The notice must be served on all other parties and must describe the relevance of the supplemental authority, with reference to specific pages in either the party's briefs or the transcript of the evidentiary hearing. Any other party may file a response of no more than two (2) double-spaced pages within five (5) business days after the date of service of the notice of supplemental authority.

Subpart G—Determinations and Actions Taken

■ 53. Amend § 210.42 by:
■ a. Revising paragraph (c)(1) and (h)(3);
■ b. Removing paragraph (h)(5);
■ c. Redesignating paragraph (h)(6) as paragraph (h)(5);
■ d. Revising newly redesignated paragraph (h)(5); and
■ e. Adding new paragraph (h)(6).

The revisions and addition read as follows:

§ 210.42 Initial determinations.

* * * * *

(c) * * *

(1) The administrative law judge shall grant the following types of motions by issuing an initial determination or shall deny them by issuing an order: a motion to amend the complaint or notice of investigation pursuant to § 210.14(b); a motion for a finding of default pursuant to §§ 210.16 and 210.17; a motion for summary determination pursuant to § 210.18; a motion for intervention pursuant to § 210.19; a motion for termination pursuant to § 210.21; a motion to suspend an investigation pursuant to § 210.23; or a motion to set a target date for an original investigation exceeding 16 months pursuant to § 210.51(a)(1); or a motion to set a target date for an enforcement proceeding exceeding twelve (12) months pursuant to § 210.51(a)(2).

* * * * *

(h) * * *

(3) An initial determination filed pursuant to paragraph (c)(1) of this section shall become the determination of the Commission thirty (30) days after the date of service of the initial determination, except as provided for in paragraph (h)(5) of this section, unless the Commission, within thirty (30) days after the date of such service shall have ordered review of the initial determination or certain issues therein or by order has changed the effective date of the initial determination.

* * * * *

(5) The disposition of an initial determination filed pursuant to paragraph (c)(1) of this section which grants a motion for summary

determination pursuant to § 210.18 that would terminate the investigation in its entirety if it were to become the Commission's final determination, shall become the final determination of the Commission forty-five (45) days after the date of service of the initial determination, unless the Commission has ordered review of the initial determination or certain issues therein, or by order has changed the effective date of the initial determination.

(6) The disposition of an initial determination filed pursuant to paragraph (c)(2) of this section, concerning possible forfeiture or return of a respondent's bonds as governed by § 210.50(d) or possible forfeiture or return of a complainant's temporary relief bond as governed § 210.70(c), shall become the final determination of the Commission forty-five (45) days after the date of service of the initial determination, unless the Commission has ordered review of the initial determination or certain issues therein, or by order has changed the effective date of the initial determination.

* * * * *

■ 54. Amend § 210.43 by revising paragraph (a)(1) to read as follows:

§ 210.43 Petitions for review of initial determinations on matters other than temporary relief.

(a) * * *

(1) Except as provided in paragraph (a)(2) of this section, any party to an investigation may request Commission review of an initial determination issued under § 210.42(a) or (c), § 210.50(d)(3), § 210.70(c), or § 210.75(a)(3) by filing a petition with the Secretary. A petition for review of an initial determination issued under § 210.42(a)(1) and a petition for review of any sanctions order issued under § 210.25(d) must be filed within twelve (12) days after service of the initial determination or order. A petition for review of an initial determination issued under § 210.42(a)(3) must be filed within five (5) business days after service of the initial determination. A petition for review of an initial determination issued under § 210.42(c) that terminates the investigation in its entirety on summary determination, or an initial determination issued under § 210.42(a)(2), § 210.50(d)(3), § 210.70(c), or § 210.75(a)(3), must be filed within ten (10) days after service of the initial determination. Petitions for review of all other initial determinations under § 210.42(c) must be filed within five (5) business days after service of the initial determination. A petition for review of an initial determination issued under § 210.50(d)(3) or § 210.70(c) must be filed within ten (10) days after service of the initial determination.

* * * * *

■ 55. Amend § 210.45 by revising paragraph (c) to read as follows:

§ 210.45 Review of initial determinations on matters other than temporary relief.

* * * * *

(c) *Determination on review.* On review, the Commission may affirm, reverse, modify, vacate, or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge. In addition, the Commission may take no position on specific issues or portions of the initial determination of the administrative law judge. The Commission also may make any findings or conclusions that in its judgment are proper based on the record in the proceeding. If the Commission's determination on review terminates the investigation in its entirety, a notice will be published in the **Federal Register**.

■ 56. Revise § 210.48 to read as follows:

§ 210.48 Disposition of petitions for reconsideration.

The Commission may affirm, reverse, modify, or vacate its determination, in whole or part, including any action ordered by it to be taken thereunder. When appropriate, the Commission may remand to the administrative law judge via an order, specifying any necessary additional findings, determinations, or recommendations.

■ 57. Amend § 210.49 by revising paragraph (d) to read as follows:

§ 210.49 Implementation of Commission action.

* * * * *

(d) *Finality of affirmative Commission action.* If the President does not disapprove the Commission's action within a 60-day period beginning the day after a copy of the Commission's action is delivered to the President, or if the President notifies the Commission before the close of the 60-day period that the President approves the Commission's action, such action shall become final the day after the close of the 60-day period or the day the President notifies the Commission of the President's approval, as the case may be.

* * * * *

■ 58. Amend § 210.51 by revising paragraph (a) introductory text and (a)(2) to read as follows:

§ 210.51 Period for concluding investigation.

(a) *Permanent relief.* Within forty-five (45) days after institution of an original investigation as to whether there is a violation of section 337 or an investigation that is an enforcement proceeding, the administrative law judge shall issue an order setting a target date for completion of the investigation. After the target date has been set, it can be modified by the administrative law judge for good cause shown before the investigation is certified to the Commission or by the Commission after the investigation is certified to the Commission.

* * * * *

(2) *Enforcement proceedings.* If the target date does not exceed twelve (12) months from the date of institution of the enforcement proceeding, the order of the administrative law judge shall be final and not subject to interlocutory review. If the target date exceeds twelve (12) months, the order of the administrative law judge shall constitute an initial determination. Any extension of the target date beyond twelve (12) months shall be by initial determination.

* * * * *

Subpart H—Temporary Relief

■ 59. Revise § 210.63 to read as follows:

§ 210.63 Briefs.

The administrative law judge shall determine whether and, if so, to what extent the parties shall be permitted to file briefs under § 210.40 concerning the issues involved in adjudication of the motion for temporary relief.

■ 60. Revise § 210.65 to read as follows:

§ 210.65 Certification of the record.

When the administrative law judge issues an initial determination concerning temporary relief pursuant to § 210.66(a), the administrative law judge shall also certify to the Commission the record upon which the initial determination is based.

■ 61. Amend § 210.66 by revising paragraphs (c) and (f) to read as follows:

§ 210.66 Initial determination concerning temporary relief; Commission action thereon.

* * * * *

(c) The Commission will not modify, reverse, or vacate an initial determination concerning temporary relief unless the Commission finds that a finding of material fact is clearly erroneous, that the initial determination contains an error of law, or that there is a policy matter warranting discussion by the Commission. All parties may file written comments concerning any clear error of material fact, error of law, or policy matter warranting such action by the Commission. Such comments must

be limited to thirty-five (35) pages in an ordinary investigation and forty-five (45) pages in a ''more complicated'' investigation. The comments must be filed no later than seven (7) calendar days after issuance of the initial determination in an ordinary case and ten (10) calendar days after issuance of the initial determination in a ''more complicated'' investigation. In computing the aforesaid 7-day and 10-day deadlines, intermediary Saturdays, Sundays, and Federal holidays shall be included. If the initial determination is issued on a Friday, however, the filing deadline for comments shall be measured from the first business day after issuance. If the last day of the filing period is a Saturday, Sunday, or Federal holiday as defined in § 201.14(a) of this chapter, the filing deadline shall be extended to the next business day. The parties shall serve their comments on other parties by messenger, overnight delivery, or equivalent means.

* * * * *

(f) If the Commission determines to modify, reverse, or vacate the initial determination, the Commission will issue a notice and, if appropriate, a Commission opinion. If the Commission does not modify, reverse, or vacate the administrative law judge's initial determination within the time provided under paragraph (b) of this section, the initial determination will automatically become the determination of the Commission. Notice of the Commission's determination concerning the initial determination will be issued on the statutory deadline for determining whether to grant temporary relief, or as soon as possible thereafter, and will be served on the parties. Notice of the determination will be published in the **Federal Register** if the Commission's disposition of the initial determination has resulted in a determination that there is reason to believe that section 337 has been violated and a temporary remedial order is to be issued. If the Commission determines (either by reversing or modifying the administrative law judge's initial determination, or by adopting the initial determination) that the complainant must post a bond as a prerequisite to the issuance of temporary relief, the Commission may issue a supplemental notice setting forth conditions for the bond if any (in addition to those outlined in the initial determination) and the deadline for filing the bond with the Commission.

■ 62. Amend § 210.67 by revising paragraph (a) to read as follows:

§ 210.67 Remedy, the public interest, and bonding.

* * * * *

(a) While the motion for temporary relief is before the administrative law judge, the administrative law judge may compel discovery on matters relating to remedy, the public interest and bonding (as provided in § 210.61). The administrative law judge also is authorized to make findings pertaining to the public interest, as provided in § 210.66(a). Such findings may be superseded, however, by Commission findings on that issue as provided in paragraph (c) of this section.

* * * * *

Subpart I—Enforcement Procedures and Advisory Opinions

■ 63. Amend § 210.75 by revising paragraphs (a)(1) introductory text and (a)(1)(i)(B) and (C) and adding paragraphs (a)(1)(i)(D) and (a)(1)(v) to read as follows:

§ 210.75 Proceedings to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders.

(a) * * *

(1) The Commission may institute an enforcement proceeding upon the filing of an enforcement complaint pursuant to §§ 210.4 and 210.8(a) by the complainant in the original investigation or the complainant's successor in interest, by the Office of Unfair Import Investigations, or by the Commission. Notwithstanding § 210.8(a)(1)(ii), no paper copies of enforcement complaints or exhibits thereto are required for the government of the foreign country in which each alleged violator is located. If a proceeding is instituted, the Commission shall publish in the **Federal Register** a notice of institution and shall serve copies of the nonconfidential version the enforcement complaint, the nonconfidential exhibits, and the notice of investigation upon each alleged violator. Within fifteen (15) days after the date of service of such a complaint, the named respondent shall file a response to it.

(i) * * *

(B) The filing party requests that the Commission postpone the determination on whether to institute an investigation;

(C) The filing party withdraws the complaint; or

(D) The complaint or any exhibits or attachments thereto contain excessive designations of confidentiality that are not warranted under § 201.6(a) of this chapter and § 210.5.

* * * * *

(v) If the Commission determines that the complaint or any exhibits or attachments thereto contain excessive designations of confidentiality that are not warranted under § 201.6(a) of this chapter and § 210.5, the Commission may require the complainant to file new nonconfidential versions of the aforesaid submissions in accordance with § 210.4(f)(7)(i) and may determine that the thirty (30) day period for deciding whether to institute an investigation shall begin to run anew from the date the new nonconfidential versions are filed with the Commission in accordance with § 210.4(f)(7)(i).

* * * * *

■ 64. Amend § 210.76 by revising the heading of paragraph (a) and paragraphs (a)(1) and (3) to read as follows:

§ 210.76 Modification or rescission of exclusion orders, cease and desist orders, consent orders, and seizure and forfeiture orders.

(a) *Petitions for modification or rescission of exclusion orders, cease and desist orders, consent orders, and seizure and forfeiture orders.* (1) Whenever any person believes that changed conditions of fact or law, or the public interest, require that an exclusion order, cease and desist order, consent order, or seizure and forfeiture order be modified or rescinded, in whole or in part, such person may file a petition, pursuant to section 337(k)(1) of the Tariff Act of 1930, requesting that the Commission make a determination that the conditions which led to the issuance of an exclusion order, cease and desist order, consent order, or seizure and forfeiture order no longer exist. The Commission may also on its own initiative consider such action. The petition shall state the changes desired and the changed circumstances or public interest warranting such action, shall include materials and argument in support thereof, and shall be served on all parties to the investigation in which the exclusion order, cease and desist order, consent order, or seizure and forfeiture order was issued. Any person may file a response to the petition within ten (10) days of service of the petition. If the Commission makes such a determination, it shall notify the Secretary of the Treasury and U.S. Customs and Border Protection.

* * * * *

(3) If the petition requests modification or rescission of an order issued pursuant to section 337(d), (e), (f), (g), or (i) of the Tariff Act of 1930 on the basis of a licensing or other settlement agreement, the petition shall contain copies of the licensing or other settlement agreements, any

supplemental agreements, any documents referenced in the petition or attached agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the petition. On motion for good cause shown, the administrative law judge or the Commission may limit the service of the agreements to the settling parties and the Commission investigative attorney.

* * * * *

■ 65. Revise appendix A to part 210 to read as follows:

Appendix A to Part 210—Adjudication and Enforcement

Initial determination concerning:	Petitions for review due:	Response to petitions due:	Commission deadline for determining whether to review the initial determination:
1. Violation § 210.42(a)(1)	12 days from service of the initial determination.	8 days from service of any petition.	60 days from service of the initial determination (on private parties).
2. Summary initial determination that would terminate the investigation if it became the Commission's final determination § 210.42(c)(1).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination (on private parties).
3. Other matters § 210.42(c)(1)	5 business days from service of the initial determination.	5 business days from service of any petition.	30 days from service of the initial determination (on private parties).
4. Declassify information § 210.42(a)(2).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination (on private parties).
5. Potentially dispositive issues § 210.42(a)(3).	5 business days from service of the initial determination.	5 business days from service of any petition.	30 days from service of the initial determination (on private parties).
6. Forfeiture or return of respondents' bond § 210.50(d)(3).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination (on private parties).
7. Forfeiture or return of complainant's temporary relief bond § 210.70(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination (on private parties).
8. Enforcement proceedings § 210.75(a)(3).	10 days from service of the enforcement initial determination.	5 business days from service of any petition.	45 days from service of the enforcement initial determination (on private parties).

By order of the Commission.

Issued: March 21, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–06385 Filed 3–27–24; 8:45 am]

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