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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS–SC–20–0102; SC21–932–1 FR]

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the California Olive Committee to increase the assessment rate for the 2021 fiscal year. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective September 13, 2021.

FOR FURTHER INFORMATION CONTACT: Bianca Bertrand, Management and Program Analyst, or Gary D. Olson, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 356–8202 or email: *BiancaM.Bertrand@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, implements an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 932, 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 California Olive Committee (Committee) locally administers the Order and is comprised of producers and handlers of olives operating within the production area.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866 and 13563. 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. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This 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 this 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. 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 assessment rate be applicable to all assessable olives for the 2021 fiscal year 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 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 request a modification of the order or to be exempted therefrom. Such a 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.

This rule increases the current assessment rate from $15.00 per ton of assessable olives to $30.00 per ton of assessable olives for the 2021 fiscal year and subsequent fiscal years. The marketing year runs August 1 through July 31.

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. Members are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting and all directly affected persons have an opportunity to participate and provide input.

For the 2020 fiscal year and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate of $15.00 per ton of assessable olives. That assessment rate will continue in effect until modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee, or other information available to USDA.

The Committee met on December 8, 2020, and unanimously recommended expenditures of $1,151,832 and an assessment rate of $30.00 per ton of assessable olives handled for the 2021 fiscal year and subsequent fiscal years. In comparison, last year's budgeted expenditures were $1,035,406. The assessment rate of $30.00 is $15.00 higher than the rate currently in effect. Handlers received 23,193 tons of assessable olives for the 2020 crop year. This is substantially less than the volume for the 2019 crop year, which was 81,689 tons of assessable olives.

The Committee recommended increasing the assessment rate due to the smaller crop. The assessment rate and funds from the Committee's authorized financial reserve is expected to cover the Committee's budgeted expenses for the 2021 fiscal year. Funds in the reserve are expected to remain within the maximum permitted by the Order.

The Order has both 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.

Actual crop year receipts, along with the proposed budget, are used to determine the assessment rate for the following fiscal year. Olives are an alternate-bearing crop, with a small crop followed by a large crop. Therefore, the Committee expects fluctuations in the assessment rate.

Major expenditures recommended by the Committee for the 2021 fiscal year include $531,300 for general administration expenses, $334,532 for research, $238,000 for marketing expenses, and $48,000 for inspection expenses. Budgeted expenses for these items for the 2020 fiscal year were $631,300, $225,606, $123,500, and $55,000, respectively.

The Committee derived the recommended assessment rate by considering anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2020 crop year, and the amount of funds available in the authorized reserve. Income derived from handler assessments, calculated at $695,790 (23,193 tons assessable olives multiplied by $30.00 assessment rate), along with funds from the Committee's authorized reserve of $456,042, will be adequate to cover budgeted expenses of $1,151,832 for the 2021 fiscal year.

The assessment rate established in this rule will 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 will be in effect for an indefinite period, the Committee will 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. 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 will 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 2021 fiscal year budget, and those for subsequent fiscal years, will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final 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 of less than $1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the national average producer price for olives for the 2020 crop year was $791.00 per ton, and total assessable volume for the 2020 crop year was 23,193 tons. The total 2020 value of the olive crop was $18,345,663 (23,193 tons times $791.00 per ton). Dividing the crop value by the estimated number of producers (800) yields an estimated average receipt per producer of $22,932. Thus, the majority of olive producers may be classified as small agricultural producers.

Based on information from the Committee regarding the volume handled by each handler, neither handler can be classified as a small agricultural service firm. Both handlers may be classified as large entities under the SBA's definition because their annual receipts are greater than $30,000,000.

As noted above, the average price received per ton by producers in the preceding crop year was $791.00 per ton of assessable olives. Given the total crop received by handlers of 23,193 tons, the total producer revenue is expected to be $18,345,663. The total assessment revenue is expected to be $695,790 (23,193 tons times $30.00 per ton). Thus, the total assessment revenue compared to total producer revenue is 0.038 percent.

This rule increases the assessment rate collected from handlers for the 2021 fiscal year and subsequent fiscal years from $15.00 to $30.00 per ton of assessable olives. The Committee unanimously recommended 2021 expenditures of $1,151,832 and an assessment rate of $30.00 per ton of assessable olives. The assessment rate of $30.00 per ton of assessable olives is $15.00 higher than the current rate. The volume of assessable olives from the 2020 crop year is estimated to be 23,193 tons. Thus, the $30.00 per ton assessment rate should provide $695,790 in assessment income (23,193 tons assessable olives multiplied by $30.00 assessment rate). Income derived from handler assessments, along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses for the 2021 fiscal year.

Major expenditures recommended by the Committee for the 2021 fiscal year include $531,300 for general administration expenses, $334,532 for research, $238,000 for marketing expenses, and $48,000 for inspection expenses. Budgeted expenses for these items in the 2020 fiscal year were $631,300, $225,606, $123,500, and $55,000, respectively.

The Committee recommended increasing the assessment rate to provide adequate income to cover the Committee's budgeted expenses for the 2021 fiscal year while maintaining its financial reserve within the requirements of the Order.

Prior to arriving at this budget and assessment rate recommendation, the Committee received information from its Executive, Marketing, and Research subcommittees. At each subcommittee meeting, the members discussed various alternatives to both the assessment rate and programs under their purview. Subcommittees deliberated alternatives relative to their needs and the costs of the programs they oversee. The Research subcommittee, for example, discussed production research proposals, their relative values, whether costs associated with each project was appropriate, whether the project was appropriate in scale, and whether the project met industry's needs. These types of deliberations are part of the annual discussion held by each

subcommittee. Subcommittees then report their conclusions and recommendations to the Committee.

Given all the information available to the Committee and its own deliberations, the Committee made a recommendation to USDA on the assessment rate and the proposed budget.

This rule increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some portion of assessments may be passed on to producers. However, these costs are expected to be offset by benefits derived by the operation of the Order.

Various subcommittees' meetings and the Committee's meeting were widely publicized throughout the California olive industry. All interested persons were invited to attend meetings and encouraged to participate in deliberations. Like all meetings, subcommittee meetings held on November 5, 2020 and the full Committee meeting held on December 8, 2020, were public meetings and all entities, both large and small scale, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including 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 the OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements are necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small- or large-scale 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. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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.

A proposed rule concerning this action was published in the **Federal Register** on April 8, 2021 (86 FR 18216). Copies of the proposal were provided by the Committee to members and handlers. Finally, the proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 45-day comment period ending May 24, 2021, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes were made to the rule proposed.

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 recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended 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, 2021, an assessment rate of $30.00 per ton is established for California olives.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–17237 Filed 8–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Doc. No. AMS–SC–20–0104; SC21–993–1 FR]

Dried Prunes Produced in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Prune Marketing Committee to increase the assessment rate established for the 2020–21 and subsequent crop years. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective September 13, 2021.

FOR FURTHER INFORMATION CONTACT: Bianca Bertrand, Management and Program Analyst, or Gary D. Olson, Acting Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901 or email: *BiancaM.Bertrand@usda.gov* or *GaryD.Olson@usda.gov.* Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Agreement and Order No. 993, as amended (7 CFR part 993), regulating the handling of dried prunes produced in California. Part 993 (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 Prune Marketing Committee (Committee) locally administers the Order and is comprised of producers and handlers of dried prunes operating within the production area, and a public member. The crop year for this Order runs from August 1 to July 31.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 12866 and 13563. 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. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final 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. Agricultural Marketing Service (AMS) has determined that this final 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. The assessment rate is applicable to all assessable dried prunes for the 2020–21 crop year and would 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 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 request a modification of the order or to be exempted therefrom. Such a 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 no later than 20 days after the date of the entry of the ruling.

This final rule increases the assessment rate from $0.25 per ton of salable dried prunes, the rate that was established for the 2019–20 and subsequent crop years, to $0.28 per ton of salable dried prunes for the 2020–21 and subsequent crop years.

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. Members are familiar with the Committee's needs and with the cost of goods and services in their local area and can formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. All directly affected persons have an opportunity to participate and provide input.

For the 2019–20 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate of $0.25 per ton of salable dried prunes. That assessment rate continues in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 10, 2020, and unanimously recommended expenditures of $24,550 and an assessment rate of $0.28 per ton of salable dried prunes handled for the 2020–21 and subsequent crop years. In comparison, last year's budgeted expenditures were $24,500. The $0.28 per ton assessment rate is $0.03 higher than the rate currently in effect. The Committee recommended increasing the assessment rate due to a smaller crop, and to provide adequate income along with carryforward/contingency funds and interest income to cover all the Committee's budgeted expenses for the 2020–21 crop year.

Major expenditures recommended by the Committee for the 2020–21 crop year include $13,700 for personnel expenses and $10,850 for operating expenses. Budgeted expenses for these items for the 2019–20 crop year were $13,300 and $11,200, respectively.

The Committee derived the recommended assessment rate by considering anticipated expenses and an estimated crop of 50,000 tons of salable dried prunes. Income derived from handler assessments, calculated at $14,000 (50,000 tons salable dried prunes multiplied by $0.28 assessment rate), along with carryforward/contingency funds and interest income ($11,682), will be adequate to cover budgeted expenses of $24,550.

The assessment rate established by this rule will continue in effect indefinitely until modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. 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 will 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 2020–21 crop year budget, and those for subsequent crop years, will be reviewed and, as appropriate, approved by USDA.

Final 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 final rule on small entities. Accordingly, AMS has prepared this final 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 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 dried prunes in the production area and 20 handlers subject to the regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the national average producer price for California dried prunes for the 2019–20 crop year was $1,510 per ton. Committee data indicates that the California dried prune total production was 110,000 tons in the 2019–20 crop year. The total 2019–20 crop year value of California dried prunes was

$166,100,000 (110,000 tons times $1,510 per ton equals $166,100,000). Dividing the crop value by the estimated number of producers (800) yields an estimated average receipt per producer of $207,625.

According to USDA Market News data, the reported terminal price for 2019 for California dried prunes ranged between $30.02 to $32.59 per 28-pound carton. The average of this range is $31.31 ($30.02 plus $32.59 divided by 2 equals $31.31). Dividing the average value by the 28-pound carton yields an estimated average price per pound of $1.12 ($31.31 average value for 28-pound carton divided by 28).

The handler price for prunes is $2,240 per ton ($1.12 per pound multiplied by 2,000 pounds per ton equals $2,240 per ton). Multiplying 2019–20 California dried prune total production of 110,000 tons by the estimated average price per ton of $2,240 equals $246,400,000. Dividing this figure by 20 regulated handlers yields estimated average annual handler receipts of $12,320,000. Therefore, using the above data, the majority of producers and handlers of California dried prunes may be classified as small entities.

As noted above, the average price received per ton by producers in the preceding crop year was $1,510 per ton of salable dried prunes. Given the estimated tonnage of 50,000 tons salable dried prunes for the 2020–21 crop year, the total producer revenue is estimated to be $75,500,000. The total assessment revenue is expected to be $14,000 (50,000 tons multiplied by $0.28 per ton). Thus, the total assessment revenue compared to total producer revenue is 0.019 percent.

This final rule increases the assessment rate collected from handlers for the 2020–21 and subsequent crop years from $0.25 to $0.28 per ton of salable California dried prunes. The Committee unanimously recommended 2020–21 crop year expenditures of $24,550 and an assessment rate of $0.28 per ton of salable dried prunes. The $0.28 per ton assessment rate is $0.03 higher than the current rate. The volume of assessable dried prunes for the 2020–21 crop year is estimated to be 50,000 tons. Thus, the $0.28 per ton of salable dried prunes should provide $14,000 in assessment income (50,000 multiplied by $0.28). Income derived from handler assessments, along with carryforward/contingency funds and interest income, will be adequate to cover budgeted expenses for the 2020–21 crop year.

Major expenditures recommended by the Committee for the 2020–21 crop year include $13,700 for personnel expenses and $10,850 for operating expenses. Budgeted expenses for these items in the 2019–20 crop year were $13,300 and $11,200 respectively.

The Committee recommended increasing the assessment rate due to a smaller crop and to provide adequate income, along with carryforward/contingency funds and interest income, to cover the Committee's budgeted expenses for the 2020–21 crop year. Prior to arriving at this budget and assessment rate recommendation, the Committee discussed various alternatives, including maintaining the current assessment rate of $0.25 per ton of salable dried prunes, and increasing the assessment rate by a different amount. However, the Committee determined that the recommended assessment rate, along with carryforward/contingency funds and interest income, will adequately fund budgeted expenses.

This final rule increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by benefits derived by the operation of the Order.

The Committee's meeting was widely publicized throughout the California prune industry. Meetings are public and virtual or in a hybrid style with participants having a choice whether to attend in person or virtually. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues.

The December 10, 2020, meeting was a virtual public meeting, and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on the 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 will be necessary as a result of this final rule. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large California prune 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. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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.

A proposed rule concerning this action was published in the **Federal Register** on May 12, 2021 (86 FR 25975). Copies of the proposal were provided by the Committee to members and handlers. Finally, the proposed rule was made available through the internet by USDA and **Federal Register**. A 30-day comment period ending June 11, 2021, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

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 recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plum, Prunes, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 993.347 is revised to read as follows:

§ 993.347 Assessment rate.

On and after August 1, 2020, an assessment rate of $0.28 per ton of

salable dried prunes is established for California dried prunes.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–17267 Filed 8–11–21; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

[NRC–2017–0090]

RIN 3150–AK04

Advanced Boiling Water Reactor (ABWR) Design Certification Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of September 29, 2021, for the direct final rule that was published in the **Federal Register** on July 1, 2021. This direct final rule amended NRC's regulations to certify the U.S. Advanced Boiling Water Reactor standard design so that applicants intending to construct and operate an U.S. Advanced Boiling Water Reactor standard design may do so by referencing the design certification rule.

DATES: *Effective date:* The effective date of September 29, 2021, for the direct final rule published July 1, 2021 (86 FR 34905), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2017–0090 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2017–0090. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3463; email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *pdr.resource@nrc.gov.*

• *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room P1–B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Dennis Andrukat, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–3561, email: *Dennis.Andrukat@nrc.gov* or James Shea, Office of Nuclear Reactor Regulation, telephone: 301–415–1388, email: *James.Shea@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On July 1, 2021 (86 FR 34905), the NRC published a direct final rule amending its regulations in part 52 of title 10 of the *Code of Federal Regulations,* ''Domestic licensing of production and utilization facilities,'' to renew the design certification for the U.S. Advanced Boiling Water Reactor (U.S. ABWR) standard design so that future applicants intending to construct and operate the renewed U.S. ABWR design may do so by referencing the design certification rule. In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on September 29, 2021. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Paperwork Reduction Act Statement

This final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget (OMB), control number 3150–0151. The effective date of the information collection associated with this final rule is September 29, 2021.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

Dated August 6, 2021.

For the Nuclear Regulatory Commission.

Richard F. Schofer,

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

[FR Doc. 2021–17115 Filed 8–11–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2021–0124]

RIN 3150–AK66

List of Approved Spent Fuel Storage Casks: TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System, Certificate of Compliance No. 1042, Amendment No. 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 2 to Certificate of Compliance No. 1042. Amendment No. 2 revises the certificate of compliance to add a dry shielded canister for storage, add new heat load zone configurations, and make other changes to the storage system. Amendment No. 2 also changes the certificate of compliance, technical specifications, and updated final safety analysis report for consistency and clarity.

DATES: This direct final rule is effective October 26, 2021 unless significant adverse comments are received by September 13, 2021. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2021–0124, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

FOR FURTHER INFORMATION CONTACT: Christian J. Jacobs, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6825; email: *Christian.Jacobs@nrc.gov* or Andrew G. Carrera, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–1078; email: *Andrew.Carrera@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0124 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0124. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2021–0124 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

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

II. Rulemaking Procedure

This rule is limited to the changes contained in Amendment No. 2 to Certificate of Compliance No. 1042 and does not include other aspects of the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System cask design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing certificate of compliance that is expected to be non-controversial. The NRC has determined that, with the requested changes, adequate protection of public health and safety will continue to be reasonably assured. The amendment to the rule will become effective on October 26, 2021. However, if the NRC receives any significant adverse comment on this direct final rule by September 13, 2021, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need

for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on March 24, 2017 (82 FR 14987), as corrected (82 FR 34387; July 25, 2017), that approved the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System design and added it to the list of NRC-approved cask designs in § 72.214, ''List of approved spent fuel storage casks,'' as Certificate of Compliance No. 1042.

IV. Discussion of Changes

On April 18, 2019, as supplemented on August 5, 2019; October 2, 2019; October 29, 2019; June 30, 2020; October 29, 2020; and January 27, 2021, TN Americas LLC submitted a request to amend Certificate of Compliance No. 1042 for the NUHOMS® EOS Dry Spent Fuel Storage System. Amendment No. 2 revises the certificate of compliance as follows:

- Adds the 61BTH Type 2 dry shielded canister transferred in the OS197 Transfer Cask for storage in the NUHOMS® MATRIX (HSM–MX) design approved in Amendment 1 to certificate of compliance No. 1042;
- for the EOS–37PTH dry shielded canister, adds two new heat load zone configurations for the EOS–37PTH for higher heat load assemblies, up to 3.5 kW/assembly, that also allow for damaged and failed fuel storage;
- for the EOS–37PTH dry shielded canister, adds basket type 4H, previously introduced in certificate of compliance No. 1042, Amendment 1, for new heat load zone configurations 1, 4, 5, 6, 8, and 9;
- for the EOS–TC108 Transfer Cask System with the EOS–37PTH dry shielded canister, adds new heat load zone configurations 4 through 9 for the 4H basket and reduce the minimum cooling times to 2 years (new heat load zone configurations 2 through 9);
- for the EOS–37PTH dry shielded canister, increases the control component source terms to better address potential control component sources from various shutdown plants; and
- revises certain certificate of compliance and technical specification items for consistency and clarity.

This amendment also revises the certificate of compliance as follows:

- Adds a description of methodology on Cobalt-60 equivalence to Section 6.2.4 of the updated final safety analysis report (UFSAR), Control Components, to clarify methodology for Control Components;
- adds a description to UFSAR Section 1.2.1.1 for EOS–37PTH and Section 1.2.1.2 for EOS–89BTH to clarify the option of using a shield plug integrated with the inner top cover plate;
- updates UFSAR Section 2.4.3 to clarify the methodology to reduce the maximum allowable heat load based on the fuel assembly type; and
- replaces the phrase ''28 days'' with ''which may be tested up to 56 days'' in paragraph 4.4.4 of the technical specification to clarify whether concrete testing is required based on horizontal storage module component temperatures.

As documented in the preliminary safety evaluation report, the NRC performed a safety review of the proposed certificate of compliance amendment request. The NRC determined that this amendment does not reflect a significant change in design or fabrication of the cask. Specifically, the NRC determined that the design of the cask would continue to maintain confinement, shielding, and criticality control in the event of each evaluated accident condition. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 2 would remain well within the limits specified by 10 CFR part 20, ''Standards for Protection Against Radiation.'' Thus, the NRC found there will be no significant change in the types or amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents.

The NRC staff determined that the amended TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System cask design, when used under the conditions specified in the certificate of compliance, the technical specifications, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be reasonably assured. When this direct final rule becomes effective, persons who hold a general license under § 72.210 may, consistent with the license conditions under § 72.212, load spent nuclear fuel into TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System casks that meet the criteria of Amendment No. 2 to Certificate of Compliance No. 1402.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC revises the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System cask design listed in § 72.214. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), this rule is classified as Compatibility Category NRC—Areas of Exclusive NRC Regulatory Authority. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Therefore, compatibility is not required for program elements in this category. Although an Agreement State may not adopt program elements reserved to the NRC, and the Category ''NRC'' does not confer regulatory authority on the State, the State may wish to inform its licensees of certain requirements by means consistent with the particular State's administrative procedure laws.

VII. Plain Writing

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

VIII. Environmental Assessment and Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

A. The Action

The action is to amend § 72.214 to revise the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 2 to Certificate of Compliance No. 1042.

B. The Need for the Action

This direct final rule amends the certificate of compliance for the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System within the list of approved spent fuel storage casks to allow power reactor licensees to store spent fuel at reactor sites in casks with the approved modifications under a general license. Specifically, Amendment No. 2 revises the certificate of compliance as described in Section IV, ''Discussion of Changes,'' of this document, for the use of the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System.

C. Environmental Impacts of the Action

On July 18,1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 2 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

The TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, can include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

This amendment does not reflect a significant change in design or fabrication of the cask. Because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 2 would remain well within the 10 CFR part 20 limits. The NRC has also determined that the design of the cask as modified by this rule would still maintain confinement, shielding, and criticality control in the event of an accident. Therefore, the proposed changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposures, and no significant increase in the potential for, or consequences from, radiological accidents. The NRC documented its safety findings in the preliminary safety evaluation report.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 2 and not issue the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System in accordance with the changes described in proposed Amendment No. 2 would have to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. The environmental impacts would be the same as the proposed action.

E. Alternative Use of Resources

Approval of Amendment No. 2 to Certificate of Compliance No. 1042 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Based on the foregoing environmental assessment, the NRC concludes that this direct final rule, ''List of Approved Spent Fuel Storage Casks: TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System, Certificate of Compliance No. 1042, Amendment No. 2,'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and TN Americas LLC. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it (1) notifies the NRC in advance; (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance; and (3) and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On March 24, 2017 (82 FR 14987), as corrected (82 FR 34387; July 25, 2017), the NRC issued an amendment to 10 CFR part 72 that approved the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System design by adding it to the list of NRC-approved cask designs in § 72.214.

On April 18, 2019, as supplemented on August 5, 2019; October 2, 2019; October 29, 2019; June 30, 2020; October 29, 2020; and January 27, 2021, TN Americas LLC submitted a request to amend the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System as described in Section IV, ''Discussion of Changes,'' of this document.

The alternative to this action is to withhold approval of Amendment No. 2 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System under the changes described in Amendment No. 2 to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation report and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory; therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (§ 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises Certificate of Compliance No. 1042 for the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System, as currently listed in § 72.214. The revision consists of the changes in Amendment No. 2 previously described, as set forth in the revised certificate of compliance and technical specifications.

Amendment No. 2 to Certificate of Compliance No. 1042 for the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System was initiated by TN Americas LLC, and was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 2 applies only to new casks fabricated and used under Amendment No. 2. These changes do not affect existing users of the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System, and the current Amendment No. 1 continues to be effective for existing users. While current users of this storage system may comply with the new requirements in Amendment No. 2, this would be a voluntary decision on the part of current users.

For these reasons, Amendment No. 2 to Certificate of Compliance No. 1042 does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons, as indicated.

Document	ADAMS Accession No./ Federal Register Citation
Direct Final Rule, 10 CFR part 72, ''List of Approved Spent Fuel Storage Casks: TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System, Certificate of Compliance No. 1042; [NRC–2016–0254] RIN 3150–AJ88, March 24, 2017.	82 FR 14987.
Correcting Amendment, 10 CFR part 72, ''List of Approved Spent Fuel Storage Casks: TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System, Certificate of Compliance No. 1042; [NRC–2016–0254] RIN 3150–AJ88, July 25, 2017.	82 FR 34387.
Initial Application from TN Americas LLC for Certificate of Compliance No. 1042, Amendment No. 2, to NUHOMS EOS Dry Spent Fuel Storage System Certificate of Compliance No. 1042, April 18, 2019.	ML19114A227 (package).
Submittal of Acceptance Review of TN Americas LLC Application for Certificate of Compliance No. 1042, Amendment No. 2, to NUHOMS EOS System, Revision 1, Response to Request for Supplemental Information, August 5, 2019.	ML19225C845.
Acceptance Review of TN Americas LLC Application for Certificate of Compliance No. 1042, Amendment No. 2, to NUHOMS EOS System, Revision 2, Supplemental Information, October 2, 2019.	ML19282A518.
Acceptance Review of TN Americas LLC Application for Certificate of Compliance No. 1042, Amendment No. 2, to NUHOMS EOS System, Revision 3—Supplemental Information, October 29, 2019.	ML19311C551.
TN Americas LLC, Application for Certificate of Compliance No. 1042, Amendment No. 2, to NUHOMS EOS System, Revision 5, June 30, 2020.	ML20190A135.
Application for Certificate of Compliance No. 1042, Amendment No. 2, to NUHOMS EOS System, Revision 6, Revised Responses to Request for Additional Information, October 29, 2020.	ML20315A417.
TN America, LLC—Application for Certificate of Compliance No. 1042 Amendment No. 2 to NUHOMS EOS System, Revision 7—Revised Response to Request for Additional Information, January 27, 2021.	ML21027A324.
User Need Memorandum Package to T. Martinez Navedo from J. McKirgan with Proposed Certificate of Compliance No. 1042, Amendment No. 2; Associated Proposed Technical Specifications; and the Preliminary Safety Evaluation Report, June 7, 2021.	ML21125A103 (package).

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2021–0124.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH–LEVEL RADIOACTIVE WASTE, AND REACTOR–RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, revise Certificate of Compliance No. 1042 to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1042.

Initial Certificate Effective Date: June 7, 2017

Amendment Number 1 Effective Date: June 17, 2020.

Amendment Number 2 Effective Date: October 26, 2021.

SAR Submitted by: TN Americas LLC.

SAR Title: Final Safety Analysis Report for the NUHOMS® EOS Dry Spent Fuel Storage System.

Docket Number: 72–1042.

Certificate Expiration Date: June 7, 2037.

Model Number: EOS–37PTH, EOS–89BTH, 61BTH Type 2.

Dated: August 4, 2021.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2021–17227 Filed 8–11–21; 8:45 am]

BILLING CODE 7590–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending (Regulation Z); Impact of the 2021 Juneteenth Holiday on Certain Closed-End Mortgage Requirements

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interpretive rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this interpretive rule to provide guidance on certain Regulation Z timing requirements related to rescission of closed-end mortgages and the TILA–RESPA Integrated Disclosures (TRID). These timing requirements are based on a definition of ''business day'' that excludes days that are designated as legal public holidays under Federal law. The interpretive rule explains these timing requirements in light of recent legislation that designated ''Juneteenth National Independence Day, June 19'' (Juneteenth) as a Federal legal public holiday. It clarifies that, if the relevant closed-end rescission or TRID time period began on or before June 17, 2021, then June 19, 2021, was considered a business day, but nothing prohibits creditors from providing longer time periods. Therefore, it would also be compliant for creditors to have considered June 19, 2021, a Federal holiday for purposes of these provisions.

DATES: This interpretive rule is effective on August 12, 2021.

FOR FURTHER INFORMATION CONTACT: Pedro De Oliveira, Lanique Eubanks, Jaclyn Maier, or Priscilla Walton-Fein, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 17, 2021, the President signed legislation that amended 5 U.S.C. 6103(a) to add ''Juneteenth National Independence Day, June 19'' (Juneteenth) to the list of Federal legal public holidays (Federal holidays).[1] Various regulatory provisions cross-reference or otherwise refer to the Federal holidays listed in 5 U.S.C. 6103(a), including the Regulation Z definition of ''business day.'' In Regulation Z, ''business day'' is defined in § 1026.2(a)(6) generally to mean ''a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions.'' However, for purposes of certain specified Regulation Z provisions, § 1026.2(a)(6) defines business day to mean: ''[A]ll calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.'' [2] This is referred to herein as the ''specific business day'' definition.

The legislation that made Juneteenth a Federal holiday took effect immediately.[3] Therefore, June 19 became a Federal holiday on June 17, 2021. By virtue of the cross-reference to 5 U.S.C. 6103(a) in § 1026.2(a)(6), the days that are considered Federal holidays under the specific business day definition in Regulation Z also changed on June 17, 2021. The Bureau understands that this presented interpretive questions and compliance challenges for the mortgage industry because the Juneteenth holiday occurred only two days after the date of the law change. Based on industry inquiries and outreach to the Bureau following the June 17, 2021, amendment to 5 U.S.C. 6103(a), the Bureau understands these issues were particularly acute for transactions that either (1) closed on or before June 17, 2021, but for which consumers' rescission periods had not yet expired or (2) were close to the

[1] Juneteenth National Independence Day Act, Public Law 117–17, 135 Stat. 287 (2021).

[2] Comment 2(a)(6)–2 further provides that four Federal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. The comment states that when one of these holidays falls on a Saturday, Federal offices and other entities might observe the holiday on the preceding Friday but, nonetheless, the observed holiday is a business day for purposes of the specific business day definition. Like the four Federal holidays listed in comment 2(a)(6)–2, Juneteenth is identified in 5 U.S.C. 6103(a) by a specific date. For 2021, Federal offices observed the Juneteenth holiday on Friday, June 18, 2021. For purposes of the specific business day definition, June 18, 2021, was a business day.

[3] The law took effect when it was signed by the President on June 17, 2021. *See, e.g., United States* v. *Casson,* 434 F.2d 415 (D.C. Cir. 1970) (indicating that a law that is effective on enactment goes into effect at the exact time that the President signs it).

planned closing date on June 17, 2021, and subject to certain disclosure timing requirements of the TRID provisions of Regulation Z.

This interpretive rule provides guidance on the 2021 Juneteenth holiday and the specific business day definition in these two situations.[4]

II. Discussion

Guidance on Determining the Applicable Specific Business Day Definition

The specific business day definition applies to various timing requirements in Regulation Z, including rescission of closed-end mortgages and some TRID provisions.[5] Regulation Z does not specify which version of the specific business day definition applies to these provisions when the definition changes during the relevant time period—the version of the definition in effect when the relevant time period begins, or the new version of the definition that takes effect before the relevant time period ends. The Bureau is issuing this interpretive rule to clarify that the version of the specific business day definition that applies to these provisions is the version of the definition in effect when the relevant time period begins.[6] Accordingly, in the context of the 2021 Juneteenth Federal holiday and the affected closed-end rescission and TRID provisions, if the relevant time period began on or before June 17, 2021, then June 19, 2021, is a business day for purposes of the specific business day definition. If the relevant time period began after June 17, 2021, then June 19, 2021, is a Federal holiday for purposes of the specific business day definition.

The Bureau concludes that this reading is consistent with the purposes of the specific business day definition, which are to provide certainty and uniformity to the timing requirements.[7] When the Federal Reserve Board (Board) established the specific business day definition, it explained that creditors and consumers need certainty as to the length of the rescission period; otherwise, they risk a delay in the loan funding date to account for an extension of the rescission period.[8] Similarly, in issuing the TRID requirements, the Bureau explained that creditors and consumers need certainty as to the length of the waiting and other time periods required under the TRID provisions in order to establish a closing date and reduce the potential for unexpected closing delays.[9] Interpreting these provisions to require use of an amended specific business day definition that takes effect only after the relevant time period begins would undermine that certainty, as it may require a change in the timing of loan funding, closing, and other dates that are dependent on the definition.

The Bureau notes that the affected closed-end rescission and TRID provisions do not prohibit creditors from providing longer time periods. Therefore, as discussed further below, it would also be compliant for creditors to have considered June 19, 2021, a Federal holiday for purposes of these provisions.

Application to Specific Rescission Provisions

As noted above, the Bureau is clarifying that the version of the specific business day definition that applies to the provisions discussed in this interpretive rule is the version of the definition in effect when the relevant time period begins. This section discusses how that guidance applies to closed-end rescission provisions that reference the specific business day definition.

Section 1026.23(a)(3)(i) provides that, for closed-end transactions covered by the right of rescission, the consumer may exercise the right to rescind until midnight of the third business day following the last of (1) delivery of all material disclosures; [10] (2) consummation of the loan; [11] and (3) delivery of the notice of the right to rescind to each consumer entitled to rescind.[12] Pursuant to § 1026.23(b)(1)(v), the notice must include the date the rescission period expires.

For purposes of § 1026.23(a)(3)(i), the rescission period is determined based on the version of the specific business day definition in effect when the rescission period begins. Similarly, for purposes of § 1026.23(b)(1)(v), the rescission period expiration date disclosed on the notice of the right to rescind is determined based on the version of the specific business day definition in effect when the rescission period begins. Therefore, if the rescission period began on or before June 17, 2021, for purposes of determining the rescission period and

[4] The Bureau is adopting this interpretation effective on the date of publication in the **Federal Register**. The interpretive rule explains the Bureau's view of the legal requirements that were applicable around the time of the Juneteenth holiday in June 2021.

[5] With respect to rescission, the affected regulatory provisions are § 1026.23(a)(3)(i) and (b)(1)(v). With respect to TRID, the affected regulatory provisions are § 1026.19(e)(1)(iii)(B), (e)(1)(iv), (e)(2)(i)(A), (e)(4)(ii), and (f)(1)(ii) and (iii). Other provisions of Regulation Z rely on the specific business day definition and therefore also were affected by the legislation. Those provisions are outside the scope of this interpretive rule.

[6] The Bureau understands that the law amending 5 U.S.C. 6103(a) to add Juneteenth to the list of Federal holidays was signed by the President shortly after 4 p.m. EST on June 17, 2021. *See* Press Release, The White House, Remarks by President Biden at Signing of the Juneteenth National Independence Day Act (June 17, 2021), *https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/06/17/remarks-by-president-biden-at-signing-of-the-juneteenth-national-independence-day-act/*. While the law took effect immediately, the Bureau is clarifying that the version of the specific business day definition in effect prior to June 17, 2021, applies where the relevant time period began at any time on June 17, 2021. The requirements discussed in this interpretive rule generally apply with respect to the day that a particular event occurred, not the time of day. Accordingly, the Bureau believes it is more consistent with these provisions not to distinguish among actions taken at different times on June 17, 2021. Treating all actions taken on June 17, 2021, the same in the context of these provisions also serves the purposes of the regulation, by providing certainty to creditors and uniformity in the application of the specific business day definition across the mortgage market.

[7] *See, e.g.,* 74 FR 23289, 23294 (May 19, 2009) (applying the specific business day definition to the seven-business-day waiting period prior to consummation after receipt of required disclosures, explaining that (1) doing so makes it easier for creditors to determine how to meet timing requirements, especially where the creditor has multiple offices not open on the same days; (2) the standard for determining when a waiting period ends will be the same for all creditors; and (3) whether a creditor's offices are open or closed will not affect the time that a consumer has to receive and review disclosures).

[8] The Board explained that it adopted the two-tier definition because transactions subject to the right of rescission need a more definite and uniform business day definition. *See* 46 FR 20848, 20850 (Apr. 7, 1981). Regulatory authority for this provision was later transferred to the Bureau. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 1061, 124 Stat. 1376, 2036 (2010) (transferring to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Board).

[9] The Bureau applied the specific business day definition to various TRID timing provisions to facilitate compliance for industry and to reduce the potential for closing delays. *See* 78 FR 79730, 79770, 79837, 79851 (Dec. 31, 2013).

[10] The material disclosures are the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §§ 1026.32(c) and (d) and 1026.43(g). *See* 12 CFR 1026.23(a)(3)(ii).

[11] ''Consummation'' is defined in § 1026.2(a)(13) as the time that a consumer becomes contractually obligated on the credit transaction. Per comment 2(a)(13)–1, when a contractual obligation is created is determined by State law.

[12] A creditor is required to provide two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice must be on a separate piece of paper but may appear with other information such as the itemization of the amount financed. The creditor may deliver the notice after the transaction is consummated, but the rescission period will not begin to run until the notice is given. *See* 12 CFR 1026.23(b)(1) and comments 23(b)(1)–2 and –4.

the disclosed rescission period expiration date, Saturday, June 19, 2021, is a business day notwithstanding the addition of Juneteenth as a Federal holiday. For example, assume the rescission period began on Wednesday, June 16, 2021. Consistent with the version of the specific business day definition in effect when the rescission period began, the creditor disclosed June 19, 2021, as the rescission period expiration date on the notice of the right to rescind. Because the rescission period began on or before June 17, 2021, Saturday, June 19, 2021, is a business day for purposes of determining the rescission period and the disclosed rescission period expiration date. In this example, the rescission period expired on Saturday, June 19, 2021; the original rescission period expiration date did not change as a result of the addition of Juneteenth as a Federal holiday. The Bureau notes, however, that for purposes of compliance with § 1026.23(a)(3)(i) and (b)(1)(v), a creditor may provide a longer rescission period.

Application to Specific TRID Provisions

As noted above, the Bureau is clarifying that the version of the specific business day definition that applies to the provisions discussed in this interpretive rule is the version in effect when the relevant time period begins. This section discusses how that guidance applies to TRID provisions that reference the specific business day definition.

Delivery of Loan Estimate prior to consummation. Section 1026.19(e)(1)(iii)(B) provides that creditors generally must deliver or place in the mail the Loan Estimate to consumers no later than seven business days before consummation of the transaction.[13] Consistent with the guidance described above, the Bureau concludes that the seven-business-day waiting period in § 1026.19(e)(1)(iii)(B) is determined based on the version of the specific business day definition in effect on the date the creditor delivers the Loan Estimate or places it in the mail. For example, if a creditor delivered or placed the Loan Estimate in the mail on Monday, June 14, 2021, the creditor complied with § 1026.19(e)(1)(iii)(B) if consummation occurred on or after Tuesday, June 22, 2021, because the Loan Estimate was delivered or mailed seven business days (including June 19, 2021) before consummation. The Bureau notes, however, that it would also be compliant for creditors to have considered June 19, 2021, a Federal holiday for purposes of § 1026.19(e)(1)(iii)(B) because creditors may provide the Loan Estimate earlier than seven business days before consummation.

Mailbox rules. Section 1026.19(e)(1)(iv), (e)(4)(ii), and (f)(1)(iii) provide that if the Loan Estimate or Closing Disclosure, as applicable, is not provided to the consumer in person, the consumer is considered to have received the Loan Estimate or Closing Disclosure three business days after it is delivered or placed in the mail when determining compliance with the disclosure timing requirements in those sections.[14] These are referred to herein as ''mailbox rules.'' The Bureau concludes that, for purposes of § 1026.19(e)(1)(iv), (e)(4)(ii), and (f)(1)(iii), the three-business-day period is determined based on the version of the specific business day definition in effect on the date the creditor delivers the disclosures or places them in the mail.[15] For example, if a creditor did not provide the Loan Estimate or Closing Disclosure to the consumer in person but delivered or placed it in the mail on Thursday, June 17, 2021, the consumer is considered to have received the Loan Estimate or Closing Disclosure on Monday, June 21, 2021. It would also be compliant for creditors to have considered June 19, 2021, a Federal holiday for purposes of the mailbox rules in § 1026.19(e)(1)(iv), (e)(4)(ii), and (f)(1)(iii).

Receipt of revised Loan Estimate and Closing Disclosure prior to consummation. Section 1026.19(e)(4)(ii) provides, in part, that the consumer must receive any revised Loan Estimate no later than four business days prior to consummation.[16] Section 1026.19(f)(1)(ii)(A) provides that the creditor must ensure that the consumer receives the Closing Disclosure no later than three business days before consummation. Unlike § 1026.19(e)(1)(iii)(B), the § 1026.19(e)(4)(ii) and (f)(1)(ii)(A) timing requirements begin when the disclosures are received by the consumer and not when they are delivered or placed in the mail. However, as noted above, § 1026.19(e)(4)(ii) and (f)(1)(iii) provide that if the revised Loan Estimate or Closing Disclosure is not provided to the consumer in person, the consumer is considered to have received the revised Loan Estimate or Closing Disclosure three business days after it is delivered or placed in the mail.

Thus, the Bureau concludes that the four- and three-business-day timing requirements in § 1026.19(e)(4)(ii) and (f)(1)(ii)(A), respectively, are determined based on the version of the specific business day definition in effect on the date the creditor either provides the required disclosures to the consumer in person or, if not provided in person, the date the creditor delivers or places the required disclosures in the mail. For example, if a creditor provided the Closing Disclosure to the consumer in person on Thursday, June 17, 2021, the creditor complied with § 1026.19(f)(1)(ii)(A) if consummation occurred on or after Monday, June 21, 2021, because the Closing Disclosure was delivered in person no later than three business days (including June 19, 2021) before consummation. The Bureau notes, however, that it would also be compliant for creditors to have considered June 19, 2021, a Federal holiday for purposes of § 1026.19(e)(4)(ii) and (f)(1)(ii)(A) because creditors may provide the revised Loan Estimate or Closing Disclosure earlier than required.

III. Regulatory Matters

This is an interpretive rule issued under the Bureau's authority to interpret Regulation Z, including under section 1022(b)(1) of the Dodd-Frank Act, which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws.[17]

By operation of section 130(f) of the Truth in Lending Act (TILA), no provision of TILA sections 130, 108(b), 108(c), 108(e), or 112 imposing any liability applies to any act done or

[13] The seven-business-day waiting period begins when the creditor delivers the Loan Estimate or places it in the mail, not when the consumer receives or is considered to have received the Loan Estimate. Comment 19(e)(1)(iii)–2.

[14] In such circumstances, the creditor may, alternatively, rely on evidence that the consumer received the disclosures earlier. Comments 19(e)(1)(iv)–1 and –2 provide that if the Loan Estimate is not provided to the consumer in person (such as by mail or email), the creditor may, alternatively, rely on evidence that the consumer received the Loan Estimate earlier than three business days after it is delivered or placed in the mail. *See also* comments 19(e)(4)(ii)–1 and 19(f)(1)(iii) 1 and –2.

[15] Relatedly, § 1026.19(e)(2)(i)(A) provides that neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction before the consumer has, among other things, received the Loan Estimate. While § 1026.19(e)(2)(i)(A) does not refer to business days when referencing the consumer receiving the Loan Estimate, § 1026.2(a)(6) lists the specific business day definition as applying to § 1026.19(e)(2)(i)(A). The same interpretation that applies to the mailbox rules for purposes of determining the receipt of disclosures also applies to § 1026.19(e)(2)(i)(A).

[16] This provision also prohibits a creditor from delivering a revised Loan Estimate on or after the date on which the creditor provides the Closing Disclosure. 12 CFR 1026.19(e)(4)(ii).

[17] 12 U.S.C. 5512(b)(1).

omitted in good faith in conformity with this interpretive rule, notwithstanding that after such act or omission has occurred, the interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.[18]

As an interpretive rule, this rule is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.[19] Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[20] The Bureau has determined that this interpretive rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.[21]

Pursuant to the Congressional Review Act,[22] the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Signing Authority

The Acting Director of the Bureau, David Uejio, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

Dated: August 5, 2021.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2021–17050 Filed 8–11–21; 8:45 am]

BILLING CODE 4810–AM–P

[18] 15 U.S.C. 1640(f); *see also* 12 U.S.C. 2617(b), 12 CFR 1024.4 (similar protection conferred by the Real Estate Settlement Procedures Act from certain liability).

[19] 5 U.S.C. 553(b).

[20] 5 U.S.C. 603(a), 604(a).

[21] 44 U.S.C. 3501 *et seq.*

[22] 5 U.S.C. 801 *et seq.*

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–498]

Schedules of Controlled Substances: Placement of 4,4′-DMAR in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Drug Enforcement Administration places 4,4′-dimethylaminorex (common name: 4,4′-DMAR) including its salts, isomers, and salts of isomers, in schedule I of the Controlled Substances Act. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle 4,4′-DMAR.

DATES: *Effective date:* September 13, 2021.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION:

Legal Authority

The United States is a party to the 1971 United Nations Convention on Psychotropic Substances (1971 Convention), February 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175, as amended. Procedures respecting changes in drug schedules under the 1971 Convention are governed domestically by 21 U.S.C. 811(d)(2–4). When the United States receives notification of a scheduling decision pursuant to Article 2 of the 1971 Convention adding a drug or other substance to a specific schedule, the Secretary of the Department of Health and Human Services (HHS),[1] after consultation with the Attorney General, shall first determine whether existing legal controls under subchapter I of the Controlled Substances Act (CSA) and the Federal Food, Drug, and Cosmetic Act meet the requirements of the schedule specified in the notification with respect to the specific drug or substance. 21 U.S.C. 811(d)(3). In the event that the Secretary of HHS (Secretary) did not so consult with the Attorney General, and the Attorney General did not issue a temporary order, as provided under 21 U.S.C. 811(d)(4), the procedures for permanent scheduling are set forth in 21 U.S.C. 811(a) and (b). Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, add to such a schedule or transfer between such schedules any drug or other substance, if he finds that such drug or other substance has a potential for abuse, and makes with respect to such drug or other substance the findings prescribed by 21 U.S.C. 812(b) for the schedule in which such drug or other substance is to be placed. The Attorney General has delegated this scheduling authority to the Administrator of the Drug Enforcement Administration (DEA Administrator or Administrator). 28 CFR 0.100.

Background

4,4′-Dimethylaminorex (common name: 4,4′-DMAR; other names: 4,5-dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine; 4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine) is a synthetic stimulant drug structurally related to 4-methylaminorex (4–MAR), a schedule I substance in the United States and a Schedule I substance in the 1971 Convention. In November 2015, the Director-General of the World Health Organization recommended the Secretary-General of the United Nations (UN Secretary-General) place 4,4′-DMAR in Schedule II of the 1971 Convention, as 4,4′-DMAR produces a spectrum of pharmacological effects similar to psychomotor stimulants listed in Schedule II of the 1971 Convention, and has dependence and abuse potential. In May 2016, the UN Secretary-General advised the Secretary of State of the United States (U.S. Secretary of State) that the Commission on Narcotic Drugs (CND) voted to place 4,4′-dimethylaminorex (4,4′-DMAR) in Schedule II of the 1971 Convention (CND Dec/59/5) during its 59th Session in March 2016.

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518 (March 8, 1985). The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

DEA and HHS Eight Factor Analyses

On October 12, 2018, in accordance with 21 U.S.C. 811(b), and in response to DEA's March 21, 2017 request, HHS provided to DEA a scientific and medical evaluation and a scheduling recommendation for 4,4′-DMAR. DEA subsequently reviewed HHS' evaluation and recommendation for schedule I placement and all other relevant data, and conducted its own analysis under the eight factors stipulated in 21 U.S.C. 811(c). DEA found, under 21 U.S.C. 812(b)(1), that this substance warrants control in schedule I. Both DEA and HHS analyses are available in their entirety in the public docket for this rule (Docket Number DEA–498) at *http://www.regulations.gov* under ''Supporting Documents.''

Notice of Proposed Rulemaking to Schedule 4,4′-DMAR

On April 7, 2020, DEA published a notice of proposed rulemaking (NPRM) entitled ''Schedules of Controlled Substances: Placement of 4,4′-DMAR in schedule I of the CSA.'' 85 FR 19401. The NPRM provided an opportunity for interested persons to file a request for hearing in accordance with DEA regulations on or before June 8, 2020. No requests for such a hearing were received by DEA. The NPRM also provided an opportunity for interested persons to submit comments on the proposed rule on or before June 8, 2020.

Comments Received

DEA received two comments on the proposed rule to control 4,4′-DMAR in schedule I of the CSA.

Support for rulemaking: One commenter recognized the dangers and public health risks, and supported the placement of 4,4′-DMAR in schedule I.

DEA Response: DEA appreciates the comment in support of this rulemaking.

Dissent for rulemaking: One commenter stated that the number of 4,4′-DMAR related deaths reported in Europe is small relative to its population, and evidence supporting scheduling is anecdotal. The commenter stated that schedule I control would restrict the ability to conduct research, and suggested that additional research with 4,4′-DMAR should take place first before clamping down. This commenter questioned the appropriateness of control of 4,4′-DMAR as a schedule I substance and suggested schedule II control for this substance.

DEA Response: DEA does not agree. As discussed above, in May 2016, the Secretary-General advised the U.S. Secretary of State that the CND voted in March 2016 to place 4,4′-DMAR in Schedule II of the 1971 Convention. As the CSA recognizes, under 21 U.S.C. 801(7), the United States is a party to international conventions, including the 1971 Convention, and is obligated to maintain appropriate control provisions related to the drugs that are covered by the treaty. In addition, DEA conducted an eight-factor analysis pursuant to 21 U.S.C. 811(c), and based its scheduling determination on a comprehensive evaluation of all available data, not just the number of deaths and anecdotal data. As stated in the proposed rulemaking, after careful review of all data, DEA concurred with HHS' assessment that 4,4′-DMAR has abuse potential comparable to other schedule I (*e.g.* aminorex and 3,4-methylenedioxymethamphetamine) or II (*d*-amphetamine) substances, and is therefore promulgating this final rule placing 4,4′-DMAR in schedule I under the CSA.

With regard to the commenter's statement that placement of 4,4′-DMAR in schedule I would restrict research on this substance, DEA notes that placing a substance in schedule I does not prohibit research on that substance. Persons interested in conducting research with 4,4′-DMAR can do so provided that they have a DEA schedule I researcher registration and meet all other statutory and regulatory criteria. This registration can be obtained by submitting an application for schedule I registration in accordance with 21 CFR 1301.11, 1301.13, 1301.18, and 1301.32. The CSA provides the specific administrative process for the Attorney General (as delegated to the Administrator), in consultation with the Secretary, to approve the registration for the bonafide research with schedule I drug substances. 21 U.S.C. 823(f); see 21 CFR 1301.18. Thus, DEA believes that adding 4,4′-DMAR in the list of schedule I substances will not restrict any legitimate research.

With regard to the commenter's suggestion that 4,4′-DMAR be placed under schedule II, as DEA has stated in prior scheduling petitions, ''Congress established only one schedule, schedule I, for drugs of abuse with 'no currently accepted medical use in treatment in the United States' and 'lack of accepted safety for use . . . under medical supervision.' 21 U.S.C. 812(b).'' 76 FR 40552 (2011); 66 FR 20038 (2001). As stated by HHS in its scientific and medical evaluation of 4,4′-DMAR, there are currently no Food and Drug Administration (FDA)-approved drug products containing 4,4′-DMAR for any clinical indication, nor are there clinical studies or petitioners that claim an accepted medical use in the United States. Thus, 4,4′-DMAR currently has no accepted medical use in treatment in the United States.[2] Therefore, placement of 4,4′-DMAR in schedule I of the CSA is appropriate.

Scheduling Conclusion

After consideration of the public comments, the scientific and medical evaluations and accompanying recommendation of HHS, and conducting an independent eight-factor analysis, DEA finds substantial evidence of potential for abuse of 4,4′-DMAR. As such, DEA is permanently scheduling 4,4′-DMAR as a controlled substance under the CSA.

Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for HHS and review of all other available data, the Administrator of DEA, pursuant to 21 U.S.C. 811(a) and 812(b)(1), finds that:

(1) 4,4′-DMAR has a high potential for abuse. This potential is comparable to other schedule I substances (*e.g.,* aminorex and 3,4-methylenedioxymethamphetamine) or schedule II substances (*e.g., d*-amphetamine);

(2) 4,4′-DMAR has no currently accepted medical use in treatment in the United States; and

(3) There is a lack of accepted safety for use of 4,4′-DMAR under medical supervision.

Based on these findings, the Administrator concludes that 4,4′-DMAR, including its salts, isomers, and salts of isomers, warrants control in schedule I of the CSA. 21 U.S.C. 812(b)(1).

Requirements for Handling 4,4′-DMAR

4,4′-DMAR is subject to the CSA's schedule I regulatory controls and

[2] Although there is no evidence suggesting that 4,4′-DMAR has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by FDA, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. The drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. 57 FR 10499 (1992), pet. for rev. denied, Alliance for Cannabis Therapeutics v. DEA, 15 F.3d 1131, 1135 (D.C. Cir. 1994).

administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, exporting, research, and conduct of instructional activities, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses), or who desires to handle 4,4′-DMAR, must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Any person who currently handles 4,4′-DMAR and is not registered with DEA must submit an application for registration and may not continue to handle 4,4′-DMAR, unless DEA has approved that application, pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of stocks.* Any person unwilling or unable to obtain a schedule I registration must surrender all quantities of currently held 4,4′-DMAR, or may transfer all quantities of currently held 4,4′-DMAR to a person registered with DEA. 4,4′-DMAR is required to be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and tribal laws.

3. *Security.* 4,4′-DMAR is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821 and 823 and in accordance with 21 CFR 1301.71–1301.76. Non-practitioners handling 4,4′-DMAR must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of 4,4′-DMAR must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

5. *Quota.* Only registered manufacturers are permitted to manufacture 4,4′-DMAR in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

6. *Inventory.* Every DEA registrant who possesses any quantity of 4,4′-DMAR, must take an inventory of 4,4′-DMAR on hand pursuant to 21 U.S.C. 827 and 958 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

Any person who registers with DEA must take an initial inventory of all stocks of controlled substances (including 4,4′-DMAR) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827, 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b).

After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including 4,4′-DMAR) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant must maintain records and submit reports with respect to 4,4′-DMAR, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1312, and 1317. Manufacturers and distributors must submit reports regarding 4,4′-DMAR to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

8. *Order Forms.* Every DEA registrant who distributes 4,4′-DMAR must comply with the order form requirements, pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305.

9. *Importation and Exportation.* All importation and exportation of 4,4′-DMAR must comply with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving 4,4′-DMAR not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

In accordance with 21 U.S.C. 811(a), this final scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of E.O. 13175. It does not 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.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–602, has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities.

DEA is placing the substance 4,4′-DMAR, including its salts, isomers, and salts of isomers, in schedule I of the CSA. This action is being taken to enable the United States to meet its obligations under the 1971 Convention. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle 4,4′-DMAR.

Based on the review of HHS' scientific and medical evaluation and all other relevant data, DEA determined that 4,4′-DMAR has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks accepted safety for use under medical supervision. DEA's research confirms that there is no legitimate commercial market for 4,4′-DMAR in the United States. Therefore, DEA estimates that no United States entity currently handles 4,4′-DMAR and does not expect any United States entity to handle 4,4′-DMAR in the foreseeable future. DEA concludes that no legitimate United States entity would be affected by this rule. As such, this rule will not have a

significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of this final rule to the Government Accountability Office, the House, and the Senate under the CRA.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, redesignate paragraphs (f)(4) through (8) as (f)(5) through (9) and add a new paragraph (f)(4) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(f) * * *

(4) 4,4′-Dimethylaminorex (4,4′-DMAR; 4,5-dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine; 4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine) 1595

* * * * *

Anne Milgram,

Administrator.

[FR Doc. 2021–17052 Filed 8–11–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2021–0545]

RIN 1625–AA08

Special Local Regulation; Great South Bay, Brightwaters, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation of certain navigable waters of Great South Bay, from Gilbert Park, Brightwaters, NY to Fire Island Lighthouse, NY for the Maggie Fischer Memorial Cross Bay Swim event. This action is necessary to provide the safety of life on these navigable waters during the swim event on Thursday, August 12, 2021. This rulemaking will prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Long Island Sound or a designated representative.

DATES: This rule is effective from 8 a.m. through 12:30 p.m. on Thursday, August 12, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0545 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Chris Gibson, Waterways Management Division, U.S. Coast Guard; telephone 203–468–4565, email *Chris.A.Gibson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. We must establish the temporary special local regulation by August 12, 2021 and insufficient time exists to execute the full NPRM process. Further, the expeditious implementation of this rule is in the public interest because it will help ensure the safety of those involved in the swim event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because the temporary special local regulation must be established on August 12, 2021 to ensure the safety of spectators and vessels during the swim event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Long Island Sound (COTP) has determined that potential hazards associated with the Maggie Fischer Memorial Cross Bay Swim marine event for any persons or vessels operating within certain waters of the Great South Bay, NY. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the special local regulated area during the Maggie Fischer Memorial Cross Bay Swim marine event.

IV. Discussion of the Rule

The COTP is establishing a temporary special local regulation to restrict vessel traffic for the safety of persons and property. The special local regulation will cover certain navigable waters of Great South Bay, from Gilbert Park, Brightwaters, NY to Fire Island Lighthouse, NY, from 8:00 a.m. until 12:30 p.m. on August 12, 2021. The temporary special local regulation will cover Waters of the Great South Bay, NY, within 100 yards of the race course. Starting Point at the Fire Island Lighthouse Dock in position at 40°38′01″ N, 073°13′07″ W; then north-by-northwest to a point in position at 40°38′52″ N, 073°13′09″ W; then north-by-northwest to a point in position at 40°39′40″ N, 073°13′30″ W; then north-by-northwest to a point in position at 40°40′30″ N, 073°14′00″ W; and then north-by-northwest, finishing at Gilbert Park, Brightwaters, NY at position 40°42′25″ N, 073°14′52″ W (NAD 83).

The duration of the regulated area is intended to protect personnel, vessels, and the marine environment in these navigable waters for the duration of the Maggie Fischer Memorial Cross Bay Swim marine event. No vessel or person will be permitted to enter the regulated area without obtaining permission from COTP or the designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, location, and duration and time-of-day of the special local regulation. This rule involves a special local regulation lasting approximately 4.5 hours and impacting a limited area of the Great South Bay. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the special local regulation and the rule would allow vessels to seek permission to enter the area. Vessel traffic would also be able to request permission from the COTP or a designated representative to enter the regulated area.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary special local regulation lasting from 8 a.m. through 12:30 p.m. on August 12, 2021 that will limit access to the Great South Bay for the duration of the swim event. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T01–0545 to read as follows:

§ 100.T01–0545 Special Local Regulation; Maggie Fischer Memorial Cross Bay Swim, Great South Bay, Brightwaters, NY.

(a) *Regulated Area.* The regulations in this section apply to the following area: Waters of the Great South Bay, NY, within 100 yards of the race course. Starting Point at the Fire Island Lighthouse Dock in position at 40°38′01″ N, 073°13′07″ W; then north-by-northwest to a point in position at 40°38′52″ N, 073°13′09″ W; then north-by-northwest to a point in position at 40°39′40″ N, 073°13′30″ W; then north-by-northwest to a point in position at 40°40′30″ N, 073°14′00″ W; and then north-by-northwest, finishing at Gilbert Park, Brightwaters, NY at position 40°42′25″ N, 073°14′52″ W. These coordinates are approximate and are based on datum NAD 1983.

(b) *Definitions.* As used in this section, *Designated Representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Long Island Sound (COTP) in the enforcement of the regulations in this section.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP or the Designated Representative.

(2) To seek permission to enter, contact the COTP or the Designated Representative via VHF–FM marine channel 16 or by contacting the Coast Guard Sector Long Island Sound Command Center at (203) 468–4401. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the Designated Representative.

(d) *Enforcement period.* This section will be enforced from 8 a.m. to 12:30 p.m. on August 12, 2021.

Dated: August 9, 2021.

S.A. Koch,

Commander, U.S. Coast Guard, Acting Captain of the Port Long Island Sound.

[FR Doc. 2021–17285 Filed 8–10–21; 11:15 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0615]

RIN 1625–AA00

Safety Zone; Ohio River, Owenboro, KY

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone from mile marker 756 to 757 of the Ohio River. The safety zone is needed to protect life and the marine environment from potential hazards created by the Owensboro Fireworks and Bridge Lights show display. This temporary final rule would prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective from 6 p.m. through 9 p.m. on August 21, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0615 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Christopher Roble, Sector Ohio Valley, U.S. Coast Guard; telephone (502) 779–5336, email *SECOHV-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone by August 21, 2021, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to ensure the safety of the participants and vessels during the Owensboro Fireworks and Bridge Lights show on August 21, 2021.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the Owensboro Fireworks and Bridge Lights show on August 21, 2021, will be a safety concern for anyone within a 1.0 mile radius of the fireworks barge. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the Owensboro Fireworks and Bridge Lights show is occurring.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on the Ohio River, starting at mile marker 756 and ending at 757, extending from bank to bank within the river. The safety zone will be enforced from 6 p.m. through 9 p.m. on August 21, 2021. The duration of the zone is intended to protect personnel, vessels,

and the marine environment in these navigable waters while the Owensboro Fireworks and Bridge Lights show is taking place. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 3 hours spread over the course of 1 day that would prohibit entry within 1 mile of the fireworks barge. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T08–0438 to read as follows:

§ 165.T08–0438 Safety Zone; Ohio River, Owensboro, KY.

(a) *Location.* The following area is a safety zone: All navigable waters of the

Ohio River between MM 756 to MM 757 in Owensboro, KY.

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

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM radio channel 16 or phone at 1–800–253–7465. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* This section will be enforced from 6 p.m. through 9 p.m. on August 21, 2021.

Dated: August 5, 2021.

A.M. Beach,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2021–17049 Filed 8–11–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED–2021–OS–0107]

Federal Preemption and Joint Federal-State Regulation and Oversight of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers

AGENCY: Office of the Secretary, Department of Education.

ACTION: Interpretation.

SUMMARY: The U.S. Department of Education (Department) issues this interpretation to revise and clarify its position on the legality of State laws and regulations that govern various aspects of the servicing of Federal student loans, such as preventing unfair or deceptive practices, correcting misapplied payments, or addressing refusals to communicate with borrowers. The Department concludes that these State laws are preempted only in limited and discrete respects, as further discussed in this interpretation. In addition, this interpretation will help facilitate close coordination between the Department and its State partners to further enhance both servicer accountability and borrower protections. This interpretation revokes and supersedes the interpretation published on March 12, 2018, ''Federal Preemption and State Regulation of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers'' (2018 interpretation).

DATES: This interpretation is effective on August 12, 2021. We must receive your comments on or before September 13, 2021.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do 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.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the interpretation, address them to Beth Grebeldinger, U.S. Department of Education, Federal Student Aid, 830 First Street NE, Room 113F4, Washington, DC 20202.

Privacy Note: The Department's policy is to make all 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: Beth Grebeldinger, U.S. Department of Education, Federal Student Aid, 830 First Street NE, Room 113F4, Washington, DC 20202. Telephone: 202–377–4018. Email: *Beth.Grabeldinger@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to comment: We are inviting comment on this interpretation because we value the public's input and perspective on these critical issues. We will consider public comment received and determine whether it is appropriate to modify or supplement this document.

Background: On March 12, 2018, the Department published in the **Federal Register** the 2018 interpretation (83 FR 10619). The 2018 interpretation set forth the Department's position at the time on the legality of several State laws regulating Federal student loan servicers, which the Department found to be broadly preempted by Federal law. In particular, the 2018 interpretation opined that State regulation of the servicing of loans under the William D. Ford Federal Direct Loan Program (Direct Loans) ''impedes uniquely Federal interests.'' *Id.* at 10,620. The 2018 interpretation also opined that State regulation of the servicing of loans under the Federal Family Education Loan Program (FFEL Loans) ''is preempted to the extent that it undermines uniform administration of the program.'' *Id.*

Federal courts have had the opportunity to consider the Department's position on preemption in several recent decisions. Those courts consistently declined to give any deference to the 2018 interpretation, finding it deserving of ''little weight.'' *Nelson* v. *Great Lakes Educ. Loan Services, Inc.,* 928 F.3d 639, 651 n.2 (7th Cir. 2019); *see also Lawson-Ross* v. *Great Lakes Higher Educ. Corp.,* 955 F.3d 908, 921 n.13 (11th Cir. 2020) (same); *New York* v. *Pennsylvania Higher Educ. Assistance Agency,* 19 Civ. 9155, 2020 WL 2097640 at *16 n.14 (S.D.N.Y. May 1, 2020) (same); *Student Loan Servicing Alliance* v. *DC,* 351 F. Supp. 3d 26, 48–51 (D.D.C. 2018). Their analyses reveal the flaws in the 2018 interpretation's insubstantial justifications for its broad claims to preempt State laws on student loan servicing.

The court in *Student Loan Servicing Alliance* analyzed the 2018 interpretation in some detail, and its analysis has been largely followed by the other courts that have considered these preemption issues. The court found that the 2018 interpretation constitutes informal guidance, having not undergone any formal review process prescribed by statute. *See* 351 F. Supp. 3d at 48–49. Thus, under *Wyeth* v. *Lavine,* 555 U.S. 555 (2009), the 2018 interpretation would be entitled only to *Skidmore* deference, which turns on its ''thoroughness, consistency, and persuasiveness.'' *Wyeth,* 555 U.S. at 577. The court went on to find that the views expressed in the 2018 interpretation warrant no deference because they are conclusory

and devoid of analysis, offering nothing more than ''a retroactive, ex-post rationalization for DOED's policy changes.'' *Student Loan Servicing Alliance,* 351 F. Supp. 3d at 50. Moreover, those views produce a ''dramatic inconsistency'' from explicit statements that the Department had made in prior judicial proceedings, and such a ''stark, unexplained change'' in the Department's approach to preemption again precluded any deference. *Id.* Finally, the 2018 interpretation was found to be neither thorough nor persuasive because it did not even specify the regulations that it claimed to be interpreting. *See id.* at 51.

The Department has reconsidered the issues of preemption and the place of the States in regulating Federal student loan servicers and revokes the 2018 interpretation as substantially overbroad and legally unsupported. Preemption issues are necessarily contextual and fact-specific, and the law does not support the sweeping claims made in the 2018 interpretation that Federal law broadly preempts State authority over Federal student loan servicing under principles of field preemption, express preemption, or conflict preemption. The Department views the States as important partners in ensuring the protection of student loan borrowers and the proper servicing of Federal student loans. The Department believes that the States have an important role to play in this area and it is appropriate to pursue an approach marked by a spirit of cooperative federalism that provides for concurrent action according to a concerted joint strategy intentionally established among Federal and State officials. Accordingly, as discussed further below, the Department believes that there is significant space for State laws and regulations relating to student loan servicing, to the extent that these laws and regulations are not preempted by the Higher Education Act of 1965, as amended (HEA), and other applicable Federal laws. We will analyze and determine preemption issues consistent with this overarching principle but based on the specific, individualized facts and circumstances of a given situation.

A. General Preemption Principles

As a preliminary matter, the Department recognizes that the Supreme Court has established the fundamental principles of Federal preemption doctrine over more than two centuries. Throughout the history of our country, the Court has repeatedly emphasized that claims of preemption of State law are narrowly construed and are to be resisted '' 'unless that [is] the clear and manifest purpose of Congress.' '' *Cipollone* v. *Liggett Group, Inc.,* 505 U.S. 504, 516 (1992) (quoting *Rice* v. *Santa Fe Elevator Corp.,* 331 U.S. 218, 230 (1947)). And where, as here, Congress legislates in a field traditionally occupied by the States, the presumption against preemption ''applies with particular force.'' *Altria Group, Inc.* v. *Good,* 555 U.S. 70, 77 (2008); *see, e.g., Pacific Gas & Elec. Co.* v. *State Energy Resources Conservation & Dev't Comm'n,* 461 U.S. 190 (1983) (Federal licensing of safety designs for nuclear power plants did not preempt State action suspending construction of such plants on economic grounds); *Huron Portland Cement Co.* v. *Detroit,* 362 U.S. 440 (1960) (city may enforce its local anti-pollution ordinance even against Federally licensed steamship).

In 2015, Connecticut became the first State to enact a law requiring licensure and oversight of student loan servicers operating in the State. In its wake, a growing number of States have followed suit by enacting their own laws or adopting their own regulations. These laws or regulations provide for licensure and oversight of student loan servicers. They also typically confer or confirm protections for citizens against prohibited acts such as engaging in unfair, deceptive, or fraudulent acts or practices; misapplying payments; reporting inaccurate information to credit bureaus; or refusing to communicate with an authorized representative of the student loan borrower.

The States that have created these regulatory regimes assert that they are acting under their general police powers for the purpose of protecting their citizens. That is a zone in which preemption is at its weakest, and the Supreme Court has emphasized the need to begin ''with the assumption that the historic police powers of the States are not to be superseded by Federal Act unless that is the clear and manifest purpose of Congress.'' *Cipollone,* 505 U.S. at 516. Particularly ''in a field which the States have traditionally occupied,'' claims of preemption face a high hurdle that has been erected to preserve the traditional balance of powers under our system of federalism. *Wyeth,* 555 U.S. at 565. One such area is education, long regarded as a subject for the exercise of predominantly State powers. Another is consumer protection, which has traditionally been regulated by the States, with more limited and occasional Federal involvement. *See, e.g., California* v. *ARC Am. Corp.,* 490 U.S. 93, 101 (1989); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132, 146 (1963).

B. Field Preemption

The 2018 interpretation opined that ''the statutory and regulatory provisions and contracts governing the Direct Loan Program preclude State regulation, either of borrowers or servicers.'' 83 FR 10621. It further stated that ''the HEA and Department regulations governing the FFEL Program preempt State servicing laws that conflict with, or impede the uniform administration of, the program.'' *Id.*

This broad assertion of power—that Federal law preempts the entire field of law relating to Federal student loan servicing—has largely been rejected by the courts. That is particularly the case where Congress has considered the matter and expressly preempted specific but limited areas of State law, as discussed below. Indeed, ''no circuit court that has considered the issue has found field preemption'' to apply in the context of the HEA. *Lawson-Ross,* 955 F.3d at 923; *see also Nelson,* 928 F.3d at 652 (''Courts have consistently held that field preemption does not apply to the HEA, and we do as well.''); *Chae* v. *SLM Corp.,* 593 F.3d 936, 941–42 (9th Cir. 2010) (same); *Cliff* v. *Payco Gen. Am. Credits, Inc.,* 363 F.3d 1113, 1125–26 (11th Cir. 2004) (same); *Armstrong* v. *Accrediting Council for Continuing Educ. & Training, Inc.,* 168 F.3d 1362, 1369 (D.C. Cir. 1999) (same).

At no time prior to the issuance of the 2018 interpretation did the Department take the view that field preemption applied to the servicing and collection of Federal student loans, and the courts have held that the Department did not provide persuasive reasons for its new position. After reexamining the issue, the Department rejects the analysis included in the 2018 interpretation and concludes that field preemption does not apply to the servicing and collection of Federal student loans.

C. Express Preemption

The 2018 interpretation further asserted broad preclusion of State student loan servicing laws on the ground that any State efforts to require Federal student loan servicers to reveal facts or information not required by Federal law are expressly preempted under the HEA. *See* 83 FR 10621. By painting with such a broad brush, the 2018 interpretation failed to consider more carefully the specific terms of applicable Federal laws and how they apply to State regulatory efforts.

In fact, the HEA does contain some specific provisions that explicitly preempt certain areas of State law, but those provisions are limited and selective. They include restrictions on

such matters as the application of State usury laws, *see* 20 U.S.C. 1078(d), of State statutes of limitation, *see* 20 U.S.C. 1091a(a)(2), of the State-law defense of infancy, *see* 20 U.S.C. 1091a(b)(2), of State wage garnishment laws, *see* 20 U.S.C. 1095a(a), of State laws on certain costs and charges, *see* 20 U.S.C. 1091a(b), and of State disclosure requirements, see 20 U.S.C. 1098g. These provisions, granular as they are, reinforce the point that Congress consciously opted to displace State authority only in these limited particulars and did not intend or provide for broad field preemption of State laws governing student loan servicing. *See, e.g., Nelson,* 928 F.3d at 650 (''The number of those provisions and their specificity show that Congress considered preemption issues and made its decisions. Courts should enforce those provisions, but we should not add to them on the theory that more sweeping preemption seems like a better policy.'') They also undermine any broad finding of express preemption, which requires courts to ''identify the domain expressly preempted by that language.'' *Medtronic, Inc.* v. *Lohr,* 518 U.S. 470, 484 (1996). In the HEA, Congress identified a series of pinpoints rather than casting a wide blanket over the entire area, and its actions must be respected in determining the scope of preemption of State law. *See id.* at 485 (intent of Congress is the ''ultimate touchstone'' of preemption analysis).

The 2018 interpretation put special emphasis on the HEA provision addressing State ''disclosure requirements.'' *See* 83 FR 10621. It observed that this provision specified ''what information must be provided in the context of the Federal loan programs,'' and expanded upon the provision by stating that it also nullified any State ''prohibitions on misrepresentation or the omission of material information.'' *Id.* But the courts have generally rejected this approach. First, this provision of the HEA covers information conveyed to the borrower before the disbursement of loan proceeds, before repayment of the loans begins, and during repayment of loans. The information disclosed is ''intended to ensure that consumer-borrowers have accurate, relevant information and can make their own informed choices about their financial affairs.'' *Nelson,* 928 F.3d at 647. Notably, the HEA provision on disclosure requirements does *not* cover affirmative misrepresentations, which are not about conveying either *more* or *less* information, but instead are simply about conveying *accurate* information so as not to mislead or defraud the borrower. The courts found this distinction to be deeply grounded in basic principles of the common law of torts, which sharply distinguish failure-to-disclose claims from claims for affirmative misrepresentation. *See, e.g., Lawson-Ross,* 955 F.3d at 917–19; *Nelson,* 928 F.3d at 647–49.

Second, the 2018 interpretation purported to rely on the Ninth Circuit's decision in the *Chae* case, which concerned the failure to disclose information in the specific ways required in Federal law, such as in billing statements. But the findings in *Chae* do not preclude State regulation of affirmative misrepresentation about information that the servicer was not required to disclose. Nor can such conduct plausibly be reframed as a mere ''failure to disclose'' correct information. *Pennsylvania* v. *Navient Corp.,* 967 F.3d 273, 289–90 (3d Cir. 2020). The *Chae* court drew this same distinction, holding that the ''use of fraudulent and deceptive practices apart from the billing statements'' are not preempted by Federal law. *See Chae,* 593 F.3d at 943; *see also Lawson-Ross,* 955 F.3d at 919 (discussing *Chae*); *Nelson,* 928 F.3d at 649–50 (same).

For these reasons, the Department finds that, except in the limited and specific instances set forth in the HEA itself, State measures to engage in oversight of Federal student loan servicers are not expressly preempted by the HEA. Accordingly, in reconsidering the issue of express preemption the Department does not find the conclusions reached in the 2018 interpretation to be persuasive. Likewise, the courts have not been persuaded when these issues have been presented to them. *See, e.g., Student Loan Servicing Alliance,* 351 F. Supp. 3d at 51–55; *Lawson-Ross,* 955 F.3d at 916–20; *Nelson,* 928 F.3d at 647–50.

D. Conflict Preemption

When, as here, both the Federal government and the States have legitimate interests in the same areas of governance, courts typically implement constitutional principles of federalism by seeking to balance and respect those mutual interests as much as possible. Where the two exercises of authority collide in irremediable conflict, then State law must yield to the superior force of the Supremacy Clause. But courts traditionally have understood their duty to harmonize Federal and State power to the greatest extent they can do so. Therefore, implied conflict preemption only nullifies State action if ''it is impossible for a private party to comply with both state and federal law'' or if State law '' 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' '' *Crosby* v. *National Foreign Trade Council,* 530 U.S. 363, 373 (2000) (quoting *Hines* v. *Davidowitz,* 312 U.S. 52, 67 (1941)).

Although the 2018 interpretation laid out some generalized grounds on which Federal and State regulations of student loan servicers could be found to clash, the courts have rejected these arguments. They have noted the Supreme Court's overarching point that where the enacted legislation explicitly addressed the issue of preemption, as is true of the HEA, ''there is no need to infer congressional intent to preempt State laws from the substantive provisions of the legislation.'' *Cipollone,* 505 U.S. at 517; *see also Navient,* 967 F.3d at 292–93; *Lawson-Ross,* 955 F.3d at 920; *Nelson,* 928 F.3d at 648.

When the court in *Student Loan Servicing Alliance* considered the District of Columbia's procedures for protecting privacy, resolving complaints, and mandating compliance with timelines, it concluded that ''[u]pon closer inspection of the state and federal provisions, it is apparent that there is no actual conflict on the grounds of impossibility.'' 351 F. Supp. 3d at 60. The court determined that each objection raised by the plaintiff about the supposed inability to harmonize Federal and State procedures posited ''a false conflict'' and could be accommodated by officials who are willing to work together in taking reasonable steps to do so. *Id.* at 60–61.

The most recent courts to consider these issues under the rubric of conflict preemption have consistently determined that the HEA places no emphasis on maintaining uniformity in Federal student loan servicing and thus they have upheld State authority to root out fraud and affirmative misrepresentations in the Federal student aid program. *See, e.g., Navient,* 967 F.3d at 292–94; *Lawson-Ross,* 955 F.3d at 920–23; *Nelson,* 928 F.3d at 650–51.

Courts have found conflict preemption to apply to State laws requiring licensing of the Department's student loan servicers in the limited circumstances where the licensing scheme purported to disqualify a Federal contractor from working within the State's boundaries. It is well-established that States cannot impede the Federal Government's selection of contractors through the imposition of a licensing requirement. In *Leslie Miller Inc.* v. *Arkansas,* 352 U.S. 187 (1956) (per curiam), the Supreme Court held that Federal bidding statutes and regulations requiring the selection of

''responsible bidder[s]'' for Federal contracts would be frustrated by ''giv[ing] the State's licensing board a virtual power of review over the federal determination'' about selecting its own contractors. *Id.* at 190.

Two recent Federal court decisions have concluded that this well-established precedent applies to a State's refusal to license Federal student loan servicers. In *Student Loan Servicing Alliance,* the Court concluded that the District of Columbia's licensing scheme was preempted because it would bar Federal student loan contractors from working within the District. *See* 351 F. Supp. 3d at 61–72, 75–76. Similarly, in *Pennsylvania Higher Education Assistance Agency* v. *Perez,* 457 F. Supp. 3d 112, 122–25 (D. Conn. 2020), the Court concluded that the State's authority to grant or withhold a license to a Federal student loan servicer was preempted because it could disqualify Federal student loan contractors from operating within the State.

E. Direct Loan Program and Preemption

The Direct Loan program, which was created as part of the Student Loan Reform Act of 1993 (Pub. L. 103–66), poses some specific statutory and regulatory issues of preemption. In this program, the Federal government makes loans directly to the borrower and is responsible for all aspects of the loan from origination through repayment, including servicing and collection. Congress also provided that the Department could use contractors to service the loans and for any other purposes deemed ''necessary to ensure the successful operation of the program.'' 20 U.S.C. 1087f(b)(4). When procuring such services, the Department must comply with all applicable Federal laws and regulations and design its program so that the loan servicing is ''provided at competitive prices.'' 20 U.S.C. 1087f(a)(1). And the Department specifies in some detail ''the responsibilities and obligations of the servicers for Direct Loans.'' 2018 interpretation, 83 FR 10620.

The 2018 interpretation observed that in some instances, these provisions would operate to preempt State requirements that directly conflicted with requirements imposed under Federal law. For example, as discussed above, an attempt by a State to revoke a license granted by the Federal government for purposes established under Federal law would be invalid. *Leslie Miller,* 352 U.S. at 190. Yet this does not imply that a State cannot act to impose reasonable, generally applicable conditions on entities (including Federally licensed contractors) operating within the bounds of the State, as authorized under its police powers exercised on behalf of its citizens. *See, e.g., California Coastal Comm'n* v. *Granite Rock Co.,* 480 U.S. 572 (1987) (''Rather than evidencing an intent to preempt such state regulation, the Forest Service regulations appear to assume compliance with state laws.'').

Where the States impose conduct requirements prohibiting affirmative misrepresentations by student loan servicers, those measures are not preempted by general disclosure requirements in Federal law. *See, e.g., Cipollone,* 505 U.S. at 529 (''State-law prohibitions on false statements of material fact do not create 'diverse, nonuniform, and confusing' standards.''). Notably, the courts have repudiated the expansive approach taken in the 2018 interpretation, which was premised on the claim that the purpose of the Direct Loan program was to ''establish a uniform, streamlined, and simplified lending program managed at the Federal level.'' 83 FR 10621. *See, e.g., Navient,* 967 F.3d at 293 (finding no legislative support for uniformity here); *Lawson-Ross,* 955 F.3d at 921–22 (same); *Nelson,* 928 F.3d at 651 (same); *College Loan Corp.* v. *SLM Corp.,* 396 F.3d 588, 597 (4th Cir. 2005) (same). Indeed, it is telling that Congress's own stated purposes in the HEA itself make no mention of uniformity, *see Lawson-Ross,* 955 F.3d at 921, and the Supreme Court has held that courts are not to infer preemption merely from the comprehensive nature of Federal regulation. *See New York State Dep't of Social Servs.* v. *Dublino,* 413 U.S. 405, 415 (1973).

The cases rejecting the claims made in the 2018 interpretation about the need for uniformity also point out that ''[e]ven if we assume that uniformity is a purpose of the HEA, [claims about affirmative misrepresentations by loan servicers] would not conflict with that purpose.'' *Lawson-Ross,* 955 F.3d at 922–23. Even such uniformity as does exist in the program ''is not harmed by prohibiting unfair or deceptive conduct in the operation of the program that is not explicitly permitted by the HEA.'' *Pennsylvania* v. *Navient Corp.,* 354 F. Supp. 3d 529, 553 (M.D. Pa. 2018), *aff'd,* 967 F.3d 273 (3d Cir. 2020). For similar reasons, the arguments in the 2018 interpretation that accompany the arguments for uniformity, which relate to reducing costs and treating borrowers equitably while not confusing them, *see* 83 FR 10620–21, are likewise unavailing. Reducing costs by making fraudulent or false statements to student loan borrowers is indefensible as a tactic; and allowing such misconduct to be perpetrated on a mass scale would neither foster equitable treatment for borrowers nor spare them any confusion. In addition, relieving Federal contractors of *any* exposure to liability for fraud or false statements would save them money, to be sure, but it would be a breathtakingly broad assertion of preemption, given that even Federal contractors are routinely subject to liability for violating State tort laws.

F. FFEL Program Loans and Preemption

As with the Direct Loan program, the FFEL program poses some specific statutory and regulatory issues of preemption. The general treatment of these issues runs parallel to the discussion for Direct Loans, in that some specific Federal laws and regulations preempt State laws that conflict squarely on matters such as timelines, dispute resolution procedures, and some particulars of debt collection and loan servicing. But here, too, the grounds for preemption of State laws are narrow and do not properly include any preemption of liability under State law for other matters, such as affirmative misrepresentations made to loan borrowers.

In the past, the Department has identified specific types of State laws that are preempted because they would frustrate the operation and purposes of the Federal student loan programs. On October 1, 1990, for instance, the Department issued a notice interpreting its regulations governing the FFEL Program (then known as the Guaranteed Student Loan program), which require guaranty agencies and lenders to take certain actions to collect FFEL Program loans. The Department's position in that interpretive notice was that the regulations requiring those activities preempt State laws regarding those very same activities. *See* 55 FR 40120. More specifically, the Department explained that its regulations establish minimum collection actions required on all FFEL obligations, which preempted contrary or inconsistent State laws that would prevent compliance with the Federal regulations. *See id.* at 40,121. These regulations for the FFEL Program are now codified at 34 CFR 682.410(b)(8) and (o).

The 2018 interpretation describes some State laws as inconsistent with specific Federal measures. These include laws creating deadlines for servicers to respond to borrower inquiries or disputes; deadlines for notifying borrowers of loan transfers between servicers; requirements for dispute resolution procedures; and a

few other miscellaneous items. *See* 83 FR 10621–22. If these specific State laws are directly inconsistent with an equally specific Federal law, they are preempted.

As with Direct Loans, however, the limits of preemption are reached when the discussion moves beyond simply setting specific details of such ''administrative mechanisms.'' *Nelson,* 928 F.3d at 651. At the heart of State laws and regulations in this area are measures designed to protect consumers. There may be many such measures that are not preempted by the general disclosure requirements in Federal law, such as State measures that prohibit affirmative misrepresentations by loan servicers. *See, e.g., Lawson-Ross,* 955 F.3d at 922–23. But this interpretation should not be read to suggest that *only* State laws and regulations relating to affirmative misrepresentation are not preempted. States may consider and adopt additional measures which protect borrowers and do not conflict with Federal law. These measures can be enforced by the States and the Department can and will work with State officials to root out all forms of fraud, falsehood, and improper conduct that may occur in the Federal student aid programs.

G. Enhanced Borrower Protections Through Federal-State Cooperation

The final section of the 2018 interpretation cautions that broad preemption of State student loan servicer laws would not leave borrowers unprotected, and it elaborates ways that the Department ''continues to oversee loan servicers to ensure that borrowers receive exemplary customer service and are protected from substandard practices.'' 83 FR 10622. In this interpretation, the Department reaffirms these important objectives and its determination to hold servicers accountable for failing to meet these standards and expectations. Yet the Department also finds that broad preemption of State student loan servicer laws would disserve these objectives for two reasons. First, State officials serve as an essential complement to the Federal government in protecting their citizens from substandard or improper practices. Second, as explained below, the Department has concluded that close coordination with its State partners will further enhance both servicer accountability and borrower protections.

Accordingly, the Department has considered the matter further and finds that the approach taken in the 2018 interpretation is seriously flawed. For all the reasons stated in this interpretation, the Department is affirmatively changing its approach to preemption of State student loan servicing laws that was laid out in the 2018 interpretation. To the extent that the final section of the 2018 interpretation purported to provide additional factual material intended to justify its position, those underpinnings are examined more carefully below, and the Department concludes that they do not support the 2018 interpretation either as a historical matter or, as a factual matter, in the likelihood that such an exclusionary approach will succeed in attaining its stated objectives. *See, e.g., FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009) (agency may change prior policy without being subject to any more searching judicial review where the agency acknowledges the change of position and accounts for any claimed factual underpinnings of the prior policy).

As a historical matter, the Federal government and the States have sought to work closely and cooperatively in certain areas of shared responsibility, such as law enforcement and consumer protection. All parties recognize that the country is vast, its population has grown to immense proportions, and public resources are limited. Administration of Federal student loans involves managing customer relationships for tens of millions of borrowers in a variety of circumstances and for distinct loan programs with different requirements that have grown up over the past several decades. The complexity and scope of the task is shown by the Department's longstanding practice of engaging large private contractors operating nationwide to service millions of borrowers with cumulative debts that in the aggregate now exceed $1.5 trillion. Managing these outside contractors to assure that the student loan program operates effectively and in line with its intended objectives is a substantial undertaking, and the oversight challenges are evident and significant.

The Department recognizes that collaboration with the States can supply the means to ensure better oversight of these contractors and provide more protection for student loan borrowers. Not all States have invested resources in overseeing loan servicers, but to the extent that they have, some State attorneys general and State student loan servicing regulators, with their own capacities and personnel, are able to maintain a closer perspective on how these loan servicers operate in their States, including how borrowers are being treated and how their needs are being met. Although the 2018 interpretation strove to justify how the Department could perform this oversight task adequately on its own, a different approach may be more likely to succeed: A coordinated partnership of interested Federal and State officials could produce a more robust system of supervision and enforcement to monitor and improve performance under this far-flung system.

In the 2018 interpretation, the Department explained as a factual matter how it would seek to monitor servicer compliance with contractual requirements related to customer service, including call monitoring, process monitoring, and servicer auditing. *See* 83 FR 10622. It also described how it uses contracting requirements to incentivize improved customer service and maintain mechanisms for reviewing and responding to complaints about customer service. But the Department's limited resources for compliance monitoring must also encompass various other issues unrelated to customer service, such as compliance with billing practices and other related operational issues. And many of the recently enacted State laws are designed to focus squarely on customer service issues: Servicers engaging in unfair, deceptive, or fraudulent acts or practices; servicers misapplying payments; servicers reporting inaccurate information on borrower performance to credit bureaus; and servicers refusing to communicate with borrowers' authorized representatives. *See, e.g.,* Conn. Gen. Stat. § 36a–850 (2016); 110 Ill. Comp. Stat. 992/20–20(i) (2018); Colo. Rev. Stat. § 5–20–109 (2019). Notably, a growing number of States are taking the trouble to enact these laws because of the documented need for more attention to problems adversely affecting their citizens. Rather than viewing this activity by the States as inconvenient or detrimental to its objectives, the Department now recognizes that State regulators can be additive in helping to achieve the same objectives championed in the 2018 interpretation. Rather than expending time and effort contesting the authority of the States in unproductive litigation, the Department intends to work with the States to share the burdens and costs of oversight to ensure that loan servicers are accountable for their performance in better serving borrowers.

Indeed, a collaborative approach where Federal and State officials work together to achieve shared objectives will likely produce a sum that is greater

than its individual parts. The Department's budget is not unlimited and maintaining effective oversight of student loan servicers that deal with tens of millions of borrower accounts is a mammoth task. Further examples discussed in the 2018 interpretation only underscore this point. For instance, the Department has built incentives into the servicer contracts to favor better-performing servicers at the expense of poorer-performing ones, to attain higher levels of customer satisfaction. *See id.* But by the same token, regulatory oversight by the States is likewise intended and designed to secure higher levels of servicer performance and to limit instances of poor customer service and other abuses through different mechanisms and channels. The same is true of the other example highlighted in the 2018 interpretation, which explains how the Department's formal complaint process can help borrowers elevate customer service issues for heightened attention and prompt resolution. *See id.* But as with the Department itself, State regulators and State attorneys general have staff members who are typically available to field and respond to complaints. Here again, the cumulative force of combining these joint efforts augments, rather than detracts from, the goal of improving customer service.

The concept of ''cooperative federalism'' laid out here can and should also lead to mutual efforts to make improvements in other areas of student loan servicing that support greater access to higher education. The core purpose of State laws and regulations overseeing student loan servicers is to protect their citizens who are borrowers of student loans and their families. The reason they took out those loans in the first place was to secure the benefits of higher education and to cope with the financial costs involved. Consideration of these broader objectives reveals many opportunities for productive cooperation that can be fruitfully pursued between Federal and State officials who share these objectives and are interested in pursuing them jointly. In short, an approach that is marked by Federal-State cooperation is likely to secure better implementation of student aid programs as well as better service to borrowers and their families. Out of this cooperation may come a broader understanding of how these mutual efforts can advance the central goal of facilitating affordable access to higher education for students in every part of the country. For these reasons, the Department is issuing this interpretation with the explicit purpose of revoking and superseding the 2018 interpretation.

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Miguel Cardona,

Secretary of Education.

[FR Doc. 2021–17021 Filed 8–11–21; 8:45 am]

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SURFACE TRANSPORTATION BOARD

49 CFR Part 1002

[Docket No. EP 542 (Sub-No. 29)]

Fees for Services Performed in Connection With Licensing and Related Services—2021 Update

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Board updates for 2021 the fees that the public must pay to file certain cases and pleadings with the Board. Pursuant to this update, 87 of the Board's 135 fees will decrease, 3 fees will increase, and 45 fees will remain at their current levels.

DATES: This final rule is effective September 11, 2021.

FOR FURTHER INFORMATION CONTACT: Laura Mizner, (202) 245–0318, or Andrea Pope-Matheson, (202) 245–0363. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board's regulations at 49 CFR 1002.3(a) provide for an annual update of the Board's entire user-fee schedule. Fees are generally revised based on the cost study formula set forth at 49 CFR 1002.3(d), which looks to changes in salary costs, publication costs, and Board overhead cost factors. Applying that formula, 87 of the Board's 135 fees will decrease, 3 will increase, and 45 will remain at their current levels.

Additional information is contained in the Board's decision. To obtain a free copy of the full decision, visit the Board's website at *www.stb.gov* or call (202) 245–0245. [Assistance for the hearing impaired is available through Federal Relay Service: (800) 877–8339.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information.

Decided: August 4, 2021.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.

Kenyatta Clay,

Clearance Clerk.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), (a)(6)(B), and 553; 31 U.S.C. 9701; and 49 U.S.C. 1321. Section 1002.1(f)(11) is also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

■ 2. Section 1002.1 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(a) Certificate of the Records Officer, $20.00.

(b) Services involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $48.00 per hour.

(c) Services involved in checking records to be certified to determine authenticity, including clerical work, etc. incidental thereto, at a rate of $33.00 per hour.

* * * * *

■ 3. In § 1002.2, revise paragraph (f) to read as follows:

* * * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
Part I: Non-Rail Applications or Proceedings to Enter Into a Particular Financial Transaction or Joint Arrangement:	
(1) An application for the pooling or division of traffic	$5,400.
(2)(i) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303	$2,400.
(ii) A petition for exemption under 49 U.S.C. 13541 (other than a rulemaking) filed by a non-rail carrier not otherwise covered	$3,800.
(iii) A petition to revoke an exemption filed under 49 U.S.C. 13541(d)	$3,200.
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13703	$33,900.
(4) An application for approval of an amendment to a non-rail rate association agreement:.	
(i) Significant amendment	$5,600.
(ii) Minor amendment	$100.
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	$600.
(6) A notice of exemption for transaction within a motor passenger corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family	$2,000.
(7)–(10) [Reserved].	
Part II: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings:	
(11)(i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901	$8,900.
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	$2,100.
(iii) Petition for exemption under 49 U.S.C. 10502	$15,400.
(12)(i) An application involving the construction of a rail line	$91,600.
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	$2,100.
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	$91,600.
(iv) A request for determination of a dispute involving a rail construction that crosses the line of another carrier under 49 U.S.C. 10902(d)	$350.
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii)	$2,600.
(14)(i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902	$7,500.
(ii) Notice of exemption under 49 CFR 1150.41–1150.45	$2,100.
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902	$8,100.
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24	$2,000.
(16) An application for a land-use-exemption permit for a facility existing as of October 16, 2008 under 49 U.S.C. 10909	$7,300.
(17) An application for a land-use-exemption permit for a facility not existing as of October 16, 2008 under 49 U.S.C. 10909	$25,900.
(18)–(20) [Reserved].	
Part III: Rail Abandonment or Discontinuance of Transportation Services Proceedings:	
(21)(i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments)	$27,200.
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	$4,400.
(iii) A petition for exemption under 49 U.S.C. 10502	$7,700.
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act	$550.
(23) Abandonments filed by bankrupt railroads	$2,300.
(24) A request for waiver of filing requirements for abandonment application proceedings	$2,200.
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment	$1,900.
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned	$27,800.
(27)(i) Request for a trail use condition in an abandonment proceeding under 16 U.S.C. 1247(d)	$350.
(ii) A request to extend the period to negotiate a trail use agreement	$550.
(28)–(35) [Reserved].	
Part IV: Rail Applications to Enter Into a Particular Financial Transaction or Joint Arrangement:	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	$23,200.
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	$12,500.
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:.	
(i) Major transaction	$1,831,500.
(ii) Significant transaction	$366,300.
(iii) Minor transaction	$8,800.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$2,000.
(v) Responsive application	$8,800.
(vi) Petition for exemption under 49 U.S.C. 10502	$11,400.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a)	$6,800.

Type of proceeding	Fee
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:.	
(i) Major transaction	$1,831,500.
(ii) Significant transaction	$366,300.
(iii) Minor transaction	$8,800.
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	$1,500.
(v) Responsive application	$8,800.
(vi) Petition for exemption under 49 U.S.C. 10502	$11,400.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a)	$6,800.
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:.	
(i) Major transaction	$1,831,500.
(ii) Significant transaction	$366,300.
(iii) Minor transaction	$8,800.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$1,400.
(v) Responsive application	$8,800.
(vi) Petition for exemption under 49 U.S.C. 10502	$11,400.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a)	$6,800.
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:.	
(i) Major transaction	$1,831,500.
(ii) Significant transaction	$366,300.
(iii) Minor transaction	$8,800.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$1,600.
(v) Responsive application	$8,800.
(vi) Petition for exemption under 49 U.S.C. 10502	$8,100.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a)	$6,800.
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	$2,800.
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	$85,800.
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:.	
(i) Significant amendment	$15,800.
(ii) Minor amendment	$100.
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	$950.
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered	$9,800.
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	$350.
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act	$350.
(49)–(55) [Reserved].	
Part V: Formal Proceedings:	
(56) A formal complaint alleging unlawful rates or practices of carriers:.	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1)	$350.
(ii) A formal complaint involving rail maximum rates filed under the Simplified-SAC methodology	$350.
(iii) A formal complaint involving rail maximum rates filed under the Three Benchmark methodology	$150.
(iv) All other formal complaints (except competitive access complaints)	$350.
(v) Competitive access complaints	$150.
(vi) A request for an order compelling a rail carrier to establish a common carrier rate	$350.
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705	$10,900.
(58) A petition for declaratory order:.	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding	$1,000.
(ii) All other petitions for declaratory order	$1,400.
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	$8,600.
(60) Labor arbitration proceedings	$350.
(61)(i) An appeal of a Surface Transportation Board decision on the merits or petition to revoke an exemption pursuant to 49 U.S.C. 10502(d)	$350.
(ii) An appeal of a Surface Transportation Board decision on procedural matters except discovery rulings	$450.
(62) Motor carrier undercharge proceedings	$350.
(63)(i) Expedited relief for service inadequacies: A request for expedited relief under 49 U.S.C. 11123 and 49 CFR part 1146 for service emergency	$350.
(ii) Expedited relief for service inadequacies: A request for temporary relief under 49 U.S.C. 10705 and 11102, and 49 CFR part 1147 for service inadequacy	$350.
(64) A request for waiver or clarification of regulations except one filed in an abandonment or discontinuance proceeding, or in a major financial proceeding as defined at 49 CFR 1180.2(a)	$700.
(65)–(75) [Reserved].	
Part VI: Informal Proceedings:	

Type of proceeding	Fee
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706	$1,500.
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements	$150.
(78)(i) The filing of tariffs, including supplements, or contract summaries	$1. per page. ($30. min. charge.)
(ii) The filing of water carrier annual certifications	$30.
(79) Special docket applications from rail and water carriers:.	
(i) Applications involving $25,000 or less	$75.
(ii) Applications involving over $25,000	$150.
(80) Informal complaint about rail rate applications	$750.
(81) Tariff reconciliation petitions from motor common carriers:.	
(i) Petitions involving $25,000 or less	$75.
(ii) Petitions involving over $25,000	$150.
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3)	$300.
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c).	$50. per document.
(84) Informal opinions about rate applications (all modes)	$300.
(85) A railroad accounting interpretation	$1,400.
(86)(i) A request for an informal opinion not otherwise covered	$1,800.
(ii) A proposal to use on a voting trust agreement pursuant to 49 CFR 1013 and 49 CFR 1180.4(b)(4)(iv) in connection with a major control proceeding as defined at 49 CFR 1180.2(a)	$6,300.
(iii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered	$600.
(87) Arbitration of certain disputes subject to the statutory jurisdiction of the Surface Transportation Board under 49 CFR 1108:.	
(i) Complaint	$75.
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	$75.
(iii) Third Party Complaint	$75.
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	$75.
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	$150.
(88) Basic fee for STB adjudicatory services not otherwise covered	$350.
(89)–(95) [Reserved].	
Part VII: Services:	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC agent	$39. per delivery.
(97) Request for service or pleading list for proceedings	$30. per list.
(98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in an STB or State proceeding that:.	
(i) Annual request does not require a **Federal Register** (FR) notice:.	
(A) Set cost portion	$200.
(B) Sliding cost portion	$58. per party.
(ii) Annual request does require a FR notice:.	
(A) Set cost portion	$450.
(B) Sliding cost portion	$58. per party.
(iii) Quarterly request does not require a FR notice:.	
(A) Set cost portion	$50.
(B) Sliding cost portion	$14. per party.
(iv) Quarterly request does require a FR notice:.	
(A) Set cost portion	$230.
(B) Sliding cost portion	$14. per party.
(v) Monthly request does not require a FR notice:.	
(A) Set cost portion	$16.
(B) Sliding cost portion	$4. per party.
(vi) Monthly request does require a FR notice:.	
(A) Set cost portion	$177.
(B) Sliding cost portion	$4. per party.
(99)(i) Application fee for the STB's Practitioners' Exam	$200.
(ii) Practitioners' Exam Information Package	$25.
(100) Carload Waybill Sample data:.	
(i) Requests for Public Use File for all years prior to the most current year Carload Waybill Sample data available, provided on CD–R	$250. per year.
(ii) Specialized programming for Waybill requests to the Board	$130. per hour.

* * * * *

[FR Doc. 2021–17014 Filed 8–11–21; 8:45 am]

BILLING CODE 4915–01–P

Proposed Rules

Federal Register
Vol. 86, No. 153
Thursday, August 12, 2021

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 Parts 915 and 944

[Doc. No. AMS–SC–20–0082; SC20–915–2]

Avocados Grown in South Florida and Imported Avocados; Change in Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the maturity requirements currently prescribed under the Florida avocado marketing order. The order regulates the handling of avocados grown in South Florida and is administered locally by the Avocado Administrative Committee (Committee). The proposed change would establish beginning and end dates for the annual maturity shipping schedule. A corresponding change would be made to the avocado import regulation as required under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by October 12, 2021.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; or submitted to 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 will be available for public inspection in the Office of the Docket Clerk during regular business hours or 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: Abigail Campos, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Abigail.Campos@usda.gov* or *Christian.Nissen@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to 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. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida. Part 915, (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 growers and handlers of avocados operating within the production area, and a public member.

This rule is also issued under section 8e of the Act (7 U.S.C. 608e–1), which provides that whenever certain specified commodities, including avocados, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for domestically produced commodities.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. 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. 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. In accordance with Executive Order 13175, AMS has not identified any tribal implications as a result of this proposed rule.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with 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 request 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 no later than 20 days after the date of the entry of the ruling (7 U.S.C. 608c(15)(B)).

There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This proposed rule would change the maturity requirements under the Order. This action would establish April 16 to April 15 of the following year as the beginning and end dates for the annual maturity shipping schedule, with an

exception for the requirements listed under Guatemalan seedling, which would run from June 9 to June 8 of the following year. This rule would provide clarity regarding the schedule and dates in effect, assist with compliance to help ensure a quality product reaches consumers, and reflect current industry practices. These changes were unanimously recommended by the Committee at its October 14, 2020, meeting.

Section 915.51 of the Order provides, in part, authority to establish maturity requirements under the Order. Section 915.52 of the Order provides authority for the modification, suspension, or termination of established regulations. Section 915.332 of the Order's rules and regulations establishes the maturity requirements for avocados grown in Florida. These requirements are specified in Table I of § 915.332(a) and establish minimum weights and diameters to delineate specific shipping time frames for avocados shipped under the Order. Maturity requirements for avocados imported into the United States are currently in effect under § 944.31.

The maturity regulations are designed to prevent the shipment of immature avocados and include the annual shipping schedule to help ensure only mature fruit reaches the market. Avocado varieties mature at different times, and varieties can vary considerably in terms of size and weight. Consequently, the schedule establishes shipping dates and maturity requirements by variety. Varieties not specifically listed on the schedule are covered by the requirements for West Indian seedling or Guatemalan seedling. These maturity dates and requirements are established based on a testing procedure developed by USDA.

The shipping schedule in Table I specifies the individual maturity requirements for the numerous avocado varieties shipped each season. As larger fruit within a variety matures earliest, the schedule makes the larger sized fruit available for market first followed by other dates to incrementally release smaller sizes for shipment as they mature. As such, the maturity requirements for a variety are usually divided into A, B, C, and D dates, which are associated with specific weights and sizes reflecting when a particular variety matures.

Avocados may not be handled until the earliest date, the A date, specified for that variety on the shipping schedule so only the largest, most mature fruits are available for market for each variety early in its season. The final date, the D date, for each variety correlates to the end of its season when all fruits of that variety should be mature and releases all remaining sizes and weights for shipment.

While the maturity schedule includes dates and maturity requirements for individual varieties, the regulations do not specify beginning and end dates for the annual maturity schedule itself. In the past, there was a gap in shipments in April, which created a natural break from one season's schedule to the next, with the first varieties appearing on the maturity schedule in May. This break served as the indicator of where the requirements of one annual schedule ended, and the new annual schedule began.

Such a differentiation between schedules is important as it clarifies which schedule is in place, so handlers know which maturity requirements need to be met. Specifically, this demarcation makes it clear the D dates for one schedule do not stretch to the A dates of the new schedule. Such a delineation between schedules provides a gap between the D dates and the A dates. This helps to ensure avocados are not shipped early to take advantage of the relaxed maturity requirements of the D-date, which could result in the shipment of immature fruit, and would circumvent the requirement that avocados may not be handled prior to the earliest date specified by the A date for that variety.

However, with the development of late-season varieties, there has been an increase in shipments under the Guatemalan seedling category in March, April, and May. Consequently, there is no longer a break in shipments between annual schedules, which has created an overlap from one annual schedule to the next. With this overlap, questions have arisen regarding the schedule, and when one annual schedule ends and another begins.

In discussing this issue, the Committee supported establishing beginning and end dates for the maturity schedule to address the overlap, and to address questions regarding which maturity schedule and dates were in effect. The Committee believes doing so would provide clarity regarding the schedule and would help assist with any compliance issues related to the dates established.

The Committee agreed that using an end date of April 15 for the shipping schedule, with an exception for avocados handled under the Guatemalan seedling category would be appropriate. This date reflects the break in schedules the industry has used to delineate one schedule from the next, and it remains applicable for all listings on the shipping schedule apart from the Guatemalan seedling.

For most avocados covered under the schedule, the normal harvest cycle, from the A date when the harvest of a particular variety begins to when all fruit of that variety has been picked, is around three months. The last A date listed on the schedule for a specific variety is for the Monday nearest December 12, with a D date of the following Monday nearest January 23. Using these dates, April 15 would provide more than enough time to harvest and ship those varieties listed on the schedule, other than Guatemalan seedling.

While the A date for the ''Guatemalan Seedling'' appears on the maturity schedule in September, the listing provides the maturity requirements for avocados of the Guatemalan type varieties and seedlings, as well as hybrid varieties and seedlings, and unidentified seedlings not listed elsewhere in Table I. Consequently, the requirements for the Guatemalan seedling cover numerous varieties with shipments extending into March, April, and May for some of the varieties in this category.

Recognizing the shipments under the Guatemalan seedling and related varieties and seedlings do not conform to the same seasonal schedule as the other varieties listed on the maturity schedule, the Committee considered alternative dates for the beginning and end dates for the maturity requirements for those varieties covered under this category. In discussing dates for the Guatemalan seedling, Committee members were concerned about establishing an end date that was beyond the proper maturity timeframe for this fruit, which could allow inferior fruit to enter the market.

Avocados mature on the tree and start the ripening process as they are picked. Avocados can be held on the tree to delay shipments or to lengthen the harvest period. However, if they remain on the tree too long, they will pass their optimal maturity. This can negatively impact the quality of the fruit resulting in fruit that is overmature or overripe.

In past seasons, the industry had been considering June 30 as an end date for the annual requirements for Guatemalan seedling. However, Committee members agreed this date was too late in the season and could result in poor quality fruit reaching the market, as some overripe avocados had appeared at the wholesale level. Committee members believe setting an end date earlier in the month would address the issues related to overmature fruit, improving the quality of avocados entering the market,

and providing customers with a better product.

According to information from the Committee, avocados declared as Guatemalan seedling have typically completed shipping before the first week in June. Considering the timing of shipments, and to ensure consumers would be receiving a quality product, the Committee recommended establishing an end date for the Guatemalan maturity requirements of June 8.

With most shipments ending before the first week in June, a June 8 end date would provide an additional week for handlers to ship any remaining avocados covered by the Guatemalan seedling requirements. Also, by having a clear end date defining where one schedule ends, and the new schedule becomes applicable, handlers could adjust their shipping dates accordingly to meet the requirements.

As a result, the Committee recommended establishing beginning and end dates for the annual maturity shipping schedule of April 16 to April 15 of the following year, with an exception for Guatemalan seedling which would extend from June 9 to June 8 of the following year. The Committee believes establishing these dates would provide clarity regarding the schedule, assist with compliance to help ensure a quality product reaches consumers, and reflect current industry practices and changes in the industry. This proposed change would only impact the maturity requirements under the Order and would make no change to the current grade requirements.

Section 8e of the Act provides that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Maturity requirements for avocados imported into the United States are currently in effect under § 944.31. As this rule would revise the maturity requirements for Florida avocados by establishing beginning and end dates for the annual maturity shipping schedule, a corresponding change would need to be made to the import regulations.

Imports and importers would also benefit from these proposed changes, which would establish beginning and end dates for the maturity requirements. Clarifying the schedule and the requirements that are in place, thus helping ensure customers are receiving a quality product would be beneficial for the entire industry, including imports.

The Hass, Fuerte, Zutano, and Edranol varieties of avocados currently are exempt from the maturity regulations and continue to be exempt under this rule. However, these varieties are not exempt from the import grade regulation, which is not being changed by this action.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 325 producers of Florida avocados in the production area and 25 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $1,000,000, and small agricultural service firms are defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistical Service (NASS), the average grower price paid for Florida avocados during the 2020–21 season was $21.97 per 55-pound bushel. Utilized production was equivalent to 624,364 55-pound bushels for a total value of over $13,718,830. Dividing the crop value by the estimated number of producers (325) yields an estimated average receipt per producer of $42,212, so the average producer would have annual receipts of less than $1,000,000.

USDA Market News reported April 2021 terminal market prices for green skinned avocados were about $36.43 per 24-pound container. Using this price and the total utilization, the total 2020–21 handler crop value is estimated at $52.1 million. Dividing this figure by the number of handlers (25) yields an estimated average annual handler receipts of slightly over $2 million, which is below the SBA threshold for small agricultural service firms.

In 2020, the Dominican Republic, Peru, Mexico, and Colombia were the major countries exporting avocado varieties other than Hass to the United States. In 2020, shipments of these types of avocados imported into the United States totaled around 29,630 metric tons. Of that amount, 29,133 metric tons were imported from the Dominican Republic. Information from USDA's Global Agricultural Trade System database indicates the dollar value of these avocados to be approximately $41,385,000. There are approximately 20 importers of green skin avocadoes. Using the total value and the number of importers, the average importer would have annual receipts of less than $30 million.

Based on these estimates, the majority of Florida avocado producers and handlers, and importers may be classified as small entities.

This proposed rule would change the maturity requirements under the Order. This action would establish April 16 to April 15 of the following year as the beginning and end dates for the annual maturity shipping schedule, with an exception for Guatemalan seedling which would run from June 9 to June 8 of the following year. This rule would provide clarity regarding the maturity schedule and dates in effect, assist with compliance to help ensure a quality product reaches consumers, and reflect current industry practices. This proposed rule would revise § 915.332. Authority for this change is provided in §§ 915.51 and 915.52. This proposed rule would also change § 944.31 in the avocado import regulation, as is required by section 8e of the Act.

This action is not expected to increase the costs associated with the Order's requirements or the avocado import regulation. Rather, it is anticipated that this action would have a beneficial impact by providing clarity regarding the maturity schedule and dates in effect, assist with compliance, and help ensure a quality product reaches consumers.

This change would provide clarity as to which schedule is in place, so producers, handlers, and importers know which maturity requirements need to be met. Establishing beginning and end dates for the maturity requirements would clearly identify when the requirements of one annual schedule end, and the new annual schedule begins. Further, having a delineation between schedules would assist with compliance by making it clear that the D dates for one schedule do not stretch to the A date of the new schedule. This would help ensure that immature avocados are not shipped early using the previous season's D date to circumvent the requirement that avocados may not be handled prior to the A date specified for that variety.

For the Guatemalan seedling, establishing the beginning and end dates for the annual maturity requirements would help prevent shipments beyond the quality lifecycle of varieties covered under this category. This change would set a clear date by which shipments under the D date would end, assisting both with compliance and with fruit quality. Absent this change, fruit could be shipped past its proper maturity period, which could provide the consumer with an inferior product.

This change would not create any additional burdens for producers, handlers, or importers. The April 15 end date reflects the break in schedules the industry has used to delineate one schedule from the next, and it remains applicable for all listings on the shipping schedule, apart from the Guatemalan seedling. The April 15 end date would provide more than enough time to harvest and ship those varieties listed on the schedule.

For those varieties covered under the Guatemalan seedling, Committee data indicates most shipments are completed before the first week in June. This change would provide an additional week beyond June 1 for handlers to ship any remaining avocados covered by the Guatemalan seedling requirements. Also, by establishing a clear end date, handlers would be able to adjust their shipping dates accordingly to meet the new requirements. Establishing an end date of June 8 for maturity requirements for the Guatemalan seedling would provide sufficient time for avocados to ship under this designation, while helping prevent the shipment of overmature fruit.

This rule would provide clarity regarding the maturity schedule and dates in effect, assist with compliance to help ensure a quality product reaches consumers, and reflect current industry practices. The benefits of this rule are expected to be equally available to all fresh avocado growers, handlers, and importers, regardless of their sizes of operations.

One alternative to this action would be to maintain the current maturity requirements without establishing end dates for the maturity schedule. However, the Committee recognized that shipments have changed over the years and wanted to provide clarity regarding the maturity schedule. Another alternative considered was establishing an end date for the requirements for Guatemalan seedling of June 30. In discussing this date, Committee members expressed concern that this date was past the proper maturity for this fruit and would allow inferior fruit to enter the market. The Committee believes establishing the changes in this proposed rule, rather than the alternatives, would assist with compliance and help ensure a quality product reaches consumers. Therefore, the Committee rejected these alternatives.

Committee meetings were widely publicized throughout the avocado industry. All interested persons were invited to attend Committee meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the October 14, 2020, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit comments on this proposed rule, including the regulatory and informational 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 the OMB and assigned OMB No. 0581–0189, Fruit Crops. No changes in those requirements would be necessary as a result of this proposed rule. 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 avocado 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. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

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.

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.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 60-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 matter.

List of Subjects

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 915 and 944 are proposed to be amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

■ 1. The authority citation for part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 915.332 is amended by adding paragraph (a)(4) to read as follows:

§ 915.332 Florida avocado maturity regulation.

(a) * * *

(4) The requirements listed in table I of this section are in effect annually from April 16 through April 15 of the following year, with an exception for the requirements for Guatemalan seedling which are in effect annually from June 9 to June 8 of the following year.

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

■ 3. The authority citation for part 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 4. Section 944.31 is amended by adding paragraph (a)(4) to read as follows:

§ 944.31 Avocado import maturity regulation.

(a) * * *

(4) The requirements listed in table I of this section are in effect annually from April 16 through April 15 of the following year, with an exception for the requirements for Guatemalan seedling which are in effect annually

from June 9 to June 8 of the following year.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–17235 Filed 8–11–21; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–116; NRC–2018–0201]

Elimination of Immediate Notification Requirements for Nonemergency Events

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; consideration in the rulemaking process.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will consider in its rulemaking process issues raised in a petition for rulemaking (PRM), dated August 2, 2018, submitted by Mr. Bill Pitesa on behalf of the Nuclear Energy Institute. The petition was docketed by the NRC on November 20, 2018, and assigned Docket No. PRM–50–116. The petitioner requested that the NRC amend its regulations to eliminate immediate notification requirements for nonemergency events for operating nuclear power reactors. The NRC will evaluate the current requirements and guidance for immediate notification of nonemergency events for operating nuclear power reactors, assess whether the requirements present an unnecessary reporting burden, and if they do, determine whether reporting can be reduced or eliminated that does not have a commensurate safety benefit.

DATES: The docket for the petition for rulemaking, PRM–50–116, is closed on August 12, 2021.

ADDRESSES: Please refer to Docket ID NRC–2018–0201 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0201 or the future rulemaking Docket ID NRC–2020–0036. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-Based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Daniel Doyle, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3748, email: *Daniel.Doyle@nrc.gov.*

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I. The Petition

Section 2.802 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Petition for rulemaking—requirements for filing,'' provides an opportunity for any person to petition the Commission to issue, amend, or rescind any regulation. The NRC received and docketed a PRM dated August 2, 2018, filed by Mr. Bill Pitesa on behalf of the Nuclear Energy Institute (NEI). The NRC assigned this PRM the docket number of PRM–50–116. On November 20, 2018 (83 FR 58509), the NRC published a notice of docketing and request for comment on PRM–50–116 in the **Federal Register**. The petitioner requests that the NRC revise its regulations in 10 CFR 50.72, ''Immediate notification requirements for operating nuclear power reactors,'' to remove the current requirement for licensees to immediately report nonemergency events that occur at operating nuclear power reactors. The petitioner states that licensees currently have procedures for responding to nonemergency events and ensuring that NRC resident inspectors are notified of nonemergency events independent of the requirements in § 50.72. The petitioner did not request removal of § 50.72 in its entirety, only the nonemergency notification requirements in § 50.72(b). The petitioner believes that ''duplicative notifications under § 50.72 serve no safety function and are not needed to prevent or minimize possible injury to the public or to allow the NRC to take necessary action.''

The petitioner suggests that in lieu of the currently required notifications, the NRC should establish guidance for the resident inspectors that provides consistent and standard expectations for using the existing communication protocols that the petitioner claims have proven to be effective for communicating from the site to the resident inspectors and, from there, to NRC management.

II. Public Comments on the Petition

On November 20, 2018, the NRC requested comments from the public on the petition and posed five specific questions to gain a better understanding of the scope and basis for the issues raised by the petitioner. The comment period ended on February 4, 2019, and the NRC received 16 public comments. Eleven comments (from NEI and nuclear power reactor licensees) supported the petition, one comment (from two private citizens) partially supported the petition, two comments (from a private citizen and a nongovernmental organization) opposed the petition, and two comments (from private citizens) were out of scope. The following is a summary of the comments organized by the specific questions in the notice of docketing.

In the first question, the NRC requested feedback on how stakeholders review and use the information contained in nonemergency event notifications, and how they would be affected if all nonemergency event notifications were eliminated. Two private citizens stated that they do not regularly review notifications on the NRC's website, but the information may be beneficial to maintain for public review. The same commenters supported the removal of redundancies in communication and suggested that the NRC maintain only those § 50.72 requirements that do not have a corresponding § 50.73, ''Licensee event report system'' report so the public is kept informed.

Several industry commenters also responded to this question. While their comments varied regarding the level of

regular review of nonemergency event notifications, the consensus was that their organizations would not be adversely impacted by the elimination of the nonemergency reporting requirements of § 50.72. Several industry commenters stated that their primary sources of operating experience are § 50.73 licensee event reports (LERs), NRC inspection reports, NRC generic communications, and the Institute for Nuclear Power Operations (INPO) operating experience database. Several commenters also stated that § 50.72 event notifications are of little value because they do not contain sufficient information on which to base follow-up or corrective actions.

The second NRC question requested feedback on whether the public release of § 50.73 LERs alone meets the needs of the public and noted the three § 50.72 reporting requirements that do not have a corresponding § 50.73 LER. Two private citizens and a nongovernmental organization agreed that the NRC should retain those nonemergency event notifications that do not have a corresponding § 50.73 LER. For the remaining reporting requirements, the public comments were divided. Two private citizens suggested that redundant reporting requirements should be eliminated, and a third private citizen preferred maintaining the status quo for nonemergency event notifications. A nongovernmental organization stated that notification of plant shutdown, deviation from technical specifications, degraded conditions (*i.e.,* safety barriers), unanalyzed conditions, and system actuation should continue because the seriousness of some conditions may not be readily apparent.

Several industry members also provided comments in response to this question. In general, the industry commenters agreed that the information in the § 50.73 LERs provides more detail and context than § 50.72 event notifications. The commenters also concluded that generally, additional information beyond the § 50.73 LER (*e.g.,* from the INPO operating experience database) is necessary to meet the information needs of the industry in order to determine applicability and take corrective actions.

The third NRC question requested that stakeholders identify, from their perspectives, the most burdensome provisions in § 50.72. The NRC received several responses from members of the industry on this topic. Several commenters repeated concerns raised by the petition. In addition, the commenters provided additional insight to the potential burdens of the nonemergency reporting requirements of § 50.72. Specifically, one commenter expressed a concern that the training required to make infrequent event notifications detracts from training in other areas. Another commenter stated that subjective terms in the regulation, such as ''seriously'' (§ 50.72(b)(3)(ii)(A)), ''significantly'' (§ 50.72(b)(3)(ii)(B)), or ''could'' (§ 50.72(b)(3)(v)) foster strenuous debates within the licensee organization or between the licensee and the NRC. One commenter estimated that approximately 30 to 40 evaluations per licensee are performed per year and determined not to be reportable under § 50.72.

The fourth NRC question directly asked if stakeholders agree with the petitioner's assertion that § 50.72 nonemergency notifications are contrary to the best interests of the public and are contrary to the stated purpose of the regulation. The comments received from members of the public generally disagreed with the petitioner's assertion. Comments received from industry agreed with the petitioner's assertion.

The fifth NRC question requested feedback from stakeholders on potential alternatives to the petitioner's proposed changes that would address the concerns raised in the petition while still providing timely event information to the NRC and the public. Most of the comments received were from members of the industry and did not provide alternative approaches to the petitioner's proposed changes to § 50.72. One commenter stated that the NRC should eliminate the reporting requirements of §§ 50.72 and 50.73 on the basis that licensees already have access to various industry platforms in order to obtain pertinent operational experience information.

The NRC received other comments related to the petition, including specific comments on the basis and background of current requirements, the significance of a loss of safety function, and suggested alternatives to the timeliness requirements for submission of § 50.73 LERs.

The NRC reviewed the other public comments received and recommends consideration of these comments in the rulemaking process. The NRC uses the basis and background of the current requirements to inform the regulatory basis of any proposed rule. The staff will discuss the significance of the loss of a safety function in greater detail in its regulatory basis.

Regarding the suggested alternatives to the timeliness requirements for submission of a § 50.73 LER, the staff notes that this would result in a significant change to the reporting requirements of § 50.73. This change may also result in the NRC receiving less information regarding root causes of the events reported due to the more stringent time demand. The NRC intends to gather additional stakeholder feedback on this topic in the rulemaking process.

III. Reasons for Consideration

Although the petitioner requested elimination of the requirements for licensees to immediately report nonemergency events that occur at operating nuclear power plants, the underlying issue is whether the current nonemergency reporting requirements create an unnecessary reporting burden. The NRC will consider this issue in its rulemaking process. The NRC will evaluate the current requirements and guidance for immediate notification of nonemergency events for operating nuclear reactors, assess whether the requirements present an unnecessary reporting burden, and if they do, determine whether reporting can be reduced or eliminated that does not have a commensurate safety benefit. The NRC must preserve the ability to maintain situational awareness of significant events at nuclear power plants, and the visibility and openness of the event notifications to public stakeholders.

Evaluation of Petitioner Assertions

Assertion 1: § 50.72 is overdue for an update.

The petitioner states that the NRC has occasionally revised the notification and reporting requirements in §§ 50.72 and 50.73 based on accumulated operating experience to remove certain requirements that provided little or no safety benefit. The petitioner asserts that these regulations have not been updated in this manner since January 2001, and that the petition is based on the accumulation of additional operating experience.

NRC Evaluation: The NRC agrees with this assertion. The NRC acknowledges that it last updated notification and reporting requirements in § 50.72 in 2001 and that sufficient operating experience exists to consider an update to the reporting requirements in § 50.72(b). The staff performed an initial evaluation of each reporting requirement in § 50.72(b) and preliminarily determined that some nonemergency reporting requirements could be updated. The NRC agrees that the reporting requirements in § 50.72(b) should be assessed and will evaluate each reporting requirement in its rulemaking process.

Assertion 2: The § 50.72 nonemergency notifications are redundant with resident inspectors' communications to the NRC.

In support of this assertion, the petitioner states that resident inspectors are familiar with the design and operations of nuclear power plants and are trained how to react to events that occur at the site, including when to escalate issues to NRC management. The petitioner also claims that NRC licensees have procedures or practices in place that ensure notification of the resident inspector independent of the requirements of § 50.72, and that the nonemergency notifications under § 50.72 serve no unique safety function.

NRC Evaluation: The NRC disagrees with the assertion that § 50.72 nonemergency notifications to the Headquarters Operations Center (HOC) [1] are redundant with resident inspectors' communications to the NRC. The petitioner claims that licensees have procedures in place to ensure that resident inspectors are informed of these types of events and that the reports made under § 50.72 are duplicated by licensee verbal reports to the onsite NRC resident inspectors. The NRC notes that the notifications to the resident inspectors as described by the petitioner are voluntary initiatives performed by the licensees; the NRC does not require licensees to contact the resident inspector. If the NRC relies on voluntary practices alone to maintain awareness of the nonemergency events listed in § 50.72(b), then there is an increased risk of loss of situational awareness and the ability to make timely decisions with adequate information. The resident inspectors may receive voluntary reports from licensees but may not always be immediately available and are not expected to perform the communication duties assumed by the HOC. Headquarters Operations Officers (HOOs) are always on call and have special knowledge and communication tools to enable accurate and efficient collection and dissemination of information for all types of facilities. In addition, every call to the HOO is recorded to ensure accuracy of information. Adding this burden to the resident inspectors could impact their ability to provide adequate oversight of the nonemergency events and decrease the speed and quality of information sharing within the NRC about nonemergency events. Further, reliance on the Resident Inspectors picking up the reporting requirement undermines the basis for the rule change as it would recognize that the need for the reporting is still necessary, it would simply shift the responsibility from the licensee to the NRC.

Assertion 3: The § 50.72 nonemergency notifications distract key plant staff when they are addressing events.

The petitioner claims that elimination of the § 50.72(b) nonemergency notifications requirement would provide a safety benefit by allowing licensees to redirect technical and engineering resources away from procedural reporting compliance activities and toward assessment and corrective action activities immediately following nonemergency events.

NRC Evaluation: The NRC disagrees, in part, with this assertion. A wide variety of events are reportable in accordance with § 50.72. Likewise, the amount of effort expended to determine if the event in question is reportable varies widely. For example, a licensee should know immediately if it is issuing a press release or notifying another government agency, which is reportable under § 50.72(b)(2)(xi). The burden for reporting this event should be only the additional cost of calling the NRC HOO and reporting the event without a significant amount of internal deliberation by the licensee. The one-hour report for deviation from a technical specification in accordance with § 50.54(x) serves as an example reporting requirement that should be apparent to the licensee and require minimal resources to report. On the other hand, commenters on the petition noted that other events, such as unanalyzed conditions, are less apparent and require more resources to determine if they are reportable. The time estimates provided by the commenters varied significantly. The NRC also received public comments that question whether licensees have sufficient resources to respond to events if they do not have sufficient resources to determine if an event is reportable. This assertion also raises a concern that licensees do not have a sufficient understanding of the intent of § 50.72(b).

To address these concerns, the NRC would need to perform additional analysis on each reporting requirement to determine which reporting requirements are creating these issues. The NRC will gather additional input from external stakeholders to determine the best way to resolve these concerns.

In summary, it is likely that certain reporting requirements have significantly more impact on licensees than others. As part of the rulemaking process, the NRC will hold public meetings with licensees to better understand which requirements cause these issues and how best to address them.

Assertion 4: The § 50.72 nonemergency notifications that are not currently reported in a 60-day LER under § 50.73 are unrelated to reactor safety.

The petitioner asserts that the three § 50.72 nonemergency notifications that do not have a corresponding requirement for a 60-day LER under § 50.73 are unrelated to reactor safety. These three requirements are § 50.72(b)(2)(xi), involving a news release or notification to another government agency; § 50.72(b)(3)(xii), involving the transport of a radioactively contaminated person to an offsite medical facility; and § 50.72(b)(3)(xiii), involving a major loss of emergency assessment capability, offsite response capability, or offsite communications capability.

The petitioner states that the first two requirements are essentially ''courtesy calls,'' and resident inspectors can handle them. The petitioner claims that § 50.72(b)(3)(xiii) is a good example of a burdensome regulation that distracts licensee managers from the problems at hand. The petitioner claims that resident inspectors will be aware of these types of emergency preparedness problems. Furthermore, the petitioner claims that issues reported under § 50.72(b)(3)(xiii) will be captured in the licensee's corrective action program, reviewed by the resident inspector, and, as appropriate, captured in a subsequent quarterly inspection report that is made available to the public.

NRC Evaluation: The NRC disagrees, in part, with this assertion. The petitioner correctly points out the three kinds of § 50.72 event notifications that have no corresponding requirement for a LER pursuant to § 50.73. The NRC believes that these reports are important for other reasons not identified by the petitioner. Although the § 50.72(b)(2)(xi) and (3)(xii) events do not directly impact reactor safety, the § 50.72(b)(3)(xiii) notification allows the NRC to confirm that reasonable assurance of public health and safety and the common defense and security is maintained by quickly evaluating and ensuring that the licensee maintains its ability to effectively implement the emergency response plan or that the

[1] The NRC HOC is the primary center of communication and coordination among the NRC, its licensees, State and Tribal agencies, and other Federal agencies regarding operating events involving nuclear reactors or materials. Located in Rockville, MD, the NRC HOC is staffed 24 hours a day by employees trained to receive and evaluate event reports and coordinate incident response activities.

licensee has taken or is taking the appropriate compensatory measures to ensure the emergency plan can still be effectively implemented. The NRC may need to take immediate action in response to these events. For example, a major loss of assessment capability, without adequate compensatory measures put in place, could degrade or prevent a licensee's ability to successfully implement its emergency response plan and negatively affect the NRC's reasonable assurance determination. The NRC needs to be able to quickly assess the impact of the loss of assessment capability as well as the adequacy of the compensatory measure(s) put in place to address the loss, to allow for timely engagement with the licensee, if required.

The number of event reports under § 50.72(b)(3)(xiii) dropped significantly after NRC endorsement of NEI 13–01, ''Reportable Action Levels for Loss of Emergency Preparedness Capabilities,'' dated July 2014 in Supplement 1 to NUREG–1022, Revision 3, dated September 2014. Prior to the endorsement of NEI 13–01, the NRC received on the order of hundreds of reports per year under this requirement. After the endorsement of NEI 13–01, the NRC now receives approximately 50–60 reports per year. As explained in the statement of considerations for the 2000 final rule amending § 50.72, ''Reporting Requirements for Nuclear Power Reactors and Independent Spent Fuel Storage Installations at Power Reactor Sites; Final Rule'' (65 FR 63769, 63774; October 25, 2000), the 8-hour reports, such as § 50.72(b)(3)(xii) through (xiii), are for ''events where there may be a need for the NRC to take an action within about a day, such as initiating a special inspection or investigation.'' If the NRC accepts the petitioner's suggested changes and relies solely on licensees' voluntary calls to the resident inspectors, then the NRC may not be able to take appropriate action in a timely manner. The current requirements in § 50.72 establish timeliness requirements for notifying the NRC. If the NRC removed these requirements, then licensees would instead provide voluntary reports to resident inspectors based on each licensee's procedures, which may or may not impose timeliness expectations for notification of the resident inspector. For example, event response for nonemergency events could be delayed several days if an event, such as an actuation of the reactor protection system, occurs on a Friday night, and the resident inspector is not informed until Monday morning. Such a delay may impact the agency's ability to determine the appropriate response to an event in a timely manner. If, due to the delay in reporting, the NRC is delayed in this assessment and in potentially taking responsive action, public health and safety could be affected.

In addition, it may not be readily apparent to the public how the NRC communicates and utilizes information received under these reporting requirements. The HOO communicates this information to all the interested internal NRC stakeholders when these reports are made. The reports in § 50.72(b)(2)(xi) and (b)(3)(xii) are of particular interest to the agency in that they ensure that the NRC is aware of communications made to other agencies and is kept informed of situations that are of high public interest (*i.e.,* news releases and transport of contaminated personnel). An important factor for event notifications under § 50.72(b)(3)(xii) is the potential for radioactive materials on the contaminated individual to be removed from the site and distributed outside of the radioactivity-controlled area.

The petitioner claims that reports made under § 50.72(b)(2)(xi) and (b)(3)(xii) are essentially ''courtesy calls'' made to the NRC. The NRC notes that by the petitioner's own admission, licensees expend minimal effort to notify the NRC if a news release or notification to another government agency is made. In these cases, the reportability of these events should be readily apparent to the licensee and, therefore, cause little administrative burden beyond that of a call to the NRC HOO.

Regarding the claim that resident inspectors can handle these ''courtesy calls,'' in addition to the previous discussion regarding delayed communication, communicating these events only to the resident inspector could alter the direct and efficient communication structure via the HOO and replace it with an indirect structure that is less efficient at disseminating information within the NRC. Moreover, licensee calls to the NRC HOC are recorded to ensure accuracy of information but, under the petitioner's proposal, licensee conversations with resident inspectors would not be recorded. Since the NRC HOC infrastructure for dissemination of this information currently exists, the resident inspectors could report the information to the NRC HOC. But this shifts the responsibility of contacting the HOC from the licensee to the resident inspectors. In addition, the NRC HOC procedures would need to be updated to address any issues associated with this change, and the NRC would need to develop guidance for the resident inspectors to communicate nonemergency events to the NRC HOC. These changes would incur additional costs for training and equipment and may result in inconsistencies in the quality and timeliness of information about these events being shared within the NRC. This could potentially delay the NRC in the performance of its regulatory functions. The concerns with additional burden on resident inspectors if they are expected to communicate issues within the NRC are provided in the NRC's evaluation of Assertion 2.

The NRC needs to preserve the ability to respond effectively to events, maintain situational awareness, provide proper regulatory oversight, and maintain credibility with the public. The NRC intends to gather additional stakeholder feedback on this topic in the rulemaking process.

Assertion 5: The public will continue to be notified of the event in accordance with § 50.73.

The petitioner states that the fuller descriptions in LERs ''provided within 60 days, as required by 10 CFR 50.73, are available to the public. Given that these are nonemergency events, this is sufficient for transparency purposes.''

NRC Evaluation: The NRC agrees, in part, with this assertion. The petitioner's claim that the public will be notified of the event in accordance with § 50.73 is correct, with the exception of the three reporting requirements in § 50.72, as discussed in Assertion 4, that do not have a corresponding reporting requirement in § 50.73: § 50.72(b)(2)(xi), (b)(3)(xii), and (b)(3)(xiii). For these reports, the NRC disagrees that the reporting requirements of § 50.73 are sufficient for the purposes of public transparency.

The NRC agrees with the petitioner's statement that LERs contain ''fuller,'' or more complete, descriptions of the reported event. The requirements of § 50.73 contain more detail regarding required content than the event notification requirements in § 50.72. The LERs generally contain a much more descriptive narrative of the event and the failure mechanisms involved.

In addition, the NRC received several public comments regarding timeliness of LERs. Two private citizens expressed support for the petition with the caveat that § 50.73 LERs should be moved to a 30-day reporting requirement to meet the needs of informing the public. However, such a significant change to the timing of the reporting requirements in § 50.73 may increase the burden on

licensees and result in the NRC receiving less information regarding root causes of the events reported due to the more stringent time demand. Furthermore, even a 30-day reporting requirement for § 50.73 LERs would represent a significant reduction in timeliness for public notification compared to the current § 50.72 notification requirements. As part of the rulemaking, the NRC will consider how it would continue to provide timely notification of events to the public if it also alters timing requirements for notifications by licensees. The NRC intends to gather additional stakeholder feedback on this topic in the rulemaking process.

Assertion 6: The NRC has never taken any kind of action in response to prompt notifications.

The petitioner claims that the requirement to notify the NRC within 4 or 8 hours implies that the NRC would need to take action before the end of the 8-hour shift (for a 4-hour report) or soon after the shift turnover (for an 8-hour report). The petitioner claims that in the almost 40 years that this regulation has been in place, the NRC has never taken any kind of action in this tight timeframe to protect the public for one of these nonemergency events. The petitioner claims that there is no need for this type of prompt action, and that the NRC rarely dispatches inspection teams. The petitioner claims that notification from the resident inspector is more than sufficient for this kind of ''prompt action.''

NRC Evaluation: The NRC disagrees with this assertion. The petitioner claims that the requirement to notify the NRC within 4 or 8 hours implies that the NRC would need to take action before the end of the 8-hour shift (for a 4-hour report) or soon after the shift turnover (for an 8-hour report). When the NRC receives these reports, the NRC HOO adds the items to a database for communication in a regular morning email. If there are items of interest (*e.g.,* complicated reactor scrams, emergency core cooling system injection) that indicate a need for prompt communication, the NRC HOO notifies interested NRC stakeholders via immediate phone calls as soon as the information from the event is put into the database. The NRC HOO may also issue to NRC management a ''HOO Highlight'' email. These events are typically communicated to staff and management within an hour of receipt of the notification.

There are several other actions that the NRC could take in response to these notifications. In the statement of considerations for the 2000 final rule, the Commission analyzed the intent of the timeliness requirements in § 50.72(b), and noted that the final provisions required 4-hour reporting, if the event was not reported in 1 hour, for an event or situation, related to the health and safety of the public or onsite personnel, or protection of the environment, for which a news release is planned or notification to other government agencies has been or will be made. The Commission stated that such an event may include an onsite fatality or inadvertent release of radioactively contaminated materials, and that this is the same as previously required. The Commission concluded that these reports are needed promptly because they involve events where there may be a need for the NRC to respond to heightened public concern.

The 2000 final rule also required 4-hour reporting, if the event was not reported in 1 hour, for unplanned transients. The Commission explained that these are events where there may be a need for the NRC to take a reasonably prompt action, such as partially activating its response plan to monitor the course of the event. For the remaining events reportable under § 50.72, the final rule required 8-hour reporting, if not reported in 1 hour or 4 hours; these are events where there may be a need for the NRC to take an action within about a day, such as initiating a special inspection or investigation.

Since the implementation of the 2000 final rule, the NRC has taken various prompt actions in response to event notifications under § 50.72(b). For example, the nonemergency event notifications serve as a potential trigger for Management Directive (MD) 8.3, ''NRC Incident Investigation Program,'' evaluations, which may or may not result in a reactive inspection in response to the event.

The NRC performed a total of 140 reactive inspections from 2006 to 2018, an average of approximately 11 reactive inspections per year. In the period from 2006 to 2012, the NRC performed an average of approximately 14 reactive inspections per year. In the period from 2013 to 2018, the NRC performed an average of approximately 7 reactive inspections per year. In 2018, the NRC performed 4 reactive inspections. Even though the total number of reactive inspections has declined over the past 12 years, the NRC still performs several reactive inspections per year. In addition to these reactive inspections, there are more events for which the agency performs an MD 8.3 evaluation. For those evaluations where baseline inspection is recommended (no reactive inspection), the regions occasionally dispatch additional inspectors to the site to respond to nonemergency events. There are also cases, such as the dual unit trip at the Calvert Cliffs Nuclear Power Plant in 2015 (Event Notification 50961), where the NRC performed an MD 8.3 evaluation and decided to perform a reactive inspection within approximately 24 hours (''Calvert Cliffs Nuclear Power Plant Units 1 and 2—NRC Special Inspection Report 05000317/2015009 and 05000318/2015009,'' dated May 27, 2015).

The NRC also routinely receives inquiries from reporters and members of the public regarding events at nuclear power stations. The nonemergency event notifications provide timely notification of events for those situations where the agency may need to respond to heightened public concern. For example, the Calvert Cliffs dual unit trip resulted in local news media coverage. Wholesale removal of these reporting requirements could render the agency unable to respond effectively to public requests for information.

Finally, depending on the nature of the nonemergency event, the agency may need to activate its response plan. At the Pilgrim Nuclear Power Station, winter storm Juno in January 2015 caused a loss-of-offsite power that caused a reactor trip (see Event Notification 50769). Then, about 10 hours later, a second event notification, 50771, was made due to complications with the plant response and failed mitigating systems. At that point, the NRC's Incident Response Center entered into Monitoring mode for this complicated event even though emergency plan activation criteria were not met.

The petitioner claims that the NRC dispatches inspection teams for only 1% of nonemergency events. However, the petitioner's statement does not recognize the actions taken by the NRC prior to dispatching these inspection teams. As discussed earlier in this section, the NRC sends inspection teams to nuclear power plants several times a year. The notifications made under § 50.72 serve as a potential trigger for the resident inspectors and regional staff to perform an MD 8.3 evaluation. The MD 8.3 evaluation assesses an event against several criteria to determine if the NRC should, in response to an event, (1) handle the issue in the baseline inspection program, (2) dispatch a special inspection team to investigate the event, or (3) dispatch an augmented inspection team to investigate the event in greater detail. The NRC may initiate an MD 8.3 evaluation as soon as a report is received, depending on the event.

Based on these reasons and examples, the NRC disagrees with the petitioner's assertion that the NRC has never taken any kind of action in response to these types of prompt event notifications or that these types of ''prompt actions'' are not needed.

Assertion 7: The § 50.72 nonemergency notification requirements are contrary to the NRC's principles of good regulation, specifically efficiency and openness.

As set forth in NUREG–1614, Volume 7, ''Strategic Plan: Fiscal Years 2018–2022,'' the NRC's principle of efficiency states, in part, ''Regulatory activities should be consistent with the degree of risk reduction they achieve. Where several effective alternatives are available, the option which minimizes the use of resources should be adopted.'' The petitioner argues that the burden of these requirements is not consistent with the degree of risk reduction achieved for the reasons discussed in the petition. Several commenters provided additional details about burdens associated with these requirements, including developing and maintaining procedures and training, screening events for possible reporting, over-reporting, retracting notifications determined to be unnecessary, and recordkeeping. The petitioner and several commenters state that the limited benefit to the NRC and the public from these notifications is not commensurate with the time and resources expended. The petitioner states that there are currently two pathways for communicating similar information, and the more efficient pathway that optimizes resources and also communicates more information should be the one that is adopted. The petitioner believes that the more efficient pathway is from the licensee to a resident inspector and then from the resident inspector to NRC regional management.

Regarding the principle of openness, the petitioner states that a perceived benefit of the current § 50.72 requirements is that information is provided to the public. However, the petitioner states that the public availability of LERs under § 50.73 within 60 days is sufficient for transparency purposes given that these are nonemergency events. The NRC's response to this view is included in its evaluation of Assertion 5.

NRC Evaluation: The NRC disagrees that the reporting requirements of § 50.72 are contrary to the other principles of good regulations. The NRC agrees in part with the petitioner's claim that the reporting requirements of § 50.72 should be evaluated for efficiency. However, as discussed previously, the reporting requirements vary greatly by number of reports per year and the amount of time licensees may spend deciding whether a specific reporting requirement has been met. Therefore, the NRC will consider this issue in its rulemaking process, where the NRC may solicit public input to help determine the best course of action to address the petitioner's concerns.

The NRC agrees in part that LERs meet the informational needs of the public, except in those cases where an event causes immediate heightened public concern. These cases may include press releases, emergency response to the site, failures or inadvertent actuation of emergency sirens, notification of other government agencies, or the transport of contaminated individuals from the site, and openness and efficiency is of utmost importance.

Regarding the principle of independence, the nonemergency reporting requirements in § 50.72 support the concept of seeking all available facts and opinions from licensees. Specifically, the nonemergency reporting requirements support this principle in that licensees notify the NRC of events of interest. The intent of the rule is to support the capability of the NRC to make timely decisions and to provide adequate assurances regarding actual or potential threats to public health and safety. This depends heavily on the rapidity with which significant events are communicated by nuclear power reactor licensees to NRC. The NRC has an obligation to collect facts quickly and accurately about significant events, assess the facts, take necessary action, and inform the public about the extent of the threat, if any, to public health and safety. Notification of these nonemergency events in a timely manner allows the agency to perform an independent assessment of the event and take appropriate action, if necessary.

Regarding reliability, the NRC acknowledges that § 50.72 has not been updated since 2001. During the rulemaking process, the NRC will evaluate the additional operating and regulatory experience gained since 2001 and determine if any changes are necessary to the nonemergency reporting requirements of § 50.72.

Assertion 8: The purpose and objectives of § 50.72 will continue to be fully met if the requested amendments are made.

The petitioner claims that the purpose and objectives of § 50.72 will continue to be fully met if the NRC grants the petitioner's request to remove the nonemergency reporting requirements contained in § 50.72(b). The petitioner bases the request on the existence of voluntary procedures to inform resident inspectors.

NRC Evaluation: For the reasons listed in the responses to the assertions in this section of this document, the NRC disagrees in general that the intent of § 50.72 would be fully met if the requested amendments were implemented as stated; however, the NRC intends to assess this claim in the rulemaking process to determine whether the NRC can eliminate any requirements within § 50.72 (due to being unnecessarily burdensome) and still preserve the purposes and objectives of § 50.72. The NRC needs to maintain the ability to respond effectively to events, maintain situational awareness, provide proper regulatory oversight, and preserve credibility with the public.

Assertion 9: Rulemaking is the preferred solution to deal with the petitioner's concerns.

NRC Evaluation: The NRC agrees, in part, that the rulemaking process can evaluate and potentially resolve the petitioner's underlying concerns associated with unnecessary burden caused by requirements associated with nonemergency event notifications. The NRC will address this issue in the rulemaking process. The NRC disagrees with the petitioner's proposed changes that would eliminate all nonemergency reporting requirements in § 50.72. Rulemaking will enable the NRC to evaluate the reporting criteria in § 50.72(b) on a case-by-case basis to determine if the reporting requirements should be modified (*e.g.,* changing the timeliness or method of reporting requirements or eliminating or adding requirements). The NRC will hold public meetings with stakeholders throughout the rulemaking process to better understand which requirements have the greatest impact on industry and the public. It may be possible to address some of these concerns by clarifying regulatory guidance.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./web link/**Federal Register** citation
PRM–50–116—Nuclear Energy Institute Petition to Amend 10 CFR 50.72, ''Immediate Notification Requirements for Operating Nuclear Power Reactors,'' August 2, 2018.	ML18247A204.
PRM–50–116: Petition for rulemaking; notice of docketing and request for comment, November 20, 2018	83 FR 58509.
Management Directive 8.3, ''NRC Incident Investigation Program,'' June 25, 2014	ML18073A200.
NUREG–1614, Volume 7, ''Strategic Plan: Fiscal Years 2018–2022,'' February 2018	ML18032A561.
NUREG–1022, Rev 3, Supplement 1, ''Event Report Guidelines 10 CFR 50.72(b)(3)(xiii),'' September 2014	ML14267A447.
NEI 13–01, Rev 0, ''Reportable Action Levels for Loss of Emergency Preparedness Capabilities,'' July 2014	ML14197A206.
''Calvert Cliffs Nuclear Power Plant Units 1 and 2—NRC Special Inspection Report 05000317/2015009 and 05000318/2015009,'' May 27, 2015.	ML15147A354.
Event Notification Report for January 28, 2015: EN 50769	*https://www.nrc.gov/reading-rm/doc-collections/event-status/event/2015/20150128en.html#en50769.*
Event Notification Report for January 28, 2015: EN 50771	*https://www.nrc.gov/reading-rm/doc-collections/event-status/event/2015/20150128en.html#en50771.*
Event Notification Report for April 10, 2015: EN 50961	*https://www.nrc.gov/reading-rm/doc-collections/event-status/event/2015/20150410en.html#en50961.*

V. Conclusion

For the reasons cited in this document, the NRC will consider the petition in the rulemaking process. The NRC will evaluate the current requirements and guidance for immediate notification of nonemergency events for operating nuclear power reactors, assess whether the requirements present an unnecessary reporting burden, and if they do, determine whether reporting can be reduced or eliminated that does not have a commensurate safety benefit.

The NRC tracks the status of all rules and PRMs on its website at *https://www.nrc.gov/about-nrc/regulatory/rulemaking/rules-petitions.html.* The public may monitor the docket for the rulemaking on the Federal rulemaking website, *https://www.regulations.gov,* by searching on Docket ID NRC–2020–0036. Publication of this document in the **Federal Register** closes Docket ID NRC–2018–0201 for PRM–50–116.

Dated: August, 9, 2021.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2021–17244 Filed 8–11–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2021–0124]

RIN 3150–AK66

List of Approved Spent Fuel Storage Casks: TN Americas LLC; NUHOMS® EOS Dry Spent Fuel Storage System, Certificate of Compliance No. 1042, Amendment No. 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 2 to Certificate of Compliance No. 1042. Amendment No. 2 would revise the certificate of compliance to add a dry shielded canister for storage, add new heat load zone configurations, and make other changes to the storage system. Amendment No. 2 also would change the certificate of compliance, technical specifications, and updated final safety analysis report for consistency and clarity.

DATES: Submit comments by September 13, 2021. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2021–0124, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

FOR FURTHER INFORMATION CONTACT: Christian J. Jacobs, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6825; email: *Christian.Jacobs@nrc.gov* or Andrew G. Carrera, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–1078; email: *Andrew.Carrera@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0124 when contacting the NRC about the availability of information for this action. You may obtain publicly-

available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0124. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2021–0124 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

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

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on October 26, 2021. However, if the NRC receives any significant adverse comment by September 13, 2021, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For a more detailed discussion of the proposed rule changes and associated analyses, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on March 24, 2017 (82 FR 14987), as corrected (82 FR 34387; July 25, 2017), that approved the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System design and added it to the list of NRC-approved cask designs in § 72.214, ''List of approved spent fuel storage casks,'' as Certificate of Compliance No. 1042.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS accession No./ **Federal Register** citation
Direct Final Rule, 10 CFR Part 72, ''List of Approved Spent Fuel Storage Casks: TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System, Certificate of Compliance No. 1042; [NRC–2016–0254] RIN 3150–AJ88,'' March 24, 2017.	82 FR 14987.
Correcting Amendment, 10 CFR Part 72, ''List of Approved Spent Fuel Storage Casks: TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System, Certificate of Compliance No. 1042; [NRC–2016–0254] RIN 3150–AJ88,'' July 25, 2017.	82 FR 34387.
Initial Application from TN Americas LLC for Certificate of Compliance No. 1042, Amendment No. 2, to NUHOMS EOS Dry Spent Fuel Storage System Certificate of Compliance No. 1042, April 18, 2019.	ML19114A227 (package).
Submittal of Acceptance Review of TN Americas LLC Application for Certificate of Compliance No. 1042, Amendment No. 2, to NUHOMS EOS System, Revision 1, Response to Request for Supplemental Information., August 5, 2019.	ML19225C845.
Acceptance Review of TN Americas LLC Application for Certificate of Compliance No. 1042, Amendment No. 2, to NUHOMS EOS System, Revision 2, Supplemental Information, October 2, 2019.	ML19282A518.
Acceptance Review of TN Americas LLC Application for Certificate of Compliance No. 1042, Amendment No. 2, to NUHOMS EOS System, Revision 3—Supplemental Information, October 29, 2019.	ML19311C551.
TN Americas LLC, Application for Certificate of Compliance No. 1042, Amendment No. 2, to NUHOMS EOS System, Revision 5, June 30, 2020.	ML20190A135.
Application for Certificate of Compliance No. 1042, Amendment No. 2, to NUHOMS EOS System, Revision 6, Revised Responses to Request for Additional Information, October 29, 2020.	ML20315A417.
TN America, LLC—Application for Certificate of Compliance No. 1042 Amendment No. 2 to NUHOMS EOS System, Revision 7—Revised Response to Request for Additional Information, January 27, 2021.	ML21027A324.
User Need Memorandum Package to T. Martinez Navedo from J. McKirgan with Proposed Certificate of Compliance No. 1042, Amendment No. 2; Associated Proposed Technical Specifications; and the Preliminary Safety Evaluation Report, June 7, 2021.	ML21125A103 (package).

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2021–0124.

Dated: August 4, 2021.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2021–17228 Filed 8–11–21; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2017–BT–STD–0023]

RIN 1905–AE01

Energy Conservation Program: Energy Conservation Standards for Microwave Ovens

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of proposed determination and request for comment.

SUMMARY: The Energy Policy and Conservation Act, as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including microwave ovens. EPCA also requires the U.S. Department of Energy (''DOE'') to periodically determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would result in significant energy savings. In this notification of proposed determination (''NOPD''), DOE has initially determined that energy conservation standards for microwave ovens do not need to be amended and requests comment on this proposed determination and the associated analyses and results.

DATES:

Meeting: DOE will hold a webinar on Monday, September 13, 2021, from 10:00 a.m. to 3:00 p.m. See section VII, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: Written comments and information are requested and will be accepted on or before October 12, 2021.

Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *https://www.regulations.gov.* Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–STD–0023, by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* to *MWO2017STD0023@ee.doe.gov.* Include docket number EERE–2017–BT–STD–0023 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section VII of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including email, postal mail, or hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid–19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the Covid–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket, which includes **Federal Register** notices, webinar attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *https://www.regulations.gov.* All documents in the docket are listed in the *https://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *https://www.regulations.gov/#!docketDetail;D=EERE-2017-BT-STD-0023.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII, ''Public Participation,'' for further information

on how to submit comments through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Synopsis of the Proposed Determination

Title III, Part B [1] of the Energy Policy and Conservation Act, as amended (''EPCA''),[2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include kitchen ranges and ovens, which encompass microwave ovens, the subject of this NOPD. (42 U.S.C. 6292(a)(10))

DOE is issuing this NOPD pursuant to the EPCA requirement that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (''NOPR'') including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m))

For this proposed determination, DOE analyzed microwave ovens subject to standards specified in 10 CFR 430.32(j)(3).

DOE first analyzed the technological feasibility of microwave ovens with lower energy use. For those microwave ovens for which DOE determined higher standards to be technologically feasible, DOE estimated energy savings that would result from potential energy conservation standards by using the same approach as when it conducts a national impacts analysis.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

Based on the results of the analyses, summarized in section V of this document, DOE has tentatively determined that current standards for microwave ovens do not need to be amended.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed determination, as well as some of the historical background relevant to the establishment of standards for microwave ovens.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include kitchen ranges and ovens, which include microwave ovens, the subject of this document. (42 U.S.C. 6292(a)(10)) EPCA prescribed energy conservation standards for kitchen ranges and ovens and directed DOE to conduct two cycles of rulemakings to determine whether to amend standards for these products. (42 U.S.C. 6295(h)(2)(A)–(B))

The energy conservation program for covered products under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA.

(42 U.S.C. 6295(s)) The DOE test procedures for microwave ovens appear at title 10 of the Code of Federal Regulations (''CFR'') part 430.23(i) and 10 CFR part 430, subpart B, appendix I (''Appendix I'').

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (See 42 U.S.C. 6297(d))

Pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for microwave ovens address standby mode and off mode energy use. In this analysis, DOE considers such energy use in its determination of whether energy conservation standards need to be amended.

DOE must periodically review its already established energy conservation standards for a covered product no later than 6 years from the issuance of a final rule establishing or amending a standard for a covered product. (42 U.S.C. 6295(m)) This 6-year look-back provision requires that DOE publish either a determination that standards do not need to be amended or a NOPR, including new proposed standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) EPCA further provides that, not later than 3 years after the issuance of a final determination not to amend standards, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2))

A determination that amended standards are not needed must be based on consideration of whether amended standards will result in significant conservation of energy, are technologically feasible, and are cost-effective. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)) Additionally, any new or amended energy conservation standard prescribed by the Secretary for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Among the factors DOE considers in evaluating whether a proposed standard level is economically justified includes whether the proposed standard at that level is cost-effective, as defined under 42 U.S.C. 6295(o)(2)(B)(i)(II). Under 42 U.S.C. 6295(o)(2)(B)(i)(II), an evaluation of cost-effectiveness requires DOE to consider savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard. (42 U.S.C. 6295(n)(2) and 42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE is publishing this NOPD in satisfaction of the 6-year review requirement in EPCA.

B. Background

1. Current Standards

In a final rule published on June 17, 2013 (''June 2013 Final Rule''), DOE prescribed the current energy conservation standards for microwave ovens manufactured on or after June 17, 2016. 78 FR 36316. These energy conservation standards address standby mode and off mode energy use and prescribe the maximum allowable average standby power in watts (''W'') as set forth in 10 CFR 430.32(j)(3) and repeated in Table II–1 of this document.

TABLE II–1—FEDERAL ENERGY CONSERVATION STANDARDS FOR MICROWAVE OVENS

Product class	Maximum allowable average standby power (w)
Microwave-Only Ovens and Countertop Convection Microwave Ovens	1.0
Built-In and Over-the-Range Convection Microwave Ovens	2.2

2. History of Standards Rulemakings for Microwave Ovens

EPCA prescribed an energy conservation standard for kitchen ranges and ovens,[3] and directed DOE to conduct two cycles of rulemakings to determine whether to amend standards for these products. (42 U.S.C. 6295(h)(2)(A)–(B)) DOE completed the first of these rulemaking cycles by publishing a final rule on September 8, 1998, that codified the prescriptive design standard for gas cooking products established in EPCA, but found that no standards were justified for electric cooking products, including microwave ovens, at that time. 63 FR 48038, 48053–48054. DOE completed the second rulemaking cycle and published a final rule on April 8, 2009, in which it determined, among other things, that standards for microwave oven active mode energy use were not economically justified. 74 FR 16040 (''April 2009 Final Rule'').

Most recently, DOE published the June 2013 Final Rule, adopting energy conservation standards for microwave ovens. 78 FR 36316. In the June 2013 Final Rule, DOE maintained its prior determination that active mode standards are not warranted for microwave ovens and prescribed energy conservation standards that address the standby and off mode energy use of microwave ovens. 78 FR 36316, 36317.

In support of the present review of the microwave oven energy conservation standards, DOE published a request for information (''RFI'') on August 13, 2019 (''August 2019 RFI''), which identified various issues on which DOE sought comment to inform its determination of whether the standards need to be amended. 84 FR 39980.

DOE received six comments in response to the August 2019 RFI from the interested parties listed in Table II–2.

[3] EPCA prescribed that gas kitchen ranges and ovens having an electrical supply cord shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1990. (42 U.S.C. 6295(h)(2)(A))

TABLE II–2—AUGUST 2019 RFI WRITTEN COMMENTS

Organization(s)	Reference in this NOPD	Organization type
Whirlpool Corporation	Whirlpool	Manufacturer.
GE Appliances	GE Appliances	Manufacturer.
Appliance Standards Awareness Project and the California Energy Commission.	ASAP and CEC	Energy Efficiency Advocate and State Energy Agency.
Edison Electric Institute	EEI	Investor Owned Utility Association.
Association of Home Appliance Manufacturers	AHAM	Industry Association.
Pacific Gas and Electric Company (''PG&E''), San Diego Gas and Electric (''SDG&E''), and Southern California Edison (''SCE'').	CA IOUs	Investor Owned Utility Association.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the comments in the public record.[4]

III. General Discussion

DOE developed this proposed determination after considering comments and information from interested parties that represent a variety of interests. This NOPD addresses issues raised by these commenters.

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q)) The microwave oven classes for this proposed determination are discussed in further detail in section IV.B.4 of this document. This proposed determination covers microwave ovens defined as household cooking appliances consisting of a compartment designed to cook or heat food by means of microwave energy, including microwave ovens with or without thermal elements designed for surface browning of food and convection microwave ovens. This includes any microwave oven components of a combined cooking product. 10 CFR 430.2. The scope of coverage is discussed in further detail in section IV.B.1 of this document.

[4] The parenthetical reference provides a reference for information located in the docket. (Docket No. EERE–2017–BT–STD–0023, which is maintained at *https://www.regulations.gov/docket?D=EERE-2017-BT-STD-0023).* The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the energy use of their product. (42 U.S.C. 6295(s) and 42 U.S.C. 6293(c)) DOE's current energy conservation standards for microwave ovens are expressed in terms of average watts of standby mode power consumption. See 10 CFR 430.23(j)(3). DOE originally established test procedures for microwave ovens in an October 3, 1997 final rule that addressed active mode energy use only. 62 FR 51976. Those procedures were based on the International Electrotechnical Commission (''IEC'') Standard 705—Second Edition 1998 and Amendment 2–1993, ''Methods for Measuring the Performance of Microwave Ovens for Households and Similar Purposes'' (''IEC Standard 705''). On July 22, 2010, DOE published in the **Federal Register** a final rule for the microwave oven test procedures (''July 2010 Repeal Final Rule''), in which it repealed the regulatory test procedures for measuring the cooking efficiency of microwave ovens. 75 FR 42579. In the July 2010 Repeal Final Rule, DOE determined that the existing microwave oven test procedure did not produce representative and repeatable test results. 75 FR 42579, 42580. DOE stated at that time that it was unaware of any test procedures that had been developed that address these concerns. 75 FR 42579, 42581.

On March 9, 2011, DOE published an interim final rule establishing test procedures for microwave ovens regarding the measurement of the average standby mode and average off mode power consumption that incorporated by reference specific clauses from the IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' First Edition 2005–06 (''IEC Standard 62301 (First Edition)''). 76 FR 12825. On January 18, 2013, DOE published a final rule amending the microwave oven test procedure to incorporate by reference certain provisions of the revised IEC Standard 62301 Edition 2.0 2011–01, along with clarifying language for the measurement of standby mode and off mode energy use. 78 FR 4015.

On December 16, 2016, DOE published a final rule (''December 2016 TP Final Rule'') amending the cooking products test procedure to, in part, incorporate methods for calculating the annual standby mode and off mode energy consumption of the microwave oven component of a combined cooking product by allocating a portion of the combined low-power mode energy consumption measured for the combined cooking product to the microwave oven component using the estimated annual cooking hours for the given components comprising the combined cooking product. 81 FR 91418, 91438–91439. That final rule, which resulted in the most recent version of the microwave oven test procedure, was codified in the CFR at Appendix I.

On January 18, 2018, DOE published an RFI (''January 2018 RFI'') initiating a data collection process to assist in its evaluation of the test procedure for microwave ovens. 83 FR 2366. On November 14, 2019, DOE published a NOPR (''November 2019 TP NOPR'') proposing amendments to the existing test procedure with requirements for both the clock display and network functionality when testing standby mode and off mode power consumption and certain technical corrections. 84 FR 61836. DOE subsequently published an SNOPR on August 3, 2021 (''August 2021 TP SNOPR'') providing additional clarification on the requirements for testing microwave ovens with network functionality. 86 FR 41759.

C. Technological Feasibility

1. General

In evaluating potential amendments to energy conservation standards, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the determination. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, sections 6(c)(3)(i) and 7(b)(1).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety; and (4) unique-pathway proprietary technologies. 10 CFR part 430, subpart C, appendix A, sections 6(c)(3)(ii)–(v) and 7(b)(2)–(5). Section IV.B.3 of this document discusses the results of the screening analysis for microwave ovens, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this proposed determination.

2. Maximum Technologically Feasible Levels

As when DOE proposes to adopt an amended standard for a type or class of covered product, in this analysis it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such a product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for microwave ovens, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this analysis are described in section IV.C of this proposed determination.

D. Energy Savings

1. Determination of Savings

For each efficiency level (''EL'') evaluated using the tools developed for the June 2013 Final Rule,[5] DOE projected energy savings from application of the EL to the microwave ovens purchased in the 30-year period that begins in the assumed year of compliance with the potential standards (2024–2053). The savings are measured over the entire lifetime of the microwave ovens purchased in the 30-year period. DOE quantified the energy savings attributable to each EL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards. DOE used the methodology from its national impact analysis to estimate national energy savings (''NES'') from potential amended standards for microwave ovens. The methodology calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used.

2. Significance of Savings

In determining whether amended standards are needed, DOE must consider whether such standards will result in significant conservation of energy. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(o)(3)(B)) Although the term ''significant'' is not defined in the EPCA, the U.S. Court of Appeals, for the District of Columbia Circuit in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), opined that Congress intended ''significant'' energy savings in the context of EPCA to be savings that were not ''genuinely trivial.''

Historically, DOE did not provide specific guidance or a numerical threshold for determining what constitutes significant conservation of energy. Instead, DOE determined on a case-by-case basis whether a particular rulemaking would result in significant conservation of energy. In a final rule published February 14, 2020, DOE adopted a numerical threshold for significant conservation of energy. 85 FR 8626, 8670. Specifically, the threshold requires that an energy conservation standard result in a 0.30 quadrillion British thermal units (''quads'') reduction in site energy use over a 30-year analysis period or a 10-percent reduction in site energy use over that same period. *Id.* Although a numeric threshold may serve as an informative guide, the significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking. For example, the United States has now rejoined the Paris Agreement and will exert leadership in confronting the climate crisis.[6] Additionally, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Further establishing a set, numerical site energy threshold for all covered products and equipment does not allow DOE to account for differences in primary energy and full-fuel-cycle (''FFC'') effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards. Accordingly, in a two part NOPR process, the first of which published on April 12, 2021 and part two on July 7, 2021, DOE reconsidered the numerical threshold process for determining significance of energy savings and whether to revert to its prior practice of making such determinations on a case-by-case basis. 86 FR 18901, 35668. Currently, under section 6(b) of appendix A to 10 CFR part 430 subpart C (''Process Rule''), if DOE determines that a more stringent energy conservation standard would not result in an additional 0.3 quads of site energy savings or an additional 10-percent reduction in site energy use over a 30-year period, DOE would propose to make a no-new standards determination.

E. Cost Effectiveness

Under EPCA's six-year-lookback review provision for existing energy

[5] U.S. Department of Energy (DOE), 2013–06–17 Energy Conservation Program: Energy Conservation Standards for Standby Mode and Off Mode for Microwave Ovens; Final Rule. *https://www.regulations.gov/document?D=EERE-2011-BT-STD-0048-0027.*

[6] *See* Executive Order 14008, 86 FR 7619 (Feb. 1, 2021) (''Tackling the Climate Crisis at Home and Abroad'').

conservation standards at 42 U.S.C. 6295(m)(1), cost-effectiveness of potential amended standards is a relevant consideration both where DOE proposes to adopt such standards, as well as where it does not. In considering cost-effectiveness when making a determination of whether existing energy conservation standards do not need to be amended, DOE considers the savings in operating costs throughout the estimated average life of the covered product compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(m)(1)(A)(*referencing* 42 U.S.C. 6295(n)(2))) Additionally, any new or amended energy conservation standard prescribed by the Secretary for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified. 42 U.S.C. 6295(o)(2(A) Cost-effectiveness is one of the factors that DOE must ultimately consider under 42 U.S.C. 6295(o)(2)(B) to support a finding of economic justification, if it is determined that amended standards are appropriate under the applicable statutory criteria. (42 U.S.C. 6295(o)(2)(B)(i)(II)))

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE performed for this proposed determination regarding microwave ovens. Separate subsections address components of DOE's analyses as performed for the June 2013 Final Rule. DOE used a national impact analysis methodology and calculated the NES expected to result from potential energy conservation standards.

A. Active Mode Standards

As part of the January 2018 RFI, DOE requested information on the feasibility of establishing an active mode test procedure for microwave ovens, including convection microwave ovens. 83 FR 2566, 2570. Similarly, in the August 2019 RFI, DOE requested comment and information on whether standards for microwave ovens in active mode were justified and on the feasibility of incorporating active mode, standby mode and off mode energy use into a single standard if DOE were to develop an active mode test procedure. 84 FR 39980, 39983.

In response to the August 2019 RFI, DOE received several comments related to active mode energy conservation standards. GE Appliances stated that there is no justification for active mode energy conservation standards due to the insufficient energy savings and lack of economic benefit. (GE Appliances, No. 5 at p. 2) GE Appliances and AHAM also stated that no other country currently requires active mode testing for microwave oven energy conservation standards, with AHAM adding that a requirement for active mode measurement would put the United States at odds with other countries, be unduly burdensome, and would require 5–6 times the current test time. (GE Appliances, No. 5 at p. 2 and AHAM, No. 6 at p. 2) AHAM stated that if DOE were to amend the test procedure to address active mode energy use, DOE would need to seek information again on energy conservation standards for microwave ovens as the test procedure affects the standards analysis. (AHAM No. 5, at p. 2)

AHAM further commented that it does not believe that standards would be justified for active mode because, to AHAM's knowledge, there is no technology currently available to reduce energy use in the active mode for either microwave-only ovens or convection microwave ovens. AHAM stated that there is no evidence to indicate that DOE's prior analysis and determination in the April 2009 Final Rule that active mode standards for microwave ovens would not be economically justified would be different today. The CA IOUs provided comments in support of incorporating active mode energy usage into microwave oven efficiency standards, stating that active mode accounts for 80 percent of annualized unit energy consumption for microwave ovens. (CA IOUs, No. 7 at p. 3) ASAP and CEC encouraged DOE to adopt an active mode test procedure for microwave ovens, stating that active mode energy consumption is almost 90 percent of the total annual energy consumption for microwave ovens, and that there is significant variation in active mode energy use among models. ASAP and CEC added that it likely is not technically feasibility to incorporate active mode, standby mode, and off mode into a single energy use metric. (ASAP and CEC, No. 8 at p. 1)

As stated, the DOE test procedure does not measure active mode energy use of microwave ovens. DOE considered in the most recent microwave oven test procedure rulemaking whether to adopt provisions for measuring the energy use of microwave ovens in active mode. In the November 2019 TP NOPR, DOE made an initial determination that an active mode measurement for microwave ovens would be unduly burdensome at this time due to the expected increase in testing cost resulting from increased testing time and the potential need for new laboratory equipment and facility upgrades that would not be justified. 84 FR 61838. Therefore, DOE did not propose an active mode test procedure in the November 2019 TP NOPR. Accordingly, DOE did not consider energy conservation standards for active mode energy use of microwave ovens in this NOPD.

Additionally, consistent with AHAM's comment, DOE is unaware of changes to the market or available technology that would suggest DOE's previous determination in the April 2009 Final Rule that an energy conservation standard for microwave oven active mode would not be technologically feasible and economically justified would be different at the present time. *See* 74 FR 16040, 16087.

B. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment for this proposed determination include (1) a determination of the scope and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of microwave ovens. The key findings of DOE's market assessment are summarized in the following sections.

1. Scope of Coverage and Product Classes

In this analysis, DOE relied on the definition of microwave ovens in 10 CFR 430.2, which defines ''microwave oven'' as household cooking appliances consisting of a compartment designed to cook or heat food by means of microwave energy, including microwave ovens with or without thermal elements designed for surface browning of food and convection microwave ovens. This includes any microwave oven components of a combined cooking product. Any product meeting the definition of microwave oven is included in DOE's scope of coverage.

For this proposed determination, DOE considered the two product classes of microwave ovens prescribed in the current energy conservation standards: (1) Microwave-Only Ovens and Countertop Convection Microwave Ovens, and (2) Built-In and Over-the-Range Convection Microwave Ovens. Section IV.B.4 of this document describes the two product classes in additional detail.

As previously stated in section III.B of this document, for these two classes of microwave ovens, DOE's current test procedure measures the energy consumption in standby mode and off mode only. Consequently, DOE's current energy conservation standards for microwave ovens are also expressed in terms of standby mode and off mode power. There are currently no active mode energy conservation standards nor a prescribed test procedure for measuring the active mode energy use or efficiency (*e.g.,* cooking efficiency) of microwave ovens.

GE Appliances stated that using the microwave oven standards to regulate combined cooking products would improperly regulate the non-microwave portion of the combined product. (GE Appliances, No. 5 at p. 2) AHAM stated that there is no technological method to accurately measure the standby mode and off mode power consumption of the microwave oven portion of a combined cooking product, as a combined cooking product typically has one power source. (AHAM, No. 6 at p. 4)

In a final rule published on August 18, 2020 (''August 2020 TP Final Rule), DOE withdrew the test procedure for conventional cooking tops, determining that it was not representative of energy use or efficiency during an average use cycle and was overly burdensome to conduct. 85 FR 50757. As part of the August 2020 TP Final Rule, DOE removed provisions for measuring the energy use of combined cooking products, which are household cooking appliances that combine a cooking product with other appliance functionality (*e.g.,* microwave/conventional cooking tops, microwave/conventional ovens, and microwave/conventional ranges.) *Id.* The current test procedure for measuring standby mode and off mode power consumption for microwave ovens excludes the microwave oven component of a combined cooking product. Appendix I, Section 3.2.1.

DOE also received several comments related to microwave ovens equipped with connected functionality in response to the August 2019 RFI. EEI stated that DOE should update the current microwave oven standby mode requirements to account for new technologies, including the integration of ''smart'' devices with demand response functionality. (EEI, No. 4 at p. 2) EEI stated that, to the extent that energy use of a ''connected'' function is measured, the current energy conservation standards for microwave ovens may impede the inclusion of such functions. *Id.* EEI suggested DOE should revise the microwave oven standby power requirements to contain three categories of microwave oven operation: standby and non-connected, standby and connected, and standby and disconnected. (EEI, No. 3 at p. 2) AHAM urged DOE not to revise the microwave oven test procedure or standards to account for the energy consumed while performing connected functions to avoid stifling innovation and potential energy saving benefits. (AHAM, No. 6 at p. 7) Based on a review of manufacturer websites and user manuals of various appliances, as well as testing conducted at DOE and third-party laboratories, connected features continue to be implemented in a variety of ways across different brands. Further, the design and operation of these features is continuously evolving as the market continues to grow for these products. Because there are a lack of available data to establish a representative test configuration for assessing the energy consumption of network functionality for microwave ovens, DOE, in the August 2021 TP SNOPR, proposed explicit language to generally require network functions to be disabled during testing. 86 FR 41759. As such, DOE is not addressing energy consumption specific to connected functions in this proposed determination.

2. Technology Options

To develop a list of technology options, DOE uses information about existing and past technology options and prototype designs to help identify technologies that manufacturers could use to meet and/or exceed a given set of energy conservation standards under consideration.

In the August 2019 RFI, DOE identified several technology options that would be expected to reduce the energy consumption of microwave ovens in standby mode and off mode, as measured by the DOE test procedure. 84 FR 39980, 39984–39985.

TABLE IV–1—MICROWAVE OVEN TECHNOLOGY OPTIONS

Mode	Technology option
Standby	Lower-power display technologies.
Standby	Cooking sensors with no standby power requirement.
Standby	Improved power supply and control board options.
Standby	Automatic power-down of most power-consuming components, including the clock display.

3. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-Pathway Proprietary Technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further.

10 CFR part 430, subpart C, appendix A, sections 6(c)(3) and 7(b). In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis.

Regarding impacts of technology options on costs, DOE does not consider cost as a factor for screening out technology options. DOE considers the economic impacts and costs on individual customers, manufacturers, and the nation in later analyses.

DOE received several comments on technology options in response to the August 2019 RFI. Whirlpool stated that all feasible technology options are currently used in microwave ovens to meet DOE's current energy conservation standards. (Whirlpool, No. 3 at p. 1) GE Appliances stated that all available and economically feasible technologies are being used in microwave ovens. (GE Appliances, No. 5 at p. 2) AHAM commented that all technology options are being employed to meet current energy conservation standards, and that it is not aware of any new technologies that increase the efficiency of microwave ovens without decreasing consumer utility. (AHAM, No. 6 at p. 4) AHAM also stated that most microwave ovens on the market are minimally compliant with the current standards, and that these units are already using the available technology options. (AHAM, No. 6 at p. 5) Whirlpool stated that additional reduction in standby mode power consumption would jeopardize key functionalities demanded by consumers, would be technologically impractical, and would be cost prohibitive. (Whirlpool, No. 3 at p. 1) CA IOUs urged DOE to investigate more stringent microwave oven standby mode standards, stating that there is evidence that technological limitations have changed since the last rulemaking. The CA IOUs commented that 33 percent of microwave-only ovens and countertop convection microwave ovens and 11 percent of built-in and over-the-range convection microwave ovens are performing better than the current standards. (CA IOUs, No. 7 at p. 1) ASAP and CEC commented that there are a range of potential intermediate efficiency levels between the current standards and the max-tech levels from the previous final rule, citing data from DOE's Compliance Certification Database,[7] which shows that for microwave-only and countertop convection microwave ovens, the models with the lowest standby power consumption consume just 0.10–0.19 W and for built-in and over-the-range convection microwave ovens, the models with the lowest standby power consumption consume 0.50–0.59 W.

DOE notes that nearly 30 percent of microwave-only ovens and countertop convection microwave ovens and 20 percent of built-in and over-the-range convection microwave ovens certified in the Compliance Certification Database exceed the minimum requirements for standby mode and off mode energy use (*i.e.,* have standby power consumption that is lower than the applicable standard). The Compliance Certification Database data indicates that technology options to achieve efficiencies higher than the current DOE standard readily exists without jeopardizing key functionalities. Consistent with the screening criteria previously discussed, DOE's engineering analysis considered technologies that are technologically feasible and that do not have significant adverse impacts on the utility of the microwave ovens to significant subgroups of consumers or that would result in the unavailability of any microwave oven with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States.

a. Screened-Out Technologies

As discussed, DOE takes into account whether a technology option will adversely impact consumer utility and product availability. In response to the August 2019 RFI, GE Appliances stated that clock displays are a critical function of microwave ovens. (GE Appliances, No. 5 at p. 2) Similarly, AHAM stated that an automatic power-down feature that shuts off the clock display decreases consumer utility, and that maintaining the clock display is critical. (AHAM, No. 6 at p. 6)

DOE has previously stated it is uncertain how greatly consumers value the function of a continuous display clock, but that loss of such function may result in significant loss of consumer utility. 78 FR 36316, 36362. Consistent with this prior concern and with comments provided by AHAM, DOE has screened out ''automatic power-down'' as a technology option due to its impact on consumer utility.

b. Remaining Technologies

After reviewing each technology, DOE did not screen out the following technology options and considers them as design options in the engineering analysis:

(1) Lower-power display technologies
(2) Cooking sensors with no standby power requirement
(3) Improved power supply and control board options

AHAM stated that cooking and humidity sensors identified by DOE take longer to re-energize, pre-condition, and calibrate, and are not applicable for the on-demand operational requirements of microwave ovens. (AHAM, No. 6 at p. 5)

In the June 2013 Final Rule, DOE concluded that cooking sensors are a viable design option for reducing microwave oven standby power consumption. 78 FR 36316, 36331. Interviews with microwave oven manufacturers and cooking sensor manufacturers and DOE's own research at the time confirmed that cooking sensors that are able to energize in a period of time that is small (5–10 seconds) compared to the duration of the cooking cycle had already been successfully deployed in commercially available products with no reliability concerns, and little to no cost premiums and impact on consumer utility. *Id.* AHAM provided no more than a generalized statement as to the operation of such sensors and DOE has no indication that its prior consideration and determination of such sensors are no longer valid. As such, DOE included such cooking sensors in its analysis.

DOE also tentatively finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service; do not result in adverse impacts on consumer utility, product availability, health, or safety; and are not a proprietary technology providing a unique pathway).

4. Product Classes

In general, when evaluating and establishing energy conservation standards, DOE divides the covered product into classes by (1) the type of energy used; (2) the capacity of the product; or (3) any other performance-related feature that affects energy efficiency and justifies different standard levels, considering factors such as consumer utility. (42 U.S.C. 42 U.S.C. 6295(q))

[7] DOE's Compliance Certification Database is available for review at *https://www.regulations.doe.gov/certification-data/products.html* (accessed on October 17, 2019).

a. Existing Product Classes

For microwave ovens, the current energy conservation standards specified in 10 CFR 430.32(j)(3) are based on two product classes determined according to the following performance-related features that provide utility to the consumer, in terms of locations where the product may be installed and availability of additional cooking functions: Intended installation (*i.e.,* countertop, built-in, or over-the-range) and presence of convection heating components. The two existing product classes are listed below.

(1) Microwave-Only Ovens and Countertop Convection Microwave Ovens
(2) Built-In and Over-the-Range Convection Microwave Ovens

b. Additional Product Classes

AHAM stated that there is no need to merge existing product classes or create additional product classes for microwave ovens currently. (AHAM, No. 6 at p. 3) DOE did not identify any additional product classes for microwave ovens based on (1) the type of energy used, (2) the capacity of the product, or (3) any other performance-related feature that affects energy efficiency and justifies different standard levels. Further, DOE did not identify any rationale to merge the existing product classes. Accordingly, DOE's analysis is based on the two existing product classes.

c. Summary

In summary, DOE assesses the product classes shown in the following list in its analysis.

(1) Microwave-Only Ovens and Countertop Convection Microwave Ovens
(2) Built-In and Over-the-Range Convection Microwave Ovens

C. Engineering Analysis

In the engineering analysis, DOE establishes the relationship between the manufacturer production cost (''MPC'') and improved microwave oven efficiency. There are two dimensions to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of microwave ovens that use less power, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class, DOE estimates the baseline manufacturer cost, as well as the incremental cost for the product at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses.

DOE typically uses one of two approaches to develop energy efficiency levels for the Engineering Analysis: (1) Relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to interpolate and define ''gap-fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the max-tech level (the level that DOE determines is the maximum achievable efficiency level, particularly in cases where the max-tech level exceeds the maximum efficiency level currently available on the market).

For this proposed determination, DOE applied a combination of the efficiency-level approach and the design level approach. For microwave-only ovens and countertop convection microwave ovens (''Product Class 1''), the standby power consumption at each efficiency level were initially derived from review of the DOE Compliance Certification Database and comparison to the levels from the June 2013 Final Rule. 78 FR 36316, 36317. The baseline standby power level, EL 0, is equal to the current standard of 1.0 W. To develop EL 1, which is 0.84 W, DOE purchased and evaluated countertop microwave-only ovens with a more efficient power supply. DOE analyzed two representative units: One that just meets the current standard of 1.0 W and another that has a lower standby power consumption. The two units otherwise share similar design characteristics such as cooking mode power, cavity size and installation configuration (*i.e.* both were countertop microwave-only ovens). In testing, DOE measured each of the internal power supply units' no-load power consumption, which is the power consumption with all other components disconnected. The first representative unit that just meets DOE's current standards had a no-load power consumption of 0.3 W, while the second unit had a 0.14 W no-load power consumption. DOE estimated that the difference between these two units (*i.e.,* 0.16 W) is the direct consequence of implementing an improved power supply. DOE, therefore, subtracted this value from the current 1.0 W standard to produce an EL 1 at 0.84 W that represents a microwave oven with an upgraded internal power supply. For Product Class 1, DOE determined that this EL 1 is also the max-tech level. DOE had previously identified a max-tech efficiency level based on automatic power-down as the technology option in the June 2013 Final Rule, with a corresponding standby power consumption of 0.02 W. 78 FR 36316, 36325. In the analysis for this NOPD, however, this technology option was screened out for the reasons discussed in section IV.B.3.a of this document.

For the built-in and over-the-range convection microwave ovens product class (''Product Class 2''), the baseline standby power consumption used for the analysis at EL 0 is the current DOE standard of 2.2 W. This maximum allowable average standby power consumption is higher than that allowed for microwave-only ovens and countertop convection microwave ovens because, in the June 2013 Final Rule, DOE had concluded that built-in and over-the-range convection microwave ovens require a larger power supply to support additional features such as an exhaust fan, additional relays, and additional lights, and that the larger power supply contributes to a higher standby power consumption. 78 FR 36316, 36328. Nonetheless, because consumer utility of the microwave oven in standby mode is similar for both product classes, DOE expects that the available design options for reducing standby power consumption would be similar. From market data, DOE observed a large percentage of built-in and over-the-range convection microwave oven models at or below the 1.0 W level. Given the prevalence of such products, DOE expects that all products in Product Class 2 could meet the 1.0 W level by using the same improved power supply design as in EL 1 for Product Class 1. Even though EL 1 for Product Class 1 is at 0.84 W, DOE

expects the larger power supply needed for Product Class 2 microwave ovens would only allow these products to achieve 1.0 W using the same power supply design. Furthermore, similar to Product Class 1, the previous max-tech level that had been identified in the June 2013 Final Rule for built-in and over-the-range convection microwave ovens based on an automatic power-down feature was removed due to concerns over consumer utility. DOE, therefore, analyzed 1.0 W as the max-tech level for this product class (in this case, EL 2, because as discussed, DOE also evaluated a gap-fill level for Product Class 2 that it designated as EL 1).

For the gap-fill EL 1 in Product Class 2, DOE analyzed a standby power level at 1.16 W, which represents a built-in and over-the-range convection microwave oven with less efficient power supplies, albeit of the same type as analyzed at max-tech. DOE estimated the standby power consumption for this EL 1 by adding the difference in wattage between an efficient and inefficient power supply's no-load consumption previously determined for Product Class 1 (*i.e.,* 0.16 W) to the 1.0 W standby power consumption of the Product Class 2 max-tech level. DOE used this approach because the improvements needed to make the power supply more efficient would be nearly identical for both product classes. Since both Product Class 2, EL 2 and Product Class 1, EL 1 utilizes the same power supply efficiency improvements, removing the improvements results in the baseline power supply design of Product Class 1. DOE therefore determined that for Product Class 2, EL 1 standby levels can be readily achieved using the Product Class 1 baseline power supply.

For both product classes, DOE tested and tore down additional microwave ovens with standby power consumptions that are lower than the max-tech values established in this rulemaking. DOE was, however, unable to isolate further technology options that resulted in the improved standby power consumption of these models other than automatic power-down.

In summary, DOE analyzed the following efficiency levels for this NOPD:

TABLE IV–2—ANALYZED EFFICIENCY LEVELS FOR MICROWAVE-ONLY OVENS AND COUNTERTOP CONVECTION MICROWAVE OVENS

Efficiency level	Standby power level source	Standby power (W)
Baseline	Baseline (current standard)	1.00
1	Improved Power Supply (Max-Tech)	0.84

TABLE IV–3—ANALYZED EFFICIENCY LEVELS FOR BUILT-IN AND OVER-THE-RANGE CONVECTION MICROWAVE OVENS

Efficiency level	Standby power level source	Standby power (W)
Baseline	Baseline (current standard)	2.20
1	Standard Power Supply	1.16
2	Improved Power Supply (Max-Tech)	1.00

The cost analysis portion of the Engineering Analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated product, and availability and timeliness of purchasing the product on the market. The cost approaches are summarized as:

- *Physical teardowns:* Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials (''BOM'') for the product.
- *Catalogue teardowns:* In lieu of physically deconstructing a product, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the BOM for the product.
- *Price surveys:* If neither a physical nor catalogue teardown is feasible (for example, for tightly integrated products such as light-emitting diode (''LED'') bulbs, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (*e.g.* large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

In the present case, after establishing the efficiency levels, DOE estimated the MPC of attaining each efficiency level based on the technology options identified for that level (*i.e.,* physical tear downs). The MPC takes into account the costs for materials, labor, depreciation, and overhead. These values were developed based on product teardowns that generated BOMs for components and manufacturing processes which contribute directly to standby power consumptions. DOE uses these BOMs, along with information on material and component prices, costs for labor, depreciation, and overhead to derive the MPC. For this analysis, the primary component of interest was the control board and its associated power supply unit.

For microwave-only ovens and countertop convection microwave ovens, DOE calculated the difference in manufacturing cost between a standard and improved power supply from BOM analysis and found the cost difference to be $0.16.

For Product Class 2, DOE modeled EL 1 using the same power supply design and cost as in the baseline products for Product Class 1. The overall teardown costs of these power supplies were on the order of $0.70, and DOE estimated that these power supplies could be used with near-zero differential cost in Product Class 2, noting that the slightly larger power supply requirement of Product Class 2 would not result in a measurable cost increase. DOE therefore applied the same incremental manufacturing cost to Product Class 2, EL 1 as Product Class 1, EL 0 (*i.e.* $0). Similarly, DOE modeled EL 2 for Product Class 2 as utilizing the same efficiency improvements made to the baseline power supply of Product Class 1 and therefore applied the same incremental cost of $0.16.

TABLE IV–4—ANALYZED EFFICIENCY LEVELS AND INCREMENTAL COSTS FOR MICROWAVE-ONLY OVENS AND COUNTERTOP CONVECTION MICROWAVE OVENS

Efficiency level	Standby power level source	Standby power (W)	Incremental MPC (2019$)
Baseline	Baseline (current standard)	1.00	
1	Improved Power Supply (Max-Tech)	0.84	$ 0.16

TABLE IV–5—ANALYZED EFFICIENCY LEVELS AND INCREMENTAL COSTS FOR BUILT-IN AND OVER-THE-RANGE CONVECTION MICROWAVE OVENS

Efficiency level	Standby power level source	Standby power (W)	Incremental MPC ($2019)
Baseline	Baseline (current standard)	2.20	
1	Standard Power Supply	1.16	$ 0
2	Improved Power Supply (Max-Tech)	1.00	0.16

D. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of microwave ovens at different efficiencies in representative U.S. single-family homes, multi-family residences, and manufactured homes, and to assess the energy savings potential of increased microwave oven efficiency. The energy use analysis estimates the range of energy use of microwave ovens in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

For this NOPD, DOE used the same methodology as that described in chapter 7 of the June 2013 Final Rule technical support document (''TSD'').[8] DOE primarily used data from the Energy Information Administration (''EIA'')'s *Residential Energy Consumption Survey* (''*RECS*''). *RECS* is a national sample survey of housing units that collects statistical information on the consumption of and expenditures for energy in housing units, along with data on energy-related characteristics of the housing units and occupants. *RECS* was constructed by EIA to be a national representation of the household population in the United States. For the June 2013 Final Rule, DOE used *RECS2009*.[9] For this NOPD, DOE updated the household sample to *RECS2015. RECS2015* includes data specific to microwave oven use frequency, whereas *RECS2009* frequency usage was estimated from overall numbers of cooked meals.

For each household, *RECS2015* provides information on the frequency of microwave oven usage per week. DOE calculated the *RECS* usage factor for each household in the sample by multiplying the frequency of use by 52 weeks per year and dividing by the weighted-average usage based on the entire *RECS* sample. The weighted-average usage was calculated by summing the average microwave use frequency per week as reported in *RECS* and multiplying by 52 weeks per year and by the housing record weight before dividing by the sum of housing record weights for the housing sample.

DOE determined the annual energy consumption of the standby mode and off mode of microwave ovens by estimating the number of hours of operation throughout the year and assuming that the unit would be in standby mode and off mode the rest of the time. For the June 2013 Final Rule, DOE determined the average hours of operation for microwaves to be 44.9 hours per year. DOE subtracted the number of calculated operating hours from the total number of hours in a year and multiplied that difference by the standby mode power usage at each efficiency level to determine annual standby mode and off mode energy consumption.

CA IOUs stated that microwave ovens spend approximately 53 hours annually in active mode. (CA IOUs, No. 7 at p. 3) DOE reviewed CA IOU's 2014 study[10] and found the sample size to be relatively small at 122 households and geographically limited, as compared to *RECS.* DOE acknowledges the benefit of using field-metered studies for energy use; however, DOE concluded that a larger study with greater geographic area would be helpful before amending the active hours used.

Chapter 7 of the June 2013 Final Rule TSD provides details on DOE's energy use analysis for microwave ovens.

E. National Energy Savings

For the present analysis, DOE projected the energy savings, over the lifetime of microwave ovens sold from 2024 through 2053. DOE evaluates the effects of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use for each microwave oven class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each microwave oven class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of microwave oven with efficiencies greater than the standard.

[8] U.S. Department of Energy (DOE), 2013–06–17 Energy Conservation Program: Energy Conservation Standards for Standby Mode and Off Mode for Microwave Ovens; Final Rule. *https://www.regulations.gov/document?D=EERE-2011-BT-STD-0048-0027.*

[9] U.S. Department of Energy (DOE), 2013–06–17 Energy Conservation Program: Energy Conservation Standards for Standby Mode and Off Mode for Microwave Ovens; Final Rule. *https://www.regulations.gov/document?D=EERE-2011-BT-STD-0048-0027.*

[10] CALMAC Study ID: SCE0360.01. 2014. *Literature Review of Miscellaneous Energy Loads (MELs) in Residential Buildings. https://www.calmac.org/publications/MEL_Literature_Review_6_10_14.pdf.*

For the June 2013 Final Rule, DOE used a methodology consistent with the national impact analysis to calculate the energy savings from each EL.

1. Product Efficiency Trends

A key component of the national energy savings analysis is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's analysis considered the projected distribution (market shares) of product efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards).

To estimate the energy efficiency distribution for microwave oven standby power, DOE used the same methodology as presented in the June 2013 Final Rule TSD and updated the model counts from the Compliance Certification Management System. The estimated market shares for the no-new-standards case for microwave ovens are shown in Table IV–6. See chapter 8 of the June 2013 Final Rule TSD for further information on the derivation of the efficiency distributions.

TABLE IV–6—EFFICIENCY DISTRIBUTIONS: NO-NEW-STANDARDS-CASE MARKET SHARES IN 2019

Microwave-only and countertop convection microwave ovens			Built-in and over-the-range convection microwave ovens		
Standard level	Standby power (W)	Market share (%)	Standard level	Standby power (W)	Market share (%)
Baseline	1.00	78.38	Baseline	2.20	81.25
1	0.84	21.62	1	1.16	0.00
			2	1.00	18.75

For the standards cases, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective. In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of products above the standard would remain unchanged.

2. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered products between each potential standards case and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from the U.S. Energy Information Administration's *Annual Energy Outlook 2019.* [11] Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

[11] U.S. Energy Information Administration, *Annual Energy Outlook 2019. https://www.eia.gov/outlooks/archive/aeo19/.*

F. Life-Cycle Cost and Payback Period Analysis

In evaluating cost-effectiveness, DOE typically conducts life-cycle cost (''LCC'') and payback period (''PBP'') analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for microwave ovens. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE uses the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of microwave ovens in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

One input to the LCC analysis is the repair and maintenance cost. AHAM stated that LED and liquid crystal display (''LCD'') technologies are more expensive and could result in higher repair and maintenance costs for the consumer. (AHAM, No. 6 at p. 6) AHAM also stated that LED and LCD displays have lower reliability compared to vacuum fluorescent displays (''VFDs''), especially in high temperature over-the-range conditions. (AHAM, No. 6 at p. 5) GE Appliances stated that there are no existing over-the-range microwave ovens using LCD technology due to extreme temperature conditions. They also indicated that previous GE Appliances over-the-range microwave ovens with an LCD screen are no longer being produced due to quality issues related to LCD screen heat exposure. (GE Appliances, No. 5 at p. 2)

As discussed in section V of this document, DOE has initially determined that the amended energy conservation standards for microwave ovens would not result in significant energy savings as required by EPCA. As such, DOE did not conduct the LCC and PBP analyses. Therefore, DOE considers the comments from AHAM and GE Appliances regarding the repair costs related to LED and LCD technologies moot.

V. Conclusions

As required by EPCA, this NOPD analyzes whether the Secretary should issue a notification of determination not to amend standards for microwave ovens based on DOE's consideration of

whether amended standards would be technologically feasible, result in significant conservation of energy, and be cost-effective. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)) Any new or amended standards issued by the Secretary would be required to comply with the economic justification and other requirements of 42 U.S.C. 6295(o).

A. Technological Feasibility

EPCA mandates that DOE consider whether amended energy conservation standards for microwave ovens would be technologically feasible. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)(B)) DOE has tentatively determined that there are technology options that would improve the efficiency of microwave ovens. These technology options are being used in commercially available microwave ovens and therefore are technologically feasible. (See section IV.B.2 of this document for further information.) Hence, DOE has tentatively determined that amended energy conservation standards for microwave ovens are technologically feasible.

B. Significant Conservation of Energy

EPCA also mandates that DOE consider whether amended energy conservation standards for microwave oven standby power would result in significant conservation of energy. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)(A))

To estimate the energy savings attributable to potential amended standards for microwave ovens, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each potential standard level. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2024–2053).

DOE analyzed the energy savings of two potential standards levels (''PSLs'') for microwave ovens (see Table V–1). The PSLs were derived from the energy efficiency levels for microwave ovens that DOE developed in engineering analysis. For this NOPD, PSL 1 represents the max-tech level for microwave-only ovens and countertop convection microwave ovens and an efficiency level above the baseline efficiency level for built-in and over-the-range convection microwave ovens. PSL 2 represents the max-tech level for standby power for both product classes.

TABLE V–1—POTENTIAL STANDARD LEVELS FOR MICROWAVE OVEN STANDBY POWER

PSL	Standby power (W)	
	Product class 1: microwave-only and countertop convection microwave ovens	Product class 2: built-in and over-the-range convection microwave ovens
1	0.84	1.16
2	0.84	1.00

Table V–2 presents DOE's projections of the NES for each potential standard level considered for microwave ovens.

TABLE V–2—CUMULATIVE NATIONAL ENERGY SAVINGS FOR MICROWAVE OVENS

	Potential standard level	
	1	2
	Quads	
Site energy savings ..	0.01	0.01
Primary energy	0.03	0.03
FFC energy	0.03	0.03

TABLE V–3—PERCENTAGE REDUCTION IN ENERGY USE

Percent of energy reduction	Potential standards level	
	1 (%)	2 (%)
Site energy savings ..	7.9	8.0

DOE estimates that amended standards for microwave oven standby power would result in energy savings of 0.01 quads at PSL 2, the max-tech level, which is under the 0.3-quads threshold currently provided in Section 6(b)(3) of the Process Rule. Additionally, DOE estimates that the percentage reduction in standby power energy use at PSL 2, the max-tech level, is 8 percent over the 30-year analysis period, which is under the 10-percent threshold currently provided in Section 6(b)(4) of the Process Rule. (See results in Table V–3). Therefore, DOE has tentatively determined that amended energy conservation standards for microwave oven standby power would not result in significant conservation of energy.

C. Cost-Effectiveness

DOE did not conduct an evaluation of the cost-effectiveness of amended standards for microwave ovens. As stated, DOE has tentatively determined that amended standards would not result in significant energy savings as required by EPCA. Absent the necessary energy savings, DOE is prohibited from establishing amended standards regardless of the cost-effectiveness of such standards. As such, DOE did not consider further the cost-effectiveness of amended standards.

D. Summary

Based on DOE's tentative determination that amended energy conservation standards for microwave oven standby power would not result in significant conservation of energy, DOE has tentatively determined that energy conservation standards for microwave oven standby power do not need to be amended. DOE will consider all comments received on this proposed determination in issuing any final determination.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This proposed determination has been determined to be not significant for purposes of Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). As a result, the Office of Management and Budget (''OMB'') did not review this proposed determination.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*https://energy.gov/gc/office-general-counsel*).

DOE reviewed this proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Because DOE is proposing not to amend standards for microwave ovens, if adopted, the determination would not amend any energy conservation standards. On the basis of the foregoing, DOE certifies that

the proposed determination, if adopted, would have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an IRFA for this proposed determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

Manufacturers of microwave ovens must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including microwave ovens. (See generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed action in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for actions which are interpretations or rulings with respect to existing regulations. 10 CFR part 1021, subpart D, appendix A4. DOE anticipates that this action qualifies for categorical exclusion A4 because it is an interpretation or ruling regarding an existing regulation and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final action.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed determination and has tentatively determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *https://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

This proposed determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *https://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this NOPD under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (''OIRA'') at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor Executive Order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Because this proposed determination does not propose to amend energy conservation standards for microwave ovens, it is not a significant regulatory action, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a Peer Review report pertaining to the energy conservation standards rulemaking analyses.[12] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. DOE has determined that the peer-reviewed analytical process continues to reflect current practice, and the Department followed that process for considering amended energy conservation standards in the case of the present action.

[12] ''Energy Conservation Standards Rulemaking Peer Review Report.'' 2007. Available at *https://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0.*

VII. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar then it will be cancelled. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=33.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this document, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Requests may be sent by email to the Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121, or *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those

persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar/public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar/public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar/public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar/public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar/public meeting.

A transcript of the webinar/public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed determination no later than the date provided in the **DATES** section at the beginning of this proposed determination. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via https://www.regulations.gov. The *https://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *https://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *https://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *https://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *https://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *https://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. With this instruction followed, the cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information

provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

DOE welcomes comments and views on any aspect of this proposal from all interested parties.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of proposed determination.

Signing Authority

This document of the Department of Energy was signed on August 6, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 6, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–17123 Filed 8–11–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0658; Project Identifier MCAI–2020–01582–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–100–1A10 airplanes. This proposed AD was prompted by a discovery that a lockwire may not have been installed on the side stay actuator pin nut of the main landing gear (MLG). This proposed AD would require inspecting the left-hand and right-hand MLG side stay actuator assembly pin nut for the presence of a lockwire, and installing a lockwire if necessary. 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 September 27, 2021.

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 *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.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.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0658; 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.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; 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–2021–0658; Project Identifier MCAI–2020–01582–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 *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this 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 Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; 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 Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2020–52, dated November 30, 2020 (also referred to after this as the Mandatory

Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Bombardier, Inc., Model BD–100–1A10 airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0658.

This proposed AD was prompted by a discovery that a lockwire may not have been installed on the side stay actuator pin nut of the MLG. The FAA is proposing this AD to address a possible missing lockwire, which could result in loss of the nut, and if undetected, lead to the collapse of the affected MLG. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 100–32–36, dated June 25, 2020; and Service Bulletin 350–32–012, dated June 25, 2020. This service information describes procedures for inspecting the left-hand and right-hand MLG side stay actuator assembly pin nut for presence of a lockwire and installing a lockwire. These documents are distinct since they apply to different airplane configurations.

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 the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined 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 623 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
1 work-hour × $85 per hour = $85	$0	$85	$52,955

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
1 work-hour × $85 per hour = $85	$1	$86

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–2021–0658; Project Identifier MCAI–2020–01582–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 27, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10, certificated in any category, serial numbers 20003 through 20780 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by a discovery that a lockwire may not have been installed on the side stay actuator pin nut of the main landing gear (MLG). The FAA is issuing this AD to address a possible missing lockwire, which could result in loss of the nut, and if undetected, lead to the collapse of the affected MLG.

(f) Compliance

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

(g) Required Actions

Within 12 months after the effective date of this AD: Inspect the left-hand (LH) and right-hand (RH) MLG side stay actuator assembly pin nuts for presence of a lockwire, in accordance with paragraph 2.B of the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1) and (2) of this AD. If the lockwire is missing: Before further flight, install a lockwire in accordance with paragraph 2.C of the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1) and (2) of this AD.

(1) Bombardier Service Bulletin 100–32–36, dated June 25, 2020.

(2) Bombardier Service Bulletin 350–32–012, dated June 25, 2020.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO 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 ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI), TCCA AD CF–2020–52, dated November 30, 2020, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0658.

(2) For more information about this AD, contact Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.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.

Issued on August 4, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–16938 Filed 8–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0655; Project Identifier MCAI–2020–01497–E]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd. & Co KG (RRD) Trent 7000–72 and Trent 7000–72C model turbofan engines. This proposed AD was prompted by the manufacturer revising the engine Time Limits Manual (TLM) life limits of certain critical rotating parts and updating certain maintenance tasks. The proposed AD would require the operator to revise the airworthiness limitation section (ALS) of their approved maintenance program (AMP) by incorporating the revised tasks of the applicable TLM for each affected model turbofan engine, 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 September 27, 2021.

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 *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *https://www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* For RRD service information identified in this NPRM, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: +44 (0)1332 242424 fax: +44 (0)1332 249936; website: *https://www.rolls-royce.com/contact-us.aspx.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759. The EASA material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0655.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0655; 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 EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Kevin M. Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; fax: (781) 238–7199; email: *kevin.m.clark@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–2021–0655; Project Identifier MCAI–2020–01497–E'' 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 *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this 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 Kevin M. Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0244, dated November 5, 2020 (EASA AD 2020–0244), to correct an unsafe condition on RRD Trent 7000–72 and Trent 7000–72C model turbofan engines.

This proposed AD was prompted by the manufacturer revising the engine TLM life limits of certain critical rotating parts and updating certain maintenance tasks. The FAA is proposing this AD to prevent the failure of critical rotating parts.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2020–0244. EASA AD 2020–0244 specifies revising the approved AMP by incorporating the limitations, tasks, and associated thresholds and intervals described in the TLM. 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 **ADDRESSES**.

Other Related Service Information

The FAA reviewed Chapter 05–10 of Rolls-Royce (RR) Trent 7000 TLM T–T7000–1RR, dated July 10, 2020. RR Trent 7000 TLM T–T7000–1RR, Chapter 05–10, identifies the reduced life limits of certain critical rotating parts.

The FAA also reviewed Chapter 05–20 of RR Trent 7000 TLM T–T7000–1RR, dated July 10, 2020. RR Trent 7000 TLM T–T7000–1RR, Chapter 05–20, identifies the critical rotating part inspection thresholds and intervals.

FAA's Determination

These engines have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified about the unsafe condition described in the EASA AD referenced in this proposed AD. 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 EASA AD 2020–0244, described previously, as incorporated by reference, 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 EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0244 will be incorporated by reference in the FAA final rule. This proposed AD would require compliance with EASA AD 2020–0244 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 2020–0244 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 2020–0244. Service information specified in EASA AD 2020–0244 that is required for compliance with it will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0655 after the FAA final rule is published.

Differences Between This Proposed AD and the EASA AD

This AD does not mandate the ''Maintenance Tasks and Replacement of Critical Parts'' and ''Corrective Action(s)'' sections of EASA AD 2020–0244. Where EASA AD 2020–0244 requires compliance from its effective date, this AD requires using the effective date of this AD. Where EASA AD 2020–0244 requires revising the AMP within 12 months from its effective date, this AD requires revising the AMP within 90 days after the effective date of this AD. This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2020–0244.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 10 engines installed on 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
Revise the ALS	1 work-hour × $85 per hour = $85	$0	$85	$850

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:

Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc): Docket No. FAA–2021–0655; Project Identifier MCAI–2020–01497–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 27, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd. & Co KG (RRD) (Type Certificate previously held by Rolls-Royce plc) Trent 7000–72 and Trent 7000–72C model turbofan engines.

(d) Subject

Joint Aircraft Service Component (JASC) Code 7200, Engine (Turbine/Turboprop).

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the engine Time Limits Manual (TLM) life limits of certain critical rotating parts and updating certain maintenance tasks. The FAA is issuing this AD prevent the failure of critical rotating parts. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2020–0244, dated November 5, 2020 (EASA AD 2020–0244).

(h) Exceptions to EASA AD 2020–0244

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0244 are not required by this AD.

(2) Where EASA AD 2020–0244 requires compliance from its effective date, this AD requires using the effective date of this AD.

(3) Paragraph (3) of EASA AD 2020–0244 specifies revising the approved AMP within 12 months after its effective date, but this AD requires revising the approved AMP within 90 days after the effective date of this AD.

(4) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2020–0244.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ECO Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *ANE–AD–AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about EASA AD 2020–0244, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0655.

(2) For more information about this AD, contact Kevin M. Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; fax: (781) 238–7199; email: *kevin.m.clark@faa.gov.*

(3) For RRD service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: +44 (0)1332 242424 fax: +44 (0)1332 249936; website: *https://www.rolls-royce.com/contact-us.aspx.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

Issued on August 3, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–16902 Filed 8–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0657; Project Identifier MCAI–2021–00478–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 adopt a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and –1041 airplanes. This proposed AD was prompted by a report indicating that during maintenance, a fuse pin retaining the main landing gear support structure (MLGSS) was found incorrectly engaged in the trunnion block and improperly secured with the associated retaining pin, due to incorrect installation during assembly. This proposed AD would require inspecting the fuse pins and associated retaining pins of the MLGSS for such discrepancies, and corrective action if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. 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 September 27, 2021.

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 *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR 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. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0657.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0657; 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.

FOR FURTHER INFORMATION CONTACT: Nick Wilson, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3230; email *nicholas.wilson@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–2021–0657; Project Identifier MCAI–2021–00478–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 *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

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 Nick Wilson, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3230; email *nicholas.wilson@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

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0112, dated April 22, 2021 (EASA AD 2021–0112), to correct an unsafe condition for certain Airbus SAS Model A350–941 and –1041 airplanes.

This proposed AD was prompted by a report indicating that during maintenance, a fuse pin retaining the MLGSS was found incorrectly engaged in the trunnion block and improperly secured with the associated retaining pin; this was due to incorrect installation during assembly. The FAA is proposing this AD to address incorrect fuse pin installations, which could lead to premature failure of the retaining pin and subsequent fuse pin migration and disconnection, and could ultimately lead to main landing gear collapse and possible damage to the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0112 describes procedures for a detailed inspection for discrepancies (missing or migrated fuse pins, and fuse pins improperly secured with the associated retaining pin) in the left- and right-hand sides of the MLGSS trunnion block. The service information also describes procedures for corrective

action (including replacement of discrepant fuse pins and the MLG forward pintle assembly). 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 and Requirements of This Proposed AD

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 the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0112 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

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 2021–0112 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0112 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 2021–0112 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 2021–0112. Service information required by EASA AD 2021–0112 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0657 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 17 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
1 work-hour × $85 per hour = $85	$0	$85	$1,445

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 30 work-hours × $85 per hour = Up to $2,550	Up to $4,410	Up to $6,960.

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

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 (AD):

Airbus SAS: Docket No. FAA–2021–0657; Project Identifier MCAI–2021–00478–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 27, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2021–0112, dated April 22, 2021 (EASA AD 2021–0112).

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by a report indicating that during maintenance, a fuse pin retaining the main landing gear support structure (MLGSS) was found incorrectly engaged in the trunnion block and improperly secured with the associated retaining pin, due to incorrect installation during assembly. The FAA is issuing this AD to address incorrect fuse pin installations, which could lead to premature failure of the retaining pin and subsequent fuse pin migration and disconnection, and could ultimately lead to main landing gear collapse and possible damage to 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, EASA AD 2021–0112.

(h) Exceptions to EASA AD 2021–0112

(1) Where EASA AD 2021–0112 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (3) of EASA AD 2021–0112 specifies contacting Airbus for approved instructions for corrective actions for certain conditions, those corrective actions must be done using a method approved in accordance with the procedures specified in paragraph (j)(2) of this AD.

(3) The ''Remarks'' section of EASA AD 2021–0112 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0112 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(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, Large Aircraft Section, 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):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are 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 procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) For information about EASA AD 2021–0112, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* 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. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0657.

(2) For more information about this AD, contact Nick Wilson, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3230; email *nicholas.wilson@faa.gov.*

Issued on August 4, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–16934 Filed 8–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0567; Project Identifier AD–2021–00663–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

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 General Electric Company (GE) GE90 model turbofan engines. This proposed AD was prompted by two separate in-flight shutdowns (IFSDs) resulting from failure of the transfer gearbox (TGB) radial bevel gear (TGB radial gearshaft). This proposed AD would require visual inspection of the TGB radial gearshaft and, depending on the results of the inspection, replacement of the TGB radial gearshaft. 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 September 27, 2021.

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 *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *www.ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0567; 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.

FOR FURTHER INFORMATION CONTACT: Stephen Elwin, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7236; fax: (781) 238–7199; email: *Stephen.L.Elwin@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–2021–0567; Project Identifier AD–2021–00663–E'' 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 *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this 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 Stephen Elwin, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. 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 was notified of two separate IFSDs resulting from the failure of the TGB radial gearshaft. After further investigation, the manufacturer determined that rework on the TGB radial gearshaft teeth chamfers during manufacturing may have caused local burrs and micro-cracks which led to high-cycle fatigue failure. GE subsequently issued service information to provide instructions for a one-time visual inspection of the affected radial gearshafts for the presence of burrs or rework on TGB gearshaft teeth chamfers. This condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and damage to the aircraft.

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 GE GE90 Service Bulletin (SB) 72–1201 R01, dated April 28, 2021 (GE90 SB 72–1201 R01), and GE GE90–100 SB 72–0857 R01, dated April 28, 2021 (GE90–100 SB 72–0857 R01). GE90 SB 72–1201 R01 specifies procedures for performing a one-time inspection of the TGB radial gearshaft for presence of burrs or rework on teeth chamfers on GE90–76B, GE90–85B, GE90–90B, and GE90–94B model turbofan engines. GE90–100 SB 72–0857 R01 specifies procedures for performing a one-time inspection of the TGB radial gearshaft for presence of burrs or rework on teeth chamfers on GE90–110B1 and GE90–115B model turbofan engines. 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 visual inspection of the TGB radial gearshaft and, depending on the results of the inspection, replacement of the TGB gearshaft.

Differences Between this Proposed AD and the Service Information

GE90 SB 72–1201 R01 and GE90–100 SB 72–0857 R01 identify affected TGB radial gearshafts with serial numbers (S/Ns) listed in paragraph 4., APPENDIX—A, Table 1, and with serial numbers starting with prefix FIAAXXXX, FIA05XXX to FIA09XXX, or FIA0AXXX to FIA0NXXX. This AD applies only to TGB radial gearshafts with S/Ns listed in paragraph 4., APPENDIX—A, Table 1 of GE90 SB 72–1201 R01 and GE90–100 SB 72–0857 R01. The FAA determined that TGB radial gearshafts with S/Ns starting with prefix FIAAXXXX, FIA05XXX to FIA09XXX, or FIA0AXXX to FIA0NXXX are not required to be inspected and removed as part of this AD. However, operators may still elect to inspect the TGB radial gearshaft with these S/Ns at the next scheduled engine shop visit.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 126 engines installed on 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
Inspect TGB radial gearshaft	1 work-hour × $85 per hour = $85	$0	$85	$10,710

The FAA estimates the following costs to do any necessary replacement 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 this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace TGB radial gearshaft	60 work-hours × $85 per hour = $5,100	$24,520	$29,620

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:

General Electric Company: Docket No. FAA–2021–0567; Project Identifier AD–2021–00663–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 27, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) GE90–76B, GE90–85B, GE90–90B, GE90–94B, GE90–110B1, and GE90–115B model turbofan engines with a transfer gearbox (TGB) radial bevel gear (TGB radial gearshaft) serial number listed in paragraph 4., APPENDIX—A, Table 1 of GE GE90 Service Bulletin (SB) 72–1201 R01, dated April 28, 2021 (GE90 SB 72–1201 R01) or paragraph 4., APPENDIX—A, Table 1 of GE GE90–100 SB 72–0857 R01, dated April 28, 2021 (GE90–100 SB 72–0857 R01).

(d) Subject

Joint Aircraft System Component (JASC) Code 7260, Turbine Engine Accessory Drive.

(e) Unsafe Condition

This AD was prompted by two separate in-flight shutdowns resulting from the failure of the TGB radial gearshaft. The FAA is issuing this AD to prevent failure of the TGB radial gearshaft. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

(1) At the next engine shop visit after the effective date of this AD, perform a visual inspection of the affected TGB radial gearshaft using the Accomplishment Instructions, paragraph 3.A.(3)(a)*1* through *3,* of GE90 SB 72–1201 R01 or GE90–100 SB 72–0857 R01, as applicable.

(2) If, during the visual inspection required by paragraph (g)(1) of this AD, discrepancies are found that meet the criteria in the Accomplishment Instructions, paragraph 3.A.(4)(a) or 3.A.(4)(b), of GE90 SB 72–1201 R01 or GE90–100 SB 72–0857 R01, before further flight, replace the TGB radial gearshaft with a part eligible for installation.

(h) Definitions

(1) For the purpose of this AD, an ''engine shop visit'' is when the compressor discharge pressure seal joint is disassembled.

(2) For the purpose of this AD, a ''part eligible for installation'' is a TGB radial gearshaft that does not have raised material or rework on the teeth chamfers as described in the Accomplishment Instructions, paragraph 3.A.(4)(a) or 3.A.(4)(b), of GE90 SB 72–1201 R01 or GE90–100 SB 72–0857 R01.

(i) Credit for Previous Actions

You may take credit for the inspection of the affected TGB radial gearshaft required by paragraph (g)(1) of this AD if you performed the inspection before the effective date of this AD using GE GE90 SB 72–1201 R00, dated January 5, 2021, or GE GE90–100 SB 72–0857 R00, dated January 5, 2021.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information. You may email your request to *ANE-AD-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

(1) For more information about this AD, contact Stephen Elwin, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7236; fax: (781) 238–7199; email: *Stephen.L.Elwin@faa.gov.*

(2) For service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way,

Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *www.ge.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

Issued on July 9, 2021.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–16758 Filed 8–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0656; Project Identifier MCAI–2021–00394–T]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by 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 De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. This proposed AD was prompted by reports of loss of hydraulic fluid and annunciation of the check fire detect light. This proposed AD would require doing a detailed visual inspection for chafing and proper clearance of the left-hand (LH) and right-hand (RH) main landing gear (MLG) primary zone advanced pneumatic detector (APD) sensing lines, the hydraulic tube assemblies, and the surrounding structure, and doing all applicable corrective 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 September 27, 2021.

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 *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com;* internet *https://dehavilland.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.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0656; 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.

FOR FURTHER INFORMATION CONTACT: Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; 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–2021–0656; Project Identifier MCAI–2021–00394–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 *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this 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 Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; 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 Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2021–12, dated April 14, 2021 (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0656.

This proposed AD was prompted by reports of loss of hydraulic fluid and annunciation of the check fire detect light. The FAA is proposing this AD to address insufficient separation between the APD sensing line and surrounding components, which could lead to a hydraulic leak, loss of hydraulic systems, and loss of fire detection in the MLG primary zone should prolonged contact occur. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

De Havilland Aircraft of Canada Limited has issued Service Bulletin 84–26–20, Revision A, dated March 9, 2021. This service information describes procedures for doing a detailed visual inspection for chafing and proper clearance of the LH and RH MLG primary zone APD sensing lines, the hydraulic tube assemblies and the surrounding structure, and doing all applicable corrective actions. Corrective actions include repair and replacement of the APD sensing line and the hydraulic tube assembly. 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 the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined 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 54 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
5 work-hours × $85 per hour = $425	$0	$425	$22,950

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 7 work-hours × $85 per hour = Up to $595	Up to 12,643	Up to $13,238.

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:

De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2021–0656; Project Identifier MCAI–2021–00394–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 27, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes, certificated in any category, serial numbers 4001 and 4003 through 4614 inclusive.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of loss of hydraulic fluid and annunciation of the check fire detect light. The FAA is issuing this AD to address insufficient separation between the advanced pneumatic detector (APD) sensing line and surrounding components, which could lead to a hydraulic leak, loss of hydraulic systems and loss of fire detection in the main landing gear (MLG) primary zone should prolonged contact occur.

(f) Compliance

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

(g) Inspection and Corrective Actions

Within 48 months or 8,000 flight hours, whichever occurs first after the effective date of this AD: Do a detailed visual inspection for chafing and proper clearance of the left- and right-hand MLG primary zone APD sensing lines, the hydraulic tube assemblies and the surrounding structure, and do all applicable corrective actions, in accordance with paragraph 3.B. of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–26–20, Revision A, dated March 9, 2021. Do all applicable corrective actions before further flight.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using De Havilland Aircraft of Canada Limited Service Bulletin 84–26–20, dated October 21, 2020.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO 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 ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2021–12, dated April 14, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0656.

(2) For more information about this AD, contact Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com;* internet *https://dehavilland.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.

Issued on August 4, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–16935 Filed 8–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0623]

RIN 1625–AA00

Safety Zone; M/V ZHEN HUA 24, Crane Delivery Operation, Chesapeake Bay and Coastal Virginia

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary moving safety zone around M/V ZHEN HUA 24 during its transit through certain waters of the Chesapeake Bay and Coastal Virginia. This action is necessary to provide for the safety of life on these navigable waters during the movement of the M/V ZHEN HUA 24 while it is transporting four new Super-Post Panamax container cranes to the Port of Baltimore, anticipated to arrive between September 4, 2021, and September 29, 2021. The Captain of the Port Virginia has determined that limited maneuverability and unique cargo of this vessel are potential hazardous to any person or vessel within the proposed safety zone. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Virginia or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before August 23, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0623 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander Ashley Holm, Sector Virginia Waterways Management division, U.S. Coast Guard; telephone 757–668–5581, email *VirginiaWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On June 28, 2021, Ports America Chesapeake, LLC notified the Coast Guard that the M/V ZHEN HUA 24 will be transporting four new Super-Post Panamax container cranes to the Port of Baltimore. The vessel transit is taking place from Shanghai, China. The M/V ZHEN HUA 24 is anticipated to arrive between September 4, 2021, and September 29, 2021. The current estimated arrival date is September 5, 2021, but is subject to change. These cranes will be delivered to, and installed at, the Seagirt Marine Terminal at Baltimore, MD.

The cranes exceed the beam of the M/V ZHEN HUA 24 on the port side by approximately 129 feet and on the starboard side by approximately 40 feet. The total beam for the vessel with the cranes aboard is approximately 300 feet. The maximum height of the cranes aboard the vessel is approximately 326

feet. This beam width and cargo height will severely restrict the M/V ZHEN HUA 24's ability to maneuver and create a hazard to navigation if required to meet or pass other large vessels transiting the navigation channels. Because of the size of the cargo and the width of the navigation channels, vessels will not be able to transit safely around the M/V ZHEN HUA 24 at close distances. During the inbound transit of the M/V ZHEN HUA 24 the vessel will travel from sea into the Chesapeake Bay, crossing the Chesapeake Bay Bridge-Tunnel (CBBT) and then proceeding north toward Baltimore. During this time safety concerns will be heightened due to the importance of CBBT and the Chesapeake's sensitive estuary environment. Hazards associated with the movement of a large freight vessel with an oversized cargo severely restricted in its ability to maneuver while transiting confined shipping channels include injury or loss of life and damage to property and the environment resulting from collisions with other vessels. The COTP Virginia has determined that potential hazards associated with the crane delivery operation would be a safety concern for any vessel required to transit the navigation channels in the Chesapeake Bay and Coastal Virginia that would meet, pass, or overtake the M/V ZHEN HUA 24. These hazards can be mitigated with a 500 yard radius safety zone around the vessel.

The Coast Guard is requesting that interested parties provide comments within a shortened comment period of 10 days instead of the typical 30 days for this notice of proposed rulemaking. The Coast Guard believes the 10-day comment period still provides for a reasonable amount of time for interested parties to review the proposal and provide informed comments on it while also ensuring that the Coast Guard has time to review and respond to any significant comments and has a final rule in effect in time for the scheduled event in order to protect against the identified hazards.

The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a temporary moving safety zone with a radius of 500 yards centered around the M/V ZHEN HUA 24 during the inbound transit through the territorial sea and the Chesapeake Bay to Baltimore, MD. The M/V ZHEN HUA 24 is currently anticipated to arrive at Baltimore sometime between September 4, 2021, and September 29, 2021. The current estimated arrival date is September 4, 2021, but is subject to change. The inbound transit is expected to last approximately 15 hours.

Enforcement of the safety zone would begin when M/V ZHEN HUA 24 crosses the 12-mile line into the U.S.-Territorial Sea and end when the vessel crosses the Virginia-Maryland state line. This enforcement period would be broadcast to mariners via email, VHF–FM radio notifications, and by COTP representatives on scene.

The duration of the zone is intended to ensure the safety of vessels and protect the environment and critical national infrastructure such as the Chesapeake Bay bridge-tunnel during the vessels transit to Baltimore. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and duration of the safety zone, which would impact only vessel traffic required to transit certain navigation channels of the Chesapeake Bay and the Coastal Virginia for an expected total no more than 15 enforcement-hours. Although these waterways support both commercial and recreational vessel traffic, small portions of the waterway would be restricted for a small period of time as the M/V ZHEN HUA 24 transits northward in the Chesapeake Bay. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent

with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a temporary safety zone that would prohibit entry within certain navigable waters of the Chesapeake Bay and Coastal Virginia. Normally such actions are categorically excluded from further review under paragraph L60c of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for the Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2021–0623 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0623 to read as follows:

§ 165.T05–0623 Safety Zone; M/V ZHEN HUA 24, Crane Delivery Operation, Chesapeake Bay and Coastal Virginia

(a) *Regulated Area.* The rule establishes the following regulated area as a temporary moving safety zone: All waters within a 500 yards radius of the M/V ZHEN HUA 24 during its inbound transit to Baltimore, MD. Inbound transit will begin when the M/V ZHEN HUA enters the U.S. Territorial Sea, as defined in 33 CFR 2.22(a)(1), and end when the vessel crosses the Virginia-Maryland State Line in the Chesapeake Bay, a line starting at a point 38°01′36″ N latitude, 75°14′34″ W longitude, then south east to a point 37°19′14″ N latitude, 72°13′13″ W longitude. These coordinates are based on WGS 84.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Virginia.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Virginia (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at (757) 483–8567 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced during inbound transit of the M/V ZHEN HUA 24 through Coastal Virginia and Chesapeake Bay on the way to the Port of Baltimore.

Dated: August 6, 2021.

Jennifer A. Stockwell,

Captain, U.S. Coast Guard, Alternate Captain of the Port Virginia.

[FR Doc. 2021–17187 Filed 8–11–21; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[GN Docket No. 18–122; GN Docket No. 21–230; DA 21–958; FRS 42256]

Wireless Telecommunications Bureau Seek Comment on Implementation of the Commission's Incremental Reduction Plan for Phase I Accelerated Relocation Payments

AGENCY: Federal Communications Commission.

ACTION: Request for comment.

SUMMARY: In this document, the Wireless Telecommunications Bureau (WTB or Bureau) seeks comment on its proposed implementation of the Commission's incremental reduction plan for Phase I Accelerated Relocation Payments (ARP) relating to the ongoing transition of the 3.7 GHz band. On August 4, 2021, as directed by the Commission in the *Expanding Flexible Use of the 3.7 to 4.2 GHz Band Report and Order,* GN Docket No. 18–122, Report and Order and Order of Proposed Modification, FCC 20–22 (Mar. 3, 2020) (*3.7 GHz Report and Order*), WTB issued a Public Notice to prescribe the filing procedures for eligible space station operators to submit Certifications of Accelerated Relocation (Certifications) and stakeholders to submit related challenges as part of the Phase I migration of incumbent services in this band. Related to this process, WTB hereby seeks comment on its proposed approach for calculating an incremental reduction for an eligible space station operator's ARP due to its failure to meet the Phase I Accelerated Relocation Deadline. Filers responding to this Public Notice should submit comments in GN Docket No. 21–320.

DATES: Interested parties may file comments on or before August 27, 2021.

ADDRESSES: You may submit Certification, identified by GN Docket No. 21–320, by any of the following methods:

- *Electronic Filers:* Elections may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/* in docket number GN 21–320.
- *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 ST 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*.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

FOR FURTHER INFORMATION CONTACT: Susan Mort, Wireless Telecommunications Bureau, at *Susan.Mort@fcc.gov* or 202–418–2429.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Implementation of the Commission's Incremental Reduction Plan for Phase I Accelerated Relocation Payments,* GN Docket No. 18–122; GN Docket No. 21–320; DA 21–958 (*Public Notice*), released on August 4, 2021. The complete text of the *Public Notice,* is available on the Commission's website at *https://www.fcc.gov/document/wtb-seeks-comment-c-band-phase-i-incremental-reducation-plan* or by using the search function for GN Docket No. 18–122 or GN Docket No. 21–320 on the Commission's ECFS web page at *www.fcc.gov/ecfs.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file elections on or before the date indicated on the first page of this document.

People With Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Ex Parte Rules: This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 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 presenters 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 § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the rules 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.

Synopsis: With this Public Notice, the Wireless Telecommunications Bureau (WTB or Bureau) seeks comment on its proposed implementation of the Commission's incremental reduction plan for Phase I Accelerated Relocation Payments (ARP) relating to the ongoing transition of the 3.7 GHz band. On August 4, 2021, as directed by the Commission in the *3.7 GHz Report and Order,* WTB issued a Public Notice to prescribe the filing procedures for eligible space station operators to submit Certifications of Accelerated Relocation (Certifications) and stakeholders to submit related challenges as part of the Phase I migration of incumbent services in this band. Related to this process, WTB hereby seeks comment on its proposed approach for calculating an incremental reduction for an eligible space station operator's ARP due to its failure to meet the Phase I Accelerated Relocation Deadline. Filers responding to this Public Notice should submit comments in GN Docket No. 21–320.

In the *3.7 GHz Report and Order,* the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use (plus a 20 megahertz guard band) throughout the contiguous United States by transitioning existing services out of the lower portion of the band and into the upper 200 megahertz of the C-band (*i.e.,* 4.0–4.2 GHz). The *3.7 GHz Report and Order* established that new 3.7 GHz Service licensees would reimburse the reasonable, actual relocation costs of eligible FSS space station operators, incumbent FSS earth station operators, and incumbent Fixed Service licensees (collectively, incumbents) to transition out of the band.

The *3.7 GHz Report and Order* established a deadline of December 5, 2025, by which incumbent space station operators were to complete the transition of their operations to the upper 200 megahertz of the band, but it also provided an opportunity for accelerated clearing of the band by allowing eligible space station operators to voluntarily commit to relocate on a two-phased accelerated schedule, with a Phase I deadline of December 5, 2021, and a Phase II deadline of December 5, 2023. All five eligible space station operators elected accelerated relocation. By electing accelerated relocation, the eligible space station operators, among other things, have voluntarily committed to perform all the tasks necessary to enable any incumbent earth station that receives or sends C-band signals to a space station owned by that operator to maintain that functionality in the upper 200 megahertz of the band. The *3.7 GHz Report and Order* stated that ''[t]o the extent eligible space station operators can meet the Phase I and Phase II Accelerated Relocation Deadlines, they will be eligible to receive the accelerated relocation payments associated with those deadlines.'' Once validated, the ARPs will be disbursed by the Relocation Payment Clearinghouse (Clearinghouse).

The *3.7 GHz Report and Order* specified that an ''eligible space station operator's satisfaction of the Accelerated Relocation Deadlines will be determined by the timely filing of a Certification of Accelerated Relocation demonstrating, in good faith, that it has completed the necessary clearing actions to satisfy each deadline'' and directed WTB to prescribe the form of such Certifications. Further, ''the Bureau, Clearinghouse, and relevant stakeholders will have the opportunity to review the Certification of Accelerated Relocation and identify potential deficiencies.''

The *3.7 GHz Report and Order* also directed that if ''credible challenges as to the space station operator's satisfaction of the relevant deadline are made, the Bureau will issue a public notice identifying such challenges and will render a final decision as to the validity of the certification no later than 60 days from its filing.'' Absent notice from WTB of deficiencies in the Certification within 30 days of its filing, the Certification will be deemed validated. Following validation, the Clearinghouse shall promptly notify overlay licensees, who must pay the ARP to the Clearinghouse within 60 days of the notice. The Clearinghouse must disburse the ARP to the eligible space station operator within seven (7) days of receipt. Should an eligible space station operator miss the Phase I or Phase II deadline, it may still receive a reduced, but non-zero, ARP if it otherwise meets the Certification requirements within six months after the relevant Accelerated Relocation Deadline.

The *3.7 GHz Report and Order* directed WTB to: (1) ''prescribe the form'' of Certifications and any challenges by relevant stakeholders, and (2) establish the process for how such challenges will impact incremental decreases in the ARP. On August 4, 2021, the Bureau issued a Public Notice implementing filing procedures for Phase I Certifications and related challenges. With the instant Public Notice, the Bureau seeks comment on how different Phase I Certification scenarios will affect both the challenge process and incremental decreases in the ARP.

At the outset, we recognize the two most straightforward scenarios. First, all Certifications filed without subsequent change—whether by amendment or superseded by a refiled Certification—will not be subject to any incremental decrease in the ARP if the Certification was filed before the Phase I deadline and is ultimately validated. Second, any Certifications filed for the first time after the Phase I deadline and later validated without amendment or refiling will be subject to the incremental reduction schedule established by the Commission in the *3.7 GHz Report and Order,* using the Certification filing date as the ''Date of Completion'' for determining the applicable percentage by which the ARP will be reduced. In both situations, the challenge process laid out in our recent Public Notice would remain unaffected. Below we seek comment on more complex scenarios involving the potential amendment or refiling of Certifications, as well as on how to take into account possible remedial actions and agreements between eligible space station operators and other stakeholders on the Certification process.

Amending or Refiling a Certification by the Phase I Deadline. In the *3.7 GHz Report and Order,* the Commission stated that it was adopting accelerated relocation rules ''to facilitate the expeditious deployment of next-generation services nationwide across the entire 280 megahertz made available for terrestrial use.'' In furtherance of this goal, we propose that eligible space station operators may amend or refile an incomplete or invalid Certification without any incremental reduction in the ARP if, prior to the Phase I deadline, the eligible space station operator corrects any underlying problems and submits an amended or refiled Certification that has no invalidating infirmities. Such amendment or refiling may be either on the eligible space station operator's own motion, in response to a challenge, or in response to the Bureau's determination that the original Certification was invalid. In this scenario, any issues in the Certification would be resolved before the Phase I deadline, and the certifying space station operator would have, in fact, come into compliance with all the requirements for claiming the ARP by said deadline.

In these circumstances, we propose that the amended or refiled Certification take the place of the original and start a new challenge process. Thus, new challenges to this amended or refiled

Certification would be permitted but would be limited to matters involving changes made to the original Certification (whether the addition of new information, modifications of information that had been included in the original Certification, or the deletion of previously included information). If, however, WTB has not already ruled on the original Certification, the Bureau could nevertheless consider all points raised during the original challenge cycle to the extent those points may still be relevant to the amended or refiled Certification. We seek comment on this approach.

If WTB ultimately decides that the amended or refiled Certification was valid, the eligible space station operator's ARP would be based on the filing date of the amended or refiled Certification. As noted above, where the amended or refiled Certification is submitted before the Phase I deadline, we propose that there will be no reduction in the ARP.

Amending or Refiling a Certification After the Phase I Deadline. Alternatively, if WTB rejects a Certification filed before the Phase I deadline (whether the original or an amended or refiled one), the eligible space station operator would have to finish any incomplete aspects of the transition and file a new, valid Certification before its entitlement to an ARP could be determined. Where the filing date of this new, valid Certification falls after the Phase I deadline, the ARP would thus be subject to the incremental reduction schedule established by the Commission in the *3.7 GHz Report and Order,* as applicable based on such Certification's filing date. We propose the same treatment in cases where the Bureau has not yet ruled on a Certification and the eligible space station operator either submits an amended or refiled Certification on its own motion, or in response to a challenge, after the Phase I deadline. We seek comment on this approach.

Where a Certification is amended or refiled after the Phase I deadline, we propose the same challenge process as where an amended or refiled Certification is filed before the Phase I deadline. Thus, new challenges to the amended or refiled Certification would be permitted but would be limited to matters involving changes made to the original Certification (whether the addition of new information, modifications of information that had been included in the original Certification, or the deletion of previously included information). If, however, WTB has not already ruled on the original Certification, the Bureau could nevertheless also consider all points raised during the original challenge cycle to the extent those points may still be relevant to the amended or refiled Certification. We seek comment on this approach.

Accounting for Remedial Action by Eligible Space Station Operators. WTB proposes to consider remedial action that an eligible space station operator may take only if said operator has memorialized that action in a Certification (whether amended or refiled). Thus, if WTB issues a final determination rejecting a Certification, the fact that the eligible space station operator may have taken remedial action—after filing its Certification but before WTB's decision—to address the problems in said Certification that had prompted WTB's rejection would not in itself invalidate or otherwise affect WTB's determination. Rather, for such remedial action to be considered, the eligible space station operator would need to submit an amended or refiled Certification reflecting that remedial action. The amended or refiled Certification would initiate a new challenge process as to those aspects that had not yet been subject to the initial challenge process and would establish a new date by which the eligible space station operator's ARP was calculated. We seek comment on this approach.

Agreements. Notwithstanding the proposals in the preceding sections, we propose to allow eligible space station operators and stakeholders (including, but not limited to, incumbent earth station operators) to enter into agreements to resolve any outstanding issues raised in a challenge to a Certification and submit any such agreements to WTB before the Bureau has made a final determination regarding the validity of the Certification. For instance, if an eligible space station operator submits a Certification (either before or after the Phase I deadline) that is credibly challenged, and it attempts to address any alleged deficiency before WTB has issued a decision, the eligible space station operator and challenging parties can enter into an agreement to resolve all outstanding issues between those parties and submit this agreement to WTB. If after review WTB accepts this agreement as a good faith resolution of issues in the eligible space station operator's Certification, the Bureau would find that the original Certification is valid and dismiss the related outstanding challenges. If such agreement resolved all outstanding challenges, the Bureau would calculate the ARP as of the date the original Certification was filed. If the agreement does not resolve all outstanding issues in an eligible space station operator's Certification and requires further remedial steps by the operator, then the Bureau proposes that it would calculate the ARP as of the date the eligible space station operator files an amended Certification, attesting that it has completed the remedial steps as per its agreement with the challenging parties (and assuming this Certification is found valid). We seek comment on this approach.

Although we propose to allow eligible space station operators and stakeholders to enter into agreements to resolve issues raised in challenges, to ensure the integrity of the transition process we also propose to bar the use of greenmail in agreements to avoid incremental reductions. For example, whenever a challenge against a Certification is withdrawn through an agreement with an eligible space station operator, we propose to require that the written withdrawal agreement be accompanied by an affidavit certifying that no parties involved have received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the agreement or withdrawal of the challenge. We seek comment on this approach.

Finally, we propose that if the eligible space station operator takes remedial action to address any challenges but does not attempt to negotiate with the challengers or such negotiations fail, WTB will proceed to make a decision based on the information submitted by the eligible space station operator in its Certification (original, amended, or refiled). We seek comment on this approach.

Amy Brett,

Acting Chief of Staff, Wireless Telecommunications Bureau.

[FR Doc. 2021–17034 Filed 8–10–21; 4:15 pm]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 86, No. 153
Thursday, August 12, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 9, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 13, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Evaluation of Child Support Enforcement Cooperation Requirements.

OMB Control Number: 0584–NEW.

Summary of Collection: The Agriculture Improvement Act of 2018 (Pub. L. 115–334) requires the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) to conduct an independent evaluation of the child support cooperation requirement in the Supplemental Nutrition Assistance Program (SNAP). The planned data collection fulfills this evaluation requirement. Section 17 [7 U.S.C. 2026] (m) (1, 2) of the Food and Nutrition Act of 2008 Section 17, 7 U.S.C. 2026), as amended by the Agriculture Improvement Act of 2018, authorizes the Secretary of Agriculture to enter into contracts with private institutions to assess the implementation, impacts, costs, and benefits of having a child support cooperation requirement in SNAP. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Appendix A3: Legal Authority Pub. L. 104–193) gave States the option to require custodial and noncustodial parents who apply for and participate in SNAP to cooperate with the child support program. The goals of this requirement are to increase child support participation, increase the income of families, and reduce their need for public assistance.

Need and Usse of the Information: The primary purpose of this voluntary, one-time data collection is to assess the implementation of the following: (1) The implementation of the child support cooperation requirement for each State in the study that currently implements the requirement; (2) the feasibility of implementing the child support cooperation requirement in a sample of State agencies that formerly implemented the requirement or are considering implementing the requirement; (3) the impact of the child support cooperation requirement in SNAP on both custodial and noncustodial parents in study States that have or formerly had a child support cooperation requirement; (4) how State agencies align the procedures for the implementing child support cooperation requirement in SNAP to those in other Federal programs; (5) determine the costs and benefits to State SNAP agencies, child support agencies, and households of requiring State agencies to implement the requirement; (6) assess the impact of the requirement on SNAP eligibility, benefit levels, food security, income, and economic stability.

Description of Respondents: Individuals/Households (750) Business-for-not-for-Profit (12) State, Local, or Tribal Government (352).

Number of Respondents: 1,114.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 1,514.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–17232 Filed 8–11–21; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–21–CF–0009]

The American Rescue Plan Act Emergency Rural Health Care Grant Program

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

ACTION: Notice of Funds Availability (NOFA).

SUMMARY: The Rural Housing Service (RHS), a Rural Development agency of the United States Department of Agriculture (USDA), announces the availability of up to $500 million in grant funding, appropriated under the American Rescue Plan Act of 2021, for the establishment of the Emergency Rural Health Care (ERHC) Grant Program. As authorized under Section 1002 of the American Rescue Plan Act of 2021, funds will be made available and distributed between two tracks of funding to eligible applicants: Track One, Recovery grants to offer support for rural health care services in the form of immediate relief to address the economic conditions arising from the COVID–19 emergency; and Track Two, Impact grants to offer longer-term funding to advance ideas and solutions to support long-term sustainability of rural health.

DATES: Applications for the ERHC Grant Program must be submitted to the applicable USDA Rural Development

Office (See **ADDRESSES** section for details). Track One, Recovery applications will be accepted on a continual basis, beginning on the publication date of this Notice, until funds are exhausted. The applicable USDA Rural Development State Office will conduct an initial review, rating, and selection of complete applications received by 4:00 p.m. local time on October 12, 2021. Subsequent application reviews, rankings, and selections will occur in additional rounds for all complete applications until all remaining funds are utilized. Track Two, Impact applications must be received by the applicable USDA Rural Development Office by 4:00 p.m. local time on October 12, 2021. Track Two, Impact applications received after October 12, 2021 will not be considered.

Comments related to the collection of information must be submitted by October 12, 2021. Please follow the directions provided in Section IX of this NOFA.

ADDRESSES: This funding opportunity will be made available for informational purposes on *Grants.gov*.

Application Submission: Track One, Recovery applications will be submitted to a processing office as designated by the USDA Rural Development State Office in the state where the applicant's project is located. Agency state office contact information is available at *https://www.rd.usda.gov/about-rd/state-offices.* Track Two, Impact applications will be submitted to a processing office as designated by the USDA Rural Development State Office in the state where the applicant is headquartered. For applicants with headquarters located in the District of Columbia, applications will be submitted to the USDA Rural Development National Office, ATTN: Jamie Davenport, 1400 Independence Ave., SW, STOP 0787, Washington, DC 20250. Both paper and electronic applications must be received by the Agency by the deadlines stated in the **DATES** section of this Notice. The use of a courier and package tracking for paper applications is strongly encouraged.

FOR FURTHER INFORMATION CONTACT: Jamie Davenport: USDA Rural Development, Community Facilities Program. Telephone: (202) 720–0002, email: *Jamie.Davenport@usda.gov.* Persons with disabilities that require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Authority:

This solicitation is authorized pursuant to the American Rescue Plan Act of 2021 (Pub. L. 117–2), 7 CFR part 3570, subpart B; 7 U.S.C. 8103(f)), Farm Security and Rural Investment Act, 2002; 7 U.S.C. 1926(a)(13), and the Consolidated Farm and Rural Development Act; 7 U.S.C. 1926(a)(26).

Rural Development Funding Priorities

The Agency encourages applicants to consider projects that will advance the following key priorities:

- Assisting rural communities recover economically from the impacts of the COVID–19 pandemic, particularly disadvantaged communities;
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

For further information, visit *https://www.rd.usda.gov/priority-points.*

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA), 5 U.S.C. 801 *et seq.,* the Office of Information and Regulatory Affairs in the Office of Management and Budget designated this action as a major rule as defined by 5 U.S.C. 804(2), (Pub. L. 104–121), because it is likely to result in an annual effect on the economy of $100,000,000 or more. Accordingly, there is a 60-day delay in the effective date of this action. Application rating, ranking, and selection will not begin until after October 12, 2021. Therefore, the 60-day delay required by the CRA is not expected to have a material impact upon the administration and/or implementation of the ERHC Grant Program.

Background

USDA's Rural Development Agencies, comprising the Rural Business-Cooperative Service (RB–CS), Rural Housing Service (RHS), and the Rural Utilities Service (RUS), are leading the way in helping rural America improve the quality of life and increase the economic opportunities for rural people. RHS offers a variety of programs to build or improve housing and essential community facilities in rural areas. The Agency also offers loans, grants, and loan guarantees for single- and multi-family housing, child-care centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers and much more. The Agency also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, state and Federal government agencies, and local communities.

The American Rescue Plan Act of 2021 (ARPA), Public Law 117–2, was signed by the President on March 11, 2021. It provides the Rural Housing Service Community Facilities (CF) Program up to $500,000,000 in grant funding for eligible CF applicants and eligible CF facilities to help broaden access to COVID–19 vaccines and testing, health care services including telehealth services, food assistance through food banks and food distribution facilities, and collaborative, evidence-based support for the long-term sustainability of rural health care.

Nearly one in five Americans live in rural areas and depend on local hospitals for care. Data shows that between January 2013 and February 2020, 101 rural hospitals closed in 28 states. According to data from the U.S. Department of Health and Human Services (HHS) and a recent study by the U.S. Government Accountability Office (GAO), counties with a hospital closure experience an immediate and steady decline in availability of health care providers compared to counties that do not experience a closure. Rural residents in these counties must travel an additional median distance of 20 miles to access health care services after a closure. Furthermore, HHS data shows that Medicare fee-for-service beneficiaries are less healthy in areas with hospital closures compared to their counterparts in service areas without closures. In addition, HHS data shows that rural hospitals operated under negative margins before closure and hospitals that remain open are increasingly showing signs of financial distress.

The financial stress on rural hospitals and the negative impact on rural residents was exacerbated by the COVID–19 pandemic. In 2020 alone, 20 hospitals closed and as many as 453 more rural hospitals are considered highly vulnerable for future closure. It is estimated that rural hospitals lost an estimated 70 percent of their income in 2020 due to delayed and deferred care caused by the pandemic. Rural residents are generally older, less healthy, and more reliant on government payors than their urban counterparts.

In designing this ERHC program, USDA determined that the challenges facing rural health care are primarily two-fold: immediate financial needs stemming from COVID–19 related

expenses and long-term access and availability of rural health care services that have been further hampered as a result of the COVID–19 pandemic. In response to these challenges, this ERHC Grant Program NOFA provides two tracks of funding: Track One for recovery grants to support immediate financial relief needs and Track Two for impact grants to advance ideas and solutions to support the long-term sustainability of rural health care.

Overview

Federal Agency: Rural Housing Service (RHS), (USDA).

Funding Opportunity Title: The American Rescue Plan Act Emergency Rural Health Care (ERHC) Grant Program.

Funding Opportunity Number: USDA–RHS–ERHC–2021.

Announcement Type: Notice of Funds Availability.

Assistance Listings (AL) Number: 10.766.

Due Date for Applications: Track One, Recovery applications will be accepted on a continual basis and will be evaluated as long as funding remains available. Complete applications received by 4:00 p.m. local time on October 12, 2021 will be evaluated and ranked according to the scoring criteria in this Notice. Applications subsequently received and/or deemed complete will be evaluated and ranked as long as funding remains available.

Applications for Track Two, Impact applications must be received by 4:00 p.m. local time on October 12, 2021. Applications received after 4:00 p.m. local time on October 12, 2021 will not be considered.

For further information, visit the Emergency Rural Health Care Grant Program web page at *https://www.rd.usda.gov/erhc.*

Items in Supplementary Information

I. Funding Opportunity Description
II. Federal Award Information
III. Definitions
IV. Eligibility Information
V. Application Submission Information
VI. Application Review Information
VII. Federal Awarding Administration Information
VIII. Federal Awarding Agency Contacts
IX. Other Information

I. Funding Opportunity Description

A. Background

This NOFA is being issued pursuant to the recently passed American Rescue Plan Act of 2021 and is considered to be Economically Significant and Major. Funds will be administered in accordance with this NOFA and will be distributed between two tracks of funding: Under Track One, Recovery grants are designed to provide emergency grant funding for eligible CF applicants to help rural hospitals and local communities broaden access to COVID–19 vaccines and testing, health care services including telehealth services, and food assistance through food banks and food distribution facilities in rural areas.

Track Two, Impact grants are designed to plan for, implement, and evaluate models to support the long-term sustainability of rural health care. Long-term sustainability is defined as improved health outcomes, improved access to quality health care, and creating and maintaining health care as a key economic driver of small communities. Details on eligible Community Facilities (CF) applicants and eligible CF facilities may be found in Section IV. Eligibility Information of this Notice.

Applicants may request assistance for costs for a performance period of up to 36 months. Track One, Recovery applicants may additionally request pre-award costs incurred on or after March 13, 2020. Applicants may not request assistance for expenses or losses that have been reimbursed from other Federal sources or that other Federal sources are obligated to reimburse.

Rural communities face unique challenges due to the COVID–19 pandemic that include financial and economic vulnerability. At the same time, rural communities have essential community infrastructure needs that are essential to promote vaccine administration and distribution, conduct COVID–19 testing, provide access to quality health care services, and support the needs of food banks and food distribution facilities. This program provides critical grant funding to support rural communities' health care needs in the face of COVID–19.

B. Program Description

This program is designed for essential community facilities located in rural areas, primarily serving rural areas, and serving populations with median household income that is lower than ninety percent of the State nonmetropolitan median household income. Within these parameters, the Agency is further encouraging investment in distressed communities. RD utilizes the Distressed Communities Index, developed by the Economic Innovation Group (EIG), which combines seven publicly available metrics to assess the economic well-being of communities. For more information on EIG's Distressed Communities Index, visit *https://eig.org/dci.* EIG's Distressed Community Map can be found at the following website: *https://ruraldevelopment.maps.arcgis.com/apps/webappviewer/index.html?id=06a26a91d074426d944d22715a90311e.* As part of its annual performance plan and strategic goals and objectives, the Agency tracks the percent of RD assistance that goes to distressed communities in its loan and grant programs and will do the same for this program.

C. Implementation of the American Rescue Act of 2021 Provisions

Track One, Recovery grant funds will be allocated to USDA Rural Development State Offices. The allocation of funds will be based on an adaptation of 7 CFR part 1940, subpart L, Methodology and Formulas for Allocation of Loan and Grant Program Funds. USDA Rural Development State Offices will have until June 30, 2022 to obligate funds allocated to their respective state. After June 30, 2022, unobligated funds may be pooled into the USDA Rural Development National Office Reserve to fund additional qualified applications based on the evaluation criteria specified in this Notice. The Agency intends to provide a minimum $350,000,000 to fund eligible facilities under Track One.

Track Two, Impact grant funds will be held within the USDA Rural Development National Office Reserve. The Agency intends to provide up to $125,000,000 to fund no more than 15 projects under Track Two. Any unobligated funds for Track Two, Impact grants will be made available for Track One, Recovery grants.

II. Federal Award Information

A. Assistance Listings (AL) Number: 10.766

Assistance Listings (AL) Title: American Rescue Plan Act Emergency Rural Health Care (ERHC) Grant Program.

B. Available Funds

The American Rescue Plan Act of 2021 provides $500,000,000 in budgetary authority for this program through September 30, 2023. The Agency may publish future notices in the **Federal Register** to align with the demand for these grants.

C. Funding Limitations

The Agency will review and evaluate applications received as set forth in this NOFA. The Agency anticipates that demand for grant funding may exceed the supply of funds and will assign

points to each application in accordance with the scoring and selection criteria for the applicable funding track outlined in this Notice.

III. Definitions

The terms and conditions provided in this NOFA are applicable to and for purposes of this NOFA only. Unless otherwise provided in the award documents, all financial terms not defined herein shall have the meaning as defined by Generally Accepted Accounting Principles (GAAP).

Agency means the Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture.

Consortium means institutions of health care, higher education, academic health and research institutes, federally-recognized tribes, or economic development entities (inclusive of tribal economic development entities), or combination thereof, located in the region identified to be served that have experience in addressing these issues in the region.

Eligible Project Costs means only those costs incurred during the grant period and eligible pre-award period and that are directly related to the use and purposes of the American Rescue Plan Act's Emergency Rural Health Care Grant Program.

GAAP means accounting principles generally accepted in the United States of America.

Poverty line means the level of income for a family of four as defined by section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

Rural and *rural area* mean a city, town, or unincorporated area with a population of not more than 20,000 inhabitants in accordance with 7 U.S.C. 1991(a)(13). Population may be adjusted by exclusion of individuals incarcerated on a long-term or regional basis and the exclusion of the first 1,500 individuals who reside in housing located on a military base. The boundaries for unincorporated areas will be based on Census Designated Place(s). Population data from the most recent decennial census of the United States will be used. For projects located on tribal trust land, the population of the tribal trust land, based on the most recent decennial census, will be used to determine the rural area regardless of whether the tribal trust land is located within the boundaries of a city or town.

Rural Development (RD) means a mission area within USDA which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service.

State nonmetropolitan median household income (MHI) means the median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns, or places of 50,000 or more population.

IV. Eligibility Information

A. Applicant Eligibility

(1) An eligible applicant under this program must be one of the types of entities outlined in 7 CFR 3570.61(a):

(a) Public body, such as a municipality, county, district, authority, or other political subdivision of a State. State public bodies are not eligible for assistance under this program.

(b) Nonprofit corporation or association. Applicants, other than nonprofit utility applicants, must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Nonprofit Track Two, Impact applicants must demonstrate a consortium of partners that demonstrate significant ties with the local rural community(ies) as referenced in paragraph (2) of this section.

(c) Federally recognized Indian Tribe, including a political subdivision of a Tribe, in a rural area.

(2) In addition to meeting the eligibility requirements of Section IV(A)(1) above, Track Two, Impact grant applicants must establish a network or consortium of entities for the purposes of this grant. The network or consortium shall:

(a) Be comprised of at least three or more health care provider organizations, economic development entities, federally-recognized tribes, and/or institutions of higher education, academic health, and research institutes (including the applicant organization).

(b) Be comprised of rural and/or urban nonprofit entities, as long as at least 66% (two-thirds) of network members are located in a rural area and primarily serve a rural area as defined by this Notice; and

(c) Identify one lead entity to serve as the primary applicant and recipient of the Track Two, Impact grant funds and accountable for monitoring and reporting on the project performance and financial management of the grant. The lead entity or applicant must be an eligible entity described above in Section IV (A) (1), although significant ties to the local rural community may be satisfied as long as at least 66% (two-thirds) of consortium members are located in a rural area and primarily serve a rural area. The lead entity must also be legally organized as an incorporated organization or other legal entity with legal authority to contract with the Federal Government.

B. Project Location Eligibility

To be eligible for grant funds under this Notice, the eligible facility or project to be financed must be located in a rural area as defined in section 343(a)(13)(C) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)(13)) and must primarily serve rural residents. The terms ''rural'' and ''rural area'' mean any area other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants. Population may be adjusted by exclusion of individuals incarcerated on a long-term or regional basis and the exclusion of the first 1,500 individuals who reside in housing located on a military base. The boundaries for unincorporated areas in determining populations will be based on the Census Designated Places(s) (CDP). Data from the most recent decennial census of the United States will be used in determining population. For projects located on tribal trust land, the population of the tribal trust land, based on the most recent decennial census, will be used to determine the rural area regardless of whether the tribal trust land is located within the boundaries of a city or town.

Non-public body applicants are not required to be headquartered in a rural area. However, applicants must demonstrate how the facility to be financed with these grant funds is located in and will primarily serve rural areas. For Track Two, Impact grants, the lead applicant must demonstrate how the project is for the benefit of facilities located in rural areas and which primarily serve rural areas.

When considering whether a facility primarily serves rural residents, the Agency will consider the applicant or facility's normal service territory, excluding any temporary expansion of service area resulting from the COVID–19 pandemic.

C. Eligible Grant Amounts

An applicant is limited in the amount of grant funds that can be requested to assist a facility, depending on the population to be served and the median household income of that population. Facilities and projects must demonstrate other sources of funds to fund the remaining portion of project costs. In these cases, grant assistance will be provided on a graduated scale with smaller communities with the lowest

median household income being eligible for a higher proportion of grant funds. Grant funds will be limited to:

(1) The percentages of eligible project costs as outlined below:

(a) Up to 75 percent when the proposed project is located in a rural community having a population of 5,000 or less and the median household income of the population to be served by the proposed facility is below the poverty line or 60 percent of the State nonmetropolitan median household income, whichever is greater.

(b) Up to 55 percent when the proposed project is located in a rural community having a population of 12,000 or less and the median household income of the population to be served by the proposed facility is below the poverty line or 70 percent of the State nonmetropolitan median household income, whichever is greater.

(c) Up to 35 percent when the proposed project is located in a rural community having a population of 20,000 or less and the median household income of the population to be served by the proposed facility is below the poverty line or 80 percent of the State nonmetropolitan median household income, whichever is greater.

(d) Up to 15 percent when the proposed project is located in a rural community having a population of 20,000 or less and the median household income of the population to be served by the proposed facility is below the poverty line or 90 percent of the state nonmetropolitan median household income, whichever is greater.

(e) In-kind contributions are not an acceptable source of cost-sharing funds. Applicants must utilize cash contributions to fund the remaining project costs and these funds must be expended for an eligible purpose outlined in this Notice.

(i) If requesting Track One, Recovery funds for lost revenue or staffing expenses as defined in paragraphs D.(1)(c) and D.(1)(f) of this section, respectively, applicants may utilize the applicable percentage of lost revenue or staffing expenses to satisfy the cost-sharing requirement. For example, an applicant that experienced $100,000 in lost revenues associated with a facility located in a rural community of less than 5,000 population and a median household income of less than 60 percent of the state nonmetropolitan median household income is eligible for a maximum project cost of 75 percent. In this example, the applicant can request $75,000 for grant funding associated with lost revenues and the remaining $25,000 in lost revenues serves as the balance of the total project cost.

(ii) Applicants may not use grant funds received under other Rural Development (RD) programs to satisfy cost-sharing or matching requirements. Federal and state resources may be acceptable sources to the extent it is allowable under the Federal or state program(s).

(iii) If awarded grant funds under this program, grant funds may not be utilized as matching funds for other Federal programs.

(2) Under Track One, Recovery, the maximum grant assistance allowed is $1,000,000. Under Track Two, Impact, the maximum grant assistance allowed is $10,000,000.

(3) Under Track One, Recovery, the minimum grant assistance allowed is $25,000. Under Track Two, Impact, the minimum grant assistance is $5,000,000.

(4) Applicants may request and receive assistance under both Track One and Track Two awards. Applicants may submit only one application for Track Two assistance. Affiliated entities may only participate in a single Track Two application.

(5) Applicants may request assistance for more than one project location. An applicant entity with wholly owned affiliated entities or subsidiaries may apply on behalf of one or more affiliated entities. An Affiliate is an entity controlling or having the power to control another entity, or a third party or parties that control or have the power to control both entities.

(6) If it is determined that an applicant is affiliated with another entity that has also applied, then the maximum grant award applies to all affiliated entities as if they applied as one applicant.

D. Eligible Use of Grant Funds

Grant funds must be used to support health care and nutritional assistance needs in correlation with the COVID–19 pandemic and as defined below. Funds may be requested for one or more purposes outlined below:

(1) Track One, Recovery funds must be used to support immediate health care needs stemming from the COVID–19 pandemic, to support preparedness for a future pandemic event, and/or to increase access to quality health care services to improve community health outcomes. To be eligible for this program, a project must support the health care needs, including access to nutrition assistance through food banks and food distribution facilities, for a rural community(ies). Funds requested from the categories below may be requested for expenses incurred during the grant period and/or the eligible pre-award period dating back to March 13, 2020:

(a) Increase capacity for vaccine distribution, including cold storage, vehicle, transportation, and other equipment expenses.

(b) Provide medical supplies and equipment to increase medical surge capacity, including personal protective equipment and laboratory equipment.

(c) Reimburse for health care-related revenue lost during the COVID–19 pandemic, including revenue losses incurred prior to the awarding of the grant through March 13, 2020. Requests for this category must include a certification from a certified public accountant (CPA) that the calculation of health care-related lost revenue requested is accurate and in alignment with previous years' revenue. When calculating lost revenue, CPAs may use budgeted revenues if the budget(s) and associated documents covering calendar year 2020 were established and approved on or before March 13, 2020. To be considered an approved budget, the budget must have been ratified, certified, or adopted by the applicant's financial executive or executive officer as of that date, and the CPA will be required to attest that the budget was established and approved on or before March 13, 2020. The CPA certification must also definitively state that these lost revenues have not been reimbursed from other Federal or state resources.

(d) Increase telehealth capabilities, including the purchase of and training needed for provider and end-user telehealth equipment, telehealth software, telehealth electronic security upgrades, electronic health records, data sharing capacity, video and teleconference services, and other underlying health care information systems.

(e) Construct or renovate temporary or permanent structures to provide health care services, such as vaccine administration, testing, and facility modifications. Examples of facilities offering health care services include health care clinics, hospitals, medical offices, outpatient facilities, mobile health clinics, mental/behavioral health, and addiction treatment centers, assisted and skilled living facilities, rehabilitation facilities, urgent care, telehealth facilities, and wellness centers. Any construction work completed with grant funds under this award shall meet the Davis-Bacon Act conditions set forth in section 9003(f) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8103(f)).

(f) Support staffing needs for vaccine administration and/or testing. Requests

for this category must include a certification from a certified public accountant (CPA) that these staffing expenses have not been reimbursed from other Federal or state resources.

(g) Support facility, equipment, and operating expenses associated with food banks and food distribution facilities, including transportation, vehicles, food storage, and other equipment. Operating expenses are limited to the grant award period and pre-award cost period.

(h) To pay professional service fees and charges, but only when such expenses are a necessary part of a facility or project allowable under this Notice, are a secondary part of the grant amount requested, and when the Agency agrees that the amounts are reasonable and customary for the type of facility and—

(i) The professional service provider is selected through a qualifications-based selection process; or

(ii) The professional service provider is the project architect, project engineer, environmental professional, environmental consultant, or legal counsel, in which case a competitive qualifications-based procurement process is not required.

(i) To pay for pre-award costs incurred between March 13, 2020 and the proposed project start date for any eligible category in paragraph D.(1)(a) through (h) of this section. Applicants should note that any pre-award activities related to construction or renovation costs must still adhere to requirements specified in this Notice, including Davis-Bacon Act requirements and all Agency environmental requirements as specified in 7 CFR part 1970.

(2) Track Two, Impact funds must be used to support the long-term sustainability of rural health care. Long-term sustainability is defined as improved health outcomes, improved access to quality health care, and creating/maintaining sustainable economic development for small communities. Often, health care is the key economic driver for small rural communities and the closures of these facilities creates negative ripple effects throughout the regional economy. Projects funded under Track Two, Impact funds must define how the proposed project will contribute to improving rural health care access, rural health outcomes, and/or the economic viability of rural health care. Track Two, Impact applicants may request and use grant funding for one or more of the following activities:

(a) Establish or scale a regional partnership or consortium of community leaders and health care partners to plan, implement, and evaluate a model(s) to support solving regional health care problems and the long-term sustainability of rural health care. Health care networks can be an effective strategy to help small rural health care providers align resources, achieve economies of scale and efficiencies, share decision-making authority, collaboratively address community challenges, and create impactful, innovative solutions as a group rather than single providers.

(b) Establish or scale an evidence-based model and disseminate lessons learned for possible replication in other small communities and regions.

(c) Identify a health-related problem within the applicant's region, develop and implement a method and solution to overcome the problem and conduct a program evaluation to examine health related outcomes, long-term sustainability, and replicability. Implementation may include construction or other related expenses that adhere to requirements specified in this Notice.

The Agency encourages, but does not require, that applicants consider the following high need topical areas: development of integrated health care models, reducing facility bypass whether through telemedicine or business plan adjustments, telehealth, electronic health data sharing, workforce development, transportation, paramedicine, obstetrics, behavioral health, farmworker health care, cooperative home care, and supporting health care as a small community, anchor institution.

(d) Establish a methodology to calculate summary impact measures or an estimated return on investment for the grant funds requested, including job creation/retention numbers, and improving quality of life.

(e) Cover the cost of technical assistance to assist with one or more aspects of project implementation, project evaluation, data sharing, and/or reporting requirements.

(f) Cover indirect costs in an amount up to a federally negotiated indirect cost rate. A copy of the current rate agreement must be provided with the application. Applicants without a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph (D)(1), may use the de minimis rate of 10 percent of modified total direct costs. Lead applicants may not request indirect costs on behalf of any other consortium member.

(g) Make sub-awards in the form of a grant, cooperative agreement, or contract, as appropriate, to other members of the consortium or other service providers such as technical assistance providers. If a grant or cooperative agreement is awarded, the organization receiving the subaward is a subrecipient (see 2 CFR 200.1), and the recipient is responsible for complying with all applicable requirements of 2 CFR part 200, including provisions for making and monitoring an award. If a contract is awarded, the organization receiving the subaward is a contractor, and the recipient is responsible for following its written procurement procedures and complying with the Federal Acquisition Regulation. Both subrecipients and contractors are required to comply with all applicable laws and regulations, including performance and financial reporting, as described in their award document.

(h) To pay professional service fees and charges associated with the grant request if the Agency agrees that the amounts are reasonable and customary for the type of facility and

(i) the professional service provider is selected through a qualifications-based selection process; or

(ii) the professional service provider is the project architect, project engineer, appraiser, environmental professional, environmental consultant, or legal counsel, in which case a competitive qualifications-based procurement process is not required.

(3) Grant funds *must not* be used to reimburse for the following purposes:

(a) Expenses or losses that have been reimbursed from any other sources or that other sources are obligated to reimburse.

(b) Expenses related to staffing needs may not exceed an annual salary of $100,000, as prorated over the applicable time period. This limitation is placed on cash compensation and does not include other health care or retirement plan compensation.

(c) Construction, renovation, purchase, or acquisition costs for facilities located in nonrural areas.

(d) Purchase or acquisition costs for facilities or property.

(e) Pay for existing indebtedness unrelated to the COVID–19 pandemic.

Refinance may be eligible for Track One, Recovery applicants for short-term debt incurred for an eligible purpose outlined in paragraph D. (1) above.

(f) With exception for eligible pre-award costs for Track One, Recovery applicants, paying obligations incurred before the beginning date or after the ending date of the grant agreement; and

(g) Any purpose prohibited in 2 CFR part 200 or 2 CFR part 400.

V. Application Submission Information

A. Request Application Package

Entities wishing to apply for assistance may download the application documents and requirements outlined in this NOFA from the ERHC Grant Program web page: *https://www.rd.usda.gov/erhc.*

Track One, Recovery applicants must submit application packages to the USDA Rural Development office in their state. Applications will be processed by the USDA Rural Development State Office in the state where the applicant's project is located. For project activities located in more than one state, the applicant's headquarters location will determine the applicable USDA Rural Development State Office. Agency state office contact information is available at *https://www.rd.usda.gov/about-rd/state-offices.*

Track Two, Impact applicants must submit application packages to the USDA Rural Development office in the state in which the applicant organization is headquartered. If a Track Two applicant is headquartered in the District of Columbia, the applicant must submit its application package to the USDA Rural Development National Office and the application will be processed by the USDA Rural Development Maryland/Delaware State Office.

B. Content and Form of Application Submission

For Track One, Recovery applicants, the applicable USDA Rural Development State Office will conduct an initial review, rating, and selection of complete applications received by the date established in this Notice, according to the selection criteria in this Notice. Subsequent application reviews, rankings, and selections will occur for all complete applications until funding has been fully utilized. Complete applications must contain all parts necessary for the Agency to determine applicant and project eligibility, ensure environmental and architectural requirements are met, calculate a priority score, and rank the application in order to be considered. Track One, Recovery, applications deemed incomplete as of the date established in this Notice will compete for any remaining funding once the applicant submits a complete application. For as long as funding remains available, the applicable USDA Rural Development State Office will work with Track One, Recovery applicants to reach a complete application status.

For Track Two, Impact applicants, the applicable USDA Rural Development State Office will conduct initial eligibility reviews. The USDA Rural Development National Office will coordinate application reviews, rankings, and selections based on the information received by the Agency as of the deadline established in this Notice.

The application for Track One and Track Two funding must include the following:

(a) A summary page, double-spaced between items, listing the following (this information should not be presented in narrative form):

(1) Track of funding requested: Track One, Recovery or Track Two, Impact;

(2) Applicant's name;

(3) Amount of grant request, and

(4) Project description, no more than three sentences summarizing applicant entity, location of assistance, and purpose and use of the grant funds.

(b) A detailed Table of Contents containing page numbers for each component of the application.

(c) One executed complete application. This includes the SF–424 ''Application for Federal Assistance,'' and SF–424A ''Budget Information—Non-Construction Programs'' or SF–424C ''Budget Information—Construction Programs.''

(d) Organizational documents that demonstrate the applicant is an eligible entity as described in Section IV. Eligibility Information. Nonprofits must provide articles of organization, incorporation, or association; by-laws; evidence of good standing; and evidence of ties to the local rural community. Ties to the local rural community may be demonstrated through: (1) Close association with, or controlled by a local unit of government; (2) Broad-based ownership and control by members of the community, as demonstrated through a listing and description of board members; and/or (3) Substantial public funding as demonstrated through pledged taxes, local government sources, or community-wide fundraising campaign.

(e) Evidence of eligibility. Applicants must submit sufficient documentation to demonstrate how the health care facility(ies) or project to be funded through this grant primarily serves rural areas, is located in a rural area, and serves a population with a median household income below the poverty line or applicable percentage defined in this Notice. This submission must describe the proposed facility or project and its service area, including:

(1) Location of facility, including population demographics of that location.

(2) Description of area and number and demographics (if known) of populations to be served, sufficiently detailed to verify Project Location Eligibility as outlined in Section IV. Eligibility Information of this Notice; and

(3) Evidence that the facility or project will primarily serve rural residents.

(f) A written budget narrative providing a detailed project budget, which also includes the following information:

(1) The amount of funds requested from each Eligible Use of Grant category, with a description of how the figure was calculated.

(2) A breakdown of project cost demonstrating the percentage of total project costs that this grant assistance will cover. This grant will cover a portion of total project costs as outlined in this Notice, and dependent on population and median household income.

(3) The time period for which this assistance is requested. All awards are limited to up to a 36-month grant period based upon the complexity of the project. In limited circumstances and only with prior Agency approval, the Agency may grant a no cost extension to the grant period. Under no circumstance shall the grant period extend beyond five full fiscal years past the award date.

For planning purposes, applicants should assume that the proposed grant period will begin no earlier than November 1, 2021 and should end no later than 36 months following that date. Eligible pre-award costs may be requested for costs incurred between March 13, 2020, and the project start date. If you receive an award, your grant period will be revised to begin on the actual date of award—the date the grant agreement is executed by the Agency—and your grant period end date will be adjusted accordingly.

(g) Environmental information necessary to support the Agency's environmental finding. Required information can be found in 7 CFR part 1970.

(h) For projects involving construction, a preliminary architectural feasibility report or engineering documentation, completed in accordance with Agency guidelines in RD Instruction 1942–A, Guide 6.

(i) Description and certification of applicant's cost share sources. For Track One, Recovery applicants seeking funds for lost health care-related revenue or staffing associated with COVID–19 vaccines and/or testing, the applicant's

required cost share can be the applicable percentage of lost health care revenue and actual staffing expenses.

(j) Three years of the most recent audits or financial statements, including a current balance sheet and income and expense statement. If audits are not available, applicants may provide this information on Forms RD 442–7, ''Operating Budget,'' including projected cash flow; RD 442–2, ''Statement of Budget, Income and Equity,'' and RD 442–3 ''Balance Sheet.''

(k) Intergovernmental Review comments, if applicable, from the local planning district commission.

(l) Certification of Non-Lobbying Activities.

(m) Standard Form LLL, ''Disclosure of Lobbying Activities,'' if applicable.

(n) Certification regarding any known relationship or association with an Agency employee in accordance with 7 CFR part 1900, subpart D.

(o) For applicants requesting funds under Track One, Recovery, a written narrative that includes:

(1) Description of how the assistance requested will broaden access to COVID–19 vaccines, COVID–19 testing, health care services and/or food bank or food distribution assistance in rural communities.

(2) If requesting funds for lost health care revenue or for staffing needs, a CPA issued certification stating that:

(a) No funds requested have been reimbursed from other Federal or state sources.

(b) No funds requested are obligated to be reimbursed from other Federal or state sources; and

(c) Funds requested are reasonable, appropriate, and align with actual or anticipated costs and/or lost revenues during the grant period.

(q) For applicants requesting funds under Track Two, Impact, provide a written narrative that addresses the following:

(1) Organizational Capacity and Strength of Consortium

(a) Evidence of an agreement formalizing a consortium for purposes of this grant funding. The agreement must address the negotiated arrangements for administering the grant funding to meet an applicant's project goals and the roles and responsibilities of each consortium member to comply with the administrative, financial, and reporting requirements of the grant and all other applicable Federal regulations and policies. This agreement must be signed by an authorized representative of the lead entity applicant and an authorized representative of each partnering consortium entity.

(b) Describe the actual composition of the consortium members and how each member is appropriate and needed to successfully accomplish project activities.

(c) Describe the abilities and contributions of the lead applicant organization and other consortium members. Provide a brief overview such as each organization's current mission, scope of current activities, demonstrated experience serving rural populations, key personnel to manage the award project, and access to financial practices and systems to ensure that Federal funds can be properly accounted for and managed.

(d) Evidence and description of how the consortium will maintain ties to the local rural community(ies). If the lead applicant is located in an urban area, describe the geographical relationship to the proposed rural service population, and plans to ensure that rural populations are served. Urban applicants must describe how they will ensure a high degree of local rural control in the project. At least 66% (two-thirds) of consortium members must be located in a rural area and primarily serve a rural area as defined by this Notice.

(e) Describe how the consortium will impact rural community(ies) and providers, and how the network will strengthen its relationship with the community and region it serves.

(f) Identify the project director for the award (or strategy for hiring), along with key activities and approximate percentage of time to be devoted to this project.

(2) Workplan and Proposed Budget

(a) Provide a project work plan that clearly illustrates the consortium's goals, strategies, activities, and measurable outcomes proposed during the entire period of performance. The work plan must identify the individual or organization responsible for carrying out each activity, include a timeline for the period of performance, and illustrate its relation to the COVID–19 pandemic.

(b) Provide a complete, consistent, and detailed budget presentation for up to a three-year period of performance through the submission of the SF–424A budget form and a Budget Narrative that justifies the appropriateness of the requested funds. The budget should be reasonable in relation to the objectives, the complexity of the activities, and the anticipated results. The budget narrative should logically and clearly document how and why each line item request (such as personnel, travel, equipment, contractual service, etc.) supports the goals and activities of the proposed award-funded activities.

(3) Evaluation, Impact, and Replicability

(a) Describe how the proposed progress toward meeting program goals contributes to the long-term sustainability of rural health care by improving rural health care access, improving rural health outcomes, and sustaining health care as an economic driver for the rural community or region.

(b) Describe how progress toward meeting program goals and determination of a return on investment will be tracked, measured, and evaluated. How will this assessment contribute to the consortium's quality improvement efforts and sustainability beyond the period of Federal funding?

(c) Explain a process for evaluating how the consortium's resources will be leveraged and utilized to increase access to health care services, improve rural health outcomes, and/or support health care as a key economic driver for small communities. Include a discussion regarding the consortium's plan for any necessary data collection efforts amongst members of the consortium, as well as any plans to solicit or provide technical assistance to support these efforts.

(d) Identify factors and strategies that will lead to project viability, sustainability of the consortium's activities after Federal funding ends, and establishment of an evidence-based model for dissemination of lessons learned for future replication.

C. Dun and Bradstreet Data Universal Numbering System (DUNS) for Award Management (SAM)

Grant applicants must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register in the System for Award Management (SAM) prior to submitting an application pursuant to 2 CFR 25.200(b). In addition, an entity applicant must maintain registration in SAM at all times during which it has an active Federal award or an application or plan under consideration by the Agency. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM. Similarly, all recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation in accordance to 2 CFR part 170. So long as an entity applicant does not have an

exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

An applicant, unless excepted under 2 CFR 25.110(b), (c), or (d), is required to:

(a) Be registered in SAM before submitting its application;

(b) Provide a valid DUNS number in its application; and

(c) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

The Federal awarding agency may not make a federal award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

As required by the Office of Management and Budget (OMB), all grant applications must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free number at 1–866–705–5711 or via internet at *http://fedgov.dnb.com/webform.* Additional information concerning this requirement can be obtained on the *Grants.gov* website at *http://www.grants.gov.* Similarly, applicants may register for SAM at *https://www.sam.gov* or by calling 1–866–606–8220.

The applicant must provide documentation that they are registered in SAM and their DUNS number. If the applicant does not provide documentation that they are registered in SAM and their DUNS number, the application will not be considered for funding.

You no longer must complete the following forms for acceptance of a federal award. This information is now collected through your registration or annual recertification in *SAM.gov* in the Financial Assistance General Certifications and Representations section:

- Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.''
- Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. Lower Tier Covered Transactions.''
- Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants).''
- Form AD–3031, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.''

D. Instructions and Resources

Instructions and additional resources for compiling and submitting an application are available on the Emergency Rural Health Care Grant Program web page at: *https://www.rd.usda.gov/erhc.*

E. Submission Dates and Times

The deadline date for applications to be considered for funding is specified in the **DATES** section at the beginning of this notice.

VI. Application Review Information

Applications will first be reviewed to determine if they meet the eligibility requirements in this Notice. If an application is deemed ineligible, the application will not be processed, evaluated, or scored. The Agency will notify ineligible applicants in writing regarding the reason(s) for ineligibility.

Applications deemed eligible will be evaluated based on the criteria below. Complete applications received by the deadline specified in this Notice will be scored and ranked to determine which applications are funded. Eligible and complete Track One, Recovery applications received after the deadline specified in this Notice will be reviewed and processed according to the criteria below for as long as funding remains available.

The Agency will review each grant application to determine eligibility. The applicant may be asked to provide additional information or documentation to assist the Agency with this determination.

A. Evaluation Criteria

Applications will be evaluated based only on the information provided in the application. References to websites or publications will not be reviewed, so full documentation and support of application criteria is encouraged. Scoring and ranking of applications will be a function of the criteria below.

(1) Track 1, Recovery applicants will receive a score based on the criteria below (maximum 100 points):

a. Distressed Communities/Communities below the poverty line threshold priority. 15 points will be given for facilities located in distressed communities according to the EIG index or communities below the poverty line. For applications supporting two or more facility locations, these priority points will only be given if 50 percent or more of the requested award funds will support distressed communities or those communities below the poverty line. EIG's Distressed Community Map can be found here: *https://ruraldevelopment.maps.arcgis.com/apps/webappviewer/index.html?id=06a26a91d074426d944d22715a90311e.* Maximum 15 points will be given.

b. Income priority. If the median household income of the facility's service area is below the higher of the poverty line or—

i. 60 percent of the State nonmetropolitan median household income: 20 points.

ii. 70 percent of the State nonmetropolitan median household income: 15 points.

iii. 80 percent of the State nonmetropolitan median household income: 10 points; or

iv. 90 percent of the State nonmetropolitan median household income: 5 points.

c. Population priority. If the facility is located in a rural community having a population, according to the most recent decennial census, of—

i. 5,000 or less: 15 points.

ii. 5,001 to 10,000: 10 points; or

iii. 10,001 to 15,000: 5 points.

d. COVID–19 vaccine administration or testing priority. 20 points will be given to applications that directly support activities to administer COVID–19 vaccines or conduct COVID–19 testing. Maximum 20 points will be given.

e. COVID–19 Impacts priority. 20 points will be given to applications with projects located in one of the top 10 percent of counties or county equivalents based upon county risk score in the United States. The risk score is calculated based on COVID–19 confirmed cases (per 10,000 population); Distressed Communities Index (DCI); Job Loss Projections (Bureau of Labor Statistics data) and the Center for Disease Control's (CDC) Social Vulnerability Index (SVI). Counties that qualify for the COVID–19 impact priority points are listed on the RD web page at *https://www.rd.usda.gov/priority-points.* For applications supporting two or more facility locations, these priority points will only be given if 50 percent or more of the requested award funds will support these high COVID–19 impact

counties. Maximum 20 points will be given.

f. Equity priority. 10 points will be given to applications with projects located in a community with a score of 0.75 or above according to the CDC's Social Vulnerability Index. Applicants may verify whether projects qualify for these priority points by viewing the RD web page at *https://www.rd.usda.gov/priority-points.* For applications supporting two or more facility locations, these priority points will only be given if 50 percent or more of the requested award funds will support these communities identified for priority points through the CDC's Social Vulnerability Index. Maximum 10 points will be given.

(2) Track Two, Impact applicants will receive a score based on the criteria below (maximum score 100 points):

a. Distressed Communities/Communities below the poverty line threshold priority. 10 points will be given for facilities or projects targeting distressed communities according to the EIG index or communities below the poverty line. For applications supporting two or more facility locations, these priority points will only be given if 50 percent or more of the requested award funds will support distressed communities or those communities below the poverty line. EIG's Distressed Community Map can be found here: *https://ruraldevelopment.maps.arcgis.com/apps/webappviewer/index.html?id=06a26a91d074426d944d22715a90311e.* Maximum 10 points will be given.

b. Income priority. If the median household income of the project's service area is below the higher of the poverty line or—

i. 60 percent of the State nonmetropolitan median household income: 15 points.

ii. 70 percent of the State nonmetropolitan median household income: 12 points.

iii. 80 percent of the State nonmetropolitan median household income: 9 points; or

iv. 90 percent of the State nonmetropolitan median household income: 6 points.

c. Population priority. If the project or facility(ies) will be located in a rural community having a population, according to the most recent decennial census, of—

i. 5,000 or less: 10 points.

ii. 5,001 to 10,000: 6 points; or

iii. 10,001 to 15,000: 3 points.

d. Need, Methodology, and Innovation (maximum 25 points). The Agency will utilize a panel of internal and/or external qualified reviewers to assess need, methodology, and innovation along the following factors:

i. The extent to which the application clearly describes the purpose of the proposed project, the local/regional health care environment and how the need was identified, expected outcomes, focus area(s) and the aim(s) the project would support.

ii. The extent to which the applicant describes an innovative approach to address the need, goals, and objectives and the appropriateness of the proposed strategy.

iii. The extent to which the applicant's project will provide demonstrable impact to rural community(ies) and the health care community.

Maximum 25 points will be given.

e. Organizational Capacity and Strength of Consortium (maximum 15 points). The Agency will utilize a panel of internal and/or external qualified reviewers to assess organizational capacity and strength of consortium along the following factors:

i. Clarity of the roles and responsibilities for each consortium member and the extent to which the network members demonstrate the strength of their mutual commitment in carrying out the planning activities.

ii. The extent to which the application identifies the composition, capacity, and expertise of each consortium member and successfully connects this expertise to the consortium members' (and project director's) proposed responsibilities.

iii. The extent to which the application describes the geographical relationship with the rural service population. Urban-based applicants also must demonstrate how the rural population will be served, and that a high degree of local rural control of the project will be maintained.

iv. Strength of the relationship between the consortium and the community or region it serves. Degree to which the consortium collaborates with appropriate organizations in the community to fulfill the goals of the consortium and the project.

v. Strength and qualifications of the project director, who will dedicate an appropriate amount of their time to the program and be responsible for monitoring the program and ensuring award activities are carried out. This element includes measuring the effectiveness of the application in clearly demonstrating how the project director's role contributes to the success of the network.

Maximum 15 points will be given.

f. Workplan and Proposed Budget (maximum 10 points). The Agency will utilize a panel of internal and/or external qualified reviewers to assess the workplan and proposed budget along the following factors:

i. The feasibility of activities and objectives identified in the work plan including measurable outcomes and the extent to which the expected outcomes this program will accomplish by the end of the period of performance.

ii. The reasonableness of the proposed budget for each year of the period of performance in relation to the objectives, the complexity of the project activities, and the anticipated results.

Maximum 10 points will be given.

g. Evaluation, Impact, and Replicability (maximum 10 points). The Agency will utilize a panel of internal and/or external qualified reviewers to assess evaluation, impact, and replicability along the following factors:

i. The clarity and appropriateness of the proposed goals, objectives, strategy to calculate summary impact measures and/or return on investment, and extent to which project activities would result in achieving the proposed goals outlined in the work plan. The extent to which measures are able to be tracked, to assess whether the program objectives will be met and the extent to which these can be attributed to the program.

ii. The appropriateness and strength of data collection efforts from the lead applicant as well as other members of the consortium, including any plans to solicit or provide technical assistance to support data collection efforts.

iii. The appropriateness and strength of the proposed process for evaluation.

iv. The extent to which the applicant clearly identifies factors and strategies that will lead to viability and sustainability of the network beyond Federal funding, and after the program ends. The clarity and reasonableness of proposed steps to disseminate lessons learned and encourage replication where appropriate.

Maximum 10 points will be given.

h. Equity priority (maximum 5 points) will be given to applications with projects located in a community with a score of 0.75 or above according to the CDC's Social Vulnerability Index. For applications supporting two or more project locations, these priority points will only be given if 50 percent or more of the requested award funds will support these communities identified for priority points through the CDC's Social Vulnerability Index. Applicants may verify whether projects qualify for these priority points through a link on the RD website.

Maximum 5 points will be given.

B. Review and Selection Process

All complete applications will be competed/ranked as specified above. Due to the competitive nature of this program, applications receiving the same score will be competed/ranked based on the Income priority score, and then if necessary, the Population priority score. A complete application contains all information requested by this Notice and is sufficient to allow the determination of eligibility, score, rank, and compete the application for funding, subject to funds available. USDA Rural Development State Offices will work with Track One, Recovery applicants to obtain a complete application for as long as funding remains available.

For Track One, Recovery applicants, determinations of eligibility, scoring, and ranking will occur at the applicable USDA Rural Development State Office where the project is located. Applications will compete for available funding allocated to the applicable USDA Rural Development State Office. If no funding remains available at the applicable State Office, the project will compete for available funding held in the USDA Rural Development National Office reserve.

For Track Two, Impact applicants, eligibility determinations will occur at the applicable USDA Rural Development State Office where the lead applicant is headquartered. If a Track Two applicant is headquartered in the District of Columbia, the applicant must submit its application package to the USDA Rural Development National Office and the application will be processed by the USDA Rural Development Maryland/Delaware State Office. The USDA Rural Development National Office will coordinate the application review, ranking, and selection for Track Two, Impact applications. These applications will be evaluated by an Application Review Panel consisting of qualified health care experts using the criteria described in Section VI Application Review Information of this Notice. Panel members will be selected by the Agency and will be qualified to evaluate the type of work proposed by the applicant. If you are interested in serving as a non-Federal independent panel reviewer and have expertise as it relates to rural health care, please send a resume addressing relevant qualifications and experience to *communityfacilities@usda.gov* no later than October 1, 2021.

In accordance with 2 CFR 200.206, the Agency will conduct a review of risk posed by applicants. For Track One, Recovery and Track Two, Impact applications that exceed $250,000, the Agency will review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM, currently the Federal Awardee Performance and Integrity Information System (FAPIIS). Applicants have the option to review information in FAPIIS and comment on any information about itself that a Federal awarding agency previously entered. The Agency will consider any comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

Applicants selected for funding will be provided a Letter of Conditions. Upon acceptance of the conditions, the applicant will sign and return to the processing office Forms RD 1942–46, ''Letter of Intent to Meet Conditions'', and RD 1940–1, ''Request for Obligation of Funds.'' The grant is approved on the date an Agency signed copy of Form RD 1940–1, ''Request for Obligation of Funds,'' is mailed to the applicant.

Prior to the disbursement of grant funds, applicants approved for funding will be required to sign an Agency approved Grant Agreement, meet any pre-disbursement conditions outlined in the Letter of Conditions, and meet the applicable Statutory or Regulatory authority for this action listed in Section I. Funding Opportunity Description.

In the event the application is not approved, the applicant will be notified in writing of the reasons for rejection and provided applicable review and appeal rights in accordance with 7 CFR part 11.

VII. Federal Awarding Administration Information

For Track One, Recovery grant recipients, the USDA Rural Development State Office in the state where the applicant's project is located will administer the selected awards. For Track Two, Impact grant recipients, the USDA Rural Development State Office in the state where the lead applicant is headquartered will administer the selected awards. Agency state office contact information is available at *https://www.rd.usda.gov/about-rd/state-offices.*

As outlined in the letter of conditions and grant agreement issued by the Agency, grant recipients will be required to provide annual financial statements in accordance with 2 CFR part 200 as adopted by the Agency in 2 CFR part 400. Grant recipients will also provide performance and financial monitoring and reporting information in accordance with 2 CFR part 200, subpart D, ''Post Federal Award Requirements.''

VIII. Federal Awarding Agency Contacts

Jamie Davenport: USDA Rural Development, Community Facilities Program. Telephone: (202) 720–0002, email: *Jamie.Davenport@usda.gov.* Persons with disabilities that require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice).

IX. Other Information

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), USDA requested that the Office of Management and Budget (OMB) conduct an emergency review by July 16, 2021 of a new information collection that contains the Information Collection and Recordkeeping requirements contained in this notice.

In addition to the emergency clearance, the regular clearance process is hereby being initiated to provide the public with the opportunity to comment under a full comment period, as the Agency intends to request regular approval from OMB for this information collection. Comments from the public on new, proposed, revised, and continuing collections of information help us assess the impact of our information collection requirements and minimize the public's reporting burden. Comments may be submitted regarding this information collection by the following method:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and, in the ''Search'' box, type in the Docket No. RHS–21–CF–0009. A link to the Notice will appear. You may submit a comment here by selecting the ''Comment'' button or you can access the ''Docket'' tab, select the ''Notice,'' and go to the ''Browse & Comment on Documents'' Tab. Here you may view comments that have been submitted as well as submit a comment. To submit a comment, select the ''comment'' button, complete the required information, and select the ''Submit Comment'' button at the bottom. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link at the bottom. Comments on this information collection must be received by October 12, 2021.

Copies of all forms, regulations, and instructions referenced in this NOFA may be obtained from RHS. Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronical, mechanical, or other technological collection techniques or other forms of information technology.

OMB Control Number: 0575–0200.

Title: American Rescue Plan Act Emergency Rural Health Care (ERHC) Grant Program.

Type of Request: New collection.

Abstract: The American Rescue Plan Act Emergency Rural Health Care Grant Program was authorized by the American Rescue Plan Act of 2021 to assist rural hospitals and local communities broaden access to COVID–19 vaccines, health care services, and food assistance through food banks and food distribution facilities, and projects supporting the long-term sustainability of rural health care. As authorized under Section 1002 of the American Rescue Plan Act, funds will be made available to eligible applicants to offer support for rural health care services in the form of immediate relief, longer-term funding to advance ideas and solutions to support long-term sustainability of rural health, and provide expeditious relief to address the current economic conditions arising from the COVID–19 emergency.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.70 hours per response.

Respondents: Public bodies, nonprofits, and Federally recognized Tribes.

Estimated Number of Respondents: 3,392.

Estimated Number of Responses per Respondent: 16.

Estimated Number of Total Annual Responses: 54,300.

Estimated Total Annual Burden and Record Keeping Hours on Respondents: 201,272 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Chief, Branch 1, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW Washington, DC 20250. Phone: 202–720–7853.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

B. Civil Rights

Programs referenced in this Notice are subject to applicable Civil Rights Laws. These laws include the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, and Section 504 of the Rehabilitation Act of 1973.

C. Intergovernmental Review

The Emergency Rural Health Care Grant Program is subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Submit one copy of the application to the State government single point of contact, if one has been designated, at the same time as application submission to the Agency. If the project is located in more than one state, submit a copy to each applicable state government single point of contact. Go to *https://www.whitehouse.gov/wp-content/uploads/2020/04/SPOC-4-13-20.pdf* for state office contact information. Applications from Federally recognized Indian tribes are not subject to this requirement.

D. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications. USDA's Office of Tribal Relations and Rural Development hosted a tribal consultation held virtually on May 4, 2021. The virtual meeting consisted of more than 120 participants, 30 of whom identified as Tribal Leaders or their proxies. USDA attendees included the Director of the Office of Tribal Relations, the Acting Administrator of RD's Rural Housing Service, RD's Chief Innovation Officer, and RD's National Native American Coordinator.

Tribal leaders expressed strong interest in broad flexibility of program design, allowing use of funds for construction, and offering grant sizes considerably larger than the existing average Community Facilities grant of $30,000 to support sizable, long-lasting impacts. Leaders highlighted specific needs around behavioral health, workforce development, data availability, food sovereignty, poverty, substance use disorders, and other infrastructure needs such as broadband and water. Leaders expressed concern that the cost-sharing requirements imposed in the statute may be too burdensome and highlighted the need for streamlined applications and limited reporting and federal data collection requirements.

This NOFA takes into consideration Tribal leader comments, particularly with respect to award size and use of funds. Cost-sharing requirements are mandated in the American Rescue Plan Act.

E. Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must have a DUNS/UEI number, which can be obtained at no cost via a toll-free request line at (866) 705–5711 or online at *http://fedgov.dnb.com/webform.* All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

F. Non-Discrimination Statement

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

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

TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

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

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

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

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

Chadwick Parker,

Acting Administrator, Rural Housing Service.

[FR Doc. 2021–17199 Filed 8–11–21; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of 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 that the Washington Advisory Committee (Committee) will hold a series of meetings via web teleconference on the dates and times listed below for the purpose of reviewing the latest draft of their report on police use of force and barriers to accountability.

DATES: These meetings will be held on:

- Wednesday, September 8, 2021, from 1:30 p.m.–3:00 p.m. Pacific Time
- Tuesday, September 28, 2021, from 12:00 p.m.–1:30 p.m. Pacific Time
- Wednesday, October 13, 2021, from 2:00 p.m.–3:30 p.m. Pacific Time
- Tuesday, November 2, 2021, from 1:30 p.m.–3:00 p.m. Pacific Time
- Wednesday, December 1, 2021, from 1:30 p.m.–3:00 p.m. Pacific Time
- Tuesday, December 14, 2021, from 12:00 1:30 p.m. Pacific Time

September 8th PUBLIC WEBEX REGISTRATION LINK: *https://tinyurl.com/4c6xw35m*
September 28th PUBLIC WEBEX REGISTRATION LINK: *https://tinyurl.com/93ccfkc9*
October 13th PUBLIC WEBEX REGISTRATION LINK: *https://tinyurl.com/2yhy6d37*
November 2nd PUBLIC WEBEX REGISTRATION LINK: *https://tinyurl.com/yesrus3h*
December 1st PUBLIC WEBEX REGISTRATION LINK: *https://tinyurl.com/37axray6*
December 14th PUBLIC WEBEX REGISTRATION LINK: *https://tinyurl.com/yjj5whrf*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public WebEx registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. 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. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701–1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Discussion of Report Draft
IV. Public Comment
V. Adjournment

Dated: August 9, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–17270 Filed 8–11–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Maryland Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a briefing of the Maryland Advisory Committee to the Commission will convene by WebEx virtual platform and conference call at 12:00 p.m. (ET) on Monday, September 13, 2021. The purpose of the meeting is continue planning on the water affordability project.

DATES: Monday, September 13, 2021; 12:00 p.m. (ET)

Public Web Conference Link (video and audio): Link: *https://bit.ly/3kFNC9A;* password, if needed: USCCR–MD

If Phone Only: 1–800–360–9505; Access code: 199 638 6973#

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–381–8915.

SUPPLEMENTARY INFORMATION: The meeting is available to the public through the web link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with conference details found through registering at the web link above. To request additional accommodations, please email *bdelaviez@usccr.gov* at least 7 days prior to the meeting.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be emailed to Barbara Delaviez at *ero@usccr.gov.* Persons who desire additional information may contact Barbara Delaviez at 202–539–8246.

Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number or email address.

Agenda: Monday, September 13, 2021; 12:00 p.m. (ET)

- Rollcall
- Project Planning
- Next Steps and Other Business
- Open Comment
- Adjournment

Dated: August 9, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–17276 Filed 8–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–57–2021]

Foreign-Trade Zone (FTZ) 75—Phoenix, Arizona; Notification of Proposed Production Activity VIAVI Solutions, Inc. (Optically Variable Pigments); Chandler, Arizona

VIAVI Solutions, Inc. (VIAVI) submitted a notification of proposed production activity to the FTZ Board for its facility in Chandler, Arizona. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on July 29, 2021.

A separate application has been submitted for FTZ designation at the company's facility under FTZ 75. The facility is used for the production of optically variable pigments. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt VIAVI from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, VIAVI would be able to choose the duty rate during customs entry procedures that applies to optically variable pigments and optically variable magnetic pigments (duty rate 3.1%). VIAVI would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad may include: 15% virgin magnesium fluoride; magnesium fluoride condensate; magnesium fluoride with aluminum; aluminum wire; aluminum granules; chrome granules; stainless wire; polyethylene terephthalate film; optically variable pigments; and, optically variable magnetic pigments (duty rate ranges from duty-free to 5%). The request indicates that polyethylene terephthalate film is subject to an antidumping/countervailing duty (AD/CVD) order if imported from China. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign (PF) status (19 CFR 146.41). The request also indicates that certain materials/components are subject to duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in PF status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is September 21, 2021.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: August 6, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–17248 Filed 8–11–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2116]

Reorganization of Foreign-Trade Zone 158 (Expansion of Service Area); Under Alternative Site Framework; Vicksburg/Jackson, Mississippi

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Greater Mississippi Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 158, submitted an application to the Board (FTZ Docket B–18–2021, docketed March 9, 2021) for authority to expand the service area of the zone to include Grenada and Panola Counties, Mississippi, as described in the application, adjacent to the Memphis (Tennessee) Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (86 FR 14307, March 15, 2021) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 158 to expand the service area under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Dated: August 6, 2021.

Christian B. Marsh,

Acting Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2021–17247 Filed 8–11–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB297]

Fisheries of the Gulf of Mexico and the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of the SEDAR 68 Review Workshop for Gulf of Mexico and Atlantic scamp grouper.

SUMMARY: The SEDAR 68 assessment process of Gulf of Mexico and Atlantic scamp grouper will consist of a Data Workshop, a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 68 Review Workshop will be held via webinar on August 30 and 31, 2021, from 9 a.m. until 5 p.m. EDT, and September 1, 2, and 3, 2021, from 10 a.m. until 4 p.m. EDT. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES: The SEDAR 68 Review Workshop will be held via webinar. The meeting will be open to the public. Registration is available online at: *https://attendee.gotowebinar.com/register/3422055535739637263.*

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three step process including: (1) Data Workshop; (2) Assessment Process utilizing workshops and webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Review Workshop agenda are as follows:

The Review Panel participants will review the stock assessment reports to determine if they are scientifically sound.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 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: August 9, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–17272 Filed 8–11–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB275]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) will convene a webinar meeting of its Groundfish Management Team (GMT) to discuss items on the Pacific Council's September 2021 meeting agenda. This meeting is open to the public.

DATES: The online meeting will be held on Tuesday, August 31 from 1:00 p.m. to 4:00 p.m. Pacific Daylight Time. The scheduled ending time for this GMT meeting is an estimate, the meeting will adjourn when business for the day is completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Todd Phillips, (*todd.phillips@noaa.gov*), Staff Officer, Pacific Council; telephone: (503) 820–2426.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT webinar is to prepare for the Pacific Council's September 2021 agenda items. The GMT will discuss o groundfish management and administrative Pacific Council agenda items. A detailed agenda for the webinar will be available on the Pacific

Council's website prior to the meeting. The GMT may also address other assignments relating to groundfish management. While the GMT may discuss recommendations to the Council, no management actions will be decided by the GMT.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 business days prior to the meeting date.

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

Dated: August 9, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–17271 Filed 8–11–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB315]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) ad hoc Marine Planning Committee will hold an online meeting. This meeting is open to the public.

DATES: The online meeting will be held Wednesday, September 1, 2021, 9 a.m. to 4 p.m., or until business for the day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer, Pacific Council; telephone: (503) 820–2409; email: *Kerry.griffin@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Pacific Council's ad hoc Marine Planning Committee (MPC) will consider information related to the United States Bureau of Ocean Energy Management's (BOEM) planning process for future offshore wind energy leases off the U.S. West Coast. Specifically, the MPC will consider a BOEM request for comment related to two areas off California: The Morro Bay 399 area and the Humboldt Bay Wind Energy Area. The MPC may also consider pending wind energy Call Areas off the Oregon Coast, other wind energy activities, or other related marine planning matters such as offshore aquaculture. The MPC may develop comments and recommendations to the Pacific Council for consideration at its September 2021 meeting. The MPC may also address administrative matters such as electing officers.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: August 9, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–17275 Filed 8–11–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB311]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Mackerel, Squid, and Butterfish Advisory Panel will hold a public webinar meeting.

DATES: The meeting will be held on Wednesday, September 1, 2021, from 2:30 p.m. until 4:30 p.m.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to *https://www.mafmc.org/council-events.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's Mackerel, Squid, and Butterfish Advisory Panel will meet via webinar to discuss recent performance of the Atlantic chub mackerel fisheries and develop a Fishery Performance Report. This report will be considered by the Scientific and Statistical Committee, the Monitoring Committee, and the Mid-Atlantic Fishery Management Council when reviewing 2022 catch and landings limits and management measures for chub mackerel. These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Kimbel-Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: August 9, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–17273 Filed 8–11–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB314]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Science and Statistical Committee (SSC) of the Mid-Atlantic Fishery Management Council (Council) will hold a meeting.

DATES: The meeting will be held on Tuesday, September 7, 2021, starting at 9 a.m. and continue through 1 p.m. on Wednesday, September 8, 2021. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar using the Webex platform with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: *http://www.mafmc.org/ssc.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to make multi-year acceptable biological catch (ABC) recommendations for Atlantic Mackerel based on the results of the recently completed management track stock assessment. The SSC will recommend 2022–23 ABC specifications for Atlantic Mackerel rebuilding alternatives identified by the Council. The SSC will also review the most recent survey and fishery data and the previously recommended 2022 ABC for Spiny Dogfish and Chub Mackerel. The SSC will discuss recent research that evaluates the monitoring and science implications and fishery interactions associated with offshore wind development. The SSC will review and provide comment on the following documents: A draft exempted fishing permit (EFP) application for thread herring, and the NMFS National Standard 1 Technical Guidance document on data-limited annual catch limits (ACLs). The SSC will also receive updates from the SSC economic work group, the SSC ecosystem work group, and future stock assessment schedules. In addition, the SSC may take up any other business as necessary.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: August 9, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–17274 Filed 8–11–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Impact Aid Discretionary Construction Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2021 for the Impact Aid Discretionary Construction Grant Program, Assistance Listing Number 84.041C. This notice relates to the approved information collection under OMB control number 1810–0657.

DATES:

Applications Available: August 12, 2021.

Date of Pre-Application Webinar: The Department will hold a pre-application meeting via webinar for prospective applicants on August 19, 2021.

Deadline for Transmittal of Applications: September 13, 2021.

Deadline for Intergovernmental Review: November 10, 2021.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Jacqueline Edwards, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW, Room 3C121, Washington, DC 20202–6244. Telephone: 202–260–3858. Email: *Jacqueline.Edwards@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Impact Aid Discretionary Construction Grant Program provides grants for emergency repairs and modernization of school facilities to certain local educational agencies (LEAs) that receive Impact Aid formula funds.

Background: The Impact Aid Discretionary Construction Program provides grants to eligible Impact Aid school districts to assist in addressing their school facility emergency and modernization needs. The eligible Impact Aid school districts have a limited ability to raise revenues for capital improvements because they have large areas of Federal land within their boundaries. As a result, these districts find it difficult to respond when their school facilities are in need of emergency repairs.

The Department recognizes that students, and the school districts that support them, need safe facilities to learn and to prevent the spread of COVID–19 and mitigate its impact. School facility emergencies that are consistent with 34 CFR 222.172(a) and 222.173 may be proposed. Funded Impact Aid emergency repair grants will be used to repair, renovate, or alter a public elementary or secondary school facility to ensure the health, safety, and well-being of students and school personnel.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii) and (iv), this priority is from section 7007(b)(2)(A) of the Elementary and Secondary Education Act of 1965, as amended (Act) (20 U.S.C. 7707(b)), and the regulations for this program in 34 CFR 222.177.

Absolute Priority: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority and otherwise follow the applicable funding provisions in 34 CFR 222.189.

This priority is:

Emergency Repair Grants.

An LEA is eligible to be considered for an emergency grant under this priority if it—

(a) Is eligible to receive formula construction funds for the fiscal year under section 7007(a) of the Act (20 U.S.C. 7707(a));

(b)(1) Has no practical capacity to issue bonds;

(2) Has minimal capacity to issue bonds and has used at least 75 percent of its bond limit; or

(3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 7003(b)(2) of the Act (20 U.S.C. 7707(b)(2)); and

(c) Has a school facility emergency that the Secretary has determined, consistent with 34 CFR 222.172(a) and 222.173, poses a health or safety hazard to students and school personnel.

Program Authority: 20 U.S.C. 7707(b).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for 34 CFR 75.600 through 75.617), 77, 79, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 222.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $17,400,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $60,000–$6,000,000.

Estimated Average Size of Awards: $2,175,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months. We will determine each project period based on the nature of the project proposed and the time needed to complete it. We will specify this period in the Grant Award Notification (GAN).

III. Eligibility Information

1. *Eligible Applicants:* An LEA is eligible to apply for an emergency grant under the absolute priority if it—

(a) Is eligible to receive formula construction funds for the fiscal year under section 7007(a) of the Act (20 U.S.C. 7707(a)) because it enrolls a high percentage (at least 50 percent) of federally connected children in average daily attendance (ADA) who either reside on Indian lands or who have a parent on active duty in the U.S. uniformed services;

(b)(1) Has no practical capacity to issue bonds (as defined in 34 CFR 222.176);

(2) Has minimal capacity to issue bonds (as defined in 34 CFR 222.176) and has used at least 75 percent of its bond limit; or

(3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 7003(b)(2) of the Act (20 U.S.C. 7703(b)(2)); and

(c) Has a school facility emergency that the Secretary has determined, consistent with 34 CFR 222.172(a) and 222.173, poses a health or safety hazard to students and school personnel.

2. a. *Cost Sharing or Matching:* In reviewing proposed awards, the Secretary considers the funds available to the grantee from other sources, including local, State, and other Federal funds. See 20 U.S.C. 7707(b)(5)(A)(iii) and 34 CFR 222.174 and 222.191 through 222.193. Consistent with 34 CFR 222.192, an applicant will be required to submit its most recently available audited financial reports for three consecutive fiscal years, showing closing balances for all school funds. If significant balances (as detailed in 34 CFR 222.192) are available at the close of the applicant's FY 2020, or its most recently audited year, that are not obligated for other purposes, those funds will be considered available for the proposed emergency repair project. Available balances may reduce the amount of funds that may be awarded or eliminate the applicant's eligibility for an emergency grant award under this competition.

b. *Supplement-Not-Supplant:* This competition involves supplement-not-supplant funding requirements. As outlined in 34 CFR 222.174, grant funds under this competition may not be used to supplant or replace other available non-Federal construction money.

c. *Administrative Cost Limitation:*

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements on how to submit an application.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* Except for applicants with no practical capacity to issue bonds, as defined in 34 CFR 222.176, an eligible applicant's award amount may not be more than 50 percent of the total cost of an approved project and the total amount of grant funds may not exceed $4 million during any four-year period. See 34 CFR 222.193. For example, an LEA that is awarded $4 million in the first year may not receive any additional funds for the following three years. Applicants may submit only one application for one educational facility as provided by 34 CFR 222.183. If an applicant submits more than one application, the Department will consider only the first submission, as determined by the *Grants.gov* system, unless an applicant contacts the Department prior to the closing date to indicate a different submission should be the single submission considered for that entity. Grant recipients must, in accordance with Federal, State, and local laws, use emergency grants for permissible construction activities at public elementary and secondary school facilities. The scope of the project for a selected facility will be identified as part of the final grant award conditions. A grantee must also ensure that its construction expenditures under this program meet the requirements of 34 CFR 222.172 (allowable program activities) and 34 CFR 222.173 (prohibited activities).

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

V. Application Review Information

1. *Selection Criteria:* Consistent with 34 CFR 75.209, the selection criteria for this competition are from the applicable statutory and regulatory provisions as indicated after each criterion. The maximum score for each criterion is indicated in parentheses. Within each criterion, the Secretary evaluates each factor equally, unless otherwise specified. The maximum score that an application may receive is 100 points.

(a) Severity of the school facility problem to be addressed by the proposed project (34 CFR 222.189(a)(1)) (Up to 30 points).

(i) Justification that the proposed emergency project will address a deficiency that poses a health or safety hazard to occupants of the facility, and consistency of the emergency description and the proposed project with the certifying local official's statement (34 CFR 222.185(a) and (c)) (Up to 15 points).

(ii) Impact of the emergency condition on the health and safety of the building occupants and how free public education program delivery in the instructional school facility is adversely affected (34 CFR 222.172, 222.173, 222.176, and 222.185(b)). Applicants should describe: the systems or areas of the facility involved (*e.g.,* HVAC, roof, floor, windows; the type of space affected, such as instructional, resource, food service, recreational, general support, or other areas); the percentage of building occupants affected by the emergency; and the importance of the facility or affected area to the instructional program (Up to 15 points).

(b) Project urgency (Up to 28 points).

(i) Risk to occupants if the facility condition is not addressed (34 CFR 222.176, definition of ''emergency''). Applicants should describe: projected increased future costs; the anticipated effect of the proposed project on the useful life of the facility or the need for major construction; and the age and condition of the facility and date of last renovation of affected areas (Up to 14 points).

(ii) The justification for rebuilding, if proposed (34 CFR 222.172(c)) (Up to 14 points).

(c) Effects of Federal presence (section 7007(b)(4)(B) and (C) and 34 CFR 222.184(b)) (Up to 30 points).

(i) Amount of non-taxable Federal property in the applicant LEA (percentage of Federal property divided by 10) (Up to 10 points).

(ii) The number of federally connected children identified in section 7003(a)(1)(A), (B), (C), and (D) of the Act in the LEA (percentage of identified children in LEA divided by 10) (Up to 10 points).

(iii) The number of federally connected children identified in section 7003(a)(1)(A), (B), (C), and (D) of the Act in the school facility (percentage of identified children in school facility divided by 10) (Up to 10 points).

(d) Ability to respond or pay (section 7007(b)(4)(A)) (Up to 12 points).

(i) The percentage of its bonding capacity used by the LEA. Four points will be distributed based on this percentage such that: four points will be given to an LEA that has used 75 percent or more of its bonding capacity; three points will be given to an LEA that has used 50 percent to 74 percent of its bonding capacity; two points will be given to an LEA that has used 25 percent to 49 percent of its bonding capacity; and one point will be given to an LEA that has used less than 25 percent of its bond limit. LEAs that do not have limits on bonded indebtedness established by their States will be evaluated by assuming that their bond limit is 10 percent of the assessed value of real property in the LEA. LEAs deemed to have no practical capacity to issue bonds will receive all four points (Up to 4 points).

(ii) Assessed value of real property per student (applicant LEA's total assessed valuation of real property per pupil as a percentile ranking of all LEAs in the State). Points will be distributed by providing all four points to LEAs in the State's poorest quartile and only one point to LEAs in the State's wealthiest quartile (Up to 4 points).

(iii) Total tax rate for capital or school purposes (applicant LEA's tax rate for capital or school purposes as a percentile ranking of all LEAs in the State). If the State authorizes a tax rate for capital expenditures, then these data must be used; otherwise, data on the total tax rate for school purposes are used. Points will be distributed by providing all four points to LEAs in the State's highest-taxing quartile and only one point to LEAs in the State's lowest-taxing quartile (Up to 4 points).

2. *Review and Selection Process:* (a) We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

(b) Upon receipt, Impact Aid program staff will screen all applications to eliminate any applications that do not meet the eligibility standards, are incomplete, or are late. Applications that do not include a signed independent emergency certification on the application deadline are considered incomplete and will not be considered for funding. Program staff will also calculate the scores for each application under criteria (c) and (d). Panel reviewers will assess the applications under criteria (a) and (b).

(c) Applications are ranked based on the total number of points received during the review process. Those with the highest scores will be at the top of the funding slate.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative

agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a GAN; or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Department has established the following performance measure for this program: an increasing percentage of LEAs receiving Impact Aid Construction funds will report that the overall condition of their school buildings is adequate. Data for this measure will be reported to the Department on the application for Impact Aid Section 7003 Basic Support Payments.

6. *Feasibility Study:* For applicants that request funding for new construction and that are selected for funding, the Department will require a feasibility of construction study prior to making an award determination. This independent third-party study must demonstrate that the chosen construction site is viable and the infrastructure will be able to sustain the new facility or addition.

7. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requester 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.

Ian Rosenblum,

Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2021–17202 Filed 8–11–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–40–007]

Spire STL Pipeline LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on July 26, 2021, Spire STL Pipeline, LLC (Spire), 700 Market Street, St. Louis, Missouri 63101, filed an application under section 7(c)(1)(B) of the Natural Gas Act (NGA),[1] and Part 157 of the Commission's regulations [2] requesting that the Commission issue a temporary certificate of public convenience and necessity for the Spire STL Pipeline Project (STL Pipeline) [3] to assure maintenance of service to Spire's customers while the Commission addresses the issues on remand from the U.S. Court of Appeals for the District of Columbia Circuit's June 22, 2021 decision in *Environmental Defense Fund* v. *FERC*.[4] In the alternative, Spire requests that the Commission issue a limited-term certificate, extending through the remand proceedings.

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://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.

Any questions regarding the proposed project should be directed to Sean P. Jamieson, General Counsel, Spire STL Pipeline LLC, 3773 Richmond Ave., Suite 300, Houston, Texas 77046 or by phone at (346) 308–7555 or email at *Sean.Jamieson@SpireEnergy.com.*

Public Participation

There are two ways to become involved in the Commission's review of this application: You can file comments on Spire's application, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on September 7, 2021.

Comments

Any person wishing to comment on Spire's application may do so. Comments may include statements of support or objections to the application. You are also encouraged to review the data request issued by the Commission in this proceeding on August 6, 2020, and include in your filing any comments responding to the questions raised in the data request.[5] The deadline for submitting initial comments is September 7, 2021, with reply comments due by October 5, 2021.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP17–40–007) in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below. Your written comments must reference the Project docket number (CP17–40–007).

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[6] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [7] and the regulations under the NGA [8] by the intervention deadline for the project, which is September 7, 2021. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp*.

There are two ways to submit your motion to intervene. In both instances,

[1] 15 U.S.C. 717f(c)(1)(B) (2018).

[2] 18 CFR 157.17 (2020).

[3] *Spire STL Pipeline LLC,* 164 FERC ¶ 61,085 (2018) (Certificate Order), *order amending certificate,* 169 FERC ¶ 61,074, *order on reh'g,* 169 FERC ¶ 61,134 (2019) (Rehearing Order).

[4] *Environmental Defense Fund* v. *FERC,* 2 F.4th 953 (D.C. Cir. 2021).

[5] This document is available on eLibrary under the following accession number: 20210806–3036. To view this document visit: *https://elibrary.ferc.gov/eLibrary/filedownload?fileid=15841891.*

[6] 18 CFR 385.102(d).

[7] 18 CFR 385.214.

[8] 18 CFR 157.10.

please reference the project docket number (CP17–40–007) in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the project docket number (CP17–40–007).

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: 3773 Richmond Ave., Suite 300, Houston, Texas 77046 or at *Sean.Jamieson@SpireEnergy.com.*

Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [9] motions to intervene are automatically granted by operation of Rule 214(c)(1).[10] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[11]

[9] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[10] 18 CFR 385.214(c)(1).

[11] 18 CFR 385.214(b)(3),(d).

A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on September 7, 2021.

Dated: August 6, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–17208 Filed 8–11–21; 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:

Docket Numbers: RP21–980–001.

Applicants: Whiting Oil and Gas Corporation, Fundare Resources Operating Company, LLC.

Description: Supplement to Joint Petition For Temporary Waiver, et al. of Whiting Oil and Gas Corporation, et al.

Filed Date: 8/5/21.

Accession Number: 20210805–5153.

Comments Due: 5 p.m. ET 8/12/21.

Docket Numbers: RP21–1018–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: § 4(d) Rate Filing: Remove GT&C Section 26 Reservation Surcharge to be effective 9/4/2021.

Filed Date: 8/4/21.

Accession Number: 20210804–5014.

Comments Due: 5 p.m. ET 8/16/21.

Docket Numbers: RP21–1019–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Remove Expired Agmts eff 8–5–2021 to be effective 8/5/2021.

Filed Date: 8/5/21.

Accession Number: 20210805–5029.

Comments Due: 5 p.m. ET 8/17/21.

Docket Numbers: RP21–1020–000.

Applicants: Alliance Pipeline L.P.

Description: § 4(d) Rate Filing: Sheet No. 206 Clean Up Filing to be effective 7/23/2021.

Filed Date: 8/5/21.

Accession Number: 20210805–5073.

Comments Due: 5 p.m. ET 8/17/21.

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 or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) 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.

Dated: August 6, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–17210 Filed 8–11–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21–11–000]

Reliability Technical Conference; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued in this proceeding on March 5, 2021, the Federal Energy Regulatory Commission (Commission) will convene its annual Commissioner-led Reliability Technical Conference on Thursday, September 30, 2021 from approximately 8:30 a.m. to 5:00 p.m. Eastern time. The purpose of this conference is to discuss policy issues related to the reliability of the

Bulk-Power System. The conference will be held virtually via WebEx.

The final agenda for this event is attached. The conference will be open for the public to attend virtually, and there is no fee for attendance. A second supplemental notice will be issued prior to the conference with the confirmed speakers. Information on the technical conference will also be posted on the Calendar of Events on the Commission's website, *http://www.ferc.gov,* prior to the event. The conference will be transcribed. Transcripts of the conference will be available for a fee from Ace-Federal Reporters, Inc. (202–347–3700).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact Lodie White at *Lodie.White@ferc.gov* or (202) 502–8453. For information related to logistics, please contact Sarah McKinley at *Sarah.Mckinley@ferc.gov* or (202) 502–8368.

Dated: August 6, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–17241 Filed 8–11–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21–111–000.

Applicants: Broad River Solar, LLC, Stony Knoll Solar, LLC, Speedway Solar NC, LLC, CPRE 1 Lessee, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Broad River Solar, LLC.

Filed Date: 8/5/21.

Accession Number: 20210805–5156.

Comments Due: 5 p.m. ET 8/26/21.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–208–000.

Applicants: Arlington Solar, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Arlington Solar, LLC.

Filed Date: 7/26/21.

Accession Number: 20210726–5240.

Comments Due: 5 p.m. ET 8/16/21.

Docket Numbers: EG21–209–000.

Applicants: American Electric Power Service Corporation.

Description: Self-Certification of Exempt Wholesale Generator Status of Martinsville OnSite Generation, LLC.

Filed Date: 7/29/21.

Accession Number: 20210729–5151.

Comments Due: 5 p.m. ET 8/19/21.

Docket Numbers: EG21–210–000.

Applicants: American Electric Power Service Corporation.

Description: Self-Certification of Exempt Wholesale Generator of South River OnSite Generation, LLC.

Filed Date: 7/29/21.

Accession Number: 20210729–5153.

Comments Due: 5 p.m. ET 8/19/21.

Docket Numbers: EG21–211–000.

Applicants: Ford County Wind Farm LLC.

Description: Notice of Sel-Certification of Exempt Wholesale Generator Status of Ford County Wind Farm LLC.

Filed Date: 8/6/21.

Accession Number: 20210806–5174.

Comments Due: 5 p.m. ET 8/27/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–106–004; ER14–2498–011; ER14–2500–011.

ER16–2462–011; ER17–2364–005; ER21–445–001.

Applicants: Birdsboro Power LLC, St. Joseph Energy Center, LLC, Oregon Clean Energy, LLC, Newark Energy Center, LLC, EIF Newark, LLC, Hill Top Energy Center LLC.

Description: Notice of Non-Material Change in Status of Birdsboro Power LLC.

Filed Date: 8/5/21.

Accession Number: 20210805–5155.

Comments Due: 5 p.m. ET 8/26/21.

Docket Numbers: ER21–1805–002.

Applicants: Upper Missouri G. & T. Electric Cooperative.

Description: Tariff Amendment: Supplement to Response to Deficiency Letter (Revised Rate Schedules 1,2,3,5,11) to be effective 6/30/2021.

Filed Date: 8/6/21.

Accession Number: 20210806–5193.

Comments Due: 5 p.m. ET 8/27/21.

Docket Numbers: ER20–1829–001.

Applicants: Trans-Allegheny Interstate Line Company, PJM Interconnection, L.L.C.

Description: Compliance filing: TrAILCo submits Response to 7/12 Deficiency Letter in ER20–1829 to be effective N/A.

Filed Date: 8/6/21.

Accession Number: 20210806–5023.

Comments Due: 5 p.m. ET 8/27/21.

Docket Numbers: ER21–1875–001.

Applicants: Arizona Public Service Company.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 7/10/2021.

Filed Date: 8/6/21.

Accession Number: 20210806–5001.

Comments Due: 5 p.m. ET 8/27/21.

Docket Numbers: ER21–2619–000.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: 3293R2 Thunderhead Wind Energy GIA & Settlement Agreement to be effective 8/4/2021.

Filed Date: 8/6/21.

Accession Number: 20210806–5051.

Comments Due: 5 p.m. ET 8/27/21

Docket Numbers: ER21–2620–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021–08–06_Hybrid Resource Accreditation to be effective 10/6/2021.

Filed Date: 8/6/21.

Accession Number: 20210806–5068.

Comments Due: 5 p.m. ET 8/27/21.

Docket Numbers: ER21–2621–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: OATT Revisions re External Resources as NWE EIM Participating Resource to be effective 10/6/2021.

Filed Date: 8/6/21.

Accession Number: 20210806–5093.

Comments Due: 5 p.m. ET 8/27/21.

Docket Numbers: ER21–2622–000.

Applicants: RE Garland LLC.

Description: § 205(d) Rate Filing: Garland Storage Shared Facilities Agreement Amendment Filing to be effective 7/20/2021.

Filed Date: 8/6/21.

Accession Number: 20210806–5120.

Comments Due: 5 p.m. ET 8/27/21.

Docket Numbers: ER21–2623–000.

Applicants: Puget Sound Energy, Inc.

Description: Tariff Cancellation: Cancellation of MSCG Agreements to be effective 10/6/2021.

Filed Date: 8/6/21.

Accession Number: 20210806–5143.

Comments Due: 5 p.m. ET 8/27/21.

Docket Numbers: ER21–2624–000.

Applicants: Puget Sound Energy, Inc.

Description: § 205(d) Rate Filing: MSCG Transmission Service Agreement to be effective 8/6/2021.

Filed Date: 8/6/21.

Accession Number: 20210806–5144.

Comments Due: 5 p.m. ET 8/27/21.

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 or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) 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.

Dated: August 6, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–17209 Filed 8–11–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3133–033]

Brookfield White Pine Hydro, LLC; Errol Hydro Co., LLC; Notice of Application Tendered for Filing With The Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

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.: 3133–033.

c. *Date Filed:* July 30, 2021.

d. *Applicant:* Brookfield White Pine Hydro, LLC and Errol Hydroelectric Co., LLC (licensees).

e. *Name of Project:* Errol Hydroelectric Project (Errol Project).

f. *Location:* The Errol Project is located on the Androscoggin River and Umbagog Lake, near the Town of Errol, and Township of Cambridge, NH, in Coos Wing County, New Hampshire and the Towns of Magalloway Plantation and Upton in Oxford County, Maine. The project occupies 3,285 acres federal land in the Umbagog National Wildlife Refuge administered by the U.S. Fish and Wildlife Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Tom Uncher, Vice President, Brookfield White Pine Hydro, LLC, Errol Hydroelectric Co., LLC, 339B Big Bay Rd., Queensbury, NY 12804 Phone at: (518) 743–2018 *Thomas.Uncher@brookfieldrenewable.com.*

i. *FERC Contact:* Kelly Wolcott at (202) 502–6480 or email at *kelly.wolcott@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *The Errol Project consists of:* (1) An existing dam consisting of a 25-foot-high, 202.5- foot-long gated section separated by rock-filled timber or concrete crib piers supporting five sluice gates and seven deep gates, and an earthen dike with a sheet steel cut-off wall on the upstream side, extending approximately 50 feet from the end of the gated section of the dam to the northwestern wall of the powerhouse and then extending another approximately 70 feet from the southeastern powerhouse wall to the eastern embankment; (2) an approximately 9,098-acre project impoundment with a storage capacity of 89,568 acre-feet at a normal pond elevation of 1,247 feet, which includes an approximately 3-mile-long reach of the Androscoggin River above Errol Dam, Umbagog Lake, and approximately 4.3 miles of the Magalloway River; (3) a reinforced concrete powerhouse containing one horizontal double regulated bulb turbine-generator unit with a hydraulic capacity of 2,600 cubic feet per second and an authorized installed generating capacity of 2,031 kilowatts (kW); (4) an approximately 80-foot-long tailrace; (5) a 3,333-kilovolt-ampere substation power transformer; and (6) appurtenant facilities.

The Errol Project is operated in accordance with the current license, and three water agreements that dictate operational flows in the watershed for other hydropower developments and for waterfowl nesting, with an estimated annual energy production of approximately 15,944 megawatt hours. The licensees propose to operate the project allowing for seasonal flows necessary for waterfowl nesting in Umbagog Lake and spring runoff and does not propose any new construction to the project. A license amendment was issued for the project in 2016 (156 FERC ¶ 62,045 (2016)), which approved the installation of a sixth turbine generator unit, which would increase the total installed capacity to 3,542.5 kW; however, the additional generator unit has not yet been installed.

l. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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 on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

m. 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, contact FERC Online Support.

n. *Procedural schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary).	September 2021.
Request Additional Information.	September 2021.
Notice of Acceptance December.	2021.
Notice of Ready for Environmental Analysis TBD.	

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: August 6, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–17240 Filed 8–11–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8819–01–R6]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for BP Amoco Chemical Company, Texas City Chemical Plant, Galveston County, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on Petition for objection to Clean Air Act Title V operating permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated July 20, 2021, granting in part and denying in part a Petition dated April 4, 2017 from the Environmental Integrity Project and Sierra Club. The Petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit issued by the Texas Commission on Environmental Quality (TCEQ) to BP Amoco Chemical Company (BP Amoco) for its Texas City Chemical Plant located in Galveston County, Texas.

ADDRESSES: The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, the Petition, and other supporting information. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office is currently closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed below if you need alternative access to the final Order and Petition, which are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database*.

FOR FURTHER INFORMATION CONTACT: Aimee Wilson, EPA Region 6 Office, Air Permits Section, (214) 665–7596, *wilson.aimee@epa.gov*.

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issue arose after this period.

The EPA received the Petition from the Environmental Integrity Project and Sierra Club dated April 4, 2017, requesting that the EPA object to the issuance of operating permit no. O1513, issued by TCEQ to the Texas City Chemical Plant in Galveston County, Texas. The Petition claims the proposed permit failed to establish a compliance schedule for BP Amoco to obtain a federally approved major source permit, failed to assure compliance with emission limits and operating requirements established by BP Amoco's New Source Review (NSR) permits, and failed to incorporate permits by rule (PBR) to assure compliance with applicable requirements.

On July 20, 2021, the EPA Administrator issued an Order granting in part and denying in part the Petition. The Order explains the basis for EPA's decision.

Dated: August 5, 2021.

David Garcia,

Director, Air and Radiation Division, Region 6.

[FR Doc. 2021–17231 Filed 8–11–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8772–01–R9]

Public Water System Supervision Program Revision for the State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Hawaii (State) revised its Public Water System Supervision (PWSS) Program under the federal Safe Drinking Water Act (SDWA) by adopting regulations to implement the federal Radionuclides Rule. The Environmental Protection Agency (EPA) has determined that the State's revisions are no less stringent than the corresponding Federal regulations and otherwise meet applicable SDWA primacy requirements. Therefore, EPA intends to approve the stated revisions as part of the State's PWSS Program.

DATES: A request for a public hearing must be received or postmarked before September 13, 2021.

ADDRESSES: All documents relating to this determination are available for inspection online at *http://health.hawaii.gov/sdwb/public-notices/*. In addition, documents relating to this determination are available between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except official State holidays, at the following address: Hawaii Department of Health, Safe Drinking Water Branch, 2385 Waimano Home Road, Uluakupu Building 4, Pearl City, Hawaii 96782.

FOR FURTHER INFORMATION CONTACT: Anna Yen, United States Environmental Protection Agency, Region 9, Drinking Water Section, via telephone number: (415) 972–3976 or email address: *yen.anna@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background. EPA approved the State's initial application for PWSS Program primary enforcement authority (''primacy'') on October 20, 1977 (42 FR 47244). Since initial approval, EPA has approved various revisions to Hawaii's PWSS Program. For the revisions covered by this action, the EPA revised the Radionuclides Rule on December 7, 2000 (66 FR 76708), which had been in effect since 1977. The revisions set new monitoring provisions for community water systems; retain the existing maximum contaminant levels (MCLs) for combined radium-226 and radium-228, gross alpha particle radioactivity, and beta particle and photon activity; and regulate uranium for the first time. EPA has determined that the Radionuclides Rule was adopted verbatim into the Hawaii Administrative Rules (HAR), Title 11, Chapter 20, in a manner that Hawaii's regulations are comparable to and no less stringent than federal requirements. EPA has also determined that the State's primacy revision application meets all of the regulatory requirements for approval, as set forth in 40 CFR 142.12, including a side-by-side comparison of the Federal requirements and the corresponding State authorities, additional materials to support special primacy requirements of 40 CFR 142.16, and a statement by the Hawaii Attorney General certifying that Hawaii's laws and regulations to carry out the program revisions were duly adopted and are enforceable. Therefore, EPA is tentatively approving the State's revisions as part of Hawaii's PWSS Program.

Public Process. Any interested party may request a public hearing on this determination. A request for a public hearing must be received or postmarked before September 13, 2021, and addressed to the Regional Administrator at the EPA Region 9, via the following email address: *R9dw-program@epa.gov.* Please note, ''State Primacy Rule Determination'' in the subject line of the email. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. If a substantial request for a public hearing is made before September 13, 2021, EPA Region 9 will hold a public hearing. Any request for a public hearing shall include the following information: 1. The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; 2. A brief statement of the requesting person's interest in the Regional Administrator's

determination and a brief statement of the information that the requesting person intends to submit at such hearing; and 3. The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If EPA Region 9 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective on September 13, 2021, and no further public notice will be issued.

Authority: Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g–2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: August 5, 2021.

Deborah Jordan,

Acting Regional Administrator, EPA Region 9.

[FR Doc. 2021–17098 Filed 8–11–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0652; FRL–8703–01–OCSPP]

Agency Information Collection Activities; Proposed Renewal of an Existing Collection and Request for Comment; Expanded Access to the Toxic Substances Control Act (TSCA) Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces the availability of and solicits public comment on an Information Collection Request (ICR) that EPA is planning to submit to the Office of Management and Budget (OMB). The ICR, entitled: ''Expanded Access to TSCA Confidential Business Information'' and identified by EPA ICR No. 2570.02 and OMB Control No. 2070–0209, represents the renewal of an existing ICR that is scheduled to expire on March 31, 2022. Before submitting the ICR to OMB for review and approval under the PRA, EPA is soliciting comments on specific aspects of the information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before October 12, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0625, online through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

Please note that due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Jessica Barkas, PMOD (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 250–8880; email address: *barkas.jessica@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. What information is EPA particularly interested in?

Pursuant to the Paperwork Reduction Act (PRA) section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Expanded Access to TSCA Confidential Business Information.

ICR number: EPA ICR No. 2570.02.

OMB control number: OMB Control No. 2070–0209.

ICR status: This ICR is currently scheduled to expire on March 31, 2022. 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 title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The 2016 amendments to the Toxic Substances Control Act (TSCA) in the Frank R. Lautenberg Chemical Safety for the 21st Century Act, expanded the categories of people to whom EPA may disclose TSCA confidential business information (CBI). The amendments authorize EPA to disclose TSCA CBI to state, tribal, and local governments; environmental, health, and medical professionals; and emergency responders, under certain conditions, including consistency with guidance that EPA is required to develop. Three guidance documents have been developed, corresponding to the new authorities in TSCA section 14(d)(4), (5), and (6).

The conditions for access vary under each of the new provisions, but generally include the following: Requesters must show that they have a need for the information related to their employment, professional, or legal duties; recipients of TSCA CBI are prohibited from disclosing or permitting further disclosure of the information to individuals not authorized to receive it (physicians/nurses may disclose the information to their patient); and except in emergency situations EPA must

notify the entity that made the CBI claim at least 15 days prior to disclosing the CBI. In addition, under these new provisions, requesters (except in some emergency situations) are required to sign an agreement and may be required to submit a statement of need to EPA.

In accordance with the requirements of TSCA section 14(c)(4)(B), the guidance documents cover the content and form of the agreements and statements required under each provision, and include information on where and how to submit requests to EPA.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to annual average 14.8 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are mainly government employees (federal, state, local, tribal), as well as medical professionals, such as doctors and nurses. The NAICS code for health care and social assistance is 62.

Respondent's obligation to respond: Voluntary.

Estimated total number of potential respondents: 3.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 2.

Estimated total annual burden hours: 89 hours.

Estimated total annual costs: $5,873.98. This includes an estimated burden cost of $5,873.98 and an estimated cost of $0 for capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is no change in the estimated total annual burden compared with that identified in the ICR currently approved by OMB, but there is an increase in the estimated burden costs and a decrease in the estimated number of total respondents. The change in estimated cost was caused by an increase in the hourly wages and a change in the methodology to calculate loaded wages (wages plus fringe benefits and overhead), and the change in the estimated number of respondents is based on EPA experience. This change is an adjustment.

In addition, this ICR reflects a change in format. OMB has requested that EPA move towards using the 18-question format for ICR Supporting Statements used by other federal agencies and departments and is based on the submission instructions established by OMB in 1995, replacing the alternate format developed by EPA and OMB prior to 1995. The Agency does not believe that this change in format resulted in substantive changes to the information collection activities or related estimated burden and costs.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: July 27, 2021.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2021–17215 Filed 8–11–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0080; FRL–8795–01–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Uses (July 2021)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before September 13, 2021.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the file symbol of the EPA registration number of interest as shown in the body of this document, using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets/about-epa-dockets.*

Due to the public health concerns related to COVID–19, the EPA/DC and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on the EPA/DC and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or

CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

Notice of Receipt—New Uses

EPA Registration Number: 100–739, 100–740, 100–1262, 100–1313, 100–1317, 100–1476, and 100–1602. *Docket ID number:* EPA–HQ–OPP–2021–0191. *Applicant:* Syngenta Crop Protection, LLC 410 Swing Road Greensboro, NC, 27419. *Active ingredient:* Difenoconazole. *Product type:* Fungicide. *Proposed use:* Caneberry Subgroup 13–07A (Foliar), Corn (Foliar), and Peanut (Seed treatment & Foliar). *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 5, 2021.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2021–17188 Filed 8–11–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 18–122; GN Docket No. 21–320; DA 21–957; FRS 42245]

Wireless Telecommunications Bureau Opens a New Docket and Establishes the Process for C-Band Space Station Operator Phase I Certification of Accelerated Relocation

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireless Telecommunications Bureau (WTB or Bureau) prescribes the form by which eligible C-band space station operators should submit Phase I Certifications of Accelerated Relocation (Certifications) and establishes the process by which stakeholders can file related challenges to those Certifications. *Expanding Flexible Use of the 3.7 to 4.2 GHz Band Report and Order,* GN Docket No. 18–122, Report and Order and Order of Proposed Modification, FCC 20–22 (Mar. 3, 2020) (*3.7 GHz Report and Order*), required that, in order to be eligible for an Accelerated Relocation Payment (ARP), an eligible space station operator must file a Certification ''demonstrating, in good faith, that it has completed the necessary clearing actions to satisfy each deadline.'' An eligible space station operator is required to complete its obligations and then file a Certification by the applicable Accelerated Relocation Deadline, which for Phase I is December 5, 2021. Certifications should be filed both in GN Docket No. 18–122 and in GN Docket No. 21–320; stakeholders should file any related challenges in GN Docket No. 21–320.

DATES: Phase I Accelerated Relocation Certifications due December 5, 2021.

ADDRESSES: You may submit Certification, identified by GN Docket No. 18–122 and GN Docket No. 21–320, by any of the following methods:

- *Electronic Filers:* Elections may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/* in docket number GN 18–122 and GN 21–320.
- *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 ST 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*
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

FOR FURTHER INFORMATION CONTACT: Susan Mort, Wireless Telecommunications Bureau, at *Susan.Mort@fcc.gov* or 202–418–2429.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice, *Wireless Telecommunications Bureau Opens A New Docket And Establishes The Process For C-Band Space Station Operator Phase I Certification Of Accelerated Relocation,* GN Docket No. 18–122; GN Docket No. 21–320; DA 21–957 (*Public Notice),* released on August 4, 2021. The complete text of the *Public Notice,* is available on the Commission's website at *https://www.fcc.gov/document/wtb-sets-c-band-phase-i-accelerated-relocation-certification-process* or by using the search function for GN Docket No. 18–122 or GN Docket No. 21–320 on the Commission's ECFS web page at *www.fcc.gov/ecfs.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file elections on or before the date indicated on the first page of this document.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Ex Parte Rules: This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 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 presenters 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 § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the rules 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.

Synopsis: With this Public Notice, the Wireless Telecommunications Bureau (WTB or Bureau) prescribes the form by which eligible C-band space station operators should submit Phase I Certifications of Accelerated Relocation (Certifications) and establishes the process by which stakeholders can file related challenges to those Certifications. The *3.7 GHz Report and Order* required that, in order to be eligible for an Accelerated Relocation Payment (ARP), an eligible space station operator must file a Certification ''demonstrating, in good faith, that it has completed the necessary clearing actions to satisfy each deadline.'' An eligible space station operator is required to complete its obligations and then file a Certification by the applicable Accelerated Relocation Deadline, which for Phase I is December 5, 2021. Certifications should be filed both in GN Docket No. 18–122 and in the new docket the Bureau opens here, GN Docket No. 21–320; stakeholders should file any related challenges in GN Docket No. 21–320.

In the *3.7 GHz Report and Order,* the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use (plus a 20 megahertz guard band) throughout the contiguous United States by transitioning existing services out of the lower portion of the band and into the upper 200 megahertz of the C-band (*i.e.,* 4.0–4.2 GHz). The *3.7 GHz Report and Order* established that new 3.7 GHz Service licensees would reimburse the reasonable, actual relocation costs of eligible FSS space station operators, incumbent FSS earth station operators, and incumbent Fixed Service licensees (collectively, incumbents) to transition out of the band.

The *3.7 GHz Report and Order* established a deadline of December 5, 2025, by which incumbent space station operators were to complete the transition of their operations to the upper 200 megahertz of the band, but it also provided an opportunity for accelerated clearing of the band by allowing eligible space station operators to voluntarily commit to relocate on a two-phased accelerated schedule, with a Phase I deadline of December 5, 2021, and a Phase II deadline of December 5, 2023. All five eligible space station operators elected accelerated relocation. By electing accelerated relocation, the eligible space station operators, among other things, have voluntarily committed to perform all the tasks necessary to enable any incumbent earth station that receives or sends C-band signals to a space station owned by that operator to maintain that functionality in the upper 200 megahertz of the band. The *3.7 GHz Report and Order* stated that ''[t]o the extent eligible space station operators can meet the Phase I and Phase II Accelerated Relocation Deadlines, they will be eligible to receive the accelerated relocation payments associated with those deadlines.'' Once the eligible space station operator's Certification is validated, the ARPs will be disbursed by the Relocation Payment Clearinghouse (Clearinghouse).

The *3.7 GHz Report and Order* specified that an ''eligible space station operator's satisfaction of the Accelerated Relocation Deadlines will be determined by the timely filing of a Certification of Accelerated Relocation demonstrating, in good faith, that it has completed the necessary clearing actions to satisfy each deadline'' and directed WTB to prescribe the form of such Certifications. Further, ''the Bureau, Clearinghouse, and relevant stakeholders will have the opportunity to review the Certification of Accelerated Relocation and identify potential deficiencies.''

The *3.7 GHz Report and Order* also directed that if ''credible challenges as to the space station operator's satisfaction of the relevant deadline are made, the Bureau will issue a public notice identifying such challenges and will render a final decision as to the validity of the certification no later than 60 days from its filing.'' Absent notice from WTB of deficiencies in the Certification within 30 days of its filing, the Certification will be deemed validated. Following validation, the Clearinghouse shall promptly notify overlay licensees, who must pay the ARP to the Clearinghouse within 60 days of the notice. The Clearinghouse must disburse the ARP to the eligible space station operator within seven (7) days of receipt. Should an eligible space station operator miss the Phase I or Phase II deadline, it may still receive a reduced, but non-zero, ARP if it otherwise meets the Certification requirements within six months after the relevant Accelerated Relocation Deadline.

The *3.7 GHz Report and Order* directed WTB to: (1) ''Prescribe the form'' of Certifications and any challenges by relevant stakeholders; and (2) establish the process for how such challenges will impact the incremental decreases in the ARP. With this Public Notice, the Bureau establishes the requisite filing procedures and challenge process relating to the Phase I Accelerated Relocation Certification process.

Filing Procedures. To claim an ARP, eligible space station operators must submit Certifications to the Clearinghouse via any of the communication methods established between those parties. In addition, these space station operators must file their Certifications with WTB, which may be done electronically with a submission to the FCC's Electronic Comment Filing System (ECFS). While Certifications must be filed in GN Docket No. 18–122, WTB hereby creates new docket, GN Docket No. 21–320, in which Certifications should also be filed. In addition, any related challenges from stakeholders must be filed in this new docket. If a stakeholder seeks to challenge multiple eligible space station operator Certifications, each challenge must be filed separately with respect to each Certification in GN Docket No. 21–320.

Certification Content. To satisfy the Phase I deadline, the Certification must describe in detail each action that was taken by the eligible space station operator, including the date of completion, in a similar format and content to that operator's Transition Plan. This description should include (but is not limited to): The operations that were repacked to satisfy the Phase I deadline; The number of new satellites, if any, that the eligible space station operator launched, including the

dates of launch, reaching final orbit, and start of operations; A description of how services were migrated to the upper portion of the band, including the pre- and post-transition frequencies that each customer occupied and now occupies; Any necessary technology upgrades or other solutions, such as video compression or modulation, that the eligible space station operator implemented, described on a per antenna and/or feed basis, as appropriate; The number and location of antennas and feeds that were transitioned to satisfy the Phase I deadline, including the actions taken (*e.g.,* retuning and repointing) for each; The date of completion of the above items; A description of the steps that the eligible space station operator has taken to identify all associated earth stations, antennas, and feeds, and to ensure that they are all are transitioned as of the date of Certification; Details relating to any variances from the eligible space station operator's Transition Plan, such as antennas and feeds involving circumstances beyond the control of the eligible space station operator and therefore subject to a transition delay notice, and antennas and feeds that are otherwise pending removal from the most recent Incumbent Earth Station list or subject to an agreement regarding the transition between the eligible space station operator and the earth station operator.

The eligible space station operator must certify that it attests to the truthfulness of the above information and is making the Certification in good faith. Eligible space stations operators are reminded that Certifications are subject to section 1.17 of the Commission's rules and violators will be subject to potential enforcement action, including monetary penalties or actions affecting the eligible space station operator's market access authorization or status as a licensee. The Bureau will determine that a Certification has been made in bad faith if, for example, the certifying party makes a statement that is false and if it finds the party did not use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted. In cases where it is found that the ARP was disbursed based on a Certification that the eligible space station operator had filed in bad faith, the operator may be subject to the additional consequence of having to return some or all of the ARP, depending on the circumstances.

We note that subsequent to the filing of the Certification the Bureau may, based on the information filed by the eligible space station operator or contained in a challenge to that operator's Certification, request additional information from the operator. Because such information may prove necessary to determine whether the eligible space station operator completed the relocation by the relevant accelerated deadline, eligible space station operators must respond to such requests for information in a prompt and complete manner.

If, after the resolution of any credible challenges and the disbursement of the ARP, it is subsequently found, by the Relocation Coordinator, Clearinghouse, or WTB, that the eligible space station operator should have transitioned additional earth stations, antennas, or feeds that it did not account for in its Transition Plan and Certification(s), the eligible space station operator will be required to remediate such earth stations, antennas, or feeds in a prompt and effective manner.

Challenges. Challenges to a Certification must be filed in GN Docket No. 21–320 within ten (10) days after the Certification is published in ECFS and the eligible space station operators' replies must be filed in that docket within five (5) days. Pursuant to the *3.7 GHz Report and Order,* WTB will announce by Public Notice whether credible challenges have been made within 30 days of the Certification's filing. After reviewing a Certification and any relevant challenges, WTB will issue one of two Public Notices. If there are no credible challenges, WTB will issue a Public Notice that lists the submitted challenges (if any), states that none constitutes a ''credible challenge'' to the validity of the Certification, and provides a brief explanation for the finding that said challenges are non-credible. If there is at least one credible challenge, WTB will issue a Public Notice announcing that one or more credible challenges have been made and instructing the Clearinghouse not to issue the ARP until WTB has made a final determination as to the validity of the challenge. WTB will issue a final determination on the challenge no later than sixty (60) days after the eligible space station operator files its Certification. If WTB ultimately finds the Certification was valid, disbursement of the Phase I ARP to the eligible space station operator will proceed as outlined above and in the *3.7 GHz Report and Order.*

Amy Brett,

Acting Chief of Staff, Wireless Telecommunications Bureau.

[FR Doc. 2021–17180 Filed 8–10–21; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0216, 3060–0248, 3060–0332, 3060–0404 and 3060–1218; FR ID 42035]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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.

DATES: Written PRA comments should be submitted on or before October 12, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0216.

Title: Section 73.3538, Application to Make Changes in an Existing Station; Section 73.1690(e), Modification of Transmission Systems.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

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

Number of Respondents and Responses: 650 respondents; 650 responses.

Estimated Hours per Response: 0.50–3 hours.

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

Total Annual Burden: 1,100 hours.

Annual Burden Cost: None.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303(r), 308, 309(j) and 337(e) of the Communications Act of 1934, as amended.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The information collection requirements contained in Section 73.3538(b)(1) of the Commission's rules requires a broadcast station to file an informal application to modify or discontinue the obstruction marking or lighting of an antenna supporting structure.

The information collection requirements contained in Section 73.1690(e) of the Commission's rules requires AM, FM and TV station licensees to prepare an informal statement or diagram describing any electrical and mechanical modification to authorized transmitting equipment that can be made without prior Commission approval provided that equipment performance measurements are made to ensure compliance with FCC rules. This informal statement or diagram must be retained at the transmitter site as long as the equipment is in use.

OMB Control Number: 3060–0248.

Title: Section 74.751, Modification of Transmission Systems.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

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

Number of Respondents and Responses: 400 respondents; 400 responses.

Estimated Time per Response: 0.50 hours.

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

Total Annual Burden: 200 hours.

Total Annual Cost: None.

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

Nature and Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The information collection requirements contained in 47 CFR 74.751(a) and (c) require licensees of low power TV or TV translator stations to send written notification to the FCC of equipment changes which may be made at licensee's discretion without the use of a formal application. Section 74.751(d) information collection requirements require that licensees of low power TV or TV translator stations place in the station records a certification that the installation of new or replacement transmitting equipment complies in all respects with the technical requirements of this section and the station authorization. The notifications and certifications of equipment changes are used by FCC staff to ensure that the equipment changes made are in full compliance with the technical requirements of this section and the station authorizations and will not cause interference to other authorized stations.

OMB Control Number: 3060–0332.

Title: Section 76.614, Cable Television System Regular Monitoring, and Section 76.1706, Signal Leakage Logs and Repair Records.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 3.995 respondents and 2,799 responses.

Estimated Hours per Response: .0167–0.5 hours.

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

Total Annual Burden: 2,799 hours.

Total Annual Cost: None.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 302 and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The information collection requirements contained in 47 CFR 76.1706 require cable operators shall maintain a log showing the date and location of each leakage source identified pursuant to 47 CFR 76.614, the date on which the leakage was repaired, and the probable cause of the leakage. The log shall be kept on file for a period of two years and shall be made available to authorized representatives of the Commission upon request.

OMB Control Number: 3060–0404.

Title: Application for an FM Translator or FM Booster Station License, FCC Form 350.

Form Number: FCC Form 350.

Type of Review: Extension of a currently approved collection.

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

Number of Respondents and Reponses: 500 respondents; 500 responses.

Frequency of Response: On occasion reporting requirement.

Estimated Time per Response: 1 hour.

Total Annual Burden: 500 hours.

Total Annual Cost: $37,500.

Obligation to Respond: Required to obtain and retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 307, 308 and 309 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Licensees and permittees of FM Translator or FM Booster stations are required to file FCC Form 350 to obtain a new or modified station license. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit.

Data from the FCC Form 350 is extracted for inclusion in the subsequent license to operate the station.

OMB Control No.: 3060–1218.

Title: Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 11 respondents and 11 responses.

Estimated Time per Response: 0.25 hours (15 minutes).

Frequency of Response: Third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 3 hours.

Total Annual Cost Burden: None.

Obligation to Respond: Required in order to monitor regulatory compliance. The statutory authority for this information collection is contained in sections 4, 303, 614, and 615 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The information collection imposes a notification requirement on certain small cable systems that become ineligible for exemption from the requirement to carry high definition broadcast signals in HD (adopted in FCC 15–65). In particular, the information collection requires that, beginning December 12, 2016, at the time a small cable system utilizing the HD carriage exemption offers any programming in HD, the system must give notice that it is offering HD programming to all broadcast stations in its market that are carried on its system. Cable operators also must keep records of such notification. This information collection requirement allows affected broadcast stations to monitor compliance with the requirement that cable operators transmit high definition broadcast signals in HD.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–17151 Filed 8–11–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 42434]

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this document announces the modification of a computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the Iowa Department of Human Services (Department). The purpose of this matching program is to verify the eligibility of applicants to and subscribers of Lifeline (existing purpose) and the new Emergency Broadband Benefit Program, both of which are administered by USAC under the direction of the FCC. More information about these programs is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before September 13, 2021. This computer matching program will commence on September 13, 2021, and will conclude 18 months after the effective date.

ADDRESSES: Send comments to Margaret Drake, FCC, 45 L Street NE, Washington, DC 20554, or to *Privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret Drake at 202–418–1707 or *Privacy@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid and the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs.

The Emergency Broadband Benefit Program (EBBP) was established by Congress in the Consolidated Appropriations Act of 2021, Pub. L. 116–260, 134 Stat. 1182. EBBP is a program that helps low-income Americans obtain discounted broadband service and one-time co-pay for a connected device (laptop, desktop computer or tablet). This program was created specifically to assist American families' access to broadband, which has proven to be essential for work, school, and healthcare during the public health emergency that exists as a result of COVID–19. A household may qualify for the EBBP benefit under various criteria, including an individual qualifying for the FCC's Lifeline program.

In a Report and Order adopted on March 31, 2016 (81 FR 33026, May 24, 2016) (*2016 Lifeline Modernization Order*), the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

The Consolidated Appropriations Act of 2021 directs the FCC to leverage the National Verifier to verify applicants' eligibility for EBBP. The purpose of this matching program is to verify the eligibility of EBBP applicants and subscribers by determining whether they receive Supplemental Nutrition Assistance Program (SNAP) benefits administered by the Iowa Department. Under FCC rules, consumers receiving these benefits qualify for Lifeline discounts and also for EBBP benefits.

Participating Agencies

Iowa Department of Human Services.

Authority for Conducting the Matching Program

The authority for the FCC's EBBP is Consolidated Appropriations Act of 2021, Public Law 116–260, 134 Stat. 1182; 47 CFR part 54. The authority for the FCC's Lifeline program is 47 U.S.C. 254; 47 CFR 54.400 through 54.423; Lifeline and Link Up Reform and Modernization, *et al.,* Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (*2016 Lifeline Modernization Order*).

Purpose(s)

In the 2016 Lifeline Modernization Order, the FCC required USAC to develop and operate the National Verifier to improve efficiency and reduce waste, fraud, and abuse in the Lifeline program. The stated purpose of the National Verifier is ''to increase the integrity and improve the performance of the Lifeline program for the benefit of a variety of Lifeline participants, including Lifeline providers, subscribers, states, community-based organizations, USAC, and the Commission.'' 31 FCC Rcd 3962, 4006,

para. 126. To help determine whether Lifeline applicants and subscribers are eligible for Lifeline benefits, the Order contemplates that the USAC-operated LED will communicate with information systems and databases operated by other Federal and State agencies. Id. at 4011–2, paras. 135–7. The Consolidated Appropriations Act of 2021 directs the FCC to leverage the National Verifier to verify applicants' eligibility for EBBP.

The purpose of this modified matching agreement is to verify the eligibility of applicants and subscribers to Lifeline (existing purpose), as well as to the new EBBP and to other Federal programs that use qualification for Lifeline as an eligibility criterion. This new agreement would replace existing agreements with Iowa that permit matching for Lifeline and EBBP by checking an applicant's/subscriber's participation in SNAP. Under FCC rules, consumers receiving these benefits qualify for Lifeline discounts and also for EBBP benefits.

Categories of Individuals

The categories of individuals whose information is involved in the matching program include, but are not limited to, those individuals who have applied for Lifeline and/or EBBP benefits; are currently receiving Lifeline and/or EBBP benefits; are individuals who enable another individual in their household to qualify for Lifeline and/or EBBP benefits; are minors whose status qualifies a parent or guardian for Lifeline and/or EBBP benefits; or are individuals who have received Lifeline and/or EBBP benefits.

Categories of Records

The categories of records involved in the matching program include, but are not limited to, the last four digits of the applicant's Social Security Number, date of birth, and last name. The National Verifier will transfer these data elements to the Iowa Department which will respond either ''yes'' or ''no'' that the individual is enrolled in a qualifying assistance program: Iowa Department of Human Services SNAP.

System(s) of Records

The records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline, which was published in the **Federal Register** at 86 FR 11526 (Feb. 25, 2021).

The records shared as part of this matching program reside in the EBBP system of records, FCC/WCB–3, Emergency Broadband Benefit Program, which was published in the **Federal Register** at 86 FR 11523 (Feb. 25, 2021).

Federal Communications Commission.

Cecilia Sigmund,

Associate Secretary, Office of the Secretary.

[FR Doc. 2021–17343 Filed 8–11–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA27

Request for Information on the Federal Deposit Insurance Corporation's Supervisory Approach to Examinations During the Pandemic

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for information (RFI).

SUMMARY: The FDIC is seeking information and comments from financial institutions for which the FDIC is the primary Federal regulator regarding the FDIC's supervisory approach to examinations during the pandemic, including on-site and off-site activities, use of technology, and communication methods.

DATES: Comments must be received by October 12, 2021.

ADDRESSES: You may submit comments, identified by RIN 3064–ZA27, by any of the following methods:

- *Agency website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the Agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–ZA27 in the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments RIN 3064–ZA27, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m., EST.
- *Public Inspection:* All comments received will be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/,* including any personal information provided, for public inspection. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, or by telephone at 877–275–3342 or 703–562–2200.

FOR FURTHER INFORMATION CONTACT: Rae-Ann Miller, Senior Deputy Director, Division of Risk Management Supervision, *rmiller@fdic.gov,* 202–898–3898; Michelle L. Cahill, Acting Senior Deputy Director, Division of Depositor and Consumer Protection; Bill Piervincenzi, Supervisory Counsel, Supervision, Legislation and Enforcement Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background Information

The FDIC has been performing on-site examinations of FDIC-supervised institutions since 1934, during which examiners review institutions' records and meet with institution management and Boards of Directors to discuss findings. Safety and soundness examinations are conducted in accordance with Section 10(d) of the Federal Deposit Insurance Act (FDI Act). Section 10(d) requires the appropriate federal banking agency for an insured depository institution to conduct a full-scope, on-site examination at least once every 12 months, but permits a longer cycle—at least once every 18 months—for insured depository institutions that meet certain criteria.[1]

The FDIC also performs consumer compliance and Community Reinvestment Act (CRA) examinations to promote adherence to federal consumer protection and fair lending laws and regulations and the CRA. FDIC policy requires full-scope consumer compliance examinations to be conducted every 12 to 36 months depending on certain criteria such as an insured depository institution's total assets and prior consumer compliance and CRA examination ratings. The Gramm-Leach-Bliley Act established intervals between CRA examinations for insured depository institutions with assets at certain levels and based on specific criteria.

For a number of years prior to the Coronavirus Disease 2019 (COVID–19) pandemic, the FDIC has been leveraging advances in technology to allow examiners to conduct certain examination functions off-site that were previously performed on-site. The FDIC believes this leveraging of technology has improved the efficiencies in the examination process and helped reduce burden on the institution, enabling examiners to be more targeted and risk focused in the work performed on-site.

On March 13, 2020, by Proclamation 9994, the President of the United States

[1] *See* Section 10(b) and 10(d) of the Federal Deposit Insurance Act. (12 U.S.C. 1820). *See also* 83 FR 67033 (December 28, 2018).

declared a National Emergency concerning the COVID–19 pandemic. The next day, the FDIC Chairman issued a mandatory telework order for all employees, consistent with the FDIC's Continuity of Operations Plan and its continued balancing of risks and mitigations under the FDIC Pandemic Influenza Plan. This telework order provided, among other things, that unless otherwise directed, all examination activity of FDIC-supervised institutions to be conducted off-site.

By leveraging prior efforts and existing technology systems, examiners have continued the FDIC examination program despite pandemic conditions.

In light of the experience of the last year, and as we look ahead, the FDIC wants to leverage what worked well in the off-site examination context to see what lessons we can learn about streamlining and improving the efficiency and efficacy of our examinations as we plan for future examinations.

Off-Site/On-Site Procedures

Prior to the pandemic, the FDIC established the following instructions for examiners regarding expectations for off-site and on-site examination activities. The FDIC is the in the process of reviewing those instructions and identifying opportunities to enhance them by incorporating lessons learned from the pandemic.

Safety and Soundness

Each safety and soundness examination has an on-site component, consistent with the requirements of Section 10(d) of the Federal Deposit Insurance Act. Per the FDIC's Risk Management Supervision (RMS) Manual of Examination Policies, Section 21.1 Examination Planning,[2] during the examination planning stage, the FDIC Examiner-in-Charge (EIC) is expected to identify examination activities that are appropriate for off-site review and those that are better suited for on-site review after considering the institution's business model, risk profile, and complexity.

The determination of the extent of off-site or on-site for each examination activity depends, in part, on the type and extent of electronic information available and whether the activity requires interaction with institution personnel.

Examiners are encouraged to conduct a number of activities off-site, such as:

- Reviewing historical financial and supervisory data and performing initial analysis of capital, earnings, liquidity, and sensitivity to market risk; and
- Reviewing the institution's written policies and procedures.

Regarding credit review, examiners may conduct the following types of actions off-site:

- Reviewing loan policies; and
- Reviewing performance report ratio data and management reports.

Examiners are currently expected to conduct certain activities on-site:

- Conducting in-depth discussions with management, including exit meetings; and
- Observing and assessing institution operations and internal controls.

Consumer Compliance and CRA

FDIC compliance and CRA examinations primarily involve three stages: pre-examination planning; review and analysis, both off-site and on-site; and communicating findings to institution management. Pre-examination planning is generally completed off-site in advance of the examination start date.

The extent to which consumer compliance and CRA examinations are conducted off-site varies. Examiners generally consider conducting certain examination activities off-site to promote efficient and effective examinations, and to minimize disruptions to an institution's normal business activities; other examination activities are more efficiently and effectively conducted on-site. For example, consumer compliance staff have found that, generally, it is more efficient to perform robust transaction testing on-site. In addition, consistent and open communication benefits from in-person meetings with institution management.

FDIC Use of Technology

The FDIC regularly evaluates and implements technology and process changes to improve regulatory effectiveness and efficiency. Some examples of technology improvements include:

- *File exchange:* The FDIC has many systems that permit financial institutions to provide electronic documents to the FDIC on a secure basis.
- *Interactive software:* The FDIC has been able to leverage technology to collaborate during examinations with other regulators as well as bankers.

Request for Comments From Interested Parties

The FDIC is issuing this RFI seeking feedback and comments from FDIC-supervised financial institutions regarding the FDIC's supervisory approach to examinations during the pandemic, including the impact of off-site activities on institution operations, the effectiveness of technology used to carry out off-site activities, and the effectiveness of communication methods used to support off-site activities. Specifically, the FDIC is seeking comment on what worked well in the off-site examination context to inform plans for future examinations, consistent with applicable law and the purpose of examinations.

The FDIC encourages comments from financial institutions for which the FDIC is the primary regulator. The FDIC also welcomes comments from other interested members of the public, including, but not limited to, other financial institutions or companies, individual depositors and consumers, consumer groups, trade associations, and others.

Suggested Topics for Commenters

On-Site and Off-Site Activities

1. In your experience, what FDIC examination activities have been best adapted to completion on an off-site basis? Please explain, including why these activities are performed best or are most effective using an off-site approach.

2. In your experience, what FDIC examination activities have not been as well suited to completion on an off-site basis? Please explain, including why these activities are best suited for completion on or are most effective using an on-site approach.

3. What criteria are useful in determining FDIC examination activities best suited for completion on either an off-site or on-site basis? Please explain.

Use of Technology

4. In your experience, what FDIC technologies used in conjunction with off-site examination activities have worked well? Please explain.

5. In your experience, what FDIC technologies used in conjunction with off-site examination activities could be improved? Please explain.

6. What new or emerging technologies would support additional off-site examination activities? Please explain, including any potential impediments to adoption or deployment.

Communication Methods

7. What communication methods used during FDIC off-site examinations worked well? Please explain.

8. What communication methods used during FDIC off-site examinations could be improved? Please explain.

[2] *https://www.fdic.gov/regulations/safety/manual/section21-1.pdf.*

9. Should the FDIC continue to use secure email as an alternative to hardcopy mail, including when providing outgoing supervisory correspondence? Please explain.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on August 5, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–17230 Filed 8–11–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Temporary Suspension of In-Person Hearings

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice.

SUMMARY: The Federal Mine Safety and Health Review Commission (the ''Commission'') is temporarily suspending in-person hearings, settlement judge conferences, and mediations in the manner described below until December 31, 2021.

DATES: *Applicable:* August 6, 2021.

FOR FURTHER INFORMATION CONTACT: Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434–9935.

SUPPLEMENTARY INFORMATION: On July 30, 2021, Commission Chief Administrative Law Judge Glynn F. Voisin issued an order, which is posted on the Commission's website (*www.fmshrc.gov*). The contents of the order were also published in the **Federal Register**. 86 FR 42,827 (Aug. 5, 2021). Under the terms of that order, the Commission was going to resume the pre-pandemic norm of in-person hearings as of September 1, 2021.

On August 6, 2021, Chief Judge Voisin issued an order supplementing the July 30 order. The contents of the August 6 order are set forth in this notice.

In view of recently updated guidance from the Centers for Disease Control and Prevention (''CDC'') highlighting the risks presented by the novel coronavirus COVID–19 and especially its rapidly spreading delta variant, the Federal Mine Safety and Health Review Commission, Office of the Chief Administrative Law Judge (OCALJ) is, effective immediately, strongly discouraging the scheduling of in-person hearings, settlement judge conferences and mediations until December 31, 2021. At the discretion of the presiding Administrative Law Judge and in coordination with the parties, such proceedings may be held by videoconference or by telephone.

In the event a Judge determines in-person proceedings are necessary for all or part of a hearing, settlement conference or mediation, he or she will seek authorization of Chief Judge Voisin prior to scheduling any such proceeding. Such authorization should only be sought where absolutely necessary and is unlikely to be granted absent an extraordinarily compelling need and strict protocols ensuring the safety of all in attendance. No party, representative or witness shall be compelled to attend an in-person hearing or conference during the pendency of this order.

The presiding administrative law judge may be contacted with questions regarding this notice.

Authority: 30 U.S.C. 823; 29 CFR part 2700.

Dated: August 6, 2021.

Sarah L. Stewart,

Deputy General Counsel, Federal Mine Safety and Health Review Commission.

[FR Doc. 2021–17152 Filed 8–11–21; 8:45 am]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than August 27, 2021.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Patty Beyers, Roscoe, South Dakota;* to retain voting shares of Ipswich Community Bancshares, Inc., and thereby indirectly retain voting shares of Ipswich State Bank, both of Ipswich, South Dakota.

Board of Governors of the Federal Reserve System, August 6, 2021.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–17168 Filed 8–11–21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than September 13, 2021.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications)

2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Woodforest Financial Group Employee Stock Ownership Plan (with 401(k) Provisions) and the related Woodforest Financial Group Employee Stock Ownership Trust, both of The Woodlands, Texas;* to acquire up to 32 percent of Woodforest Financial Group, Inc., and thereby indirectly acquire Woodforest National Bank, The Woodlands, Texas.

Board of Governors of the Federal Reserve System, August 6, 2021.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–17169 Filed 8–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Health and Nutrition Examination Survey (NHANES) Stored Biologic Samples; Proposed Cost Schedule and Guidelines for Proposals To Use Serum, Plasma, and Urine Samples

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces the availability of stored serum, plasma, and urine samples obtained from participants in the National Health and Nutrition Examination Survey (NHANES) and the proposal parameters and fee schedule for use. The National Health and Nutrition Examination Survey (NHANES) is one of a series of health-related surveys conducted by CDC's National Center for Health Statistics (NCHS).

DATES: The stored NHANES biologic samples are available August 12, 2021. The fee structure for these samples is effective August 12, 2021.

FOR FURTHER INFORMATION CONTACT: Bryan Stierman, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, MD 20782. Telephone: (301) 458–4798. Email: *Serumplasmaurine@cdc.gov.*

SUPPLEMENTARY INFORMATION: NHANES is a program of periodic surveys conducted by NCHS. Examination surveys conducted since 1960 by NCHS have provided national estimates of the health and nutritional status of the U.S. civilian non-institutionalized population. The goals of NHANES are: (1) To estimate the number and percent of persons in the U.S. population and designated subgroups with selected diseases and risk factors; (2) to monitor trends in the prevalence, awareness, treatment and control of selected diseases; (3) to monitor trends in risk behaviors and environmental exposures; (4) to analyze risk factors for selected diseases; (5) to study the relationship between diet, nutrition and health; (6) to explore emerging public health issues and new technologies; and (7) to establish and maintain a national probability sample of baseline information on health and nutrition status.

For NHANES cycles prior to the 2021–22 cycle, the survey oversamples the two largest race/ethnicity groups, non-Hispanic black and Mexican American (and all Hispanic since 2007–08). In 2011–2020, NHANES also oversampled the Asian race/ethnicity group.

Sample Availability

Samples are available from NHANES III, a periodic survey that was conducted from 1988–1994 (see: *https://wwwn.cdc.gov/nchs/nhanes/nhanes3/default.aspx* for more information on NHANES III), and the continuous NHANES, with data release in two-year cycles starting in 1999–2000 through the 2019-March 2020 (Coronavirus Disease 2019 (COVID–19) pre-pandemic) (Table A) collection. NCHS is making both collections available for study proposals.

Approximately 30,000 individuals were examined in NHANES III, which began in the fall of 1988, and ended in the fall of 1994. Investigators can analyze samples from this survey in two phases. Phase 1 was conducted from October 1988 to October 1991 and Phase 2 began October 1991 and ended October 1994.

Beginning in 1999, NHANES became a continuous, annual survey with examination of approximately 5,000 individuals a year and data release every two years. Samples from a single year of the survey will only be provided in emergency situations (outbreaks). Projects must use two-year cycles or multiple two-year cycles for their studies (*i.e.,* 1999–2000, 2001–2002 etc.).

Serum, plasma, and urine samples are stored in two biorepositories. Samples that were initially used for laboratory assays included in the surveys, that were stored at −70°C and that have been through at least two freeze-thaw cycles, are considered surplus samples. They are stored at a commercial biorepository under contract to NCHS. In addition, another set of serum, plasma, and urine samples were also stored immediately after collection at −80°C or below in vapor-phase liquid nitrogen. These samples have not undergone a freeze-thaw cycle and are considered pristine samples. The CDC Biorepository (CBR) is the long-term repository for the pristine NHANES serum, plasma, and urine samples. NCHS is making both pristine and surplus collections available for study proposals. Please see the NHANES Biospecimen Program series report for details about collection and storage of serum, plasma, and urine samples *http://www.cdc.gov/nchs/data/series/sr_02/sr02_170.pdf.*

TABLE A—OVERVIEW OF BIOSPECIMENS BY SURVEY YEAR, NHANES III (1988–1994) AND NHANES 1999-MARCH 2020

[Pre-pandemic]

NHANES cycle	Sample type					
	Pristine [1]			Surplus [2]		
	Sera	Plasma	Urine	Sera	Plasma	Urine
III (1988–1994)	X			X		
1999–2000	X	X	X	X	X	
2001–2002	X	X	X	X	X	
2003–2004	X	X	X	X		
2005–2006	X	X	X	X		
2007–2008	X	X	X	X	X	

TABLE A—OVERVIEW OF BIOSPECIMENS BY SURVEY YEAR, NHANES III (1988–1994) AND NHANES 1999-MARCH 2020—Continued

[Pre-pandemic]

NHANES cycle	Sample type					
	Pristine [1]			Surplus [2]		
	Sera	Plasma	Urine	Sera	Plasma	Urine
2009–2010	X	X	X	X		
2011–2012	X		X	X		
2013–2014	X		X	X		
2015–2016	X		X	X		
2017–2018	X		X	X		
2019—March pre-pandemic 2020	X		X	X		

[1] Samples immediately frozen for storage, did not undergo laboratory testing.
[2] Samples are surplus specimens after laboratories had completed testing.

Parameters for Sample Use

1. Investigators should justify why they need a national probability sample for their study.

2. To assure the representative nature of NHANES, at least a ⅓ sample of a two-year cycle must be requested for an individual proposal. For details of the sampling design, see the Analytic Guidelines at: *https://wwwn.cdc.gov/nchs/nhanes/analyticguidelines.aspx.*

3. Investigators that request pristine (never thawed) samples should justify the use of the pristine samples.

4. Only proposals with test results that are determined *not* to have clinical significance for participants will be accepted. Starting in 1999, the consent form informed participants that they would not receive results from any future laboratory analysis that may be conducted on their samples. Though the consent form for NHANES III had less detail, this parameter is also applicable to the use of NHANES III samples. Therefore, only proposals with laboratory test results that do *not* have clinical significance to the survey participant will be accepted. The potential for clinical significance of a laboratory test should be addressed by investigators in the proposal; the determination of clinical significance will be made by the Technical Panel. A laboratory test result is considered clinically significant to the survey participant if the following criteria are met:

- The laboratory test is performed by a Clinical Laboratory Improvement Amendments (CLIA)- certified laboratory deeming the findings valid,
- the findings have significant implications for the participant's health concerns, and
- a course of action is readily available to treat the associated health concern

Proposal Evaluation

All proposals for use of NHANES samples will be evaluated by a Technical Panel, the NCHS Confidentiality Officer, the NCHS Human Subjects Contact and the NCHS Ethics Review Board (ERB). The current Technical Panel consists of NHANES staff: Two physicians, one statistician and a laboratory expert. Other experts from inside or outside the Federal Government are added as needed. The Technical Panel reviews proposals for scientific merit to determine: The need to use a nationally representative sample, public health significance, and laboratory assay validity, and potential for clinical significance to the participant. The NCHS Confidentiality Officer reviews for disclosure risk; the NCHS Human Subjects Officer for potential human subjects concerns; and the NCHS ERB for conforming to the informed consent. The NCHS ERB will review the proposal even if the investigator has received approval by their respective institutional review panel. The proposal, if approved, will become an amendment to the current NHANES ERB Protocol (*i.e.,* the NHANES ERB Protocol that is in effect at the time of the investigator's proposal approval and held at NCHS).

The Technical Panel will evaluate the proposal for the scientific, technical, and clinical significance to the participant, the appropriateness and adequacy of the study design, and the methodology proposed to reach the study goals. See ''Procedures for Proposals'' below. The proposal should outline how the results from the laboratory analysis will be used. Because NHANES is a complex, multistage probability sample of the U.S. population, the appropriateness of the NHANES sample to address the goals of the proposal will be an important aspect of scientific merit.

Sampling weights are therefore used to make national estimates of frequencies. The use of weights, sampling frame and methods of assessment of variables included in the data are likely to affect the proposed study. For this reason, investigators submitting proposals are required to request at least a ⅓ sample of a NHANES cycle to maintain the representative nature of the survey.

The Technical Panel will also review the data analysis plan and evaluate whether the proposal is an appropriate use of the NHANES samples. The investigators should justify why they need a national probability sample for their study. The Technical Panel review will seek to assure that the proposed project does not go beyond either the general purpose for collecting the samples in the survey, or of the specific stated goals of the NHANES proposal.

Investigators are encouraged to review the NHANES data, survey documents, manuals and questionnaires at: NHANES Questionnaires, Datasets, and Related Documentation (cdc.gov) or for NHANES III: *https://wwwn.cdc.gov/nchs/nhanes/nhanes3/datafiles.aspx*

Procedures for Proposals

All investigators (including CDC investigators) must submit a proposal for use of NHANES serum, plasma, or urine samples. Proposals are limited to a maximum of 10 single-spaced typed pages, excluding figures and tables, using at least a size 10 font. The cover of the proposal (which is not included in the 10-page limit) should include the title of the proposal, the name, address, phone number and Email address of the principal investigator (PI), and the name of the institution where the laboratory analysis will be done. The name, address, phone number and Email address of all additional investigators should also be included on the cover. All proposals should be Emailed to

Serumplasmaurine@cdc.gov. Proposals from CDC investigators must also include the investigator's Collaborative Institutional Training Initiative (CITI) expiration date.

The following criteria will be used for technical evaluation of proposals:

Proposals should include the following information:

(1) *Specific Aims:* List the broad objectives; describe concisely and realistically what the study is intended to accomplish and state the specific hypotheses to be tested. NHANES is designed to provide prevalence estimates of diseases or conditions that are expected to affect at least 5–10 percent of the population. Proposals that expect much lower prevalence estimates need to provide more detail on why samples from NHANES are needed for the project and provide details on how these data will be analyzed.

(2) *Background and Public Health Significance:* Describe the public health significance, scientific merit, and practical utility of the assay. Briefly describe in 1–2 pages the background of the proposal, identifying gaps in knowledge that the project is intended to fill. State concisely the importance of the study in terms of the broad, long-term objectives and public health relevance including a discussion of how the results will affect public health policy or further scientific knowledge. The proposal should justify the need for samples that are representative of the U.S. population. The investigator should convey how the results will be used and the relationship of the results to the data already collected in NHANES. The analyses should be consistent with the NHANES mission and the health status variables.

(3) *Study Design and Methods:* Describe the study design, analytic plan, and the procedures to be used. A detailed description of laboratory methods including validity and reliability must be included with references. The volume of sample and number of samples requested must be specified. Adequate methods for handling and storage of samples must also be addressed. The laboratory must demonstrate expertise in the proposed laboratory test including the capability for handling the workload requested in the proposal. The proposal should also include a justification for determination of sample size or a power calculation. If the investigator is requesting a sub-sample of samples, a detailed description and justification must be given.

The Technical Panel will evaluate the Investigator's submitted proposal study design and analysis plan to determine whether the project is consistent with the design of the NHANES survey. The resulting data will be released in the public domain or in rare occasions to the NCHS Research Data Center by NCHS (if there is a disclosure concern, *e.g.* one year of NHANES cycle). Released data from sub-samples may be less useful to the scientific community, so such requests will receive a lower priority for obtaining the samples.

(4) *Clinical Significance of Results:* Address the clinical significance to the survey participant of the proposed laboratory test. Since the consent document for sample storage and future studies states that individual results will not be provided to the participant, the investigator must address whether there is evidence that the proposed test results have health implications to the participants and whether knowledge of results would provide grounds for medical intervention (even if many years have passed since the participant was in the survey and the sample collected). Any test with results that are clinically significant, and would require reporting to the participant, is not appropriate for testing on the stored serum, plasma, or urine samples and will not be approved; laboratory testing that is clinically significant should be considered for inclusion in a future NHANES survey cycle see NHANES New Content and Proposal Guidelines (cdc.gov).

(5) *Qualification:* Provide a brief description of the Principal Investigator's expertise in the proposed area, including publications in this area within the last three years. A representative sample of earlier publications may be listed if this section does not exceed two pages.

(6) *Period of Performance:* Specify the project time period. Substantial progress must be made in the first year that samples have been obtained, and the project should be completed within a reasonable time period. Please discuss the approximate time the investigator expects this project will take to complete the project. The NCHS Project Officer must be consulted about the disposition of the samples. At the end of the project period, any unused samples must be returned to the NHANES Specimen Repository or discarded appropriately.

(7) *Funding:* The source and status of the funding to perform the requested laboratory analysis should be included. Investigators will be responsible for the cost of processing and shipping the samples. The cost per sample is $15.00. The basis for the cost structure is in the last section of this document. Payment for the samples will be collected before the samples are released.

Submission of Proposals

Proposals can be submitted in MS Word format by Email to: *Serumplasmaurine@cdc.gov.*

Project Timeframes

- Submitting Proposals: Can be submitted on an ongoing basis.
- Scientific Review Date (NHANES Technical Panel): Within one month of proposal submission.
- Scientific Review Date (NCHS Human Subjects, Confidentiality and ERB): Within two months of Technical Panel proposal acceptance.
- Anticipated distribution of samples: One month after ERB approval and after all Interagency Agreements or Material Transfer Agreements are signed, and fees are paid.

Approved Proposals

Approved projects will be provided samples after receipt of a signed Materials Transfer Agreement (MTA) and a check (written to The Centers for Disease Control and Prevention) for the cost of the samples, or for Federal Government proposals, a signed Interagency Agreement (IAA). All laboratory results obtained from the samples must be sent back to NCHS to be linked to the NHANES variables requested by the investigator and that are needed to perform a quality control review of the data. The results data files will undergo disclosure review by the NCHS Disclosure Review Board or NCHS Confidentiality Officer or designee before the linked data are sent to the investigator for quality control review. Once approved by disclosure review and after the investigator has signed the Data Sharing Agreement or a Designated Agent Agreement (respectively ''Agreement''), the linked data file will be sent to the investigator for use pursuant to the terms of the relevant agreement. The quality control review must take place within 60 days and the return of the data to NCHS within the next 30 days so these data may be released to the public.

Agency Agreement

A formal signed agreement in the form of an MTA or an IAA with investigators who have projects approved will be completed before the release of the samples to the investigator. This agreement will contain the conditions for use of the samples as stated in this **Federal Register** Notice and as agreed upon by the investigators and CDC.

Continuations

A brief progress report will be submitted annually to NHANES. This report should describe work completed and timeline to project completion. If five years have elapsed since the initial approval of the protocol by the NCHS ERB a more detailed plan and timeline to complete the study will be required by NHANES. If at any time during the project a new investigator(s) are added or the Principal Investigator has changed, the NHANES Serum/plasma/urine Project Officer must be notified.

Disposition of Results and Samples

No samples provided can be used for any purpose other than those specifically requested in the proposal and approved by the NHANES Technical Panel and the NCHS ERB. No samples can be shared with others, including other investigators, unless specified in the proposal and so approved by the NHANES Technical Panel and the NCHS ERB. Any unused samples must be returned to the NHANES Serum, Plasma and Urine Repository or disposed of, after NHANES approval, upon completion of the approved project. The results, once returned to NCHS, will be part of the public domain. The investigator will have 60 days for quality control review of the data before public release by NHANES.

Cost Schedule for Providing NHANES Samples

There is a nominal processing fee of $15.00 for each sample received from an NHANES Serum, Plasma and Urine Repository. If the investigator requests to use the samples for another project after the completion of the initial project, the additional cost will be $5.50 per sample to handle the processing of the data and management of the subsequent proposal process. A new proposal must be submitted and go through the approval process before any additional use of the samples. The costs include the collection, processing, storage, and retrieval of the samples along with the review of proposals and the preparation of the data files. The costs listed are for the recurring laboratory materials to dispense and prepare the samples during collection and for shipping. The costs for the NHANES repository include long term storage (including inventory management and materials and equipment) and accessioning of samples and pulling samples from the freezer for shipment to the investigator. Labor costs are based on a proposal administrator to manage the proposal process and computer programmers at NCHS who prepare the data files for the release of the data along with documentation on the NHANES web page.

ELEMENTS OF THE FEE FOR NHANES BIOLOGIC SAMPLES

Cost factors	Cost per vial
Material and Equipment	$3.42
Processing the samples (Receiving, handling, and shipping)	2.58
Inventory management	1.80
Administrative, management of the proposal process.	1.65
Preparation of data files	3.85
Subtotal	13.30
CDC Support (5%)	0.67
Subtotal	13.97
NCHS Support (7.50%)	1.05
Total	*15.00

*Total is rounded down from $15.02.

Authority: Sections 301,306 and 308 of the Public Health Service Act (42 U.S.C. 241,242k and 242m).

Dated: August 9, 2021.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2021–17265 Filed 8–11–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; ORR–6 Performance Report (OMB #0970–0036)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, Health and Human Services (HHS).

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR) is requesting a revision of the ORR–6 Performance Report (OMB #0970–0036, expiration 2/28/2022). Proposed revisions include new data collection primarily for the new Refugee Health Promotion (RHP) set-aside program, and reformatting and revisions of instructions and forms for clarity.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street, SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ACF/ORR requests information from the ORR–6 Performance Report to determine effectiveness of state Cash and Medical Assistance (CMA) and Refugee Support Services programs. ORR uses state-by-state CMA utilization rates, derived from the ORR–6 Performance Report, to formulate program initiatives, priorities, standards, budget requests, and assistance policies. Federal regulations require state Refugee Resettlement, Replacement Designee agencies, and local governments submit statistical or programmatic information that the ORR Director determines to be required to fulfill their responsibility under the Immigration and Nationality Act (INA). The existing ORR–6 was revised to include data collection for the new RHP set-aside program, add new data elements to better understand the meaning of existing data collection, and update the instructions and reformat some of the forms to provide clearer definitions and better distinguish the participation and performance results of different support services programs.

Respondents: State governments and Replacement Designees.

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
ORR–6 Performance Report	69	6	19	7,866	2,622

Estimated Total Annual Burden Hours: 2,622.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 8 U.S.C 1522 of the Immigration and Nationality Act (the Act) (Title IV, Sec. 412 of the Act), and 45 CFR 400.28(b).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–17246 Filed 8–11–21; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; National Advisory Committee (NAC) Recommendations and State Self-Assessment Survey (OMB #0970–0560)

AGENCY: Office on Trafficking in Persons, Administration for Children and Families, Health and Human Services (HHS).

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting an extension to continue use of an existing information collection: The National Advisory Committee on the Sex Trafficking of Children and Youth in the United States (NAC) Recommendations and State Self-Assessment Survey (0970–0560). No changes are proposed.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street, SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Preventing Sex Trafficking and Strengthening Families Act of 2014 mandated the NAC to develop a report describing how each state has implemented its recommendations to address sex trafficking in children and youth. The NAC proposed to administer a survey allowing states to assess their progress in implementing NAC recommendations. Submissions allow states to document their efforts in the following sections: Multidisciplinary Response, Screening and Identification, Child Welfare, Service Provision, Housing, Law Enforcement and Prosecution, Judiciary, Demand Reduction, Prevention, Legislation and Regulation, Research and Data, and Funding. Each state will have the opportunity to provide a self-assessed tier ranking for each recommendation, a justification of their assessment, sources for their assessment, and the public or private nature of those sources. The survey was initially launched in March 2021 with a due date in June 2021. We are requesting an extension to allow states ample time to collaborate and compile their responses. There are no changes proposed.

Respondents: State Governors, child welfare agencies, local law enforcement, and other local agencies.

Annual Burden Estimates: Each state is responsible for collaborating with governors, law enforcement agencies, prosecutors, courts, child welfare agencies, and other local agencies and relevant groups to provide their self-assessment of their state's implementation efforts. The opportunity burden is calculated below, assuming five respondents for each state:

TABLE 1—OPPORTUNITY BURDEN

Instrument	Total number of respondents contributing for 50 states	Total number of responses per respondent	Average burden hours per response	Total/annual burden hours
NAC Recommendations and State Self-Assessment Survey	250	1	6.85	1,713
Estimated Opportunity Burden Totals				1,713

Estimated Total Annual Opportunity Burden Hours: 1,713.

States also have one designated point of contact responsible for aggregating information and submitting the state response. The recordkeeping burden is calculated below:

TABLE 2—RECORDKEEPING B

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total/annual burden hours
NAC Recommendations and State Self-Assessment Survey	50	1	40	2,000
Estimated Recordkeeping Burden Totals				2,000

Estimated Total Annual Recordkeeping Burden Hours: 2,000.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Pub. L. 113–183.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–17236 Filed 8–11–21; 8:45 am]

BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[0970–0557]

Proposed Information Collection Activity; Cost Study of Trauma-Specific Evidence-Based Programs Used in the Regional Partnership Grants Program

AGENCY: Children's Bureau, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Children's Bureau (CB), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting an extension with minor changes to the approved information collection: The Cost Study of Trauma-Specific Evidence-Based Programs used in the Regional Partnership Grants (RPG) Program. This data collection request was previously approved and scheduled for spring 2021 but was delayed due to the COVID–19 pandemic. Data collection is now feasible but will extend beyond the current expiration date of November 30, 2021, so an extension is needed. Additionally, since approval, minor changes were made to the instruments to include a question in the time log to ask about virtual service delivery since the COVID–19 pandemic resulted in grantees offering virtual services.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Since 2006, CB has awarded multiple rounds of competitive grants to state and local agencies and service providers under the RPG Program. Grants are awarded to organizations such as child welfare agencies, substance abuse treatment providers, or family court systems to develop interagency collaborations and provide services designed to increase well-being, improve permanency, and enhance the safety of children who are in or are at risk of being placed in out-of-home care as a result of a parent's or caretaker's substance abuse. Thirty-five grantees are participating in the ongoing RPG national cross-site evaluation, which examines implementation, partnerships, outcomes, and impacts. All grantees collect data on a uniform set of performance measures and report them to CB on a semi-annual basis through a web-based system. These ongoing data collection activities are approved under OMB #0970–0527. All grantees are also required to use a portion of their funding to conduct their own ''local'' program impact evaluation.

This proposed cost study adds a new and unique contribution to CB's portfolio of evaluation activities. Although the RPG cross-site evaluation will provide evidence for the effectiveness of some interventions to address the emotional effects of trauma, more information is needed about the cost of implementing these Evidence-Based Programs (EBPs).

The cost study has the key objective to determine the cost of implementing the following three select Trauma-Specific EBPs: Parent-Child Interaction Therapy, Seeking Safety, and Trauma-Focused Cognitive Behavioral Therapy. To carry out this objective, the study team will collect detailed cost information from nine RPG round four and five grantees who are implementing these selected EBPs. For each grantee, the study team will administer the following two data collection instruments: (1) A Cost Workbook used to collect comprehensive information on the cost of implementing each select program (Instrument #1), and (2) a Staff Survey and Time Log used to collect information on how program staff allocate their time (Instrument #2).

Respondents: Grantee staff.

Annual Burden Estimates

Data collection will take place within a 1-year period.

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total/annual burden hours
Cost Workbook	9	1	8	72
Staff Survey and Time Log	90	1	3.6	330

Estimated Total Annual Burden Hours: 402.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: The Child and Family Services Improvement and Innovation Act (Pub. L. 112–34).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–17256 Filed 8–11–21; 8:45 am]

BILLING CODE 4184–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Understanding Children's Transitions From Head Start to Kindergarten (HS2K) (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) seeks approval to conduct semi-structured, qualitative interviews with Head Start staff (grantee administrators, managers/coordinators, center directors, teachers, staff), parents, affiliated community providers, and partner Local Education Agency (LEA) staff (administrators, elementary school principals, staff, and kindergarten teachers) at six sites. A comparative case study design will explore varying strategies and approaches to supporting children's transitions from Head Start to kindergarten.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: The proposed case studies intend to study the transition strategies and approaches employed, across various levels, both within and across the Head Start and elementary school systems. The case studies focus on how relationships across systems support coordinated transition practices, which are hypothesized to lead to the most positive outcomes for children, families, and teachers. Qualitative data collection protocols will explore how the supports for and implementation of transition approaches vary amongst Head Start grantees/delegates, Head Start centers, elementary schools, and LEAs within the same communities, including contextual factors that support or hinder meaningful collaboration.

Respondents: Head Start administrators, LEA administrators, Head Start center directors, elementary school principals, Head Start teachers, kindergarten teachers, elementary school staff, Head Start managers & coordinators, Head Start parents/families (pre- and post-kindergarten transition), Community Service Providers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. Burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Supplemental Materials A: Initial outreach and recruitment scripts for Programs and Schools (Head Start grantee and delegate agency administrator, Local Education Agency administrator, Head Start Center Director, elementary principal	36	1.3	1.3	46.8	23.4
Supplemental Materials B: Initial Outreach and Recruitment Scripts for Head Start Families	72	1	.25	18	9
Administrator Interview Protocol (Head Start grantee and delegate agency administrator, Local Education Agency administrator)	30	1	1	30	15
Site Leadership Interview Protocol (Head Start Center Director, elementary principal)	12	1	1.25	15	7.5
Teacher & Staff Interview Protocol (Head Start teacher, kindergarten teacher, elementary staff)	30	1	.80	24	12
Head Start Manager/Coordinator Interview Protocol	12	1	1.25	15	7.5
Head Start Family Background Questionnaire	48	1	.25	12	6
Head Start Family Focus Group Protocol	48	1	1.25	60	30
Kindergarten Family Interview Protocol	12	1	.75	9	4.5
Community Partner Interview Protocol	6	1	1	6	3
Social Network Instrument	90	1	.25	22.5	11.25

Estimated Total Annual Burden Hours: 129.15.

Authority: 42 U.S.C. Section 9835 and 42 U.S.C. Section 9844.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–17262 Filed 8–11–21; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Data Collection for the Engaging Fathers and Paternal Relatives: A Continuous Quality Improvement Approach in the Child Welfare System Project (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE) within the Administration for Children and Families (ACF) is proposing to conduct data collection activities for the Engaging Fathers and Paternal Relatives: A Continuous Quality Improvement Approach in the Child Welfare System (FCL) Project. This evaluation is a descriptive study of child welfare agencies' use of a continuous quality improvement process called the Breakthrough Series Collaborative (BSC) to implement strategies to improve father and paternal relative engagement in the child welfare system. The project is designed to examine the use of the BSC methodology to strengthen fathers' and paternal relatives' engagement with children involved in child welfare and to add to the evidence base on engagement strategies for fathers and paternal relatives in child welfare.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: The FCL evaluation has three equally important aims. The first is to describe promising strategies and approaches for engaging fathers and paternal relatives in the child welfare system. The second is to assess the promise of the BSC as a continuous quality improvement framework for addressing challenges in the child welfare system, including whether and to what extent the BSC has potential, and if so, how it may be applied to other child welfare challenges. The third is to assess the extent to which agencies experienced a shift in organizational culture in terms of the importance of father engagement.

The descriptive evaluation will build on the findings of the pilot study conducted under the umbrella generic: Formative Data Collections for ACF Program Support (OMB #0970–0531). (Site selection for the pilot study was conducted under the umbrella generic: Formative Data Collections for ACF Research (OMB #0970–0356). It will focus on organizational changes and network supports for father and paternal relative engagement, changes in staff attitudes and skills for engaging fathers and paternal relatives, and father and paternal relative engagement outcomes. This evaluation will explore the implementation of father and paternal relative engagement strategies and approaches by examining process outcomes. By examining process outcomes, the evaluation is designed to indicate whether strategies and approaches developed in the BSC are likely to lead to placement stability and permanency outcomes.

Data collection will take place with stakeholders in five child welfare agencies implementing the BSC (including one agency that had two separate teams participate in the earlier pilot study). Data collection activities include discussions with participating agency staff and key partners during site visits, focus groups or interviews with fathers and paternal relatives with relatively recent experience with the focal child welfare agencies, and web surveys of participating agency staff.

Respondents: Child welfare agency leaders, child welfare agency program staff and key partner staff involved in implementing the engagement strategies; community stakeholders whose role has intersected with the child welfare agency and who have an interest in father and paternal relative engagement; and, father and paternal relative clients of the agencies. Program staff may include senior leaders, managers, and frontline staff.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Interview topic guide	230	1	1.5	345	173
Father and paternal relative focus group protocol	72	1	1.5	108	54
Staff survey	360	2	0.333	240	120

Estimated Total Annual Burden Hours: 347.

Authority:

Sec. 403. [42 U.S.C. 603] and Sec. 426. [42 U.S.C. 626]

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–17263 Filed 8–11–21; 8:45 am]

BILLING CODE 4184–73–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Early Care and Education Leadership Study (ExCELS) Descriptive Study (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE) within the Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (DHHS) seeks approval to collect information for the Early Care and Education Leadership Study (ExCELS) Descriptive Study.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: The ExCELS Descriptive Study is a new information collection to learn about what leadership looks like in center-based early care and education settings serving children whose ages range from birth to age 5, but not yet in kindergarten, and better understand how leadership might improve center quality and outcomes for staff, children, and families. The goals of ExCELS are to (1) develop a short-form measure of early care and education leadership that has strong psychometric properties, and (2) examine empirical support for the associations among key constructs and outcomes in the study's theory of change of early care and education leadership for quality improvement. The study will recruit 120 centers that receive funding from Head Start or the Child Care and Development Fund, ask the primary site leader at the centers to participate in two interviews, and distribute surveys to select center managers and all teaching staff to test hypothesized associations between leadership constructs and outcomes in the study's theory of change.

Respondents: Management and teaching staff from center-based early care and education settings that receive funding from Head Start or the Child Care and Development Fund.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Center recruitment call script	180	1	.33	59	30
Umbrella organization recruitment approval call script	113	1	.33	37	19
Engagement interview guide	150	1	.33	50	25
Staffing structure and leadership positions interview guide	120	1	.50	60	30
Teaching staff roster	120	1	.25	30	15
Center manager survey	240	1	.42	101	51
Teaching staff survey	1,680	1	1	1,680	840

Estimated Total Annual Burden Hours: 1,010.

Authority: Authorized by the Head Start Act section 640 [42 U.S.C. 9835] and section 649 [42 U.S.C. 9844]; appropriated by the Continuing Appropriations Act of 2019; the Child Care and Development Block Grant Act of 1990 section 658O [42 U.S.C. 9858], which also provides authority to use this discretionary funding for research; appropriated by the Continuing Appropriations Act of 2019; and the Child Care and Development Block Grant (CCDBG) Act of 1990 as amended by the CCDBG Act of 2014 (Pub. L. 113–186).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–17260 Filed 8–11–21; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Head Start Evaluation of a Trauma-Informed Care Program (New Collection)

AGENCY: Office of Head Start, Administration for Children and Families, Health and Human Services (HHS).

ACTION: Request for public comment.

SUMMARY: The Office of Head Start, Administration for Children and Families (ACF), is proposing to collect data for a new evaluation of a trauma-informed care program that will include a small randomized controlled trial across 10 sites within Head Start Region V. The goals of the project are to identify the implementation supports and methods needed to enable teachers to effectively implement Trauma-Informed Care in early care and education programs, and to evaluate its outcomes. Information collected will be used to inform ongoing training and technical assistance (TTA) work provided by the Head Start Centers, particularly decisions regarding allocation of TTA resources. More generally, results may inform OHS guidance around social-emotional programming.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street, SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The National Center on Health, Behavioral Health, and Safety, in partnership with Child Trends and the Center for Childhood Resilience at the Anne & Robert H. Lurie Children's Hospital of Chicago (Lurie), will conduct information collection activities across 10 sites within Head Start Region V as part of a small randomized controlled trial of the Ready to Learn through Relationships (RLR) program, a trauma-informed Framework and Toolkit designed to promote resilience in young children. In this evaluation, sites will be matched on a number of factors that may be related to implementation and randomized to either a low- or high-intensity TTA condition. The low-intensity condition will receive 4 hours of training, a ''toolkit'' of activity-based handouts, and access to virtual TA office hours. The high-intensity condition will include 4 hours of additional training on use of the toolkit modules, 6 hours of implementation support, and monthly classroom coaching.

Region V Head Start programs that choose to voluntarily participate in the RLR program will be asked to complete a number of implementation and outcomes measures and participate in other evaluation activities. Data collection will involve virtual semi-structured interviews and focus groups at the end of the evaluation period, web-based surveys (pre and post), a monthly web-based log of coaching activities completed, and repeated teacher reports of practices throughout the day on a mobile app during 5 weeks across the school year.

The information to be collected focuses on teacher practices for supporting children's social-emotional development and on training and implementation factors that may enhance these practices, which is directly relevant to Head Start's mission. Information obtained will be shared with Regional TTA providers and site administrators to inform their ongoing and future TTA work. More specifically, results of the evaluation will identify the extent to which more intensive TTA with ongoing coaching and on-site expert consultation enhances teacher practice beyond a lower-intensity TTA approach. Additionally, data are expected to identify implementation factors that may enhance outcomes at both the level of the teacher and Head Start Centers.

Respondents: All early childhood centers in Head Start Region V that meet inclusion criteria will be invited to submit application forms to participate in the evaluation, and approximately 10 centers will be selected. Within each center (or site), we anticipate there will be three classrooms of 3–5 year olds. Participants at each center will consist of 7 or 8 individuals (*e.g.,* directors, mental health and behavior consultants, lead and assistant teachers, and coaches), for a total of 75 individuals across all centers or sites.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total/annual burden hours
Trauma-Informed System Change Instrument (TISCI) Questionnaire (all site staff)	75	2	0.17	26
Attitudes Related to Trauma-Informed Care (ARTIC) Questionnaire (all site staff)	75	2	0.25	38
Site Application Form (site administrators)	20	1	1	20
Site Administrator Interview	10	1	1	10
Coach/Teacher Background Form	50	1	0.10	5
Coaching Logs	20	14	0.25	70
Coach Satisfaction Survey	20	1	0.25	5
Coach Interview	20	1	1	20
Professional Self-Care Scale (PSCS)—teachers	30	2	0.10	6
Ecological Momentary Assessment (EMA) Survey -teachers	30	100	0.07	210
Teacher Satisfaction Survey	30	1	0.25	8
Teacher Focus Group	15	1	1	15

Estimated Total Annual Burden Hours: 433.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Head Start Act Sec. 648.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–17242 Filed 8–11–21; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Ryan White HIV/AIDS Program Client-Level Data Reporting System, OMB No. 0906–0039—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than October 12, 2021.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or by mail to the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information collection request title for reference, pursuant to Section 3506(c)(2)(A), the Paperwork Reduction Act of 1995.

Information Collection Request Title: Ryan White HIV/AIDS Program Client-Level Data Reporting System: OMB No. 0906–0039—Extension.

Abstract: The Ryan White HIV/AIDS Program (RWHAP), authorized under Title XXVI of the Public Health Service Act, is administered by HRSA's HIV/AIDS Bureau. HRSA awards funding to recipients in areas of the greatest need to respond effectively to the changing HIV epidemic, with an emphasis on providing life-saving and life-extending medical care, treatment, and support services for people living with HIV in the United States.

RWHAP reporting requirements include the annual submission of client-level data in the RWHAP Services Report (RSR). RSR collects information from grant recipients and their subcontracted service providers, funded under Parts A, B, C, and D of the RWHAP legislation. HRSA is requesting an extension of the current RSR with no changes.

Need and Proposed Use of the Information: RWHAP legislation specifies HRSA's responsibilities in administering grant funds, allocating funding, assessing HIV care outcomes (*e.g.,* viral suppression), and serving particular populations. RSR collects data on the characteristics of RWHAP-funded recipients, their contracted service providers, and the patients or clients served. RSR system consists of two primary components, the Recipient Report and the Provider Report, and a data file containing the client-level data elements. Data is submitted annually. RWHAP legislation specifies the importance of recipient accountability and linking performance to budget. RSR is used to ensure recipient compliance with the law, including evaluating the effectiveness of programs, monitoring recipient and provider performance, and informing annual reports to Congress. Information collected through the RSR is critical for HRSA, state and local grant recipients, and individual providers to assess the status of existing HIV-related service delivery systems, assess trends in service utilization, assess the impact of data reporting and identify areas of greatest need.

Likely Respondents: RWHAP grant recipients, as well as their subcontracted service providers, funded under RWHAP parts A, B, C, and D.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Recipient Report	595	1	595	11	6,545
Provider Report	2,063	1	2,063	13	26,819
Client Report	1,532	1	1,532	113	173,116
Total	4,190		4,190		206,480

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2021–17206 Filed 8–11–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), or their successor, the authorities that are vested in the Secretary of Health and Human Services under section 1150C of the Social Security Act (42 U.S.C. 1301 *et seq.*), as added by section 9911 of the American

Rescue Plan Act of 2021 (Pub. L. 117–2). This authorizes the HRSA Administrator, on behalf of the Secretary, to make payments to rural providers and suppliers for health care related expenses and lost revenues that are attributable to COVID–19. This delegation does not confer authority to issue regulations. These authorities may be redelegated.

This delegation of authority is effective upon date of signature.

Dated: August 9, 2021.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2021–17212 Filed 8–11–21; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0406]

Guidance on Voluntary Compliance With Training Requirements for Personnel Serving on U.S.-Flagged Passenger Ships That Carry More Than 12 Passengers on International Voyages.

AGENCY: Coast Guard, Homeland Security (DHS).

ACTION: Notice of policy.

SUMMARY: The Coast Guard announces the availability of CG–MMC Policy Letter 02–21, titled ''Guidance on Voluntary Compliance with Training Requirements for Personnel Serving on U.S.-flagged Passenger Ships that Carry More than 12 Passengers on International Voyages.'' This policy provides guidance to passenger vessel owners and operators on voluntary compliance with the 2016 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW Convention) and the Seafarers' Training, Certification and Watchkeeping Code (STCW Code). Vessels may be subject to detentions in foreign ports if personnel have not received appropriate training in accordance with the STCW Convention and the STCW Code.

DATES: CG–MMC Policy Letter 02–21 was issued August 05, 2021.

ADDRESSES: Policy Letter 02–21 is available in docket number USCG–2021–0406 on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information about this policy, contact Megan Johns Henry, U.S. Coast Guard Office of Merchant Mariner Credentialing Maritime Personnel Qualifications Division (CG–MMC–1); telephone (202) 372–1255, email *Megan.C.Johns@uscg.mil.*

SUPPLEMENTARY INFORMATION: The International Maritime Organization (IMO) establishes the minimum international standards of competence including training requirements for mariners and maritime personnel through the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW Convention) and the Seafarers' Training, Certification and Watchkeeping Code (STCW Code).

In 2016, the IMO adopted amendments to the STCW Convention and the STCW Code expanding the existing training requirements for personnel on passenger vessels. These amendments entered into force on July 1, 2018. These amendments have not been codified into national regulations at this time. However, because the United States is signatory to the STCW Convention, vessel owners and operators should be aware that their vessels are subject to foreign port state control actions, including detention, if mariners are not compliant with the STCW Convention and the STCW Code.

The Coast Guard has issued CG–MMC Policy Letter 02–21 to provide guidance to passenger vessel owners and operators on voluntary compliance with the 2016 amendments to the STCW Convention and the STCW Code. The Coast Guard will not issue endorsements related to the training of personnel on passenger vessels.

CG–MMC Policy Letter 02–21 is not a substitute for applicable legal requirements, nor is it itself a rule. The Coast Guard does not currently require any mariner to meet the training requirements in CG–MMC Policy Letter 02–21, paragraphs 4. a. (i) and (ii), in other words, it is possible to comply with U.S. domestic legal obligations without undertaking the specific trainings. Before creating any such requirement, the Coast Guard would undertake a separate rulemaking.

We issue this notice of availability in accordance with 5 U.S.C. 552(a) and under the authority of 46 U.S.C. 7101 and 7313. If you have questions about the policy letter, or believe that changes are necessary, please contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: August 6, 2021.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2021–17139 Filed 8–11–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2159]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information

may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Connecticut: Fairfield.	City of Stamford (21–01–0442P).	The Honorable David R. Martin, Mayor, City of Stamford, 888 Washington Boulevard, 10th Floor, Stamford, CT 06901.	Environmental Protection Board, 888 Washington Boulevard, 7th Floor, Stamford, CT 06901.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 16, 2021	090015
Florida:						
Duval	City of Jacksonville (21–04–0882P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Development Services Division, 214 North Hogan Street, Jacksonville, FL 32202.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 25, 2021	120077
Glades	Seminole Tribe of Florida (21–04–1236P).	The Honorable Marcellus W. Osceola, Jr., Chairman, Seminole Tribe of Florida, 6300 Stirling Road, Hollywood, FL 33024.	Hollywood Environmental Resource Management Department, 6363 Taft Street, Suite 309, Hollywood, FL 33024.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 21, 2021	120685
Hendry	Seminole Tribe of Florida (19–04–1505P).	The Honorable Marcellus W. Osceola, Jr., Chairman, Seminole Tribe of Florida, 6300 Stirling Road, Hollywood, FL 33024.	Hollywood Environmental Resource Management Department, 6363 Taft Street, Suite 309, Hollywood, FL 33024.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2021	120685
Glades	Unincorporated areas of Glades County (21–04–1236P).	The Honorable Tim Stanley, Chairman, Glades County Board of Commissioners, P.O. Box 1527, Moore Haven, FL 33471.	Glades County Community Development Department, 198 6th Street, Moore Haven, FL 33471.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 21, 2021	120095
Hendry	Unincorporated areas of Hendry County (19–04–1505P).	The Honorable Mitchell Wills, Chairman, Hendry County Board of Commissioners, P.O. Box 2340, LaBelle, FL 33975.	Hendry County Building Department, 640 South Main Street, LaBelle, FL 33935.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2021	120107
Leon	City of Tallahassee (21–04–3156X).	The Honorable John E. Dailey, Mayor, City of Tallahassee, 300 South Adams Street, Tallahassee, FL 32301.	Stormwater Management Department, 408 North Adams Street, Tallahassee, FL 32301.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 4, 2021	120144

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Leon	Unincorporated areas of Leon County (21–04–3156X).	The Honorable Rick Minor, Chairman, Leon County Commission, 301 South Monroe Street, Tallahassee, FL 32301.	Department of Development Support and Environmental Management, 435 North Macomb Street, 2nd Floor, Tallahassee, FL 32301.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 4, 2021	120143
Monroe	City of Key Colony Beach (21–04–2856P).	The Honorable Ron Sutton, Mayor, City of Key Colony Beach, 600 West Ocean Drive, Key Colony Beach, FL 33051.	City Hall, 600 West Ocean Drive, Key Colony Beach, FL 33051.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 8, 2021	125121
Monroe	Unincorporated areas of Monroe County (21–04–3074P).	The Honorable Michelle Coldiron, Mayor, Monroe County Board of Commissioners, 25 Ships Way, Big Pine Key, FL 33043.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 12, 2021	125129
Pasco	Unincorporated areas of Pasco County (20–04–5876P).	The Honorable Dan Biles, Pasco County Administrator, 8731 Citizens Drive, Suite 350, New Port Richey, FL 34654.	Pasco County Government Center, 8731 Citizens Drive, New Port Richey, FL 34654.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 1, 2021	120230
Volusia	City of Daytona Beach (21–04–3150P).	The Honorable Derrick L. Henry, Mayor, City of Daytona Beach, 301 South Ridgewood Avenue, Room 200, Daytona Beach, FL 32114.	Utilities Department, 125 Basin Street, Suite 100, Daytona Beach, FL 32114.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 17, 2021	125099
Walton	City of Freeport (21–04–1423P).	The Honorable Russ Barley, Mayor, City of Freeport, 112 State Hwy. 20 West, Freeport, FL 32439.	Planning and Zoning Department, 16040 Highway 331 Business, Freeport, FL 32439.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 18, 2021	120319
Georgia: Columbia	City of Harlem (21–04–3151P).	The Honorable Roxanne Whitaker, Mayor, City of Harlem, P.O. Box 99, Harlem, GA 30814.	City Hall, 320 North Louisville Street, Harlem, GA 30814.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 12, 2021	130266
Louisiana:						
Ascension	Unincorporated areas of Ascension Parish (20–06–3506P).	The Honorable Clint Cointment, President, Ascension Parish, 615 East Worthey Street, Gonzales, LA 70737.	Ascension Parish Governmental Complex, 615 East Worthey Street, Gonzales, LA 70737.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2021	220013
Lafayette	City of Broussard (21–06–1666P).	The Honorable Ray Bourque, Mayor, City of Broussard, 310 East Main Street, Broussard, LA 70518.	City Hall, 310 East Main Street, Broussard, LA 70518	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 20, 2021	220102
LaSalle	Unincorporated areas of LaSalle Parish (21–06–2196P).	Mr. Robert Fowler, LaSalle Parish President, P.O. Box 1288, Jena, LA 71342.	LaSalle Parish Courthouse, 1050 Courthouse Street, Room 13, Jena, LA 71342.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 18, 2021	220112
Maine: York	Town of Kittery (20–01–0605P).	Ms. Kendra Amaral, Manager, Town of Kittery, 200 Rogers Road, Kittery, ME 03904.	Planning and Development Department, 200 Rogers Road, Kittery, ME 03904.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 14, 2021	230171
Maryland: Frederick.	City of Frederick (21–03–0422P).	The Honorable Michael O'Connor, Mayor, City of Frederick, 101 North Court Street, Frederick, MD 21701.	Engineering Department, 140 West Patrick Street, 3rd Floor, Frederick, MD 21701.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 1, 2021	240030
Massachusetts:						
Plymouth	Town of Carver (20–01–0491P).	Mr. Richard LaFond, Town of Carver Administrator, 108 Main Street, Carver, MA 02330.	Town Hall, 108 Main Street, Carver, MA 02330.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 26, 2021	250262
Plymouth	Town of Pembroke (20–01–0491P).	Mr. William D. Chenard, Town of Pembroke Manager, 100 Center Street, Pembroke, MA 02359.	Town Hall, 100 Center Street, Pembroke, MA 02359.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 26, 2021	250277
Nevada: Nye	Unincorporated areas of Nye County (21–09–0364P).	The Honorable Debra Strickland, Chair, Nye County Board of Commissioners, 2100 East Walt Williams Drive, Suite 100, Pahrump, NV 89048.	Nye County Planning Department, 250 North Highway 160, Suite 1, Pahrump, NV 89050.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 1, 2021	320018

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
New Mexico: Santa Fe.	Unincorporated areas of Santa Fe County (21–06–1246P).	Ms. Katherine Miller, Santa Fe County Manager, 102 Grant Avenue, Santa Fe, NM 87501.	Santa Fe County Building and Development Services Department, 102 Grant Avenue, Santa Fe, NM 87501.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 17, 2021	350069
Rhode Island: Washington.	Town of Charlestown (21–01–0755P).	The Honorable Deborah A. Carney, President, Town of Charlestown Council, 4540 South County Trail, Charlestown, RI 02813.	Building/Zoning and Floodplain Management Department, 4540 South County Trail, Charlestown, RI 02813.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 29, 2021	445395
Texas:						
Bexar	City of San Antonio (20–06–2739P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvement, Storm Water Division, 114 West Commerce Street, San Antonio, TX 78205.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 18, 2021	480045
Bexar	City of San Antonio (21–06–0439P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvement, Storm Water Division, 114 West Commerce Street, San Antonio, TX 78205.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 25, 2021	480045
Bexar	Unincorporated areas of Bexar County (21–06–0439P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 25, 2021	480035
Burnet	Unincorporated areas of Burnet County (21–06–1501P).	The Honorable James Oakley, Burnet County Judge, 220 South Pierce Street, Burnet, TX 78611.	Burnet County Development Services Department, 133 East Jackson Street, Burnet, TX 78611.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 18, 2021	481209
Collin	City of Plano (21–06–0228P).	The Honorable John B. Muns, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	City Hall, 1520 K Avenue, Plano, TX 75074.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 5, 2021	480140
Dallas	City of Rowlett (20–06–2314P).	The Honorable Tammy Dana-Bashian, Mayor, City of Rowlett, 4000 Main Street, Rowlett, TX 75088.	Community Development Department, 5702 Rowlett Road, Rowlett, TX 75089.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 19, 2021	480185
Galveston	City of League City (21–06–0710P).	The Honorable Pat Hallisey, Mayor, City of League City, 300 West Walker Street, League City, TX 77573.	Engineering Department, 500 West Walker Street, League City, TX 77573.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 18, 2021	485488
Galveston	Unincorporated areas of Galveston County (21–06–0710P).	The Honorable Mark Henry, Galveston County Judge, 772 Moody Avenue, Suite 200, Galveston, TX 77550.	Galveston County Building Department, 823 Rosenberg Street, Galveston, TX 77553.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 18, 2021	485470
Llano	Unincorporated areas of Llano County (21–06–1501P).	The Honorable Ron Cunningham, Llano County Judge, 801 Ford Street, Room 101, Llano, TX 78643.	Llano County Land Development and Emergency Management Department, 100 West Sandstone Street, Suite 200A, Llano, TX 78643.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 18, 2021	481234
Rockwell	City of Rockwall (20–06–3796P).	Ms. Mary Smith, Interim City Manager, City of Rockwall, 385 South Goliad Street, Rockwall, TX 75087.	Planning and Zoning Department, 385 South Goliad Street, Rockwall, TX 75087.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 1, 2021	480547
Tarrant	City of Fort Worth (21–06–0746P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 27, 2021	480596
Travis	City of Pflugerville (20–06–3449P).	The Honorable Victor Gonzales, Mayor, City of Pflugerville, 100 East Main Street, Suite 300, Pflugerville, TX 78691.	Development Services Department, 201–B East Pecan Street, Pflugerville, TX 78691.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 22, 2021	481028
Travis	City of Pflugerville (21–06–0300P).	The Honorable Victor Gonzales, Mayor, City of Pflugerville, 100 East Main Street, Suite 300, Pflugerville, TX 78691.	Development Services Department, 201–B East Pecan Street, Pflugerville, TX 78691.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 4, 2021	481028

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Travis	Unincorporated areas of Travis County, (21–06–0300P).	The Honorable Andy Brown, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	Travis County, Transportation and Natural Resources Department, 700 Lavaca Street, 5th Floor, Austin, TX 78701.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 4, 2021	481026
Webb	Unincorporated areas of Webb County (21–06–0214P).	The Honorable Tano E. Tijerina, Webb County Judge, 1000 Houston Street, 3rd Floor, Laredo, TX 78040.	Webb County, Planning Department, 1110 Washington Street, Suite 302, Laredo, TX 78040.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 12, 2021	481059
Utah: Salt Lake	City of South Jordan (20–08–0763P).	The Honorable Dawn R. Ramsey, Mayor, City of South Jordan, 1600 West Towne Center Drive, South Jordan, UT 84095.	Development Services Department, 1600 West Towne Center Drive, South Jordan, UT 84095.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 27, 2021	490107

[FR Doc. 2021–17218 Filed 8–11–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2158]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below.

Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alaska: Anchorage	Municipality of Anchorage (20–10–0848P).	The Honorable Austin Quinn-Davidson, Mayor, Municipality of Anchorage, 632 West 6th Avenue, Suite 840, Anchorage, AK 99501.	Municipality of Anchorage, 4700 South Bargaw Street, Anchorage, AK 99507.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 5, 2021	020005
Arizona:						
Maricopa	City of Surprise (21–09–0673P).	The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Public Works Department, Engineering Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 5, 2021	040053
Pinal	Unincorporated Areas of Pinal County (21–09–0194P).	The Honorable Stephen Q. Miller, Chairman, Board of Supervisors, Pinal County, P.O. Box 827, Florence, AZ 85132.	Pinal County, Engineering Division, 31 North Pinal Street Building F, Florence, AZ 85132.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 22, 2021	040077
California:						
Riverside	Unincorporated Areas of Riverside County (21–09–0016P).	The Honorable Karen Spiegel, Chair, Board of Supervisors, Riverside County, 4080 Lemon Street, 5th Floor, Riverside, CA 92502.	Riverside County, Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 26, 2021	060245
San Joaquin ...	City of Lathrop (20–09–0630P).	The Honorable Sonny Dhaliwal, Mayor, City of Lathrop, 390 Towne Centre Drive, Lathrop, CA 95330.	Community Development Department, Planning Division, 390 Towne Centre Drive, Lathrop, CA 95330.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 18, 2021	060738
Ventura	City of Simi Valley (21–09–0281P).	The Honorable Keith L. Mashburn, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	City Hall, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 8, 2021	060421
Ventura	Unincorporated Areas of Ventura County (20–09–1626P).	The Honorable Linda Parks, Chair, Board of Supervisors, Ventura County, 800 South Victoria Avenue, Ventura, CA 93009.	Ventura County, Public Works Agency, 800 South Victoria Avenue, Ventura, CA 93009.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 21, 2021	060413
Colorado: ..... Morgan	Unincorporated Areas of Morgan County (21–08–0019P).	Mr. Mark Arndt, District 1 Commissioner, Morgan County, P.O. Box 596, Fort Morgan, CO 80701.	Morgan County, Planning and Zoning Department, 218 West Kiowa Avenue, Fort Morgan, CO 80701.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 22, 2021	080129
Idaho:						
Ada	City of Eagle (20–10–1292P).	The Honorable Jason Pierce, Mayor, City of Eagle, 660 East Civic Lane, Eagle, ID 83616.	City Hall, 660 East Civic Lane, Eagle, ID 83616.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 14, 2021	160003
Ada	City of Star (20–10–1292P).	The Honorable Trevor Chadwick, Mayor, City of Star, City Hall, 10769 West State Street, Star, ID 83669.	City Hall, 10769 West State Street, Star, ID 83669.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 14, 2021	160236
Ada	Unincorporated Areas of Ada County (20–10–1292P).	Mr. Rod Beck, Chairman, Ada County, Board of Commissioners, 200 West Front Street, Boise, ID 83702.	Ada County, Courthouse, 200 West Front Street, Boise, ID 83702.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 14, 2021	160001
Illinois: Will	Village of Bolingbrook (21–05–0627P).	The Honorable Mary Alexander-Basta, Mayor, Village of Bolingbrook, 375 West Briarcliff Road, Bolingbrook, IL 60440.	Village Hall, 375 West Briarcliff Road, Bolingbrook, IL 60440.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 28, 2021	170812
Florida:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Duval	City of Jacksonville (21–04–0683P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, City Hall at St. James Building, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	City Hall, 117 West Duval Street, Room 100, Jacksonville, FL 32202.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 14, 2021	120077
St. Johns	Unincorporated Areas of St. Johns County (20–04–5575P).	Mr. Jeremiah Ray Blocker, Chair, St. Johns County, Board of County Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County, Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32084.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 29, 2021	125147
St. Johns	Unincorporated Areas of St. Johns County (21–04–0683P).	Mr. Jeremiah Ray Blocker, Chair, St. Johns County, Board of County Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County, Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32084.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 14, 2021	125147
Iowa: Story	City of Ames (21–07–0024P).	The Honorable John Haila, Mayor, City of Ames, 515 Clark Avenue, Ames, IA 50010.	City Hall, 515 Clark Avenue, Ames, IA 50010.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 21, 2021	190254
Kansas: Shawnee	City of Topeka (21–07–0131P).	The Honorable Michelle De La Isla, Mayor, City of Topeka, 215 Southeast 7th Street, Room 350, Topeka, KS 66603.	Engineering Division, 620 Southeast Madison Street, Topeka, KS 66603.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 12, 2021	205187
Michigan:						
Oakland	City of Farmington Hills (20–05–4934P).	The Honorable Vicki Barnett, Mayor, City of Farmington Hills, 31555 West Eleven Mile Road, Farmington Hills, MI 48336.	City Hall, 31555 Eleven Mile Road, Farmington Hills, MI 48336.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 22, 2021	260172
Oakland	City of Novi (20–05–4934P).	The Honorable Bob Gatt, Mayor, City of Novi, Civic Center, 45175 Ten Mile Road, Novi, MI 48375.	Civic Center, 45175 Ten Mile Road, Novi, MI 48375.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 22, 2021	260175
Wayne	Charter Township of Brownstown (21–05–2424P).	Mr. Andrew Linko, Supervisor, Charter Township of Brownstown, Township Hall, 21313 Telegraph Road, Brownstown, MI 48183.	Charter Township Offices, 21313 Telegraph Road, Brownstone, MI 48183.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 18, 2021	260218
Minnesota:						
Marshall	City of Oslo (21–05–2364P).	The Honorable Erika Martens, Mayor, City of Oslo, City Hall, P.O. Box 187, Oslo, MN 56744.	City Hall, 107 3rd Avenue East, Oslo, MN 56744.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 5, 2021	270272
Marshall	Unincorporated Areas of Marshall County (21–05–2364P).	Mr. Rolland Miller, Chairperson, Marshall County, Board of Commissioners, 26817 420th Avenue Northwest, Warren, MN 56762.	Marshall County, Courthouse, 208 East Colvin Avenue, Warren, MN 56762.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 5, 2021	270638
Nevada:						
Clark	City of Henderson (21–09–0246P).	The Honorable Debra March, Mayor, City of Henderson, 240 South Water Street, Henderson, NV 89015.	Public Works Department, 240 South Water Street, Henderson, NV 89015.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 3, 2021	320005
Clark	Unincorporated Areas of Clark County (21–09–0246P).	The Honorable Marilyn Kirkpatrick, Chair, Board of Commissioners, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89155.	Office of the Director of Public Works, 500 South Grand Central Parkway, 2nd Floor, Las Vegas, NV 89155.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 3, 2021	320003
Washoe	Unincorporated Areas of Washoe County (21–09–0392P).	The Honorable Bob Lucey, Chairman, Board of Commissioners, Washoe County, 1001 East 9th Street, Reno, NV 89512.	Washoe County, Administration Building, Department of Public Works, 1001 East 9th Street, Reno, NV 89512.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 10, 2021	320019

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
New Jersey: Passaic.	Borough of Pompton Lakes (21–02–0381P).	The Honorable Michael Serra, Mayor, Borough of Pompton Lakes, 25 Lenox Avenue, Pompton Lakes, NJ 07442.	Municipal Building, 25 Lenox Avenue, Pompton Lakes, NJ 07442.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 25, 2021	345528
Texas: Dallas	Town of Highland Park (21–06–0509P).	The Honorable Margo Goodwin, Mayor, Town of Highland Park, 4700 Drexel Drive, Highland Park, TX 75205.	Engineering Department, 4700 Drexel Drive, Highland Park, TX 75205.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 22, 2021	480178
Virginia: Albemarle	Unincorporated Areas of Albemarle County (21–03–0174P).	Mr. Jeff Richardson, Albemarle County, Executive, 401 McIntire Road, Charlottesville, VA 22902.	Albemarle County, Department of Community Development, 401 McIntire Road, Charlottesville, VA 22902.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 5, 2021	510006
Wisconsin: Crawford.	City of Prairie du Chien (21–05–1223P).	The Honorable Dave Hemmer, Mayor, City of Prairie du Chien, 214 East Blackhawk Avenue, Prairie du Chien, WI 53821.	City Hall, 214 East Blackhawk Avenue, Prairie du Chien, WI 53821.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 28, 2021	555573

[FR Doc. 2021–17217 Filed 8–11–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2156]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before November 10, 2021.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2156, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after

FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Coconino County, Arizona and Incorporated Areas Project: 17–09–1408S Preliminary Date: June 30, 2020	
City of Sedona	Community Development Department, 102 Roadrunner Drive, Sedona, AZ 86336.
Unincorporated Areas of Coconino County	Coconino County, Community Development Department, 2500 North Fort Valley Road, Building 1, Flagstaff, AZ 86001.
Yavapai County, Arizona and Incorporated Areas Project: 17–09–1408S Preliminary Date: June 30, 2020	
City of Sedona	Community Development Department, 102 Roadrunner Drive, Sedona, AZ 86336.
Unincorporated Areas of Yavapai County	Yavapai County, Flood Control District, 1120 Commerce Drive, Prescott, AZ 86305.
Klamath County, Oregon and Incorporated Areas Project: 17–10–0391S Preliminary Date: April 30, 2020	
City of Bonanza	City Hall, 2900 4th Avenue, Bonanza, OR 97623.
City of Chiloquin	City Hall, 127 South First Avenue, Chiloquin, OR 97624.
City of Klamath Falls	Land Use Planning Office, 226 South Fifth Street, Klamath Falls, OR 97601.
City of Merrill	City Hall, 301 East 2nd Street, Merrill, OR 97633.
The Klamath Tribes	Klamath Tribes Administration, 501 Chiloquin Boulevard, Chiloquin, OR 97624.
Unincorporated Areas of Klamath County	Klamath County, Community Development Office, 305 Main Street, Klamath Falls, OR 97601.

[FR Doc. 2021–17201 Filed 8–11–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No.: B–2116).	Unincorporated Areas of Maricopa County (21–09–0181X).	The Honorable Jack Sellers, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	Apr. 30, 2021	040037.
Mohave (FEMA Docket No.: B–2116).	City of Bullhead City (20–09–0730P).	The Honorable Tom Brady, Mayor, City of Bullhead City, 2355 Trane Road, Bullhead City, AZ 86442.	Public Works Department, 2355 Trane Road, Bullhead City, AZ 86442.	Jun. 9, 2021	040125.
Pima (FEMA Docket No.: B–2080).	City of Tucson (20–09–2061P).	The Honorable Regina Romero, Mayor, City of Tucson, 255 West Alameda Street, Tucson, AZ 85701.	Planning and Development Services, Public Works Building, 201 North Stone Avenue, Tucson, AZ 85701.	Mar. 15, 2021	040076.
Pima (FEMA Docket No.: B–2080).	Town of Marana (20–09–0784P).	The Honorable Ed Honea, Mayor, Town of Marana, 11555 West Civic Center Drive, Marana, AZ 85653.	Engineering Department, Marana Municipal Complex, 11555 West Civic Center Drive, Marana, AZ 85653.	Apr. 5, 2021	040118.
Pima (FEMA Docket No.: B–2108).	Unincorporated Areas of Pima County (20–09–1372P).	The Honorable Ramon Valadez, Chairman, Board of Supervisors, Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 201 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	Mar. 8, 2021	040073.
California:					
Los Angeles (FEMA Docket No.: B–2108).	City of Los Angeles (20–09–1031P).	The Honorable Eric Garcetti, Mayor, City of Los Angeles, 200 North Spring Street, Room 303, Los Angeles, CA 90012.	Department of Public Works, Stormwater Public Counter, 1149 South Broadway, 8th Floor, Los Angeles, CA 90015.	Mar. 4, 2021	060137.
Nevada (FEMA Docket No.: B–2080).	Town of Truckee (20–09–0383P).	The Honorable David Polivy, Mayor, Town of Truckee, 10183 Truckee Airport Road, Truckee, CA 96161.	Eric W. Rood, Administrative Center, 950 Maidu Avenue, Nevada City, CA 95959.	Mar. 22, 2021	060762.
Orange (FEMA Docket No.: B–2116).	City of Huntington Beach (20–09–0545P).	The Honorable Lyn Semeta, Mayor, City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648.	City Hall, 2000 Main Street, Huntington Beach, CA 92648.	Dec. 17, 2020	065034.
Orange (FEMA Docket No.: B–2108).	City of Irvine (20–09–1008P).	The Honorable Christina L. Shea, Mayor, City of Irvine, City Hall, 1 Civic Center Plaza, Irvine, CA 92606.	City Hall, 1 Civic Center Plaza, Irvine, CA 92623.	Mar. 5, 2021	060222.
Orange (FEMA Docket No.: B–2080).	City of Orange (21–09–0083X).	The Honorable Mark A. Murphy, Mayor, City of Orange, 300 East Chapman Avenue, Orange, CA 92866.	City Hall, 300 East Chapman Avenue, Orange, CA 92866.	Mar. 12, 2021	060228.
Orange (FEMA Docket No.: B–2080).	City of Villa Park (21–09–0083X).	The Honorable Robert Pitts, Mayor, City of Villa Park, 17855 Santiago Boulevard, Villa Park, CA 92861.	City Hall, 17855 Santiago Boulevard, Villa Park, CA 92861.	Mar. 12, 2021	060236.
Orange (FEMA Docket No.: B–2116).	Unincorporated Areas of Orange County (20–09–0545P).	The Honorable Michelle Steel, Chair, Board of Supervisors, Orange County, 333 West Santa Ana Boulevard, Santa Ana, CA 92701.	Orange County Flood Control Division, H.G. Osborne Building, 300 North Flower Street, 7th Floor, Santa Ana, CA 92703.	Dec. 17, 2020	060212.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Orange (FEMA Docket No.: B–2080).	Unincorporated Areas of Orange County (21–09–0083X).	The Honorable Michelle Steel, Chair, Board of Supervisors, Orange County, 333 West Santa Ana Boulevard, Santa Ana, CA 92701.	Orange County Flood Control Division, H.G. Osborne Building, 300 North Flower Street, 7th Floor, Santa Ana, CA 92703.	Mar. 12, 2021	060212.
Riverside (FEMA Docket No.: B–2080).	City of Eastvale (18–09–2446P).	The Honorable Brandon Plott, Mayor, City of Eastvale, 12363 Limonite Avenue, Suite 910, Eastvale, CA 91752.	City Hall, Public Works Department, 12363 Limonite Avenue, Suite 910, Eastvale, CA 91752.	Apr. 5, 2021	060155.
Riverside (FEMA Docket No.: B–2080).	City of Jurupa Valley (18–09–2446P).	The Honorable Anthony Kelly, Jr., Mayor, City of Jurupa Valley, 8930 Limonite Avenue, Jurupa Valley, CA 92509.	City Hall, 8930 Limonite Avenue, Jurupa, CA 92509.	Apr. 5, 2021	060286.
Riverside (FEMA Docket No.: B–2080).	City of Norco (18–09–2446P).	The Honorable Berwin Hanna, Mayor, City of Norco, 2870 Clark Avenue, Norco, CA 92860.	City Hall, 2870 Clark Avenue, Norco, CA 92860.	Apr. 5, 2021	060256.
Riverside (FEMA Docket No.: B–2080).	Unincorporated Areas of Riverside County (18–09–2446P).	The Honorable V. Manuel Perez, Chairman, Board of Supervisors, Riverside County, 4080 Lemon Street, 5th Floor, Riverside, CA 92501.	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.	Apr. 5, 2021	060245.
Sacramento (FEMA Docket No.: B–2116).	Unincorporated Areas of Sacramento County (20–09–0760P).	The Honorable Phil Serna, Chairman, Board of Supervisors, Sacramento County, 700 H Street, Suite 2450, Sacramento, CA 95814.	Sacramento County Department of Water Resources, 827 7th Street, Room 301, Sacramento, CA 95814.	May 11, 2021	060262.
San Bernardino (FEMA Docket No.: B–2116).	City of San Bernardino (20–09–1133P).	The Honorable John Valdivia, Mayor, City of San Bernardino, 290 North D Street, San Bernardino, CA 92401.	City Hall, 300 North D Street, San Bernardino, CA 92418.	Apr. 28, 2021	060281.
San Bernardino (FEMA Docket No.: B–2116).	Unincorporated Areas of San Bernardino County (20–09–1133P).	The Honorable Curt Hagman, Chairman, Board of Supervisors, San Bernardino County, 385 North Arrowhead Avenue, 5th Floor, San Bernardino, CA 92415.	San Bernardino County Public Works, Water Resources Department, 825 East 3rd Street, San Bernardino, CA 92415.	Apr. 28, 2021	060270.
San Diego (FEMA Docket No.: B–2108).	Unincorporated Areas of San Diego County (20–09–2025P).	The Honorable Greg Cox, Chairman, Board of Supervisors, San Diego County, 1600 Pacific Highway, San Diego, CA 92101.	San Diego County Flood Control District, Department of Public Works, 5510 Overland Avenue, Suite 410, San Diego, CA 92123.	Apr. 14, 2021	060284.
San Mateo (FEMA Docket No.: B–2116).	City of Belmont (20–09–1412P).	The Honorable Charles Stone, Mayor, City of Belmont, 1 Twin Pines Lane, Belmont, CA 94002.	Public Works Department, 1 Twin Pines Lane, Belmont, CA 94002.	May 20, 2021	065016.
Ventura (FEMA Docket No.: B–2108).	City of Simi Valley (19–09–2151P).	The Honorable Keith L. Mashburn, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	City Hall, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	Apr. 27, 2021	060421.
Colorado:					
Weld (FEMA Docket No.: B–2080).	Town of Milliken (19–08–1058P).	The Honorable Elizabeth Austin, Mayor, Town of Milliken, 1101 Broad Street, Milliken, CO 80543.	Town Hall, 1101 Broad Street, Milliken, CO 80543.	Feb.1, 2021	080187.
Weld (FEMA Docket No.: B–2080).	Unincorporated Areas of Weld County (19–08–1058P).	Mr. Mike Freeman, Commissioners Chair, Weld County, 1150 O Street, Greeley, CO 80632.	Weld County Commissioner's Office, 915 10th Street, Greeley, CO 80632.	Feb. 1, 2021	080266.
Florida:					
Clay (FEMA Docket No.: B–2108).	Unincorporated Areas of Clay County (20–04–2911P).	Mr. Mike Cella, Chairperson, Board of Clay County Commissioners, P.O. Box 1366, Green Cove Springs, FL 32043.	Clay County, 321 Walnut Street, Green Cove Springs, FL 32043.	Apr. 29, 2021	120064.
Duval (FEMA Docket No.: B–2108).	City of Jacksonville (20–04–2911P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, City Hall at St. James Building, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	City Hall, 117 West Duval Street, Room 100, Jacksonville, FL 32202.	Apr. 29, 2021	120077.
Duval (FEMA Docket No.: B–2108).	City of Jacksonville (20–04–3128P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, City Hall at St. James Building, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	City Hall, 117 West Duval Street, Room 100, Jacksonville, FL 32202.	May 5, 2021	120077.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
St. Johns (FEMA Docket No.: B–2108).	Unincorporated Areas of St. Johns County, (20–04–2994P).	Mr. Jeb S. Smith, Chair, St. Johns County Board of County Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Permit Center, 4040 Lewis Speedway, St. Augustine, FL 32084.	Apr. 15, 2021	125147.
St. Johns (FEMA Docket No.: B–2108).	Unincorporated Areas of St. Johns County (20–04–3165P).	Mr. Jeb S. Smith, Chair, St. Johns County Board of County Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Permit Center, 4040 Lewis Speedway, St. Augustine, FL 32084.	May 13, 2021	125147.
Hawaii: Hawaii (FEMA Docket No.: B–2080).	Hawaii County (20–09–1839P).	The Honorable Harry Kim, Mayor, County of Hawaii, 25 Aupuni Street, Hilo, HI 76720.	Hawaii County Department of Public Works, Engineering Division, 101 Pauahi Street, Suite 7, Hilo, HI 96720.	Mar. 19, 2021	155166.
Illinois:					
Champaign (FEMA Docket No.: B–2123).	City of Champaign (20–05–2709P).	The Honorable Deborah Frank Feinen, Mayor, City of Champaign, 102 North Neil Street, Champaign, IL 61820.	City Hall, 102 North Neil Street, Champaign, IL 61820.	Jul. 15, 2021	170026.
Cook (FEMA Docket No.: B–2116).	City of Markham (20–05–2119P).	The Honorable Roger A. Agpawa, Mayor, City of Markham, 16313 Kedzie Parkway, Markham, IL 60428.	City Hall, 16313 South Kedzie Parkway Markham, IL 60428.	Jun. 16, 2021	175169.
Cook (FEMA Docket No.: B–2116).	Unincorporated Areas of Cook County (20–05–2119P).	The Honorable Toni Preckwinkle, County Board President, Cook County, 118 North Clark Street, Room 537, Chicago, IL 60602.	Cook County Building and Zoning Department, 69 West Washington, Suite 2830, Chicago, IL 60602.	Jun. 16, 2021	170054.
Cook (FEMA Docket No.: B–2108).	Unincorporated Areas of Cook County (21–05–0108P).	Toni Preckwinkle, County Board President, Cook County, 118 North Clark Street, Room 537, Chicago, IL 60602.	Cook County Building and Zoning Department, 69 West Washington, Suite 2830, Chicago, IL 60602.	May 4, 2021	170054.
Cook (FEMA Docket No.: B–2108).	Village of Orland Park (21–05–0108P).	The Honorable Keith Pekau, Mayor, Village of Orland Park, 14700 South Ravinia Avenue, Orland Park, IL 60462.	Village Hall, 14700 South Ravinia Avenue, Orland Park, IL 60462.	May 4, 2021	170140.
DuPage (FEMA Docket No.: B–2108).	City of Naperville (20–05–3287P).	The Honorable Steve Chirico, Mayor, City of Naperville, 400 South Eagle Street, Naperville, IL 60540.	Municipal Center, 400 South Eagle Street, Naperville, IL 60540.	Apr. 26, 2021	170213.
DuPage (FEMA Docket No.: B–2108).	City of Wheaton (20–05–3287P).	The Honorable Philip J. Suess, Mayor, City of Wheaton, 303 West Wesley Street, Wheaton, IL 60187.	City Hall, 303 West Wesley Street, Wheaton, IL 60187.	Apr. 26, 2021	170221.
DuPage (FEMA Docket No.: B–2108).	Unincorporated Areas of DuPage County (20–05–3287P).	Dan Cronin, Chairman, DuPage County Board, 421 North County Farm Road, Wheaton, IL 60187.	County Administration Building, Stormwater Management, 421 North County Farm Road, Wheaton, IL 60187.	Apr. 26, 2021	170197.
DuPage (FEMA Docket No.: B–2123).	Village of Lisle (20–05–2443P).	The Honorable Christopher Pecak, Mayor, Village of Lisle, 925 Burlington Avenue, Lisle, IL 60532.	Village Hall, 925 Burlington Avenue, Lisle, IL 60532.	Jul. 15, 2021	170211.
DuPage (FEMA Docket No.: B–2116).	Village of Lisle (20–05–3529P).	The Honorable Christopher Pecak, Mayor, Village of Lisle, 925 Burlington Avenue, Lisle, IL 60532.	Village Hall, 925 Burlington Avenue, Lisle, IL 60532.	Jun. 1, 2021	170211.
Livingston (FEMA Docket No.: B–2123).	Unincorporated Areas of Livingston County (20–05–1894P).	The Honorable Kathy Arbogast, County Board Chair, Livingston County, 112 West Madison Street, Pontiac, IL 61764.	Livingston County Regional Planning Commission, 110 West Water Street, Suite 3, Pontiac, IL 61764.	Jul. 15, 2021	170929.
Livingston (FEMA Docket No.: B–2123).	Village of Forrest (20–05–1894P).	The Honorable Lewis Breeden, Village President, Village of Forrest, 323 South Williams, Forrest, IL 61741.	Village Hall, 323 South Williams Forrest, IL 61741.	Jul. 15, 2021	170425.
Rock Island (FEMA Docket No.: B–2108).	City of Rock Island (20–05–2335P).	The Honorable Mike Thoms, Mayor, City of Rock Island, 1528 3rd Avenue, Rock Island, IL 61201.	City Hall, 1528 3rd Avenue, Rock Island, IL 61201.	Apr. 21, 2021	175171.
Will (FEMA Docket No.: B–2116).	City of Lockport (21–05–0834P).	The Honorable Steven Streit, Mayor, City of Lockport, 222 East 9th Street, Lockport, IL 60441.	Public Works and Engineering, 17112 South Prime Boulevard, Lockport, IL 60441.	Jun. 11, 2021	170703.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Will (FEMA Docket No.: B–2080).	Unincorporated Areas of Will County (20–05–3060P).	The Honorable Jennifer Bertino-Tarrant, County Executive, Will County, Will County, Office Building, 302 North Chicago Street, Joliet, IL 60432.	Land Use Department, 58 East Clinton Street, Suite 100, Joliet, IL 60432.	Apr. 9, 2021	170695.
Will (FEMA Docket No.: B–2116).	Unincorporated Areas of Will County (21–05–0834P).	The Honorable Jennifer Bertino-Tarrant, Will County Executive, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Land Use Department, 58 East Clinton Street, Suite 100, Joliet, IL 60432.	Jun. 11, 2021	170695.
Will (FEMA Docket No.: B–2123).	Village of Monee (20–05–3654P).	The Honorable Therese M. Bogs, Mayor, Village of Monee, 5130 West Court Street, Monee, IL 60449.	Village Hall, 5130 West Court Street, Monee, IL 60449.	Jun. 24, 2021	171029.
Will (FEMA Docket No.: B–2080).	Village of Romeoville (20–05–3060P).	The Honorable John D. Noak, Mayor, Village of Romeoville, 1050 West Romeo Road, Romeoville, IL 60446.	Village Hall, 1050 West Romeo Road, Romeoville, IL 60446.	Apr. 9, 2021	170711.
Indiana: Marion (FEMA Docket No.: B–2116).	City of Indianapolis (20–05–3684P).	The Honorable Joe Hogsett, Mayor, City of Indianapolis, 200 East Washington Street, Suite 2501, Indianapolis, IN 46204.	City Hall, 1200 Madison Avenue, Suite 100, Indianapolis, IN 46225.	May 24, 2021	180159.
Kansas:					
Johnson (FEMA Docket No.: B–2108).	City of Shawnee (20–07–1084P).	The Honorable Michelle Distler, Mayor, City of Shawnee, City Hall, 11110 Johnson Drive, Shawnee, KS 66203.	City Hall, 11110 Johnson Drive, Shawnee, KS 66203.	Apr. 28, 2021	200177.
Leavenworth (FEMA Docket No.: B–2116).	City of Basehor (20–07–1131P).	The Honorable David Breuer, Mayor, City of Basehor, P.O. Box 406, Basehor, KS 66007.	City Hall, 2620 North 155th Street, Basehor, KS 66007.	May 12, 2021	200187.
Leavenworth (FEMA Docket No.: B–2116).	Unincorporated Areas of Leavenworth County (20–07–1131P).	Mr. Doug Smith, Chairman, Board of County Commissioners, Leavenworth County, 300 Walnut Street, Suite 225, Leavenworth, KS 66048.	Leavenworth County Courthouse, 300 Walnut Street, Leavenworth, KS 66048.	May 12, 2021	200186.
Michigan: Macomb (FEMA Docket No.: B–2116).	City of Fraser (20–05–3517P).	The Honorable Michael Carnagie, Mayor, City of Fraser, 33000 Garfield Road, Fraser, MI 48026.	City Hall, 33000 Garfield Road, Fraser, MI 48026.	May 28, 2021	260122.
Minnesota:					
Norman (FEMA Docket No.: B–2080 and B–2108).	City of Halstad (20–05–2194P).	The Honorable Lori Delong, Mayor, City of Halstad, 405 2nd Avenue, West Halstad, MN 56548.	Administrative Building, 405 2nd Avenue, West Halstad, MN 56548.	Mar. 10, 2021	270324.
Norman (FEMA Docket No.: B–2080 and B–2108).	City of Hendrum (20–05–2263P).	The Honorable Curt Johannsen, Mayor, City of Hendrum, P.O. Box 100, Hendrum, MN 56550.	Administrative Building, 308 Main Street East, Hendrum, MN 56550.	Mar. 10, 2021	270325.
Norman (FEMA Docket No.: B–2080 and B–2108).	Unincorporated Areas of Norman County (20–05–2194P).	Ms. Lee Ann Hall, Chair, Norman County Board of Commissioners, 315 West Main Street, Ada, MN 56510.	Norman County Court House, 16 3rd Avenue East, Ada, MN 56510.	Mar. 10, 2021	270322.
Norman (FEMA Docket No.: B–2080 and B–2108).	Unincorporated Areas of Norman County (20–05–2263P).	Ms. Lee Ann Hall, Chair, Norman County Board of Commissioners, 315 West Main Street, Ada, MN 56510.	Norman County Court House, 16 3rd Avenue East, Ada, MN 56510.	Mar. 10, 2021	270322.
Missouri:					
Boone (FEMA Docket No.: B–2108).	City of Columbia (21–07–0104P).	The Honorable Brian Treece, Mayor, City of Columbia, P.O. Box 6015, Columbia, MO 65205.	City Hall, 701 East Broadway, Columbia, MO 65205.	Apr. 21, 2021	290036.
Boone (FEMA Docket No.: B–2108).	Unincorporated Areas of Boone County (21–07–0104P).	Mr. Bill Florea, Director, Resource Management, Boone County, 801 East Walnut Street, Room 333, Columbia, MO 65201.	Boone County Government Center, Assessor's Office, 801 East Walnut Street, 1st Floor, Columbia, MO 65201.	Apr. 21, 2021	290034.
Jasper (FEMA Docket No.: B–2116).	City of Joplin (20–07–1062P).	The Honorable Ryan Stanley, Mayor, City of Joplin, City Hall, 5th Floor, 602 South Main Street, Joplin, MO 64801.	City Hall, 602 South Main Street, Joplin, MO 64801.	Jun. 3, 2021	290183.
Nevada: Carson City (FEMA Docket No.: B–2108).	City of Carson City (20–09–0437P).	The Honorable Brad Bonkowski, Mayor, City of Carson City, City Hall, 201 North Carson Street, Suite 2, Carson City, NV 89701.	Building Division Permit Center, 108 East Proctor Street, Carson City, NV 89701.	Feb. 18, 2021	320001.
New York:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Queens (FEMA Docket No.: B–2108).	City of New York (20–02–1119P).	The Honorable Bill de Blasio, Mayor, City of New York, City Hall, New York, NY 10007.	Department of City Planning, Waterfront Division, 22 Reade Street, New York, NY 10007.	Jun. 2, 2021	360497.
Richmond (FEMA Docket No.: B–2108).	City of New York (20–02–1564P).	The Honorable Bill de Blasio, Mayor, City of New York, City Hall, New York, NY 10007.	Department of City Planning, Waterfront Division, 22 Reade Street, New York, NY 10007.	Jun. 16, 2021	360497.
North Dakota:					
Traill (FEMA Docket No.: B–2080 and B–2108).	Township of Herberg (20–05–2194P).	Mr. Steven Reinpold, Chairman, Township of Herberg, 221 169th Avenue, Hillsboro, ND 58045.	County Courthouse, 114 West Caledonia, Hillsboro, ND 58045.	Mar. 10, 2021	380621.
Traill (FEMA Docket No.: B–2080 and B–2108).	Township of Elm River (20–05–2263P).	Mr. Todd Harrington, Supervisor, Township of Elm River, 948 173rd Avenue, Grandin, ND 58038.	County Courthouse, 114 West Caledonia, Hillsboro, ND 58045.	Mar. 10, 2021	380636.
Ohio:					
Fairfield (FEMA Docket No.: B–2080).	Unincorporated Areas of Fairfield County (20–05–3622P).	Mr. Dave L. Levacy, Commissioner, Fairfield County, 210 East Main Street, Room 301, Lancaster, OH 43130.	Fairfield County Regional Planning Commission, 210 East Main Street, Room 104, Lancaster, OH 43130.	Mar. 4, 2021	390158.
Franklin (FEMA Docket No.: B–2108).	City of Columbus (20–05–4648P).	The Honorable Andrew J. Ginther, Mayor, City of Columbus, 90 West Broad Street, 2nd Floor, Columbus, OH 43215.	Department of Development, 757 Carolyn Avenue, Columbus, OH 43224.	Apr. 1, 2021	390170.
Franklin (FEMA Docket No.: B–2080).	City of Dublin (20–05–2455P).	The Honorable Chris Amorose Groomes, Mayor, City of Dublin, City Hall, 5200 Emerald Parkway, Dublin, OH 43017.	Engineering Building, 5800 Shier-Rings Road, Dublin, OH 43017.	Feb. 24, 2021	390673.
Franklin (FEMA Docket No.: B–2080).	City of Grove City (20–05–3170P).	The Honorable Richard L. ''Ike'' Stage, Mayor, City of Grove City, 4035 Broadway, Grove City, OH 43123.	City Hall, 4035 Broadway, Grove City, OH 43123.	Feb. 19, 2021	390173.
Lucas (FEMA Docket No.: B–2080).	City of Toledo (20–05–2610P).	The Honorable Wade Kapszukiewicz, Mayor, City of Toledo, One Government Center, Suite 2200, Toledo, OH 43604.	Department of Inspection, One Government Center, Suite 1600, Toledo, OH 43604.	Mar. 31, 2021	395373.
Richland (FEMA Docket No.: B–2080).	Unincorporated Areas of Richland County (20–05–1712P).	Mr. Anthony Vero, County Executive, Richland County, 50 Park Avenue East, Mansfield, OH 44902.	Richland County Director of Building Regulations, 1495 West Longview, Avenue Suite 202A, Mansfield, OH 44906.	Mar. 23, 2021	390476.
Richland (FEMA Docket No.: B–2080).	Village of Bellville (20–05–1712P).	The Honorable Teri L. Brenkus, Mayor, Village of Bellville, 142 Park Place, Bellville, OH 44813.	Zoning Inspector, 142 Park Place, Bellville, OH 44813.	Mar. 23, 2021	390604.
Warren (FEMA Docket No.: B–2108).	City of Lebanon (20–05–3843P).	The Honorable Amy Brewer, Mayor, City of Lebanon, 50 South Broadway, Lebanon, OH 45036.	City Hall, 50 South Broadway, Lebanon, OH 45036.	May 3, 2021	390557.
Oregon: Columbia (FEMA Docket No.: B–2108).	City of Scappoose (21–10–0251P).	The Honorable Scott Burge, Mayor, City of Scappoose, 33568 East Columbia Avenue, Scappoose, OR 97056.	Community Development Center, 52610 Northeast 1st Street, Suite 120, Scappoose, OR 97056.	Apr. 19, 2021	410039.
Texas:					
Dallas (FEMA Docket No.: B–2108).	City of Carrollton (20–06–1319P).	The Honorable Kevin Falconer, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, TX 75011.	Engineering Department, 1945 East Jackson Road, Carrolton, TX 75011.	Apr. 12, 2021	480167.
Dallas (FEMA Docket No.: B–2108).	City of Mesquite (20–06–2074P).	The Honorable Bruce Archer, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	Engineering Division, 1515 North Galloway Avenue, Mesquite, TX 75149.	Apr. 8, 2021	485490.
Dallas (FEMA Docket No.: B–2108).	City of Richardson (20–06–1189P).	The Honorable Paul Voelker, Mayor, City of Richardson, City Hall, 411 West Arapaho Road, Richardson, TX 75080.	Engineering Office, 411 West Arapaho Road, Richardson, TX 75080.	Apr. 22, 2021	480184
Tarrant (FEMA Docket No.: B–2080).	City of Fort Worth (20–06–0541P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76102.	Mar. 19, 2021	480596.
Washington: Jefferson (FEMA Docket No.: B–2116).	Unincorporated Areas of Jefferson County (20–10–1157P).	Ms. Kate Dean, County Commissioner, Jefferson County Board of County Commissioners, P.O. Box 1220, Port Townsend, WA 98368.	Jefferson County Department of Community Development, 621 Sheridan Street, Port Townsend, WA 98368.	May 11, 2021	530069.
Wisconsin:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Iron (FEMA Docket No.: B–2108).	Unincorporated Areas of Iron County (20–05–2553P).	Mr. Joseph Pinardi, Chairman, Iron County, 406 Maple Street, Hurley, WI 54534.	Iron County Comprehensive Planning, Land and Zoning Department, 300 Taconite Street, Suite 115, Hurley, WI 54534.	Apr. 9, 2021	550182.
Kenosha (FEMA Docket No.: B–2116).	Village of Somers (17–05–6202P).	Mr. George Stoner, Board of Trustees President, Village of Somers, 7511 12th Street, Somers, WI 53171.	Village Hall, 7511–12th Street, Kenosha, WI 53144.	Jun. 14, 2021	550406.
Manitowoc (FEMA Docket No.: B–2080).	City of Manitowoc (20–05–4694P).	The Honorable Justin M. Nickels, Mayor, City of Manitowoc, 900 Quay Street, Manitowoc, WI 54220.	City Hall, 900 Quay Street, Manitowoc, WI 54220.	Mar. 11, 2021	550240.
Manitowoc (FEMA Docket No.: B–2080).	Unincorporated Areas of Manitowoc (20–05–4694P).	The Honorable Jim Brey, Chair, Board of Supervisors, Manitowoc County Courthouse, 1010 South 8th Street, Manitowoc, WI 54220.	Manitowoc County Courthouse, 1010 South 8th Street, Manitowoc, WI 54220.	Mar. 11, 2021	550236.
Outagamie (FEMA Docket No.: B–2108).	City of Appleton (20–05–2300P).	The Honorable Jake Woodford, Mayor, City of Appleton, City Hall, 100 North Appleton Street, Appleton, WI 54911.	City Hall, 100 North Appleton Street, Appleton, WI 54911.	Apr. 28, 2021	555542.
Outagamie (FEMA Docket No.: B–2108).	Unincorporated Areas of Outagamie County (20–05–2300P).	Mr. Thomas M. Nelson, County Executive, Outagamie County, 320 South Walnut Street, Appleton, WI 54911.	Outagamie County Building, 410 South Walnut Street, Appleton, WI 54911.	Apr. 28, 2021	550302.

[FR Doc. 2021–17204 Filed 8–11–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2155]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before November 10, 2021.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2155, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Davis County, Utah and Incorporated Areas Project: 10–08–1054S Preliminary Date: June 3, 2021	
City of Bountiful	City Hall, 795 South Main Street, Bountiful, UT 84010.
City of West Bountiful	City Hall, 550 North 800 West, West Bountiful, UT 84087.
Unincorporated Areas of Davis County	Davis County Administration Building, 61 South Main Street, Farmington, UT 84025.

[FR Doc. 2021–17200 Filed 8–11–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of December 2, 2021 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Adams County, Colorado and Incorporated Areas Docket No.: FEMA–B–2039	
City of Northglenn	City Hall, 11701 Community Center Drive, Northglenn, CO 80233.
City of Thornton	City Hall, 9500 Civic Center Drive, Thornton, CO 80229.
Unincorporated Areas of Adams County	Adams County Community and Economic Development, 4430 South Adams County Parkway, 1st Floor, Suite W2000, Brighton, CO 80601.
Douglas County, Colorado and Incorporated Areas Docket No.: FEMA–B–2039	
Town of Parker	Town Hall, 20120 East Mainstreet, Parker, CO 80138.
Unincorporated Areas of Douglas County	Douglas County Department of Public Works Engineering, 100 Third Street, Castle Rock, CO 80104.
Rio Blanco County, Colorado and Incorporated Areas Docket No.: FEMA–B–2050	
Town of Meeker	Town Hall, 345 Market Street, Meeker, CO 81641.
Town of Rangely	Town Hall, 209 East Main Street, Rangely, CO 81648.
Unincorporated Areas of Rio Blanco County	Rio Blanco County Clerk and Recorder's Office, 555 Main Street, Meeker, CO 81641.
Cherokee County, Iowa and Incorporated Areas Docket No.: FEMA–B–2031	
City of Aurelia	City Hall, 236 Main Street, Aurelia, IA 51005.
City of Cherokee	City Hall, 416 West Main Street, Cherokee, IA 51012.
City of Larrabee	Community Center, 101 North Main Street, Larrabee, IA 51029.
City of Quimby	City Hall, 101 East 2nd Avenue, Quimby, IA 51049.
City of Washta	City Hall, 203 Main Street, Washta, IA 51061.
Unincorporated Areas of Cherokee County	Cherokee County Courthouse, 520 West Main Street, Cherokee, IA 51012.
Crawford County, Iowa and Incorporated Areas Docket No.: FEMA–B–2036	
City of Arion	Arion City Hall, 333 4th Street, Dow City, IA 51528.
City of Aspinwall	Crawford County Courthouse, 1202 Broadway, Denison, IA 51442.
City of Buck Grove	Buck Grove City Hall, 333 4th Street, Dow City, IA 51528.
City of Charter Oak	City Hall, 453 Railroad Street, Charter Oak, IA 51439.
City of Deloit	Community Center, 320 Maple Street, Deloit, IA 51441.
City of Denison	City Hall, 111 North Main Street, Denison, IA 51442.
City of Dow City	City Hall, 117 North Franklin Street, Dow City, IA 51528.
City of Kiron	City Hall, 12 North Grove Street, Kiron, IA 51448.
City of Manilla	City Hall, 443 Main Street, Manilla, IA 51454.
City of Ricketts	City Hall, 28 Maple Street, Ricketts, IA 51460.
City of Vail	City Hall, 215 Main Street, Vail, IA 51465.
City of Westside	City Hall, 131 Main Street, Westside, IA 54167.
Unincorporated Areas of Crawford County	Crawford County Courthouse, 1202 Broadway, Denison, IA 51442.
King George County, Virginia (All Jurisdictions) Docket No.: FEMA–B–2030	
Unincorporated Areas of King George County	King George County Community Development Department, 10459 Courthouse Drive, Suite 104, King George, Virginia 22485.

[FR Doc. 2021–17220 Filed 8–11–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2157]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before November 10, 2021.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2157, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf*.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Colbert County, Alabama and Incorporated Areas Project: 18–04–0031S Preliminary Date: February 4, 2021	
City of Leighton	City Hall, 8900 Main Street, Leighton, AL 35646.
City of Muscle Shoals	City Hall, 2010 East Avalon Avenue, Muscle Shoals, AL 35661.
City of Sheffield	City Hall, 600 North Montgomery Avenue, Sheffield, AL 35660.
City of Tuscumbia	Street Department, 301–A East 7th Street, Tuscumbia, AL 35674.
Town of Littleville	Littleville Town Hall, 1810 George Wallace Highway, Russellville, AL 35654.

Community	Community map repository address
Unincorporated Areas of Colbert County	Colbert County Water Department, 2750 Alabama Highway 20, Tuscumbia, AL 35674.
Franklin County, Alabama and Incorporated Areas Project: 18–04–0031S Preliminary Date: February 4, 2021	
Unincorporated Areas of Franklin County	Franklin County Highway Department, 600 Park Boulevard Northeast, Russellville, AL 35653.
Lauderdale County, Alabama and Incorporated Areas Project: 18–04–0031S Preliminary Date: February 4, 2021	
City of Florence	City Hall, 110 West College Street, Florence, AL 35630.
Town of Killen	Town Hall, 319 J.C. Mauldin Highway, Killen, AL 35645.
Town of Lexington	Town Hall, 11060 Alabama Highway 101, Lexington, AL 35648.
Town of Saint Florian	Saint Florian Town Hall, 83 Saint Florian Road, Florence, AL 35630.
Town of Waterloo	Town Hall, 315 Main Street, Waterloo, AL 35677.
Unincorporated Areas of Lauderdale County	Lauderdale County Road Department, 1630 State Street, Florence, AL 35630.
Lawrence County, Alabama and Incorporated Areas Project: 18–04–0031S Preliminary Date: February 4, 2021	
City of Moulton	City Hall, 720 Seminary Street, Moulton, AL 35650.
Town of North Courtland	Lawrence County Engineering Department, 160 Parker Road, Moulton, AL 35650.
Town of Town Creek	Town Hall, 15935 Main Street, Town Creek, AL 35672.
Unincorporated Areas of Lawrence County	Lawrence County Engineering Department, 160 Parker Road, Moulton, AL 35650.
Bay County, Florida and Incorporated Areas Project: 11–04–1987S Preliminary Date: October 25, 2019	
City of Callaway	Planning and Zoning Department, 324 South Berthe Avenue, Callaway, FL 32404.
City of Lynn Haven	Planning and Zoning Department, 825 Ohio Avenue, Lynn Haven, FL 32444.
City of Mexico Beach	City Hall, 201 Paradise Path, Mexico Beach, FL 32456.
City of Panama City	Planning Department, 501 Harrison Avenue, Panama City, FL 32401.
City of Panama City Beach	Building Department, 116 South Arnold Road, Panama City Beach, FL 32413.
City of Parker	City Hall, 1001 West Park Street, Parker, FL 32404.
City of Springfield	City Hall, 408 School Avenue, Springfield, FL 32401.
Unincorporated Areas of Bay County	Bay County Planning and Zoning Department, 840 West 11th Street, Panama City, FL 32401.
Franklin County, Florida and Incorporated Areas Project: 12–04–0465S Preliminary Date: June 13, 2019	
City of Apalachicola	Planning and Community Development Department, 192 Coach Wagoner Boulevard, Apalachicola, FL 32320.
City of Carrabelle	City Hall, 1206 Highway 98 East, Carrabelle, FL 32322.
Unincorporated Areas of Franklin County	Franklin County Emergency Management Department, 28 Airport Road, Apalachicola, FL 32320.
Hampshire County, Massachusetts and Incorporated Areas Project: 17–01–0941S Preliminary Date: June 30, 2021	
Town of Amherst	Town Hall, 4 Boltwood Avenue, Amherst, MA 01002.
Kaufman County, Texas and Incorporated Areas Project: 20–06–0074S Preliminary Date: March 26, 2021	
City of Combine	City Hall, 123 Davis Road, Combine, TX 75159.
City of Crandall	City Hall, 110 South Main Street, Crandall, TX 75114.
City of Dallas	Dallas Water Utilities, Stormwater Operations, 320 East Jefferson Boulevard, Room 312, Dallas, TX 75203.
City of Forney	City Hall, 101 East Main Street, Forney, TX 75126.
City of Mesquite	Engineering Division, 1515 North Galloway Avenue, Mesquite, TX 75149.
City of Rosser	First United Methodist Church, 202 Ennis Street, Rosser, TX 75157.
City of Seagoville	City Hall, 702 North Highway 175, Seagoville, TX 75159.
Unincorporated Areas of Kaufman County	Kaufman County Courthouse, 100 West Mulberry Street, Kaufman, TX 75142.

[FR Doc. 2021–17219 Filed 8–11–21; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Florida:					
Brevard, (FEMA Docket No.: B–2130).	City of Cocoa, (20–04–1578P).	The Honorable Mike Blake, Mayor, City of Cocoa, 65 Stone Street, Cocoa, FL 32922.	City Hall, 65 Stone Street, Cocoa, FL 32922.	Jul. 13, 2021	120020
Collier, (FEMA Docket No.: B–2133).	Unincorporated areas of Collier County, (21–04–0329P).	The Honorable Penny Taylor, Chair, Collier County Board of Commissioners, 3299 Tamiami Trail East, Suite 303, Naples, FL 34112.	Collier County Growth Management Department, 2800 North Horseshoe Drive, Naples, FL 34104.	Jul. 23, 2021	120067
Lake, (FEMA Docket No.: B–2125).	City of Leesburg, (21–04–0344P).	The Honorable John Christian, Mayor, City of Leesburg, 501 West Meadow Street, Leesburg, FL 34748.	City Hall, 501 West Meadow Street, Leesburg, FL 34748.	Jul. 13, 2021	120136
Lake, (FEMA Docket No.: B–2125).	Unincorporated areas of Lake County, (21–04–0344P).	Ms. Jo Anne Drury, Interim Lake County Manager, P.O. Box 7800, Tavares, FL 32778.	Lake County Administration Building, 315 West Main Street, Tavares, FL 32778.	Jul. 13, 2021	120421
Monroe, (FEMA Docket No.: B–2130).	Unincorporated areas of Monroe County, (21–04–0382P).	The Honorable Michelle Coldiron, Mayor, Monroe County Board of Commissioners, 25 Ships Way, Big Pine Key, FL 33042.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Jul. 26, 2021	125129
Monroe, (FEMA Docket No.: B–2133).	Unincorporated areas of Monroe County, (21–04–1092P).	The Honorable Michelle Coldiron, Mayor, Monroe County Board of Commissioners, 25 Ships Way, Big Pine Key, FL 33042.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Jul. 19, 2021	125129

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Monroe, (FEMA Docket No.: B–2130).	Unincorporated areas of Monroe County, (21–04–1224P).	The Honorable Michelle Coldiron, Mayor, Monroe County Board of Commissioners, 25 Ships Way, Big Pine Key, FL 33042.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Jul. 26, 2021	125129
Palm Beach, (FEMA Docket No.: B–2130).	Town of Hypoluxo, (20–04–4389P).	The Honorable Michael C. Brown, Mayor, Town of Hypoluxo, 7580 South Federal Highway, Hypoluxo, FL 33462.	Town Hall, 7580 South Federal Highway, Hypoluxo, FL 33462.	Jul. 20, 2021	120207
Georgia: Columbia, (FEMA Docket No.: B–2130).	Unincorporated areas of Columbia County, (20–04–4680P).	The Honorable Douglas R. Duncan, Jr., Chairman, Columbia County Board of Commissioners, 630 Ronald Reagan Drive, Building B, Evans, GA 30809.	Columbia County Engineering Services Division, Stormwater Compliance Department, 630 Ronald Reagan Drive, Building A, Evans, GA 30809.	Jul. 22, 2021	130059
Louisiana: Ouachita, (FEMA Docket No.: B–2130).	Unincorporated areas of Ouachita Parish, (20–06–2168P).	The Honorable Shane Smiley, President, Ouachita Parish Police Jury, 301 South Grand Street, Suite 201, Monroe, LA 71201.	Ouachita Parish Floodplain Manager's Office, 1650 DeSiard Street, Suite 202, Monroe, LA 71201.	Jul. 23, 2021	220135
Massachusetts: Plymouth, (FEMA Docket No.: B–2125).	Town of Marion, (21–01–0018P).	The Honorable Randy L. Parker, Chairman, Town of Marion Board of Selectmen, 2 Spring Street, Marion, MA 02738.	Building Department, 2 Spring Street, Marion, MA 02738.	Jul. 16, 2021	255213
New Mexico:					
Taos, (FEMA Docket No.: B–2125).	Town of Taos, (21–06–0091P).	The Honorable Daniel R. Barrone, Mayor, Town of Taos, 400 Camino De La Placita, Taos, NM 87571.	Town Hall, 400 Camino De La Placita, Taos, NM 87571.	Jul. 23, 2021	350080
Taos, (FEMA Docket No.: B–2125).	Unincorporated areas of Taos County, (20–06–2296P).	Mr. Brent Jaramillo, Taos County Manager, 105 Albright Street, Suite G, Taos, NM 87571.	Taos County Planning Department, 105 Albright Street, Suite G, Taos, NM 87571.	Jul. 16, 2021	350078
Taos, (FEMA Docket No.: B–2125).	Unincorporated areas of Taos County, (21–06–0091P).	Mr. Brent Jaramillo, Taos County Manager, 105 Albright Street, Suite G, Taos, NM 87571.	Taos County Planning Department, 105 Albright Street, Suite G, Taos, NM 87571.	Jul. 23, 2021	350078
Oklahoma: Tulsa, (FEMA Docket No.: B–2130).	City of Owasso, (20–06–3124P).	Mr. Warren Lehr, City of Owasso Manager, 200 South Main Street, Owasso, OK 74055.	Public Works Department, 301 West 2nd Avenue, Owasso, OK 74055.	Jul. 22, 2021	400210
Pennsylvania: Columbia, (FEMA Docket No.: B–2125).	Town of Bloomsburg, (20–03–1776P).	The Honorable William Kreisher, Mayor, Town of Bloomsburg, 301 East 2nd Street, Bloomsburg, PA 17815.	Town Hall, 301 East 2nd Street, Bloomsburg, PA 17815.	Jul. 19, 2021	420339
South Carolina: Horry, (FEMA Docket No.: B–2130).	City of North Myrtle Beach, (21–04–0131P).	Mr. Michael Mahaney, City of North Myrtle Beach Manager, 1018 2nd Avenue South, North Myrtle Beach, SC 29582.	Planning and Development Department, 1018 2nd Avenue South, North Myrtle Beach, SC 29582.	Jul. 26, 2021	450110
Texas:					
Harris, (FEMA Docket No.: B–2130).	Unincorporated areas of Harris County, (19–06–3656P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	Jul. 26, 2021	480287
Kaufman, (FEMA Docket No.: B–2130).	City of Terrell, (20–06–3456P).	The Honorable Rick Carmona, Mayor, City of Terrell, P.O. Box 310, Terrell, TX 75160.	Engineering Department, 201 East Nash Street, Terrell, TX 75160.	Jul. 19, 2021	480416
Rockwall, (FEMA Docket No.: B–2130).	City of Fate, (20–06–3482P).	The Honorable David Billings, Mayor, City of Fate, P.O. Box 159, Fate, TX 75132.	Department of Planning and Development, 1900 CD Boren Parkway, Fate, TX 75087.	Jul. 19, 2021	480544
Rockwall, (FEMA Docket No.: B–2130).	City of Rockwall, (20–06–3482P).	Ms. Mary Smith, Interim Manager, City of Rockwall, 385 South Goliad Street, Rockwall, TX 75087.	Department of Public Works, Engineering Division, 385 South Goliad Street, Rockwall, TX 75087.	Jul. 19, 2021	480547
Smith, (FEMA Docket No.: B–2130).	Unincorporated areas of Smith County, (20–06–3422P).	The Honorable Nathaniel Moran, Smith County Judge, 200 East Ferguson Street, Suite 100, Tyler, TX 75702.	Smith County Bridge Department, 1700 West Claude Street, Tyler, TX 75702.	Jul. 14, 2021	481185
Virginia:					
Albemarle, (FEMA Docket No.: B–2125).	Unincorporated areas of Albemarle County, (20–03–1246P).	Mr. Jeffrey B. Richardson, Albemarle County Executive, 401 McIntire Road, Charlottesville, VA 22902.	Albemarle County Department of Community Development, 401 McIntire Road, Charlottesville, VA 22902.	Jul. 13, 2021	510006

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Loudoun, (FEMA Docket No.: B–2130).	Town of Leesburg, (21–03–0539P).	The Honorable Kelly Burk, Mayor, Town of Leesburg, 25 West Market Street, Leesburg, VA 20176.	Department of Plan Review, 25 West Market Street, Leesburg, VA 20176.	Jul. 19, 2021	510091
Loudoun, (FEMA Docket No.: B–2130).	Unincorporated areas of Loudoun County, (21–03–0539P).	Mr. Tim Hemstreet, Loudoun County Administrator, P.O. Box 7000, Leesburg, VA 20177.	Loudoun County Planning and Zoning Department, 1 Harrison Street Southeast, Leesburg, VA 20175.	Jul. 19, 2021	510090
Stafford, (FEMA Docket No.: B–2130).	Unincorporated areas of Stafford County, (21–03–0356P).	Mr. Fred Presley, Stafford County Administrator, 1300 Courthouse Road, Stafford, VA 22554.	Stafford County Department of Public Works, Environmental Division, 2126 Jefferson Highway, Suite 203, Stafford, VA 22554.	Jul. 19, 2021	510154

[FR Doc. 2021–17205 Filed 8–11–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0080]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: USCIS Case Status Online

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until October 12, 2021.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0080 in the body of the letter, the agency name and Docket ID USCIS–2005–0033. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2005–0033.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2005–0033 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* USCIS Case Status Online.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Agency Form Number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This system allows individuals or their representatives to request case status of their pending application through USCIS' website.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection USCIS Case Status Online is 7,020,000 and the estimated hour burden per response is 0.075 hours (4.5 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 526,500 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0, any costs are captured in the form filed by the respondent.

Dated: August 9, 2021.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–17259 Filed 8–11–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0018]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Permission To Reapply for Admission Into the United States After Deportation or Removal

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until October 12, 2021.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0018 in the body of the letter, the agency name and Docket ID USCIS–2005–0034. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2005–0034.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2005–0034 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–212; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the data collected on Form I–212 to determine whether an alien is eligible for and should be granted the benefit of consent to reapply for admission into the United States. This form standardizes requests for consent to reapply and its data collection requirements ensure that, when filing the application, the alien provides the basic information that is required to assess eligibility for consent to reapply.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–212 (Paper) is 7,000 and the estimated hour burden per response is 2 hours. The estimated total number of respondents for the information collection I–212 (CBP e-SAFE) is 1,200 and the estimated hour burden per response is 2 hours. The estimated total number of respondents for the information collection of Biometrics is 350 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 16,810 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $223,650.

Dated: August 9, 2021.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–17261 Filed 8–11–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0149, 1076–0152, and 1076–0158]

Agency Information Collection Activities; Class III Gaming Procedures, Tribal Revenue Allocation Plans, and Gaming on Trust Lands Acquired After October 17, 1988

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Assistant Secretary—Indian Affairs (AS–IA) are proposing to renew three information collections.

DATES: Interested persons are invited to submit comments on or before October 12, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Ms. Paula Hart, Director, Office of Indian Gaming, AS–IA, 1849 C Street NW, Mail Stop 3657, Washington, DC 20240; or by email to *indiangaming@bia.gov.* Please reference OMB Control Number 1076–0149, 1076–0152, or 1076–0158 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Paula Hart, Director, Office of Indian Gaming, AS–IA, telephone: 202–219–4066.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the AS–IA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the AS–IA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the AS–IA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The collection of information will ensure that the provisions of the Indian Gaming Regulatory Act (IGRA) and other applicable requirements are met when federally recognized Tribes submit Class III procedures for review and approval by the Secretary of the Interior. Sections 291.4, 291.10, 291.12 and 291.15 of 25 CFR 291, Class III Gaming Procedures, specify the information collection requirement. An Indian Tribe must ask the Secretary to issue Class III gaming procedures. The information to be collected includes: The name of the Tribe, the name of the State, Tribal documents, State documents, regulatory schemes, the proposed procedures, and other documents deemed necessary.

Title of Collection: Class III Gaming Procedures.

OMB Control Number: 1076–0149.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes.

Total Estimated Number of Annual Respondents: 12.

Total Estimated Number of Annual Responses: 12.

Estimated Completion Time per Response: 320 hours.

Total Estimated Number of Annual Burden Hours: 3,840 hours.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

* * * * *

Abstract: An Indian tribe must ask the Secretary to approve a Tribal revenue allocation plan. In order for Indian Tribes to distribute net gaming revenues in the form of per capita payments, information is needed by the AS–IA to ensure that Tribal revenue allocation plans include: (1) Assurances that certain statutory requirements are met, (2) a breakdown of the specific used to which net gaming revenues will be allocated, (3) eligibility requirements for participation, (4) tax liability notification, and (5) the assurance of the protection and preservation of the per capita share of minors and legal incompetents. Sections 290.12, 290.17, 290.24 and 290.26 of 25 CFR part 290, Tribal Revenue Allocation Plans, specify the information collection requirement. The information to be collected includes: The name of the Tribe, Tribal documents, the allocation plan, and other documents deemed necessary.

Title of Collection: Tribal Revenue Allocation Plans.

OMB Control Number: 1076–0152.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes.

Total Estimated Number of Annual Respondents: 20.

Total Estimated Number of Annual Responses: 20.

Estimated Completion Time per Response: 100 hours.

Total Estimated Number of Annual Burden Hours: 2,000 hours.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

* * * * *

Abstract: The collection of information will ensure that the provisions of IGRA, Federal law, and the trust obligations of the United States are met when Federally recognized Tribes submit an application under 25 CFR part 292. The applications covered by this OMB Control No. are those seeking a secretarial determination that a gaming establishment on land acquired in trust after October 17, 1988, would be in the best interest of the Indian Tribe and its members, and would not be detrimental to the surrounding community.

Title of Collection: Gaming on Trust Lands Acquired After October 17, 1988.

OMB Control Number: 1076–0158.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes.

Total Estimated Number of Annual Respondents: 2.

Total Estimated Number of Annual Responses: 2.

Estimated Completion Time per Response: 1,000 hours.

Total Estimated Number of Annual Burden Hours: 2,000 hours.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2021–17207 Filed 8–11–21; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–665 and 731–TA–1557 (Final)]

Certain Mobile Access Equipment and Subassemblies Thereof From China; Scheduling of the Final Phase of Countervailing Duty and Anti-Dumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing and antidumping duty investigation Nos. 701–TA–665 and 731–TA–1557 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain mobile access equipment and subassemblies thereof (''mobile access equipment'') from China, provided for in subheadings 8427.10.80, 8427.20.80, 8427.90.00, and 8431.20.00 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized. The determination with respect to imports of mobile access equipment alleged to be sold at less-than-fair-value is pending.

DATES: July 30, 2021.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco ((202) 205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as ''certain mobile access equipment, which consists primarily of boom lifts, scissor lifts, and material telehandlers, and subassemblies thereof. Mobile access equipment combines a mobile (self-propelled or towed) chassis, with a lifting device (*e.g.,* scissor arms, boom assemblies) for mechanically lifting persons, tools and/or materials capable of reaching a working height of ten feet or more, and a coupler that provides an attachment point for the lifting device, in addition to other components. The scope of this investigation covers mobile access equipment and subassemblies thereof whether finished or unfinished, whether assembled or unassembled, and whether the equipment contains any additional features that provide for functions beyond the primary lifting function.'' [1]

Background.— The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of an affirmative preliminary determination by Commerce that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of mobile access equipment. The investigations were requested in petitions filed on February 26, 2021, by the Coalition of American Manufacturers of Mobile Access Equipment, consisting of JLG Industries, Inc., Hagerstown, Maryland and Terex Corporation, Redmond, Washington.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.— Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.— Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on September 29, 2021, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on October 12, 2021. Information about the place and form of the hearing, including about how to participate in and/or view the hearing,

[1] 86 FR 41013, July 30, 2021.

will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.* Interested parties should check the Commission's website periodically for updates. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 5, 2021. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 8, 2021. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is October 5, 2021. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 19, 2021. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before October 19, 2021. On November 3, 2021, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 5, 2021, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 6, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–17162 Filed 8–11–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–75 (Extension)]

Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Extension of Action

AGENCY: United States International Trade Commission.

ACTION: Institution and Scheduling of an Investigation Under Section 204(c) of the Trade Act of 1974 (19 U.S.C. 2254(c)).

SUMMARY: Following receipt of petitions on August 2, 2021 and August 4, 2021, requesting extension of the relief action currently in place on imports of crystalline silicon photovoltaic (''CSPV'') cells (whether or not partially or fully assembled into other products), the Commission instituted investigation No. TA–201–075 (Extension) under the Trade Act of 1974 (''the Act''). The purpose of this investigation is to determine whether the action taken by the President under section 203 of the Act with respect to certain CSPV cells, whether or not partially or fully assembled into other products (including, but not limited to, modules, laminates, panels, and building-integrated materials) (''CSPV products''), described in Proclamation 9693 of January 23, 2018, as modified by Proclamation 10101 of October 10, 2020, continues to be necessary to prevent or remedy serious injury and whether there is evidence that the domestic industry is making a positive adjustment to import competition.

DATES: August 6, 2021.

FOR FURTHER INFORMATION CONTACT: Jordan Harriman (202–205–2610), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.— On January 23, 2018, the President, pursuant to section 203 of the Trade Act of 1974 (19 U.S.C. 2253) (Trade Act), issued Proclamation 9693, imposing a safeguard measure on imports of CSPV products, in the form of (a) a tariff-rate quota on imports of solar cells not partially or fully assembled into other products and (b) an increase in duties on imports of modules. The proclamation was published in the **Federal Register** on January 25, 2018 (83 FR 3541). The measure took effect on February 7, 2018, for a period of four years, or through February 6, 2022. The President imposed the measure following receipt of a report from the Commission in November 2017 under section 202 of the Trade Act (19 U.S.C. 2252) that contained an affirmative determination, remedy recommendations, and certain additional findings (see Crystalline Silicon Photovoltaic Cells (Whether or not Partially or Fully Assembled into Other Products), investigation No. TA–201–75, USITC Publication 4739, November 2017).

On February 7, 2020, the Commission issued its report, pursuant to section 204(a)(2) of the Trade Act (19 U.S.C. 2254(a)(2)), on the results of its monitoring of developments with respect to the domestic solar industry (see Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully

Assembled Into Other Products: Monitoring Developments in the Domestic Industry, No. TA–201–075 (Monitoring)). On March 6, 2020, the Commission issued an additional report pursuant to a request from the United States Trade Representative under section 204(a)(4) of the Trade Act (19 U.S.C. 2254(a)(4)), regarding the probable economic effect on the domestic CSPV cell and module manufacturing industry of modifying the safeguard measure (see Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Advice on the Probable Economic Effect of Certain Modifications to the Safeguard Measure, No. TA–201–075 (Modification)). Subsequently, the President issued Proclamation 10101, modifying in part the action applicable to imports covered by the safeguard measure (85 FR 65639 (Oct. 16, 2020)).

Following receipt of a petition filed on behalf of Auxin Solar Inc. and Suniva, Inc., on August 2, 2021, including an amendment thereto filed on August 5, 2021, and a petition filed on August 4, 2021, on behalf of Hanwha Q CELLS USA, Inc., LG Electronics USA, Inc., and Mission Solar Energy, the Commission is instituting this investigation, pursuant to section 204(c) of the Act.[1] The purpose of this investigation is to determine whether the action taken by the President under section 203 of the Act with respect to CSPV products continues to be necessary to prevent or remedy serious injury and whether there is evidence that the domestic industry is making a positive adjustment to import competition. For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 206, subparts A and F (19 CFR part 206).

Participation in the investigation and public service list.— Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance, and each party submitting a document for the consideration of the Commission in the course of this investigation must serve a copy of that document on all other parties in the manner provided by § 206.8 of the Commission's rules.

Please note that the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of confidential business information (CBI) under an administrative protective order (APO) and CBI service list.—Pursuant to § 206.54(e) of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation in accordance with the procedures set forth in section 206.17 of the rules, provided that the application is made not later than 21 days after the publication of this notice in the **Federal Register**. The Secretary will maintain a separate service list for those parties authorized to receive CBI under the APO.

The Commission may also include some or all CBI submitted in this investigation in the report it sends to the President and the U.S. Trade Representative in this or a related investigation. The Commission will not otherwise disclose information which it considers to be CBI unless the party submitting the information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. See 19 U.S.C. 2252(a)(8) and 19 U.S.C. 1332(g).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on November 3, 2021. Information about the place and form of the hearing, including about how to participate in and/or view the hearing, will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.* Participating parties should check the Commission's website periodically for updates.

Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 28, 2021. All persons desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on October 29, 2021, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each participating party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is October 27, 2021. Parties may also file written testimony in connection with their presentation at the hearing and posthearing briefs. The deadline for filing posthearing briefs is November 10, 2021. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information on or before November 10, 2021. All written submissions must conform with the provisions of sections 201.8, 206.7, and 206.8 of the Commission's rules; any submissions that contain CBI must also conform with the requirements of sections 201.6 of the Commission's rules.

The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* further explains the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, will not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 206.8 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or CBI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of section 204(c) of the Act (19 U.S.C. 2254(c)); this notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.

Issued: August 6, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–17190 Filed 8–11–21; 8:45 am]

BILLING CODE 7020–02–P

[1] The Commission is exercising its authority under section 603(a) of the Act (19 U.S.C. 2482(a)) to consolidate these proceedings.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–865]

Bulk Manufacturer of Controlled Substances Application: Bulk Manufacturer of Marihuana: PA Options for Wellness, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: The Drug Enforcement Administration (DEA) is providing notice of an application it has received from an entity applying to be registered to manufacture in bulk basic class(es) of controlled substances listed in schedule I. DEA intends to evaluate this and other pending applications according to its regulations governing the program of growing marihuana for scientific and medical research under DEA registration.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefor, may file written comments on or objections to the issuance of the proposed registration on or before October 12, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. To ensure proper handling of comments, please reference Docket No. DEA–865 in all correspondence, including attachments.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) prohibits the cultivation and distribution of marihuana except by persons who are registered under the CSA to do so for lawful purposes. In accordance with the purposes specified in 21 CFR 1301.33(a), DEA is providing notice that the entity identified below has applied for registration as a bulk manufacturer of schedule I controlled substances. In response, registered bulk manufacturers of the affected basic class(es), and applicants therefor, may file written comments on or objections of the requested registration, as provided in this notice. This notice does not constitute any evaluation or determination of the merits of the application submitted.

The applicant plans to manufacture bulk active pharmaceutical ingredients (APIs) for product development and distribution to DEA registered researchers. If the application for registration is granted, the registrant would not be authorized to conduct other activity under this registration aside from those coincident activities specifically authorized by DEA regulations. DEA will evaluate the application for registration as a bulk manufacturer for compliance with all applicable laws, treaties, and regulations and to ensure adequate safeguards against diversion are in place.

As this applicant has applied to become registered as a bulk manufacturer of marihuana, the application will be evaluated under the criteria of 21 U.S.C. 823(a). DEA will conduct this evaluation in the manner described in the rule published at 85 FR 82333 on December 18, 2020, and reflected in DEA regulations at 21 CFR part 1318.

In accordance with 21 CFR 1301.33(a), DEA is providing notice that on May 26, 2021, PA Options for Wellness, Inc., 4711 Queen Avenue, Suite 201, Harrisburg, Pennsylvania 17109–3125, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2021–17171 Filed 8–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–878]

Importer of Controlled Substances Application: Epic Pharma, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Epic Pharma, LLC. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before September 13, 2021. Such persons may also file a written request for a hearing on the application on or before September 13, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 7, 2021, Epic Pharma, LLC., 22715 North Conduit Avenue, Laurelton, New York 11413, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Methadone	9250	II

The company plans to import the listed controlled substance for research and development purposes.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2021–17182 Filed 8–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–875]

Importer of Controlled Substances Application: Globyz Pharma, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Globyz Pharma, LLC. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before September 13, 2021. Such persons may also file a written request for a hearing on the application on or before September 13, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on May 7, 2021, Globyz Pharma, LLC., 2101 Market Street, Suite 5, Upper Chichester, Pennsylvania 19061–4001, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Lisdexamfetamine	1205	I

The company plans to import finished dosage unit products of Lisdexamfetamine for the one time need of analytical testing. No other activity for this drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2021–17181 Filed 8–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–881]

Importer of Controlled Substances Application: Cambrex High Point, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Cambrex High Point, Inc., has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before September 13, 2021. Such persons may also file a written request for a hearing on the application on or before September 13, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 9, 2021, Cambrex High Point, Inc., 4180 Mendenhall Oaks Parkway, High Point, North Carolina 27265–8017, applied to renew as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Poppy Straw Concentrate.	9670	II

The company plans to import Poppy Straw Concentrate to develop its own portfolio of generic products. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2).

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2021–17185 Filed 8–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–882]

Importer of Controlled Substances Application: MP Pharma Services

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: MP Pharma Services has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before September 13, 2021. Such persons may also file a written request for a hearing on the application on or before September 13, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on June 30, 2021, MP Pharma Services, 4222 Emperor Boulevard, Suite 320, Durham, North Carolina 27703–9455, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
5-Methoxy-N-N-Dimethyltryptamine.	7431	I

The company plans to import 5-Methoxy-N–N-Dimethyltryptamine as raw material and as a formulated drug for analytical as well as research and development purposes. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2021–17186 Filed 8–11–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–880]

Importer of Controlled Substances Application: Curium US, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Curium US LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before September 13, 2021. Such persons may also file a written request for a hearing on the application on or before September 13, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 15, 2021, Curium US, LLC., 2703 Wagner Place, Maryland Heights, Missouri 63043, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Ecgonine	9180	II

The company plans to import small quantities of the above listed controlled substance to be used in diagnostic testing. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2021–17183 Filed 8–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Telecommunications Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 13, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at 202–693–0456 or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: Under the paperwork requirement specified by paragraph (c) of the Standard, employers must certify that his or her workers have been trained as specified by the training provision of the Standard. Specifically, employers must prepare a certification record that includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed. The certification record shall be prepared at the completion of training and shall be maintained on file for the duration of the worker's employment. The information collected would be used by employers as well as compliance officers to determine whether workers have been trained according to the requirements set forth in 29 CFR 1910.268(c). For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 4, 2021 (86 FR 23742).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs

receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Telecommunications Standard.

OMB Control Number: 1218–0225.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 256,413.

Total Estimated Number of Responses: 256,413.

Total Estimated Annual Time Burden: 5,499 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Crystal Rennie,

Senior PRA Analyst.

[FR Doc. 2021–17197 Filed 8–11–21; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 21–053]

Name of Information Collection: NASA Serves the Public To Inspire Reach-Out and Engage (NSPIREHub)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by September 13, 2021.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 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 instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 202–358–2375 or email *claire.a.little@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract: The National Aeronautics and Space Administration (NASA) is committed to effectively performing the Agency's communication function in accordance with the Space Act Section 203 (a) (3) to ''provide for the widest practicable and appropriate dissemination of information concerning its activities and the results there of,'' and to enhance public understanding of, and participation in, the nation's space program in accordance with the NASA Strategic Plan.

The NASA Serves the Public to Inspire Reach-Out and Engage (NSPIREHub) is a one-stop, web-based volunteer management system that streamlines communications, recruitment and marketing and enhances reporting and management of official outreach events. The NSPIREHub engages, informs and inspires current docents, employees (civil servants and contractors), interns and qualified members of the general public to share NASA's advancements, challenges and contributions through participation in official outreach (*i.e.* launch support, special events support activities, etc.).

The NSPIREHub utilizes a multiple tiered, role-based NAMS provisioning to empower system administrators to request and collect specific user information for the purpose of coordinating the carrying out of NASA's official outreach activities. These specific purposes include but are not limited to: Facilitating pre-event briefings, onsite and virtual support trainings, shadowing opportunities and assignment scheduling.

The information collected and protected within the NSPIREHub helps to ensure all outreach support team members, prior to serving, are equipped with the tools, skills and confidence necessary to share their stories in alignment with NASA's communication priorities. It also makes possible the efficient reporting of metric data relevant to the impact of official outreach on fulfillment of NASA's responsibilities as related to the Space Act, Section 203.

II. Methods of Collection: Electronic.

III. Data

Title: NASA Serves the Public to Inspire, Reach-out, and Engage VolunteerHub (NSPIREHub)

OMB Number:

Type of review: New

Affected Public: Individuals

Estimated Annual Number of Activities: 5,250

Estimated Number of Respondents per Activity: 3

Annual Responses: 15,750

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 2,630

Estimated Total Annual Cost: $66,938

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Nanette Smith,

NASA Directives and Regulations Team Lead.

[FR Doc. 2021–16948 Filed 8–11–21; 8:45 am]

BILLING CODE 7510–13–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m., Thursday, August 19, 2021.

PLACE: Via Conference Call.

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 his 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 Session**

Agenda

I. Call to Order
II. Executive Session Other Matter
III. Executive Session Sunshine Act
IV. Executive Session: Report from CEO
V. Executive Session: Report from CFO
VI. Executive Session: NeighborWorks Compass™ Update
VII. Action Item Approval of Minutes
VIII. Action Item FY2022 Preliminary Spend Plan
IX. Action Item NeighborWorks Compass ™

a. Resolution To Authorize Expansion of Tech Development Contract
b. Resolution To Authorize Execution of Customer Services Contract
X. Discussion Item Audit Committee Report
XI. Discussion Item FY2023 Budget Submission
XII. Discussion Item Replacement of Procurement Platform (NEST)
XIII. Discussion Item Strategic Planning Update
XIV. Discussion Item Operations Guide Review
XV. Discussion Item Kansas City Office Lease Strategy
XVI. Discussion Item DC Office Lease Strategy
XVII. Adjournment

PORTIONS OPEN TO THE PUBLIC: Everything except the Executive Session.

PORTIONS CLOSED TO THE PUBLIC: Executive Session.

CONTACT PERSON FOR MORE INFORMATION: Lakeyia Thompson, Special Assistant, (202) 524–9940; *Lthompson@nw.org.*

Lakeyia Thompson,

Special Assistant.

[FR Doc. 2021–17347 Filed 8–10–21; 4:15 pm]

BILLING CODE 7570–02–P

POSTAL REGULATORY COMMISSION

[Docket No. N2021–2; Presiding Officer's Ruling No. 6]

Service Standard Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is providing notice that the hearing dates reserved for August 11–13, 2021, are cancelled. This notice informs the public of the cancelling of said hearing dates and excuses the witnesses from appearing.

ADDRESSES: For additional information, Presiding Officer's Ruling No. 6 can be accessed electronically through the Commission's website at *https://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: On June 17, 2021, the Postal Service filed a request for an advisory opinion regarding planned changes to the service standards for First-Class Package Service.[1] On July 23, 2021, the American Postal Workers Union, AFL–CIO (APWU) filed a notice of its intent to file rebuttal testimony.[2]

The Commission's procedural schedule reserved August 11–13, 2021, as hearing dates, if any party filed a notice of intent to file a rebuttal case.[3] In accordance with this schedule, the Presiding Officer established August 4, 2021, as the deadline for any parties to file any notices of intent to conduct oral cross-examination on the Postal Service's direct case or to file a request to present oral argument at the hearing. POR No. 3. No party filed a notice of intent to cross-examine any of the Postal Service's witnesses or a request to present oral argument by the established deadline. Additionally, the Presiding Officer established August 5, 2021, as the deadline for any parties to file any notices of intent to conduct oral cross-examination on the APWU's rebuttal case. No party filed a notice of intent to cross-examine the APWU's rebuttal witness.[4] Therefore, the hearing dates reserved for August 11–13, 2021, are cancelled.

The Postal Service's witnesses—Stephen B. Hagenstein (USPS–T–1), Michelle Kim (USPS–T–2), Thomas J. Foti (USPS–T–3), and Sharon Owens (institutional witness)—are not called for oral cross-examination and are excused from appearing. No later than Tuesday, August 10, 2021, the Postal Service shall file any corrected testimony, corrected designated written-cross examination, etc., applicable to the excused witnesses with a declaration/affidavit from the witness attesting to the proposed record material. The Postal Service may move to admit these materials by written motion by Wednesday, August 11, 2021. Objections to the admission of the proposed record material for these excused witnesses are due Thursday, August 12, 2021.

Additionally, the rebuttal witness—Anita Morrison (APWU–RT–1)—is not called for oral cross-examination and is excused from appearing. No later than Thursday, August 12, 2021, the rebuttal witness shall file a motion, in writing, to admit her testimony, along with a declaration that her testimony would be the same if offered orally (and proffer any corrections if necessary). Objections to the admission of the proposed record material for this excused rebuttal witness are due Friday, August 13, 2021.

Ruling

1. The hearing dates reserved for August 11–13, 2021, are cancelled.
2. Proposed record materials from the excused Postal Service witnesses shall be filed with the Commission by August 10, 2021, consistent with the body of this Ruling.
3. The Postal Service shall move to admit the proposed record materials for excused witnesses by August 11, 2021, consistent with the body of this Ruling.
4. Objections to the admission of the Postal Service's proposed record materials are due August 12, 2021.
5. Excused rebuttal witness shall move to have her testimony (or corrected testimony) admitted by August 12, 2021, consistent with the body of this Ruling.
6. Objections to the admission of the rebuttal witness' proposed record materials are due August 13, 2021, consistent with the body of this Ruling.
7. The Secretary shall arrange for publication of this ruling in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021–17189 Filed 8–11–21; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Parcel Select 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:* August 12, 2021.

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 August 3, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add*

[1] United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, June 17, 2021 (Request).

[2] American Postal Workers Union, AFL–CIO Notice of Intent to File Rebuttal Testimony, July 23, 2021.

[3] Presiding Officers Ruling No. 3 at 2 (citing Order Modifying Procedural Schedule, July 8, 2021, at 3 (Order No. 5933) (modifying Notice and Order on the Postal Service's Request for an Advisory Opinion on Changes in the Nature of Postal Services, June 21, 2021 (Order No. 5920)) (POR No. 3).

[4] The Postal Service stated that it did not intend to conduct oral cross-examination of the rebuttal witness and reserved the right to conduct follow-up cross-examination in the event that any other party did file a notice of intent to conduct oral cross-examination. *See* United States Postal Service Notice Concerning Oral Cross-Examination of Rebuttal Witnesses, August 5, 2021, at 1.

Parcel Select Contract 47 to Competitive Product List. Documents are available at *www.prc.gov,* Docket Nos. MC2021–120, CP2021–122.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–17166 Filed 8–11–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail 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:* August 12, 2021.

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 August 6, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 717 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–121, CP2021–123.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–17167 Filed 8–11–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail 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:* August 12, 2021.

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 August 2, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 716 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–119, CP2021–121.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–17165 Filed 8–11–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail 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:* August 12, 2021.

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 July 29, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 715 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–117, CP2021–119.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–17163 Filed 8–11–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service 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:* August 12, 2021.

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 July 29, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 75 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–118, CP2021–120.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–17164 Filed 8–11–21; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–126, OMB Control No. 3235–0287]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form 4

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Under Section 16(a) of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*) every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which registered under Section 12 of the Exchange Act (15 U.S.C. 78l), or who is a director or an officer of the issuer of such security (collectively ''insiders''), must file a statement with the Commission reporting their ownership. Form 4 is a statement to disclose changes in an insider's ownership of securities. The information is used for the purpose of disclosing the equity holdings of insiders of reporting companies. Approximately 338,207 insiders file Form 4 annually and it takes approximately 0.5 hours to prepare for a total of 169,104 annual burden hours.

Written comments are invited on: (a) Whether this proposed collection of

information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 6, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17157 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92599; File No. SR–CBOE–2021–041]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Certain Rules To Accommodate the Listing and Trading of Micro FLEX Index Options and To Make Other Clarifying and Nonsubstantive Changes

August 6, 2021.

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 July 23, 2021, 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.[3] 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 certain Rules to accommodate the listing and trading of Micro FLEX Index Options and to make other clarifying and nonsubstantive changes. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend certain rules to accommodate the listing and trading of certain FLexible EXchange (''FLEX'') index options with an index multiplier of one (''Micro FLEX Index Options''). The Exchange has the authority to list options on broad-based indexes for which the value of the underlying is at least 100 with an index multiplier of one[4] and proposes to expand that authority to list FLEX Index Options on the same indexes with an index multiplier of one. The Exchange believes Micro FLEX Index Options will expand investors' choices and flexibility by listing and trading FLEX Options on larger-valued broad-based indexes, which provide investors with the ability to gain exposure to the market, with a notional value of 1/100th of the value of currently available FLEX Index Options.

The Exchange believes the additional granularity provided by Micro FLEX Index Options with respect to the prices at which investors may execute and exercise index options on the Exchange will appeal to institutional investors by providing them with an additional exchange-traded tool to manage the positions and associated risk in their portfolios more precisely based on notional value, which currently may equal a fraction of a standard contract. For example, suppose an investor holds a security portfolio of $10,000,000 and desires to hedge its portfolio with SPX options. In order to hedge the entire portfolio with SPX options, the investor would need to trade 23.11 contracts ($10,000,000/$432,770).[5] The nearest whole number of contracts would be 23 contracts, which would have a total notional value of $9,953,710. As a result, the investor could only hedge within $46,290 of its portfolio value with SPX options with an index multiplier of 100 and would be underhedged. However, with SPX micro-options, the investor would need to trade 2,310.70 contracts ($10,000,000/$4,327.70). The nearest whole number of contracts would be 2,311 SPX micro-options,[6] which would have a total notional value of $10,001,314.70. This will allow the investor to hedge within $1,315 of its portfolio value. Therefore, the proposed rule change would permit this investor to hedge its portfolio more effectively with far greater precision.

The Exchange notes investors may currently execute and exercise options with this smaller contract multiplier in the unregulated over-the-counter (''OTC'') options market. The Exchange understands that investors may prefer to trade such options in a listed environment to receive the benefits of trading listing options, including (1) enhanced efficiency in initiating and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On August 4, 2021, the Exchange filed Partial Amendment No. 1 to the proposed rule change. The Exchange withdrew Partial Amendment No. 1 on August 6, 2021.

[4] *See* Rule 4.11 (definition of micro-option). Currently, the Exchange has the authority to list options on 13 indexes that satisfy this criteria: S&P 500 Index, Mini-S&P 500 Index (XSP), Russell 2000 Index (RUT), Mini-Russell 2000 Index (MRUT), Dow Jones Industrial Average (DJX), S&P 100 Index (OEX and XEO), S&P 500 ESG Index (SPESG), MSCI EAFE Index (MXEA), MSCI Emerging Markets Index (MXEF), Russell 1000 Growth Index (RLG), Russell 1000 Value Index (RLV), Russell 1000 Index (RUI), and FTSE 100 Mini-Index (UKXM). The proposed rule change would authorize the Exchange to list Micro FLEX Index Options on the same 13 indexes.

[5] This assumes an S&P 500 Index value of 4,327.70.

[6] An investor could also trade 23 SPX options and 11 micro-options. We do not, however, expect investors to make two separate trades in this manner due to the additional price and execution risk that accompanies two separate trades compared to a single trade.

closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes the proposed rule change may shift liquidity from the OTC market onto the Exchange, which the Exchange believes would increase market transparency as well as enhance the process of price discovery conducted on the Exchange through increased order flow.

Currently, Rule 4.21(b)(1) states the index multiplier for FLEX Index Options is 100. The proposed rule change adds that the index multiplier for FLEX Index Options on broad-based indexes for which the value of the underlying is at least 100[7] may also be one (a ''Micro FLEX Index Option'') (in addition to the current index multiplier of 100), and that a FLEX Trader must specify when submitting a FLEX Order.

To the extent the Exchange lists a Micro FLEX Index Option on an index on which it also lists a standard FLEX Index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.[8] The Exchange believes that the clarity of this approach is appropriate and transparent. The Exchange recognizes the need to differentiate Micro FLEX Index Options from standard FLEX Index Options and believes the proposed rule change will provide the necessary differentiation.

When submitting a FLEX Order, the submitting FLEX Trader[9] must include all required terms of a FLEX Option series.[10] Pursuant to current Rule 4.21(b)(1), the submitting FLEX Trader must include the underlying equity security or index (*i.e.,* the FLEX Option class) on the FLEX Order. The proposed rule change amends Rule 4.21(b)(1) to state that if a FLEX Trader specifies an index on a FLEX Order, the FLEX Trader must also include whether the index option has an index multiplier of 100 or 1 when identifying the class of FLEX Order. The Exchange is specifying it may list FLEX Index Option classes with an index multiplier of either 1 or 100. Therefore, each FLEX Index Option series in a Micro FLEX Index Option class will include the same flexible terms as any other FLEX Option series, including strike price, settlement, expiration date, and exercise style as required by Rule 4.21(b).[11]

FLEX Micro Options will be traded in the same manner as all other FLEX Options pursuant to Chapter 5, Section F of the Rules. There are two important distinctions between FLEX Index Options with a multiplier of 100 and FLEX Micro Options due to the difference in multipliers.

Term	Index (multiplier of 100)	Index (multiplier of 1)
Strike Price	4330	4330
Bid or offer	32.05	32.05
Total Value of Deliverable	$433,000	$4,330
Total Value of Contract	$3,205	$32.05

The proposed rule change amends certain Rules describing the exercise prices and bids and offers of FLEX Options to reflect these distinctions (as further described below).

The Rules permit trading in a put or call FLEX Option series only if it does not have the same exercise style, same expiration date, and same exercise price as a non-FLEX Option series on the same underlying security or index that is already available for trading.[12] In other words, a FLEX Option series may not have identical terms as a non-FLEX Option series listed for trading. The proposed rule change adds to the introductory paragraph of Rule 4.21(b) that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option) (*i.e.,* a Micro FLEX Index Option may not have the same terms as a non-FLEX Index Option or non-FLEX micro-option). This will prevent a Micro FLEX Index Option from being listed with terms identical to those of a non-FLEX Index Option (with an index multiplier of 1 or 100) on the same index.

Pursuant to Rule 4.22(a), a FLEX Option position becomes fungible with a non-FLEX option that becomes listed with identical terms. As discussed above, options with different multipliers are different classes, and an option series in one class cannot be fungible with an option series in another classes, even if they are economically equivalent. Fungibility is only possible for series with identical terms. This is similar to how a FLEX XSP Index Option series is not fungible with an economically equivalent non-FLEX SPX Option series. Therefore, a FLEX Micro Option would become fungible with a non-FLEX micro-option with the same terms pursuant to Rule 4.22(a), but would not be fungible with a non-FLEX option overlying the same index with a multiplier of 100 with the same expiration date, settlement, and exercise price. Because the proposed rule change will not permit a Micro FLEX Index Option to be listed with the same terms as a non-FLEX Index Option regardless of the index multiplier, proposed Rule 4.22(b)(2) states if a non-FLEX Index Option series with an index multiplier of 100 and the same terms as a FLEX Index Option overlying the same index with a multiplier of one is listed for trading, a position established under the FLEX trading procedures may be closed using the FLEX trading procedures in Chapter 5, Section F against another closing only FLEX position during the time period that non-FLEX Index Option series is listed for trading. No FLEX Orders may be submitted into an electronic auction or represented for open outcry trading pursuant to Rule 5.72 for a FLEX Index Option series with a multiplier of one with the same terms as the non-FLEX Index Option series overlying the same index with an index multiplier of 100, unless the FLEX Order is a closing order, during the time that non-FLEX Index Option series is listed for trading.[13] This proposed ''closing only'' process is similar to the current ''closing only'' process for non-FLEX Option American-style series added intraday, as set forth in current Rule 4.22(b) (which the Exchange proposes to number as Rule 4.22(b)(1), accompanied by nonsubstantive punctuation mark changes to reflect proposed Rule

[7] These are the same indexes on which the Exchange may list micro-options (non-FLEX options with an index multiplier of one).

[8] For example, a standard FLEX Index Option for index ABC with an index multiplier of 100 may have symbol 4ABC, while a Micro FLEX Index Option for index ABC with a multiplier of one may have symbol 4ABC9. Similarly, in the non-FLEX market, a non-FLEX option on index ABC with an index multiplier of 100 may have symbol ABC, while a non-FLEX micro-option would have a different symbol (such as ABC9).

[9] A ''FLEX Trader'' is a Trading Permit Holder the Exchange has approved to trade FLEX Options on the Exchange.

[10] These terms include, in addition to the underlying equity security or index, the type of options (put or call), exercise style, expiration date, settlement type, and exercise price. *See* Rule 4.21(b). A ''FLEX Order'' is an order submitted in FLEX Options. The submission of a FLEX Order makes the FLEX Option series in that order eligible for trading. *See* Rule 5.72(b).

[11] As discussed below, these are the terms designated by the Commission as those that constitute standardized options, and therefore, the Exchange believes the proposed rule change is consistent with Section 9(b) of the Act. *See* Securities Exchange Act Release No. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993) (''1993 FLEX Approval Order'').

[12] *See* Rule 4.21(a)(1).

[13] To the extent the non-FLEX Index Option is later delisted, then opening trades of the Micro FLEX Index Option may resume after that occurs.

4.22(b)(2)). This provision will prevent new Micro FLEX Index Option positions from being opened when a non-FLEX Index Option with a multiplier of 100 with the same terms is listed for trading.[14]

Trading Hours

Pursuant to Rule 5.1(b)(3)(A) and (c)(1), Micro FLEX Index Options will be available for trading during the same hours as non-FLEX Index Options pursuant to Rule 5.1(b)(2). Therefore, Regular Trading Hours for Micro FLEX Index Options will generally be 9:30 a.m. to 4:15 p.m. Eastern time.[15] To the extent an index option is authorized for trading during Global Trading Hours, the Exchange may also list Micro FLEX Index Options during that trading session as well, the hours for which trading session are 3:00 a.m. to 9:15 a.m. Eastern time.

Expiration, Settlement, and Exercise Style

In accordance with Rule 4.21(b), FLEX Traders may designate the type (put or call), exercise style, expiration date, and settlement type of Micro FLEX Index Options.

Exercise Prices

The proposed rule change amends Rule 4.21(b)(6) to describe the difference between the meaning of the exercise price of a FLEX Index Option with a multiplier of 100 and a Micro FLEX Index Option. Specifically, the proposed rule change states that the exercise price for a FLEX Index Option series in a class with a multiplier of one is set at the same level as the exercise price for a FLEX Index Option series in a class with a multiplier of 100.

The proposed rule change also adds the following examples to Rule 4.21(b)(6) regarding how the deliverable for a Micro FLEX Index Option will be calculated (as well as for a FLEX Index Option with a multiplier of 100 and a FLEX Equity Option, for additional clarity and transparency): If the exercise price of a FLEX Option series is a fixed price of 50, it will deliver: (A) 100 shares of the underlying security at $50 (with a total deliverable of $5,000) if a FLEX Equity Option; (B) cash equal to 100 (*i.e.* the index multiplier) times 50 (with a total deliverable value of $5,000) if a FLEX Index Option with a multiplier of 100; and (C) cash equal to 1 (*i.e.* the index multiplier) times 50 (with a total deliverable value of $50) if a Micro FLEX Index Option. If the exercise price of a FLEX Option series is 50% of the closing value of the underlying security or index, as applicable, on the trade date, it will deliver: (A) 100 shares of the underlying security at a price equal to 50% of the closing value of the underlying security on the trade date (with a total deliverable of 100 times that percentage amount) if a FLEX Equity Option; (B) cash equal to 100 (*i.e.,* the index multiplier) times a value equal to 50% of the closing value of the underlying index on the trade date (with a total deliverable of 100 times that percentage amount) if a FLEX Index Option with a multiplier of 100; and (C) cash equal to 1 (*i.e.,* the index multiplier) times a value equal to 50% of the closing value of the underlying index on the trade date (with a total deliverable of one times that percentage amount) if a Micro FLEX Index Option.

The descriptions of exercise prices for FLEX Equity Options and FLEX Index Options with a multiplier of 100 are true today. The proposed rule change merely adds for purposes of clarity examples to the rule regarding the exercise price of a FLEX Equity Option or a FLEX Index Option with a multiplier of 100 (the deliverables for which are equal to the exercise price times the 100 contract multiplier to determine the deliverable dollar value). Because a Micro FLEX Index Option has a multiplier of 1/100 of the multiplier of a FLEX Index Option with a multiplier of 100, the value of the deliverable of a FLEX Micro Option as a result is 1/100 of the value of the deliverable of a FLEX Index Option with a deliverable of 100.

Bids and Offers

Pursuant to Rule 5.4(c), the Exchange will determine the minimum increment for bids and offers on Micro FLEX Index Options (as it does for all other FLEX Options) on a class-by-class basis, which may not be smaller than (1) $0.01, if the exercise price for the FLEX Option series is a fixed price, or (2) 0.01%, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date.[16] The proposed rule change amends Rule 5.3(e)(3) to describe the difference between the expression of bids and offers for FLEX Equity Options, FLEX Index Options with a multiplier of 100, and Micro FLEX Index Options. Currently, that rule states that bids and offers for FLEX Options must be expressed in (a) U.S. dollars and decimals if the exercise price for the FLEX Option series is a fixed price, or (b) a percentage, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date, per unit.[17] As noted above, a FLEX Option contract unit consists of 100 shares of the underlying security or 100 times the value of the underlying index, as they currently have a 100 contract multiplier.[18] The proposed rule change clarifies that bids and offers are expressed per unit, if a FLEX Equity Option or a FLEX Index Option with a multiplier of 100, and adds an example (as set forth below). This is true today, and merely adds clarity to the Rules.

The proposed rule change adds to Rule 5.3(e)(3) a description of the expression of bids and offers for Micro FLEX Index Options. Specifically, bids and offers for Micro FLEX Index Options must be expressed in (a) U.S. dollars and decimals if the exercise price for the FLEX Option series is a fixed price, or (b) a percentage per 1/100th unit of the underlying security or index, as applicable, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date. Additionally, the proposed rule change adds examples describing the expression of bids and offers of FLEX Options: If the exercise price of a FLEX Option series is a fixed price, a bid of ''0.50'' represents a bid of (A) $50 (0.50 times 100 shares) for a FLEX Equity Option; (B) $50 (0.50 times an index multiplier of 100) for a FLEX Index Option with a multiplier of 100; and (C) $0.50 (0.50 times an index multiplier of one) for a Micro FLEX Index Option. If the exercise price of a FLEX Option series is a percentage of the closing value of the underlying equity security, a bid of ''0.50'' represents a bid of (A) 50% (0.50 times 100 shares) of the closing value of the underlying equity security on the trade date if a FLEX Equity Option; (B) 50% (0.50 times an index multiplier of 100) of the closing value of the underlying

[14] If the Exchange lists a non-FLEX Index Option with a multiplier of one with identical terms as a Micro FLEX Index Option, then current Rule 4.22(a) applies to the fungibility of those options (or proposed Rule 4.22(b)(1) if it is an American-style) series added intraday).

[15] Certain indexes close trading at 4:00 p.m. Eastern time. *See* Rule 5.1.

[16] The System rounds bids and offers to the nearest minimum increment.

[17] The proposed rule change reorganizes the language in this provision to make clear that the phrase ''if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date'' applies to the entire clause (B) of 5.3(e)(3). The proposed rule change also adds a cross-reference to Rule 5.4 to provide that bids and offers in U.S. dollars and decimals and percentages of the closing values of the underlying equity security or index on the trade date must be in the applicable minimum increment as set forth in Rule 5.4.

[18] *See* current Rule 4.21(b)(1).

index on the trade date if a FLEX Index Option with a multiplier of 100; and (C) 0.50% (0.50 times an index multiplier of one) of the closing value of the underlying index on the trade date if a Micro FLEX Index Option. The Exchange believes this approach identifies a clear, transparent description of the differences between FLEX Index Options with a multiplier of 100 and Micro FLEX Index Options. The proposed rule change also provides additional clarity regarding how bids and offers of FLEX Equity Options and FLEX Index Options with a multiplier of 100 are expressed.

Contract Size Limits

The proposed rule change updates various other provisions in the following Rules to reflect that one-hundred micro-contracts overlying an index will be economically equivalent to one contract for a standard index option overlying the same index:

- *Rule 5.74:* Rule 5.74 describes the Exchange's FLEX Solicitation Auction Mechanism (''FLEX SAM''). An order, or the smallest leg of a complex order, must be for at least the minimum size designated by the Exchange (which may not be less than 500 standard option contracts or 5,000 mini-option contracts). The proposed rule change adds that 50,000 Micro FLEX Index Options is the corresponding minimum size for orders submitted into FLEX SAM Auctions.
- *Rule 5.87:* Rule 5.87(f) describes when a Floor Broker is entitled to cross a certain percentage of an order, subject to the requirements in that paragraph. Under that Rule, the Exchange may determine on a class-by-class basis the eligible size for an order that may be transacted pursuant to this paragraph; however, the eligible order size may not be less than 50 standard option contracts (or 500 mini-option contracts or 5,000 for micro-options). The proposed rule change adds that 5,000 FLEX Index Option contracts with an index multiplier of one is the corresponding minimum size for orders that may be crossed in accordance with this provision. Additionally, Rule 5.87, Interpretation and Policy .07(a) provides that Rule 5.86(e) [19] does not prohibit a Trading Permit Holder (''TPH'') from buying or selling a stock, security futures or futures position following receipt of an order, including an option order, but prior to announcing such order to the trading crowd, provided that the option order is in a class designated as eligible for ''tied hedge'' transactions and within the eligibility size parameters, which are determined by the Exchange and may not be smaller than 500 standard option contracts (or 5,000 mini-option contracts or 50,000 micro-options). The proposed rule change adds that 50,000 FLEX Index Option contracts with a multiplier of one is the corresponding minimum size for orders that may qualify as tied hedge transactions and not be deemed a violation of Rule 5.86(e).

Position and Exercise Limits [20]

The proposed rule change amends Rule 8.35(a) regarding position limits for FLEX Options to describe how Micro FLEX Index Options will be counted for purposes of determining compliance with position limits.[21] Because 100 Micro FLEX Index Options are equivalent to one FLEX Index Option with a multiplier of 100 overlying the same index due to the difference in contract multipliers, proposed Rule 8.35(a)(7) states that for purposes of determining compliance with the position limits under Rule 8.35, 100 Micro FLEX Index Option contracts equal one FLEX Index Option contract with a multiplier of 100 with the same underlying index. The proposed rule change makes a corresponding change to Rule 8.35(b) to clarify that, like reduced-value FLEX contracts, Micro FLEX Index Option contracts will be aggregated with full-value contracts and counted by the amount by which they equal a full-value contract for purposes of the reporting obligation in that provision (*i.e.,* 100 Micro FLEX Index Options will equal one FLEX Index Option contract with a multiplier of 100 overlying the same index).[22] The proposed rule change also adds that Micro FLEX Index Options on certain broad-based indexes for which FLEX Index Options with a multiplier of 100 have no position limits will also have no position limits. The proposed rule change amends Rule 8.42(g) to make corresponding changes regarding the application of exercise limits to Micro FLEX Index Options. This is consistent with the current treatment of other reduced-value FLEX Index Options with respect to position and exercise limits. The margin requirements set forth in Chapter 10 of the Rules will apply to FLEX Micro Options (as they currently do to all FLEX Options).[23]

Capacity

The Exchange has analyzed its capacity and represents that it believes the Exchange and Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of the Micro FLEX Index Options. Because the proposed rule change is limited to broad-based index options, which currently represent only 13 of the indexes on which the Exchange listed on the Exchange, the Exchange believes any additional traffic that may be generated from the introduction of Micro FLEX Index Options will be manageable. The Exchange also understands that the OCC will be able to accommodate the listing and trading of Micro FLEX Index Options.

Nonsubstantive and Clarifying Changes

The proposed rule change specifies the actual permissible minimum amounts for exercise prices for FLEX Equity Options or FLEX Index Options

[19] Rule 5.86(e) provides that it will be considered conduct inconsistent with just and equitable principles of trade for any TPH or person associated with a TPH, who has knowledge of all material terms and conditions of an original order and a solicited order, including a facilitation order, that matches the original order's limit, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as an option that is the subject of the original order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until either (1) all the terms and conditions of the original order and any changes in the terms and conditions of the original order of which that Trading Permit Holder or associated person has knowledge are disclosed to the trading crowd or (2) the solicited trade can no longer reasonably be considered imminent in view of the passage of time since the solicitation. An order to buy or sell a ''related instrument,'' means, in reference to an index option, an order to buy or sell securities comprising ten percent or more of the component securities in the index or an order to buy or sell a futures contract on any economically equivalent index.

[20] This discussion focuses on position and exercise limits with respect to indexes on which the Exchange currently lists standard options and may also list Micro FLEX Index Options. To the extent the Exchange lists Micro FLEX Index Options on other indexes in the future, they would be subject to the same position and exercise limits set forth in the applicable Rules, and similarly aggregated with standard options on the same indexes, as proposed.

[21] The proposed rule change also corrects an administrative error in Rule 8.35(a). Currently, there are two subparagraphs numbered as (a)(5). The proposed rule change amends paragraph (a) to renumber the second subparagraph (a)(5) to be subparagraph (a)(6).

[22] As it does today with respect to reduced-value indexes, the Exchange will count Micro FLEX Index Options as a percentage of a FLEX Index Option with a multiplier of 100 when calculating positions to determine compliance with position limits. For example, currently, since 10 XSP contracts equals 1 SPX contract, 5 XSP contracts equals 0.5 SPX contracts for position limit purposes. With respect to Micro FLEX Index Options, since 100 Micro FLEX SPX Options equals 1 FLEX SPX Option, 4 Micro FLEX SPX Options will equal 0.47 FLEX SPX Options for purposes of position limits.

[23] Pursuant to Rule 8.43(j), FLEX Index Options with a multiplier of one will be aggregated with non-FLEX Index Options on the same underlying index in the same manner as all other FLEX Index Options.

that are not Cliquet-settled rather than identifying them by reference to Rule 5.4, which defines permissible minimum increments for bids and offers. Current Rule 4.21(b)(6) states the exercise price (which the System rounds to the nearest minimum increment as set forth in Rule 5.4), which may be for a FLEX Equity Option or FLEX Index Option that is not Cliquet-settled, a fixed price expressed in terms of dollars and decimals or a specific index value, as applicable, or a percentage of the closing value of the underlying equity security or index, as applicable, on the trade date. The Exchange has historically interpreted this rule to mean that the smallest permissible increments for exercise prices of FLEX Options are the same as the minimum increments for bids and offers of FLEX Options, which smallest increments the Exchange may determine on a class-by-class basis (as the Exchange may do for minimum increments for bids and offers).

Rather than identify the minimum increments for exercise prices by reference to the rule describing the minimum increments for bids and offers, the proposed rule change adds the language specifying the actual minimum increments for exercise prices for FLEX Equity Options and FLEX Index Options that are not Cliquet-settled, which minimum increments are the same as minimum increments for bids and offers. Specifically, the proposed rule change states that the exercise price may be in increments no smaller than (which language is taken from Rule 5.4(c)(4)) (1) for a FLEX Equity Option or FLEX Index Option that is not Cliquet-settled, (a) $0.01, if the exercise price for the FLEX Option series is expressed as a fixed price in terms of dollars and decimals or a specific index value, as applicable, or (b) 0.01%, if the exercise price for the FLEX Option series is expressed as a percentage of the closing value of the underlying equity security or index on the trade date, as applicable.[24] The minimum permissible amounts of $0.01 and 0.01% for FLEX Options with fixed exercise prices and percentage exercise prices, respectively, submitted into FLEX Auctions added to Rule 4.21(b)(6) are the current minimum increments permissible for these FLEX Options. Therefore, the proposed rule change makes no substantive changes to the minimum increments of exercise prices for FLEX Orders submitted into FLEX Auctions. The Exchange believes this will make the rule regarding permissible exercise prices for FLEX Options more transparent and thus may eliminate potential confusion regarding permissible exercise prices.

The proposed rule change adds to Rule 4.21(b)(6) after subparagraph (B) that the Exchange may determine the smallest increment for exercise prices of FLEX Options on a class-by-class basis. As discussed above, this is consistent with the Exchange's longstanding interpretation of the current Rule, which refers to the minimum increment for bids and offers as set forth in Rule 5.4 when identifying the minimum increments for exercise prices of FLEX Options. Rule 5.4(c)(4) states that the Exchange may determine the minimum increment for bids and offers on FLEX Options on a class-by-class basis, which may be no smaller than the amounts specified in that rule. Therefore, the Exchange has interpreted Rule 4.21(b)(6) to mean that those same provisions apply to the minimum increments for exercise prices for FLEX Options. The proposed rule change codifies this longstanding interpretation in the Rules, which the Exchange believes will make the rule regarding permissible exercise prices for FLEX Options more transparent and thus may eliminate potential confusion regarding permissible exercise prices.[25]

The proposed rule change moves the parenthetical regarding the System rounding the exercise price to the nearest minimum increment for bids and offers in the class (as set forth in Rule 5.4) from the introductory clause in Rule 4.21(b)(6) to the end of subclause (A)(ii) so that it applies only to that subclause. While not specified in the Rules, such rounding would only occur for exercise prices expressed as a percentage, so the proposed rule clarifies that it applies only for exercise prices expressed as a percentage and specifies that the System rounds the actual exercise prices to the nearest fixed price minimum increment for bids and offers in the class. The proposed rule change also adds to the parenthetical in Rule 4.21(b)(6)(A)(ii) that the System rounds the ''actual'' exercise price to the nearest fixed price minimum increment to provide additional clarity to the provision, as the dollar value of an exercise price expressed as a percentage determined after the closing value is available would be rounded to the nearest minimum dollar value increment, which dollar value would represent the ultimate, ''actual'' exercise price.

Similarly, the proposed rule change clarifies in Rule 5.3(e)(3) and 5.4(c)(4) that the System rounds the final transaction prices (rather than bids and offers) of FLEX Options to the nearest fixed price minimum increment for the class as set forth in Rule 5.4(c)(4)(A) following application of the designated percentage to the closing value of the underlying security or index. This is consistent with current functionality and is merely a clarification in the Rules to more accurately reflect how the System currently works. For example, suppose a FLEX Trader enters a percentage bid of 0.27 for a FLEX Equity Option, which is the price at which the order for that option ultimately trades, and the underlying security has a closing value of 24.52 on the trade date. Following the close on the trade date, the System calculates the transaction price to be 6.6204 (0.27×24.52). Assuming the minimum increment for bids and offers in a FLEX Option class is $0.01, the System rounds 6.6204 to the nearest penny, which would be a transaction price of $6.62. The dollar value of the transaction price of a FLEX Option for which the bids and offers were expressed as a percentage (the ''final'') determined after the closing value is available would be rounded to the nearest fixed price minimum increment for the class (*e.g.,* the nearest $0.01, if that is the minimum determined for the class). This is the same rounding process that applies today for these options.

Currently, as clarified by these proposed rule changes (and the additional description regarding rankings of bids and offers in FLEX Auction, as discussed below), bids and offers expressed as a percentage of the closing value of the underlying on the trade date are ranked by the percentage amount for FLEX Option series for which the exercise price is expressed as such a percentage. As a result, the transaction ''price(s)'' at the conclusion of a FLEX Auction will be a percentage amount(s), rather than bids and offers. Once the closing value of the underlying on the trade date is available, the System determines the exercise price and transaction price in a dollar amount using that closing value and rounds each to the minimum dollar amount increment at that time. The proposed rule change replaces the phrase ''bids and offers'' with ''final transaction

[24] The proposed rule change makes nonsubstantive changes to the structure of this sentence to accommodate the addition of the specific minimum increments for the exercise price.

[25] The Exchange believes this flexibility is appropriate to permit the Exchange to make determinations based on the market characteristics of different classes. The Exchange notes the rules of another options exchange similarly permit that exchange to determine on a class-by-class basis both minimum increments for exercise prices and premiums (*i.e.,* bids and offers) stated using a percentage-based methodology. *See, e.g.,* NYSE Arca, Inc. (''Arca'') Rule 5.32–O(e)(2)(C).

prices'' in Rules 5.3(e)(3) and 5.4(c)(4). This is consistent with current functionality and is merely a clarification in the Rules to more accurately reflect how the System currently works. For example, suppose a FLEX Trader submits an order to buy 100 contracts of FLEX Option series ABC Mar 50.24% into a FLEX Auction. There are two responses, each to sell 100, with response 1 offering to sell at 7.01% and response 2 to sell at 7.03%. Response 1 is a better price for the buy order (*i.e.* is ranked higher than response 2), so response 1 executes against the buy order at the conclusion of the auction for a transaction price of 7.01% of the closing value of the underlying on that date. Following the close of trading, the closing price of ABC on the day of that trade is $47.63. At that time, the System determines the actual exercise price in dollars to be $23.93 (rounded from 23.929).[26] At that time, the System also determines the final transaction price in dollars to be $3.34 (rounded from 3.338).[27]

In addition, the proposed rule change makes a clarifying, nonsubstantive change to Rule 5.3(e)(3). Rule 5.3(e)(3) currently states that bids and offers for FLEX Options must be expressed in (a) U.S. dollars and decimals, if the exercise price for the FLEX Option series is a fixed price, or (b) a percentage, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date, per unit of the underlying security or index, as applicable. The System rounds bids and offers to the nearest minimum increment. The proposed rule change clarifies in the proposed parenthetical in the first paragraph of Rule 5.3(e)(3)(B) (as described above) that bids and offers would be in the applicable minimum increment as set forth in Rule 5.4. This is true today and merely incorporates a cross-reference to Rule 5.4, which describes permissible minimum increments for bids and offers. The Exchange believes the addition of this cross-reference will provide additional transparency and clarity to this Rule.

The proposed rule change also codifies in Rules 5.72(c)(3)(A) and (d)(2), 5.73(e), and 5.74(e) how FLEX Auction response bids and offers (as well as Initiating Orders and Solicitation Orders with respect to FLEX AIM Auctions and FLEX SAM Auctions, respectively) are ranked during the allocation process following each type of FLEX Auction (*i.e.,* electronic FLEX Auction, open outcry FLEX Auction, FLEX AIM Auction, and FLEX SAM Auction, respectively). FLEX Orders will always first be allocated to responses at the best price, as applicable.[28] With respect to responses to all types of FLEX Auctions for a FLEX Option series with an exercise price expressed as a dollar and decimal, the ''prices'' at which FLEX Traders submitting responses are competing are the dollar and decimal amounts of the response bids and offers entered as fixed amounts (as is the case with all non-FLEX Options), and the proposed rule change codifies this in the Rules. With respect to responses to all types of FLEX Auctions for a FLEX Option series with an exercise price expressed as a percentage, the ''prices'' at which FLEX Traders submitting responses are competing are the percentage values of the response bids and offers entered as percentages (which ultimately become a dollar value after the closing value for the underlying security or index, as applicable, is available), and the proposed rule change codifies this in the Rules. These are nonsubstantive changes, as they reflect how ranking following FLEX Auctions occurs today, and the Exchange believes these changes will provide additional transparency in the Rules.

Finally, in Rule 4.22(b), the proposed rule change modernizes (and moves to make clear it will apply to the entire paragraph (b) (as proposed to be amended) the provision regarding how FLEX Traders are notified when a FLEX Option series becomes restricted. Currently, Rule 4.22(b) states a FLEX Official announces to FLEX Traders when such a FLEX Option series is restricted to closing only transactions. This was true when FLEX Options were traded only in open outcry and a verbal announcement was made to the trading floor. Currently, because FLEX Options are available for electronic and open outcry trading, the Exchange notifies FLEX Traders when a FLEX Option series is restricted to closing only transactions. In accordance with Rule 1.5, the Exchange currently notifies FLEX Traders of restricted FLEX Option series by electronic message.

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.[29] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[30] 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)[31] 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 and the public interest. The Exchange believes the proposed rule change will expand investor choice and flexibility by providing investors with the ability to gain exposure to the market using FLEX Index options with a notional value of 1/100th of the value of current FLEX Index options. The Exchange believes there is unmet market demand from market participants for Micro FLEX Index Options. Micro FLEX Index Options will provide additional granularity with respect to the prices at which investors may execute and exercise index options on the Exchange. Micro FLEX Index Options will provide

[26] As set forth in Rule 4.21(b)(6), a FLEX Option series with a percentage exercise price reflects a percentage of the closing value of the underlying equity security or index, as applicable, on the trade date. Therefore, in this example, the actual exercise price is the percentage (50.24%) of the closing value of underlying ABC on the trade date ($47.63), which is 23.929, which the System rounds to $23.93. Contract multipliers are applied after any rounding occurs.

[27] As set forth in Rule 5.4(c)(4), a FLEX Option series with a percentage bid or offer reflects a percentage of the closing value of the underlying equity security or index, as applicable, on the trade date. Therefore, in this example, the actual transaction price is the percentage (7.01%) of the closing value of underlying ABC on the trade date ($47.63), which is 3.338, which the System rounds to $3.34.

[28] The proposed rule change also clarifies this in Rule 5.72(d)(2) by adding a cross-reference to Rule 5.85(a)(1), which states that, with respect to open outcry trading on the Exchange's trading floor, bids and offers with the highest bid and lowest offer have priority. This is a nonsubstantive change that is currently true for open outcry FLEX Auctions, and the proposed rule change merely makes this explicit in Rule 5.72(d)(2), which cross-reference was previously inadvertently omitted from the Rules.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] *Id.*

investors with an exchange-traded tool to manage more precisely based on notional value the positions and associated risk in their portfolios, which currently may equal a fraction of a standard contract. Because Micro FLEX Index Options and standard FLEX Index Options (as well as non-FLEX index options) will overlie the same indexes, market participants may use them as hedging vehicles to meet their investment needs in connection with index-related products and cash positions in a similar manner as they currently do with standard FLEX Index Options, but as a more manageably sized contract. The smaller-sized contract will provide all market participants with more precision with respect to hedging their portfolios more effectively with far greater precision. Given the various trading and hedging strategies employed by investors, this additional granularity may provide investors with more control over the trading of their investment strategies and management of their positions and risk associated with option positions in their portfolios.

Additionally, Micro FLEX Index Options will provide investors with the ability to execute and exercise options with a smaller index multiplier in a listed market environment as opposed to in the unregulated OTC options market. The proposed rule change may shift liquidity from the OTC market onto the Exchange, which the Exchange believes would increase market transparency as well as enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors. By permitting index options to trade with the same multiplier currently available to customized options in the OTC market, the Exchange believes the proposed rule change will also promote competition and remove impediments to and perfects the mechanism of a free and open market and a national market system by further improving a comparable alternative to the OTC market in customized options. By enhancing our Exchange products to provide additional terms available in the OTC market but not currently available in the listed options market, the Exchange believes it may be a more attractive alternative to the OTC market. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of the OCC as issuer and guarantor of all listed options.

The listing of Micro FLEX Index Options has the same practical effect as the listing of FLEX Index Options on reduced-value indexes, which the Exchange (and other options exchanges) currently has the authority to do with respect to several indexes (in accordance with previously Commission-approved rules). For example, the Exchange may list FLEX Options on both the S&P 500 Index (SPX options) and the Mini-S&P 500 Index (XSP options), which is 1/10th the value of the S&P 500 Index.[32] This is economically equivalent to if the Exchange listed an S&P 500 Index option with an index multiplier of 100 and with an index multiplier of 10, respectively. The Commission approved the Exchange's authority to list non-FLEX Options on broad-based indexes with a value of at least 100 with an index multiplier of 1, and the proposed rule change extends that authority to list FLEX Options on the same indexes.[33]

As described above, the proposal contains a number of features designed to protect investors by reducing investor confusion. For example, Micro FLEX Index Options will be designated by different trading symbols from standard FLEX Index Options. Additionally, the proposed rule change describes in the Rules the differences regarding the meanings of bids and offers, exercise prices (and thus deliverables), and minimum sizes of index options contracts with a multiplier of one and a multiplier of 100, all of which are adjusted proportionately to reflect the difference in multiplier, and thus the difference in the deliverable value of the underlying.[34] The Exchange believes the transparency and clarity the proposed rule change adds to the Rules regarding the distinctions between index options due to the different multipliers will benefit investors. These proposed changes are not novel, as they correspond to similar rule provisions regarding other reduced-value options.[35]

Other than these differences, Micro FLEX Index Options will trade in the same manner as all other FLEX Index Options. Because Micro FLEX Index Options and standard FLEX Index Options (and non-FLEX options) overlie the same indexes, market participants may use Micro FLEX Index Options as hedging vehicles to meet their investment needs in connection with index-related products and cash positions in a similar manner as they do with standard index options, but as a more manageably sized contract. The smaller-sized contract may provide market participants with more precision with respect to hedging their portfolios. Therefore, the Exchange believes it is reasonable and appropriate to permit FLEX Traders to trade Micro FLEX Index Options in the same manner as all other FLEX Options.

The Exchange believes the proposed rule change regarding the treatment of Micro FLEX Index Options with respect to determining compliance with position and exercise limits is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. Micro FLEX Index Options will be counted for purposes of those limits in a proportional manner to FLEX Index Options (including reduced-value indexes) with a multiplier of 100 and aggregated with FLEX Index Options overlying the same index (including reduced-value indexes) and non-FLEX Options in the same manner as index options currently are. This is equivalent to current limits imposed on reduced-value options and micro-options. As noted above, while the multipliers of reduced-value indexes are $100, a reduced-value index option has an economically equivalent effect to an index option with a smaller multiplier. An index option with a multiplier of one corresponds to an option overlying a reduced-valued index that is 1/100th the value of the full-value index. It just uses a different multiplier rather than a different value of the underlying

[32] The Exchange notes if it desired to list a reduced-value index option on other indexes, or list an option on a micro-level index (*i.e.,* an index with 1/100th the value of the full-sized index), it could do so without Commission approval if the underlying index satisfied the generic listing criteria in Rule 4.12.

[33] *See* Securities and Exchange Act Release No. 91528 (April 9, 2021), 86 FR 19933 (April 15, 2021) (SR–CBOE–2020–117) (Commission approval of micro-options).

[34] These proposed changes correspond to similar provisions for mini-options and micro-options, which also have a smaller multiplier than standard-sized options.

[35] *See, e.g.,* Rules 4.5, Interpretation and Policy .18 (description of strike prices for mini-options, which have a multiplier of 10), 5.3(c) (description of bids and offers for mini-options and micro-options), and 5.74(a)(4) (description of minimum size of FLEX Agency Order for mini-options and micro-options). Just as terms for micro-options, which have a multiplier of 1/100th the size of standard options, equal 1/100th of the same terms for standard options, the proposed terms for Micro FLEX Index Options, which have a multiplier 1/100th the size of FLEX Index Options with a multiplier of 100, equal 1/100th of the same terms as FLEX Index Options with a multiplier of 100.

index.[36] The Exchange believes its surveillances continue to be designed to deter and detect violations of Exchange Rules, including position and exercise limits and possible manipulative behavior, and those surveillance will apply to index options with a multiplier of one that the Exchange determines to list for trading. Ultimately, the Exchange does not believe that this proposed rule change raises any unique regulatory concerns because existing safeguards—such as position and exercise limits (and the aggregation of options overlying the same index (including reduced-value indexes)) and reporting requirements—would continue to apply.

The Exchange represents that it has the necessary systems capacity to support the new option series given these proposed specifications. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading Micro FLEX Index Options. The Exchange further notes that current Exchange Rules that apply to the trading of other FLEX Index Options traded on the Exchange will also apply to the trading of Micro FLEX Index Options, such as Exchange Rules governing customer accounts, margin requirements and trading halt procedures. The Exchange understands that market participants may currently, and currently do, execute orders in options like the ones being proposed in the unregulated OTC options market, where neither the Exchange nor the Commission has oversight over market participants that may be purposely trading at prices through the listed market. The proposed rule change may encourage these orders to be submitted to the Exchange, which could bring these orders into a regulated market and be subject to surveillance and oversight to which they are currently not subject with respect to execution of these option orders.

The Exchange believes the proposed rule change will protect investors by preventing a Micro FLEX Index Option series to be listed with the same terms as a non-FLEX Index Option. Therefore, Micro FLEX Index Options will be permissible with the same terms as FLEX Index Options with a multiplier of 100 are currently available for trading. The Exchange believes this restriction eliminates any possible price protection concerns that permitting a FLEX Option with the same terms a but a different index multiplier than a non-FLEX Option on the same underlying index may allow FLEX options with a multiplier of one to gain priority over customer orders on the book for similar non-FLEX index options overlying the same index and to bypass or trade through the NBBO in non-FLEX options, potentially leading to market fragmentation.

The Exchange believes the proposed rule change will move volume currently being executed in the OTC market to the Exchange. As discussed above, the precision the proposed rule change will add to the Exchange is currently available in the OTC market, and the Exchange understands this precision is necessary for certain market participants' investment strategies. The Exchange has heard from numerous institutional investors—insurance companies, in particular—who use index options to hedge their portfolio risk. These investors have indicated they execute a significant portion of their hedging transactions in the OTC market because the Exchange does not offer a product that provides them with the level of precision they need for their hedging activity. However, they have expressed their preference to transact on the Exchange to eliminate the counterparty risk they must incur by trading in the OTC market. The Exchange understands that it is a critical and regular part of an insurance company's business to hedge their risk, which many do with index options. When insurance companies issue policies to their customers, those companies accumulate liabilities for the payouts they may need to make to their customers pursuant to those policies. Insurance companies regularly hedge the notional amount of these liabilities to protect against downturns in the market. Because they are looking to protect against broad market downturns, broad-based index options are a tool insurance companies often use for this protection. One insurance company informed the Exchange that it has hedged approximately 25% of the notional value of its $40 billion portfolio with index options executed in the OTC market, and the Exchange understands several other companies have similarly used index options to hedge significant portions of their portfolios. Given the size of insurance companies' portfolios, which can be in the tens of billions of dollars, that translates to index options with an aggregate notional value of billions of dollars being transacted annually in the nontransparent, unregulated, and riskier OTC market (where there is counterparty risk and no price protection exists for these customers).

For a customer to achieve a precise hedge for a specific notional value amount using currently available products on the Exchange, the Exchange understands a customer would need to make at least four separate trades (which multiple trades introduce additional costs, inefficiencies, and execution risk) to achieve a result close to identical to the result it could achieve with a single trade in the OTC market. The inability of insurance companies to precisely hedge the notional value of their portfolios ultimately harms their customers. If an insurance company, for example, ''underhedges'' the notional value of its portfolio (which, again, is generally at least tens of billions of dollars), even 1% of such ''slippage'' would leave hundreds of millions of dollars of that portfolio unhedged,[37] which creates significant risk for that company.[38] Alternatively, if an insurance company ''overhedges'' the notional value of its portfolio, that would unnecessarily tie up some of its financial reasons, as the difference in value of the options and the value of the portfolio is serving no purpose. Either case will likely result in higher premiums or reduced benefits for customers. As a result, because these companies are unable to achieve a more precise hedge on the Exchange, they turn to the OTC market where the precision they need to implement their hedging strategies more efficiently is available and not unnecessarily harm their customers.

For example, if an insurance company sells to a customer a $247,589,000 annuity policy, the insurance company may seek to obtain positions in broad-based index options with an equivalent notional value. On the Exchange, if the company used SPX options, it would need 651 SPX contracts if the index level of the S&P 500 Index was 3801.19 (247,589,000/3801.19/100 [39] = 651.34). However, 651 SPX contracts would equate to $247,457,469, leaving that one policy underhedged by $131,531. The company could also trade 6514 XSP options, which would equate to $247,609,517, which would overhedge the policy by $20,517 and unnecessarily use that amount of funds for hedging its portfolio rather than, for example, pay

[36] This is also similar to position limits for other options with multipliers less than 100. *See, e.g.,* Rule 8.30, Interpretation and Policy .08 (describing position limits for mini-options).

[37] For example, if an insurance company has a $40,000,000,000 portfolio, 1% of that portfolio equates to $400,000,000.

[38] The Exchange notes the total unhedged risk across the insurance industry would be multiplied if each insurance company were unable to hedge the full notional value of its portfolio.

[39] The index multiplier is 100.

out insurance benefits to customers.[40] With a one multiplier, the company could instead trade 65135 FLEX SPX Option contracts with a multiplier of one (as the company may do today in the OTC market), which would equate to $247,590,511, which is far closer to the value of the policy and thus is the most efficient use of the insurance company's hedging resources.

This example demonstrates the value one insurance company could receive from the availability of FLEX Index Options with a multiplier of one for a hedge related to a single policy. The aggregate value to the insurance industry, and their customers, created by the availability of FLEX Index Options with a multiplier of one would be extensive if multiple insurance companies used these options to hedge their portfolios, as the Exchange expects them to do. As a result, a substantial number of index options transactions that currently occur with no transparency and counterparty risk would have the opportunity to receive the benefits of occurring on a national securities exchange. The availability of this product on the Exchange would provide these companies with a more transparent, lower risk option that would allow them to use their resources more efficiently and pass on those savings to their customers.

The Exchange's surveillance program will incorporate Micro FLEX Index Options. Broker-dealers are also subject to due diligence and best execution obligations, which obligations may require broker-dealers to consider the prices of economically equivalent options when executing customer orders. Market participants may currently, and the Exchange understands they currently do, execute orders like the ones being proposed in the unregulated OTC market, where neither the Exchange nor the Commission has oversight over market participants that may be purposely trading at prices through the listed market.

The Commission initially approved the listing and trading of FLEX Options on only two indexes—the S&P 100 and S&P 500.[41] As noted above, the Commission issued a separate order designating FLEX Options as standardized options under Rule 9b–1 of the Exchange Act, which order specifically referenced FLEX Options on those two indexes.[42] While the initial scope of FLEX Options was limited, the use of FLEX Options has significantly expanded since 1993. The Exchange may now list FLEX Options on any equity or index for which it is authorized to trade non-FLEX Options.[43] The expansion of the use of FLEX Options is consistent with the initial purpose for which the Exchange initially proposed to adopt FLEX Options, which was to permit trading in options that were otherwise permissible in the OTC market to provide investors with the benefits of trading options on a listed market versus the OTC market. Since 1993, the Commission, through designated authority, has approved numerous proposed rule changes to expand the applicability of FLEX Options and designated those FLEX Options as standardized options under Rule 9b-1 of the Exchange Act, including FLEX Options with terms different than those initially approved by the Commission in 1993.[44] The proposed rule change similarly seeks to expand the availability of FLEX Options in a manner consistent with the initial purpose for which the Exchange initially adopted, and has since then expanded the applicability of, FLEX Options. Options with an index multiplier of one are currently permissible in the OTC market but not in the listed market. The proposed rule change seeks to meet the demands of investors that currently may only obtain more precise hedging as described above through the OTC markets. The Exchange believes it benefits the investing public to continue to enhance product offerings to evolve to constantly changing needs of investors, even if certain products were initially introduced in a more limited manner.

A robust and competitive market requires that exchanges respond to investors' evolving needs by constantly improving their offerings. When Congress charged the Commission with supervising the development of a ''national market system'' for securities, Congress stated its intent that the ''national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.[45] Consistent with this purpose, Congress and the Commission have repeatedly stated their preference for competition, rather than regulatory intervention to determine products and services in the securities markets.[46] This consistent and considered judgment of Congress and the Commission is correct, particularly in light of evidence of robust competition in the options trading industry. The fact that an exchange proposed something new is a reason to be receptive, not skepticalinnovation is the life-blood of a vibrant competitive marketand that is particularly so given the continued internalization of the securities markets, as exchanges continue to implement new products and services to compete not only in the United States but throughout the world. Options exchanges continuously adopt new and different products and trading services in response to industry demands in order to attract order flow and liquidity to increase their trading volume. This competition has led to a growth in investment choices, which ultimately benefits the marketplace and the public. The Exchange believes that the proposed rule change will help further competition by providing market participants with yet another investment option for the listed options market.

The Exchange believes the proposed nonsubstantive, codifying, and clarifying changes described above increase the transparency of the Rules and ultimately benefit investors. With respect to the codification of how FLEX orders and auction responses will be ranked, the Exchange believes ranking percentage-priced premiums at the time of the auction rather than after the close of trading (when the dollar amount of the price is determined) will promote just and equitable principles of trade because it is consistent with the ranking of dollar-priced premiums. This also

[40] As this relates to only a single policy in the insurance company's portfolio, the harm that may be caused by the lack of precision only increases for each policy for which the company is unable to precisely hedge.

[41] *See* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (SR–CBOE–92–17) (''Initial Cboe FLEX Approval'').

[42] *See* 1993 FLEX Approval Order.

[43] *See* Rule 4.20.

[44] Similar to previous changes in the past, the Commission has the authority to designate FLEX Options with an index multiplier of one to be standardized options pursuant to Rule 9b–1 under the Exchange Act if it believes such designation is appropriate.

[45] *See* H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.).

[46] *See* S. Rep. No. 94–75, 94th Cong., 1st Sess. 8 (1975) (''The objective [in enacting the 1975 amendments to the Exchange Act] would be to enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services.''); Order Approving Proposed Rule Change Relating to NYSE Arca Data, Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the [self-regulatory organizations] and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system.''); and Regulation NMS, 70 FR at 37499 (observing that NMS regulation ''has been remarkably successful in promoting market competition in [the] forms that are most important to investors and listed companies'').

provides FLEX Traders with real-time executions as opposed to waiting until the close of trading to know if it received an execution and, if so, for how many contracts. FLEX Traders are competing in auctions based on the percentage amount of their bids and offers (in the same manner they do with dollar bids and offers) and thus should be ranked based on that amount, as they do not know at the time of submitting those bids and offers to what final price they will be rounded. Like bids and offers in dollar amounts, the Exchange believes a FLEX Trader willing to pay more (or receive less) at the time of a FLEX Auction should receive priority. As long as it is possible that different percentage bids and offers could differ after the close of trading, the Exchange believes a more aggressive auction response bares the risk that the adjusted price may also be more aggressive, and the responder should be rewarded for taking on that risk by receiving a higher ranking. The Exchange believes consistency in ranking of bids and offers submitted in all FLEX Auctions (and non-FLEX Auctions) will benefit investors, and providing FLEX Traders that submit more aggressive responses with priority will encourage FLEX Traders to submit competitive responses, which ultimately benefits investors as well.

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 as any Micro FLEX Index Options the Exchange lists for trading will be available for all market participants in the same manner who wish to trade such options. The Exchange may list Micro FLEX Index Options for trading on all broad-based indexes with a value of at least 100 currently authorized to be listed on the Exchange, subject to the same listing criteria (the Exchange is currently authorized to list micro-options on the same indexes). These options will trade in the same manner as FLEX Index Options with a multiplier of 100, with certain terms proportionately adjusted to reflect the different contract multipliers.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because Micro FLEX Index Options may only be listed for trading on the Exchange. To the extent that the availability of these products makes the Exchange a more attractive marketplace to market participants at other exchanges, market participants are free to elect to become market participants on the Exchange. As noted above, other derivative products related to these indexes are listed for trading on other exchanges. Additionally, the Exchange notes that listing and trading Micro FLEX Index Options on the Exchange will subject such options to transparent exchange-based rules as well as price discovery and liquidity, as opposed to alternatively trading these products in the OTC market.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition. The proposal is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors by providing them with a lower-cost option to hedge their investment portfolios. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar products. The Exchange believes this is an enhancement to a comparable alternative to the OTC market in customized options. By enhancing our FLEX trading platform to provide additional contract granularity that available in the OTC market but not currently available in the listed options market, the Exchange believes it may be a more attractive alternative to the OTC market. The Exchange believes market participants will benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options.

The proposed nonsubstantive, clarifying, and codifying changes will have no impact on competition, as they merely clarify or codify information in the Rules and make no changes to how FLEX Options trade. With respect to the codification of how FLEX orders and auction responses will be ranked, the Exchange believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will rank FLEX orders and auction responses in the same manner regardless of the form of the exercise price of a series.

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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2021–041 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–2021–041. 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 Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2021–041, and should be submitted on or before September 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17175 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92593; File No. SR–CboeEDGX–2021–036]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

August 6, 2021.

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 August 2, 2021, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'' or ''EDGX Equities'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*) [sic], 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 Fee Schedule applicable to its equities trading platform (''EDGX Equities'') to modify the fee associated with Remove Volume Tier 2.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 17% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that add liquidity and assesses a fee of $0.00285 per share for orders that remove liquidity. For orders in securities priced below $1.00, the Exchange provides a standard rebate of $0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of total dollar value for orders that remove liquidity. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Pursuant to footnote 1 of the Fee Schedule, the Exchange currently offers Remove Volume Tiers that provide Members an opportunity to receive a reduced fee from the standard fee assessed for liquidity removing orders that yield fee codes BB,[4] N,[5] and W.[6] The Remove Volume Tiers offer two different tiers that vary in criteria difficulty and incentive opportunities which Members may qualify for reduced fees for such orders. For example, the Remove Volume Tier 2 currently provides a reduced fee of $.00270 for Members who have either (1) an ADAV[7] greater than or equal to 0.25% of the TCV[8] with displayed orders that yield fee codes B,[9] V[10] or Y;[11] or (2) Retail

[47] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (July 26, 2021), available at *https://markets.cboe.com/us/equities/market_statistics/*.

[4] Fee code 'BB' is appended to orders that remove liquidity from EDGX (Tape B) and is assessed a fee of $0.00285 per share.

[5] Fee code 'N' is appended to orders that remove liquidity from EDGX (Tape C) and is assessed a fee of $0.00285 per share.

[6] Fee code 'W' is appended to orders that remove liquidity from EDGX (Tape A) and is assessed a fee of $0.00285 per share.

[7] ADAV means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

[8] TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[9] Fee code 'B' is appended to orders that add liquidity to EDGX (Tape B) and is provided a rebate of $0.0016 per share.

[10] Fee code 'V' is appended to orders that add liquidity to EDGX (Tape A) and is provided a rebate of $0.0016 per share.

[11] Fee code 'Y' is appended to orders that add liquidity to EDGX (Tape C) and is provided a rebate of $0.0016 per share.

Order ADV[12] (*i.e.,* yielding fee code ZA[13]) greater than or equal to 0.45% of the TCV. The Exchange now proposes to increase the reduced fee to $0.00275 provided under the Remove Volume Tier 2. The Exchange notes that the Remove Volume Tier 2, as modified, continues to be available to all Members and provides Members an opportunity to receive a reduced fee, albeit less of a reduced fee than currently offered. Further, the Remove Volume Tier 2 continues to be designed to encourage Members to increase their order flow on the Exchange which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants at improved prices.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[14] in general, and furthers the objectives of Section 6(b)(4),[15] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[16] 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change to the Remove Volume Tier 2 reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. In particular, the Exchange believes the proposed fee change for Remove Volume Tier 2 is reasonable because the tier will continue to be available to all Members and provide all Members with an additional opportunity to receive a reduced fee. The Exchange further believes Remove Volume Tier 2 is a reasonable means to encourage growth in Members' overall order flow to the Exchange and to incentivize Members to continue to provide liquidity adding and liquidity removing on the Exchange by offering them an opportunity to receive a reduced fee on qualifying orders. The Exchange believes that the proposed tier will generally benefit all market participants by incentivizing continuous liquidity and thus, deeper more liquid markets as well as increased execution opportunities. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

Further, the Exchange believes that the amended Remove Volume Tier 2 is reasonable as it does not represent a significant departure from the criteria or corresponding rates currently offered in the Fee Schedule, and that the proposed reduced fee is commensurate with the criteria. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members are and will continue to be eligible for Remove Volume Tiers and have the opportunity to meet the tiers' criteria and receive the applicable reduced fee if such criteria is met. The Exchange also notes that amended tier will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebate offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding reduced fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed amendment to the Remove Volume Tier 2 would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the Remove Volume Tiers will continue to apply to all Members equally in that all Members are eligible for these tiers, have a reasonable opportunity to meet the tiers' criteria and will receive the reduced fee on their qualifying orders if such criteria is met. Additionally, the Remove Volume Tiers are designed to attract additional order flow to the Exchange. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 17% of the market share.[17] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. 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

[12] ADV means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

[13] Fee code 'ZA' is appended to Retail Orders that add liquidity to EDGX and is provided a rebate of $0.0032 per share.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(5).

[17] *Supra* note 4.

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.'' [18] 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'. . . .''.[19] Accordingly, the Exchange does not believe its proposed fee change imposes 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 [20] and paragraph (f) of Rule 19b–4 [21] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2021–036 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–CboeEDGX–2021–036. 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 Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2021–036 and should be submitted on or before September 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17178 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

[18] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[19] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–659, OMB Control No. 3235–0723]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form 1–Z

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 1–Z (17 CFR 239.94) is used to report terminated or completed offerings or to suspend the duty to file ongoing reports under Regulation A, an exemption from registration under the Securities Act of 1933 (15 U.S.C 77a *et seq.*). The purpose of the Form 1–Z is to collect empirical data for the Commission on offerings conducted under Regulation A that have terminated or completed, to indicate to the Commission that issuers that have conducted Tier 2 offering are suspending their duty to file reports under Regulation A and to provide such information to the investing public. We estimate that approximately 17 issuers file Form 1–Z annually. We estimate that Form 1–Z takes approximately 1.5 hours to prepare. We estimate that 100% of the 1.5 hours per response is prepared by the company for a total annual burden of 26 hours (1.5 hours per response × 17 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate

of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 6, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17156 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92590; File Nos. SR–NASDAQ–2020–081; SR–NASDAQ–2020–082]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving Proposed Rule Changes, as Modified by Amendments No. 1, To Adopt Listing Rules Related to Board Diversity and To Offer Certain Listed Companies Access to a Complimentary Board Recruiting Service

August 6, 2021.

I. Introduction and Overview

A self-regulatory organization, or ''SRO,'' may propose a change in its rules or propose a new rule by filing the proposal with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] This order considers two separate proposed rule changes that The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Commission.

On December 1, 2020, the Exchange filed with the Commission, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder,[2] a proposed rule change to adopt listing rules related to board diversity (''Board Diversity Proposal''). The proposed rule change was published for comment in the **Federal Register** on December 11, 2020.[3] On February 26, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[4]

On December 1, 2020, the Exchange also filed with the Commission, pursuant to Section 19(b)(1) of the Act[5] and Rule 19b–4 thereunder,[6] a proposed rule change to offer certain listed companies access to a complimentary board recruiting service to help advance diversity on company boards (''Board Recruiting Service Proposal''), which was published for comment in the **Federal Register** on December 10, 2020.[7] On February 26, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[8]

On March 10, 2021, the Division, for the Commission pursuant to delegated authority, published notice of Amendments No. 1[9] and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[10] to determine whether to approve or disapprove the proposed rule changes, as modified by Amendments No. 1.[11]

The Act governs the Commission's review of SRO-proposed rules. Section 19(b)(2)(C)(i) provides that the Commission ''shall approve'' a proposal if it finds that the rule is consistent with the requirements of the Act and the rules and regulations applicable to the SRO—including requirements in Section 6(b).[12] The statute does not give the Commission the ability to make any changes to the rule proposal as submitted, or to disapprove the rule proposal on the ground that the Commission would prefer some alternative rule on the same topic.

Under the Board Diversity Proposal, the Exchange proposes to require each Nasdaq-listed company, subject to certain exceptions, to publicly disclose in an aggregated form, to the extent permitted by applicable law, information on the voluntary self-identified gender and racial characteristics and LGBTQ+ status (all terms defined below) of the company's board of directors. The Exchange also proposes to require each Nasdaq-listed company, subject to certain exceptions, to have, or explain why it does not have, at least two members of its board of directors who are Diverse, including at least one director who self-identifies as female and at least one director who

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90574 (December 4, 2020), 85 FR 80472 (SR–NASDAQ–2020–081). Comments received on the Board Diversity Proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2020-081/srnasdaq2020081.htm.* On January 19, 2021, pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), the Division of Trading and Markets (''Division''), for the Commission pursuant to delegated authority, 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. *See* Securities Exchange Act Release No. 90951, 86 FR 7135 (January 26, 2021). The Division, for the Commission pursuant to delegated authority, designated March 11, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change. *See also infra* note 11 and accompanying text (providing additional procedural history for the Board Diversity Proposal).

[4] The full text of Amendment No. 1 to the Board Diversity Proposal is available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2020-081/srnasdaq2020081-8425992-229601.pdf.*

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CFR 240.19b–4.

[7] *See* Securities Exchange Act Release No. 90571 (December 4, 2020), 85 FR 79556 (SR–NASDAQ–2020–082). Comments received on the Board Recruiting Service Proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2020-082/srnasdaq2020082.htm.* On January 19, 2021, pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), the Division, for the Commission pursuant to delegated authority, 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. *See* Securities Exchange Act Release No. 90952, 86 FR 7148 (January 26, 2021). The Division, for the Commission pursuant to delegated authority, designated March 10, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change. *See also infra* note 11 and accompanying text (providing additional procedural history for the Board Recruiting Service Proposal).

[8] The full text of Amendment No. 1 to the Board Recruiting Service Proposal is available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2020-082/srnasdaq2020082-8425987-229599.pdf.*

[9] Amendment No. 1 to the Board Diversity Proposal and Amendment No. 1 to the Board Recruiting Service Proposal are collectively referred to as ''Amendments No. 1.''

[10] 15 U.S.C. 78s(b)(2)(B).

[11] *See* Securities Exchange Act Release No. 91286, 86 FR 14484 (March 16, 2021). On June 7, 2021, pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), the Division, for the Commission pursuant to delegated authority, designated a longer period within which to issue an order approving or disapproving the proposed rule changes, as modified by Amendments No. 1. *See* Securities Exchange Act Release Nos. 92118, 86 FR 31355 (June 11, 2021) (SR–NASDAQ–2020–081); 92119, 86 FR 31355 (June 11, 2021) (SR–NASDAQ–2020–082). The Division, for the Commission pursuant to delegated authority, designated August 8, 2021 as the date by which the Commission shall approve or disapprove the Board Diversity Proposal, and August 7, 2021 as the date by which the Commission shall approve or disapprove the Board Recruiting Service Proposal.

[12] 15 U.S.C. 78s(b)(2)(C)(i).

self-identifies as an Underrepresented Minority or LGBTQ+.[13] Under the Board Recruiting Service Proposal, the Exchange proposes to provide certain Nasdaq-listed companies with one year of complimentary access for two users to a board recruiting service, which would provide access to a network of board-ready diverse candidates for companies to identify and evaluate.

This order applies the governing standard under the Act and finds that the Board Diversity Proposal, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Separately, it finds that the Board Recruiting Service Proposal, as modified by Amendment No. 1, is also consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The proposed rule changes therefore are required to be and are approved.[14]

In particular, the Commission finds that the Board Diversity Proposal and the Board Recruiting Service Proposal are consistent with Section 6(b)(5) of the Act,[15] which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, and not be designed to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the exchange; and Section 6(b)(8) of the Act,[16] which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Commission also finds that the Board Recruiting Service Proposal, as modified by Amendment No. 1, is consistent with Section 6(b)(4) of the Act,[17] which requires that national securities exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The proposals and Commission findings are discussed below.

II. Discussion and Commission Findings

The Board Diversity Proposal would establish a disclosure-based framework that would make consistent and comparable statistics widely available to investors regarding the number of Diverse directors serving on a Nasdaq-listed company's board.[18] Board-level diversity statistics are currently not widely available on a consistent and comparable basis, even though the Exchange and many commenters argue that this type of information is important to investors.[19] The Board Diversity Proposal would also provide increased transparency and require an explanation regarding why a Nasdaq-listed company does not meet the proposed board diversity objectives, for those companies that do not choose to meet such objectives. It would augment existing Commission requirements that companies disclose whether, and how, their boards or board nominating committees consider diversity in nominating new directors.[20] As noted by the Exchange and a number of commenters,[21] a better understanding of why a company does not meet the proposed objectives would contribute to investors' investment and voting decisions. Investors and companies have different views regarding board diversity and whether board diversity affects company performance and governance.[22] As discussed below, commenters representing a broad array of investors have indicated an interest in board diversity information. And, regardless of their views on those issues, the Board Diversity Proposal would provide investors with information to facilitate their evaluation of companies in which they might invest. The Board Diversity Proposal would therefore contribute to the maintenance of fair and orderly markets, which has previously been found by the Commission to support a finding that an exchange listing standard satisfied the requirements of Section 6(b)(5).[23] Accordingly, as discussed below, the Commission finds that the Board Diversity Proposal is designed to 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 protect investors and the public interest. The Commission also finds that the Board Diversity Proposal is not designed to permit unfair discrimination between issuers or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange, and would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Board Recruiting Service Proposal would provide Eligible Companies,[24] which by definition do

[13] While these Nasdaq-listed companies would have an objective of at least two Diverse directors, including at least one director who self-identifies as female and at least one director who self-identifies as an Underrepresented Minority or LGBTQ+, as described below, other Nasdaq-listed companies would have different board diversity objectives. *See infra* notes 25–27.

[14] In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See also infra* Section II.

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(8).

[17] 15 U.S.C. 78f(b)(4).

[18] Pursuant to proposed Rule 5605(f)(1), ''Diverse'' would be defined to mean an individual who self-identifies in one or more of the following categories: (i) Female, (ii) Underrepresented Minority, or (iii) LGBTQ+. Also pursuant to proposed Rule 5605(f)(1), ''Female'' would be defined to mean an individual who self-identifies her gender as a woman, without regard to the individual's designated sex at birth; ''Underrepresented Minority'' would be defined to mean an individual who self-identifies as one or more of the following: Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or Two or More Races or Ethnicities; and ''LGBTQ+'' would be defined to mean an individual who self-identifies as any of the following: Lesbian, gay, bisexual, transgender, or as a member of the queer community. *See* Amendment No. 1 to the Board Diversity Proposal at 327; proposed Rule 5605(f)(1).

[19] *See infra* Section II.A.2. (describing the Exchange's and commenters' arguments regarding the demand for board diversity information, including board-level diversity statistics).

[20] *See* Regulation S–K, Item 407(c)(2)(vi).

[21] *See infra* Section II.A.2. (describing the Exchange's and commenters' arguments regarding the demand for board diversity information, including explanations for why a company does not meet the proposed diversity objectives).

[22] *See infra* Section II.B. (describing commenters' differing views regarding board diversity and whether board diversity affects company performance and governance).

[23] *See* Securities Exchange Act Release No. 78223 (July 1, 2016), 81 FR 44400, 44403 (July 7, 2016) (order approving SR–NASDAQ–2016–013) (''2016 Approval Order'') (finding that exchange disclosure-related listing standards contribute to the maintenance of fair and orderly markets). The maintenance of ''fair and orderly markets'' is a statutory goal included throughout the Act, including components that apply to SROs such as Nasdaq. *See, e.g.,* Sections 6(f), 9(i), 11, 11A, 12(f), and 19(b)(3) of the Act.

[24] The Board Recruiting Service Proposal in general defines ''Eligible Company'' as a listed company that represents to the Exchange that it does not have: (i) At least one director who self-identifies as Female; and (ii) at least one director who self-identifies as one or more of the following: An Underrepresented Minority or LGBTQ+. *See* proposed IM–5900–9(a); Amendment No. 1 to the Board Recruiting Service Proposal at 11 n.20 (describing the treatment of a Company with a Smaller Board). A Foreign Issuer would be an Eligible Company if it represents to the Exchange that it does not have: (i) At least one director who

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not have a specified number of Diverse directors, with access to a network of board-ready diverse candidates, allowing these companies to identify and evaluate such candidates if they choose to use the service to increase diverse representation on their boards. The Board Recruiting Service Proposal would also help Eligible Companies to meet (or exceed, in the case of a Company with a Smaller Board [25]) the diversity objectives under the separately approved Board Diversity Proposal, if they elect to meet those objectives rather than disclose why they have not met the objectives. Further, the Board Recruiting Service Proposal could help the Exchange compete to attract and retain listings, particularly in light of the diversity objectives in the Board Diversity Proposal, which is also approved by this order and that will apply to Nasdaq-listed companies. Accordingly, and as discussed below in Section II.I., the Commission finds that the Board Recruiting Service Proposal is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among issuers, is not designed to permit unfair discrimination between issuers, and does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission further believes that the Board Recruiting Service Proposal would provide for the equitable allocation of complimentary services and reflects the current competitive environment for listings among national securities exchanges.

A. Disclosures Under the Board Diversity Proposal

1. Disclosure-Based Framework

The Board Diversity Proposal's disclosure-based framework would be established by proposed Rules 5605(f) and 5606. The Exchange proposes to adopt new Rule 5605(f)(2), which would require each Nasdaq-listed company (other than a Foreign Issuer,[26] Smaller Reporting Company,[27] or Company with a Smaller Board) to have, or explain why it does not have, at least two members of its board of directors who are Diverse,[28] including at least one Diverse director who self-identifies as Female and at least one Diverse director who self-identifies as an Underrepresented Minority or LGBTQ+.[29] If a company elects to satisfy the requirements of proposed Rule 5605(f)(2) by disclosing why it does not meet the applicable diversity objectives, the company would be required to: (i) Specify the requirements of proposed Rule 5605(f)(2) that are applicable; and (ii) explain the reasons why it does not have two Diverse directors (or one Diverse director for a Company with a Smaller Board).[30] The Exchange would not evaluate the substance or merits of a company's explanation.[31]

As proposed, if a company fails to adhere to proposed Rule 5605(f), the Exchange's Listing Qualifications Department would promptly notify the company and inform it that it has until the later of its next annual shareholders meeting or 180 days from the event that caused the deficiency to cure the deficiency.[32] If a company does not regain compliance within the applicable cure period, the Listings Qualifications Department would issue a Staff Delisting Determination Letter.[33]

Pursuant to proposed Rule 5606(a), each Nasdaq-listed company would be required to annually disclose its board-level diversity data in a substantially similar format as the ''Board Diversity Matrix.'' In the proposed Board Diversity Matrix, a company would be required to provide the total number of directors on its board, and the company (other than a Foreign Issuer) would be required to provide the following: (1) The number of directors based on gender identity (female, male, or non-binary[34]) and the number of directors who did not disclose gender; (2) the number of directors based on race and ethnicity (African American or Black, Alaskan Native or Native American, Asian, Hispanic or Latinx, Native Hawaiian or Pacific Islander, White, or Two or More Races or Ethnicities [35]),

self-identifies as Female; and (ii) at least one director who self-identifies as one or more of the following: Female, an Underrepresented Individual, or LGBTQ+. *See* proposed IM–5900–9(b). A Smaller Reporting Company would be an Eligible Company if it represents to the Exchange that it does not have: (i) At least one director who self-identifies as Female, and (ii) at least one director who self-identifies as one or more of the following: Female, an Underrepresented Minority, or LGBTQ+. *See* proposed IM–5900–9(c).

[25] Proposed Rule 5605(f)(2)(D) would require each company with a board of directors of five or fewer members (''Company with a Smaller Board'') to have, or explain why it does not have, at least one member of its board of directors who is Diverse.

[26] The Exchange proposes to define a Foreign Issuer as: (a) A Foreign Private Issuer (as defined in Rule 5005(a)(19)); or (b) a company that (i) is considered a ''foreign issuer'' under Rule 3b–4(b) under the Act, 17 CFR 240.3b–4(b), and (ii) has its principal executive offices located outside of the United States. *See* proposed Rule 5605(f)(1). For Foreign Issuers, the Exchange proposes to define ''Diverse'' to mean an individual who self-identifies as one or more of the following: Female, LGBTQ+, or an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious, or linguistic identity in the country of the company's principal executive offices as reported on the company's Form F–1, 10–K, 20–F, or 40–F (''Underrepresented Individual''). *See* proposed Rule 5605(f)(2)(B)(i). Proposed Rule 5605(f)(2)(B) would require each Foreign Issuer (other than a Company with a Smaller Board) to have, or explain why it does not have, at least two members of its board of directors who are Diverse, including at least one Diverse director who self-identifies as Female. The second Diverse director may include an individual who self-identifies as one or more of the following: Female, LGBTQ+, or an Underrepresented Individual.

[27] The Exchange proposes to define a Smaller Reporting Company as set forth in Rule 12b–2 under the Act. *See* proposed Rule 5605(f)(1). Proposed Rule 5605(f)(2)(C) would require each Smaller Reporting Company (other than a Company with a Smaller Board, as discussed below) to have, or explain why it does not have, at least two members of its board of directors who are Diverse, including at least one Diverse director who self-identifies as Female. The second Diverse director may include an individual who self-identifies as one or more of the following: Female, LGBTQ+, or an Underrepresented Minority.

[28] As proposed, ''two members of its board of directors who are Diverse'' would exclude emeritus directors, retired directors, and members of an advisory board. *See* Amendment No. 1 to the Board Diversity Proposal at 73 n.187.

[29] *See* proposed Rule 5605(f)(2)(A).

[30] *See* proposed Rule 5605(f)(3). The disclosure must be provided in advance of the company's next annual meeting of shareholders: (a) In any proxy statement or any information statement (or, if a company does not file a proxy, in its Form 10–K or 20–F); or (b) on the company's website. *See id.* If the company provides the disclosure on its website, the company must submit such disclosure concurrently with the filing made pursuant to (a) above and submit a URL link to the disclosure through the Nasdaq Listing Center, within one business day after such posting. *See id.*

[31] *See* Amendment No. 1 to the Board Diversity Proposal at 74–75 (emphasizing that an explanation must ''satisfy subparagraphs (i) and (ii) of proposed Rule 5605(f)(3)''—the company must ''explain the reasons why it does not have the applicable number of Diverse directors,'' it is not enough ''merely to state that 'the Company does not comply with Nasdaq's diversity rule'''). *See also* letter from John A. Zecca, Executive Vice President, Chief Legal Officer, and Chief Regulatory Officer, Nasdaq, to Vanessa A. Countryman, Secretary, Commission, dated February 26, 2021 (''Nasdaq Response Letter II''), at 8 (''The company can choose to disclose as much, or as little, insight into the company's circumstances or diversity philosophy as the company determines, and shareholders may request additional information directly from the company if they need additional information to make an informed voting or investment decision.''). *See id.,* for examples of specific disclosures the Exchange would consider sufficient to satisfy the requirements of proposed Rule 5605(f)(3).

[32] *See* proposed Rule 5605(f)(6)(A). Proposed Rule 5605(f)(6)(B) would provide a grace period for a company that has satisfied the diversity objectives within the applicable timeframes, but later ceases to meet the diversity objectives due to a vacancy on its board of directors.

[33] *See* Rule 5810(c)(3). A company that receives a Staff Delisting Determination can appeal the determination to the Hearings Panel through the process set forth in Rule 5815. *See* Amendment No. 1 to the Board Diversity Proposal at 88.

[34] *See* Amendment No. 1 to the Board Diversity Proposal at 327 (defining ''non-binary''). Although non-binary is included as a category in the Board Diversity Matrix, a company would not satisfy the diversity objectives in proposed Rule 5605(f)(2) if a director self-identifies solely as non-binary. *See id.* at 66 n.173.

[35] If a director self-identifies in the ''Two or More Races or Ethnicities'' category, the director must also self-identify in each individual category, as appropriate. *See id.* at 66 n.174.

disaggregated by gender identity (or did not disclose gender); (3) the number of directors who self-identify as LGBTQ+; and (4) the number of directors who did not disclose a demographic background under item (2) or (3) above.[36]

A company that qualifies as a Foreign Issuer may elect to use an alternative Board Diversity Matrix format.[37] A Foreign Issuer would be required to provide the total number of directors on its board, and would also be required to provide the following: (1) Its country of principal executive offices; (2) whether it is a Foreign Private Issuer; (3) whether disclosure is prohibited under its home country law; (4) the number of directors based on gender identity (female, male, or non-binary) and the number of directors who did not disclose gender; (5) the number of directors who self-identify as Underrepresented Individuals in its home country jurisdiction; (6) the number of directors who self-identify as LGBTQ+; and (7) the number of directors who did not disclose the demographic background under item (5) or (6) above.[38]

As proposed, if a company fails to adhere to proposed Rule 5606, the Exchange would notify the company that it is not in compliance with a listing standard and allow the company 45 calendar days to submit a plan to regain compliance and, upon review of such plan, the Exchange may provide the company with up to 180 days to regain compliance.[39] If the company does not submit a plan or regain compliance within the applicable time periods, it would be issued a Staff Delisting Determination, which the company could appeal to a Hearings Panel.[40]

The Exchange states that, with these provisions, it is proposing a disclosure-based framework and not a mandate.[41] The Exchange also states that while some companies have made progress in diversifying their boardrooms, the national market system and the public interest would be well-served by a ''disclosure-based, business driven'' framework for companies to embrace meaningful and multi-dimensional diversification of their boards.[42]

Some commenters express support for a ''flexible'' ''comply-or-disclose'' approach.[43] Some commenters state that the proposal would not impose a quota for board diversity,[44] and emphasize that the Exchange does not plan to judge the merits of a company's explanation relating to board diversity.[45] Other commenters express the concern that the Board Diversity Proposal would establish a quota for a minimum number of Diverse directors.[46] Some commenters also argue that the proposal would substitute a regulator's judgment for that of shareholders' and companies' boards and management in choosing directors,[47] and that directors should be selected for their experience, competence, and skills.[48]

In response to comments, the Exchange notes that the Board Diversity Proposal would establish a disclosure-based framework and not a mandate or quota.[49] According to the Exchange,

[36] *See* proposed Rule 5606(a).

[37] *See id.*

[38] *See id.* Proposed Rule 5606 would become operative one year after Commission approval of the proposal. *See* proposed Rule 5606(e). A company would be required to be in compliance with proposed Rule 5606 by the later of: (i) One calendar year from the approval date (''Effective Date''); or (ii) the date the company files its proxy statement or its information statement for its annual meeting of shareholders (or, if the company does not file a proxy or information statement, the date it files its Form 10–K or 20–F) during the calendar year of the Effective Date.

[39] *See* Rule 5810(c)(2).

[40] *See id.*

[41] *See* Amendment No. 1 to the Board Diversity Proposal at 19. *See also id.* at Section 3.a.VII.D (discussing the alternatives that the Exchange has considered, including a mandate versus a disclosure-based approach).

[42] *See id.* at 8–9, 12, 41. The Exchange states that, although gender diversity has improved among U.S. company boards in recent years, the pace of change has been gradual and the U.S. still lags behind jurisdictions that have focused on board diversity, and progress toward bringing underrepresented racial and ethnic groups into the boardroom has been slower. *See id.* at 12, Section 3.a.IV.

[43] *See, e.g.,* letter from Kristi Mitchem, Chief Executive Officer, BMO Global Asset Management, to Vanessa Countryman, Secretary, Commission, dated January 11, 2021 (''BMO Letter''), at 2; letter from Brian V. Breheny, Skadden, Arps, Slate, Meagher & Flom LLP, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021 (''Skadden Letter''), at 2; letter from Lisa M. Fairfax, Alexander Hamilton Professor of Business Law, George Washington University Law School, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021 (''Fairfax Letter''), at 10; letter from Molly Gochman, Founder & President, Stardust, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021 (''Stardust Letter''), at 2; letter from Brenda Chia and Sanjiv Shah, Co-Chairs, Association of Asian American Investment Managers, dated December 28, 2020 (''AAAIM Letter''), at 2; letter from Betty T. Yee, California State Controller, to Vanessa Countryman, Secretary, Commission, dated December 21, 2020, at 1–2; letter from Hershel Harper, Chief Investment Officer, UAW Retiree Medical Benefits Trust, to Vanessa Countryman, Secretary, Commission, dated December 22, 2020 (''UAW Letter''), at 2–3; letter from Jay Huish, Executive Director, and William J. Coaker Jr., Chief Investment Officer, San Francisco Employees' Retirement System, to Vanessa Countryman, Secretary, Commission, dated December 17, 2020, at 2.

[44] *See, e.g.,* letter from Kurt Schacht, Head of Advocacy, CFA Institute Advocacy and Karina Karakulova Sr. Manager, Capital Markets Policy—Americas, CFA institute, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021 (''CFA Letter'') at 6; letter from Scott M. Stringer, New York City Comptroller, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021 (''New York City Comptroller Letter''), at 1 and 3; letter from William J. Stromberg, President and CEO, and David Oestreicher, General Counsel and Corporate Secretary, T. Rowe Price Group, Inc., to Vanessa Countryman, Secretary, Commission, dated December 29, 2020 (''T. Rowe Letter''), at 2; letter from Joseph M. Torsella, Pennsylvania State Treasurer, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021, at 1–2; AAAIM Letter at 2; letter from Douglas K. Chia, Soundboard Governance LLC, to Vanessa Countryman, Secretary, Commission, dated December 29, 2020 (''Soundboard Letter''), at 2; letter from Amy L. Goodman and John F. Olson to Vanessa A. Countryman, Secretary, Commission, dated December 24, 2010 (''Goodman and Olson Letter''), at 2; letter from Patricia Gazda, Corporate Governance Officer, Ohio Public Employees Retirement System, to Vanessa Countryman, Secretary, Commission, dated December 23, 2020 (''OPERS Letter''), at 2; UAW Letter at 2–3; letter from Barb Smoot, President and CEO, Women for Economic and Leadership Development, to Vanessa Countryman, Secretary, Commission, dated December 21, 2020.

[45] *See, e.g.,* letter from John W. Rogers, Jr., Chairman and Co-CEO, and Mellody Hobson, President and Co-CEO, Ariel Investments, LLC, to Vanessa Countryman, Secretary, Commission, dated December 29, 2020 (''Ariel Letter''), at 1; letter from Aeisha Mastagni, Portfolio Manager, Sustainable Investment and Stewardship Strategies, California State Teachers' Retirement System, to Vanessa A. Countryman, Secretary, Commission, dated December 23, 2020, at 2.

[46] *See, e.g.,* letter from Publius Oeconomicis to Vanessa Countryman, Secretary, Commission, dated May 3, 2021 (''Publius Letter II''), at 1–2; letter from Peter Flaherty, Chair, and Paul D. Kamenar, Counsel, National Legal and Policy Center, to Vanessa Countryman, Secretary, Commission, dated January 14, 2021 (''NLPC Letter''); letter from Henry D. Wolfe, Chairman, De la Vega Occidental & Oriental Holdings L.L.C., to Vanessa Countryman, Secretary, Commission, dated January 4, 2021 (''De La Vega Letter''), at 2; letter from Dennis E. Nixon, President, International Bancshares Corporation, to Vanessa A. Countryman, Secretary, Commission, dated December 31, 2020 (''IBC Letter''), at 5; anonymous letter with pseudonym ''Publius Oeconomicis'' to Vanessa Countryman, Secretary, Commission, dated December 28, 2020 (''Publius Letter''), at 8–10; letter from Walter Donnellan dated December 14, 2020 (''Donnellan Letter''), at 3. One commenter argues that the Exchange downplays the consequences of non-compliance, and that the proposed framework would require companies to either discriminate based on sex, race, or sexual orientation or assume a serious risk of reputational and litigation harm. *See* letter from C. Boyden Gray and Jonathan Berry, Boyden Gray & Associates, submitted on behalf of the Alliance for Fair Board Recruitment, dated April 6, 2021 (''Alliance for Fair Board Recruitment Letter''), at 31–33. Some commenters also argue that men and women do not choose or desire all professions equally. *See* letter from Richard Morrison, Research Fellow, Competitive Enterprise Institute, dated March 11, 2021 (''CEI Letter''), at 3–4; letter from Independent Women's Forum, dated December 24, 2020 (''Independent Women's Forum Letter''), at 2.

[47] *See, e.g.,* letter from David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, to J. Matthew DeLesDernier, Assistant Secretary, Commission, dated January 4, 2021 (''Heritage Foundation Letter''), at 6–7; IBC Letter at 2; Donnellan Letter at 2–3; Type A Letter.

[48] *See, e.g.,* De La Vega Letter at 2–3; Heritage Foundation Letter at 16.

[49] *See* Nasdaq Response Letter II at 6–7. The Exchange also rejects the comments that claim that the proposal is a de facto quota, and states that the proposal is intended to provide shareholders with sufficient information to make an informed voting

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proposed Rule 5605(f) would set forth ''aspirational diversity objectives'' and not quotas, mandates, or set-asides, and companies that do not meet the objectives need only explain why they do not.[50] The Exchange also provides examples of what might be contained in such an explanation and reiterates that it would not assess the substance of the explanation, but would merely verify that the company has provided one.[51] The Exchange further states that the proposal would not require any particular board composition or require a company to select directors based on any criteria other than an individual's qualifications for the position.[52] The Exchange believes that its proposal would balance the calls of investors for companies to increase diverse representation on their boards with the need for companies to maintain flexibility and decision-making authority over their board composition.[53]

The Board Diversity Proposal would establish a disclosure-based framework for Nasdaq-listed companies that would contribute to investors' investment and voting decisions. While the proposal may have the effect of encouraging some Nasdaq-listed companies to increase diversity on their boards, the proposed rules do not mandate any particular board composition. The proposal would not require a company to select a director solely because that person falls within the proposed definition of ''Diverse,'' would not prevent companies and their shareholders from selecting directors based on experience, competence, and skills, and would not substitute a regulator's judgment for companies' or their shareholders' judgment in selecting directors. Rather, a Nasdaq-listed company that does not meet the board diversity objectives may comply with proposed Rule 5605(f) by identifying the requirements of Rule 5605(f)(2) that apply to the company and explaining why it does not meet the objectives, and the Exchange would not assess the substance of the company's explanation.[54]

Some companies may prefer not to explain their approach to board diversity for various reasons, such as concerns regarding perceived reputational, legal, or other harm. However, the proposal could mitigate potential concerns by giving companies substantial flexibility in crafting the required explanation—including how much detail to provide—and the Exchange would not evaluate the substance of the explanation. Moreover, while there would be costs to listing elsewhere,[55] companies that object to providing any explanation can choose instead to list on a different exchange. No company is required to list on Nasdaq. Rather, exchanges compete for listings, with four exchanges that currently list securities of operating companies [56] and nine exchanges that have rules for the listing of issuers on the exchange.[57] Listing exchanges compete with each other for listings in many ways, including listing fees, listing standards, and listing services.[58] In approving proposed rule changes relating to complimentary services that exchanges offer to issuers, including issuers that switch listing markets, the Commission has also explained that exchanges are responding to competitive market pressures.[59] As discussed in Section II.D. below, the current proposals may provide another way in which the exchanges compete for listings.

2. Demand for and Potential Benefits of the Proposed Disclosures

In the Board Diversity Proposal, the Exchange states that its discussions with organizational leaders representing a broad spectrum of market participants and stakeholders (including members of the business, investor, governance, legal, and civil rights communities) revealed strong support for disclosure requirements that would standardize the reporting of board diversity statistics.[60] The Exchange also states that current reporting of board diversity data is not provided in a consistent manner or on a sufficiently widespread basis and, as such, investors are not able to readily compare board diversity statistics across companies.[61] In pointing out the ''broad latitude'' afforded to companies by Commission rules relating to board diversity and proxy disclosure, the Exchange states that the absence of a specific definition of ''diversity'' for such disclosures has resulted in current reporting of board-level diversity

or investment decision, or to facilitate informed discussions with companies. *See id.* at 8.

[50] *See* letter from Stephen J. Kastenberg, Ballard Spahr LLP, to Vanessa Countryman, Secretary, Commission, dated February 5, 2021 (submitted on behalf of the Exchange by its counsel) (''Nasdaq Response Letter I''), at 2.

[51] *See id.* at 2–3. *See also* Nasdaq Response Letter II at 7.

[52] *See* Nasdaq Response Letter I at 3.

[53] *See* Nasdaq Response Letter II at 7. *See also infra* Section II.D. (describing the Exchange's argument that companies are free to decide where to list and may switch listing markets).

[54] One commenter states that, if the Exchange is truly interested in establishing only a disclosure framework, it should remove the diversity objectives and only require board-level statistical disclosure, or alternatively require all companies to disclose an explanation for the constitution of their boards. *See* Publius Letter II at 2. As discussed in Section II.C.2., it is not unreasonable to only require companies that do not meet the proposed diversity objectives to disclose why they have not done so, rather than to require all Nasdaq-listed companies to disclose their approach to board diversity. Moreover, as discussed in Section II.A.2., explanations from companies that do not meet the proposed diversity objectives, in addition to board-level statistical disclosure, would contribute to investors' investment and voting decisions.

[55] These costs would include the fixed costs associated with listing on a different exchange (such as the exchange's application fee, and the legal and accounting expenses associated with ensuring that the issuer satisfies the listing standards of the new exchange), as well as the costs associated with communicating with investors about the transfer of listing. *See* Securities Act Release No. 10428 (October 24, 2017), 82 FR 50059, 50065 (October 30, 2017) (''Rule 146 Release'').

[56] These exchanges are Nasdaq; New York Stock Exchange LLC (''NYSE''); Cboe BZX Exchange, Inc. (''BZX''); and NYSE American LLC (''NYSE American'').

[57] These exchanges are Nasdaq; NYSE; BZX; NYSE American; Investors Exchange LLC (''IEX''); Long-Term Stock Exchange, Inc. (''LTSE''); Nasdaq BX, Inc.; NYSE Arca, Inc.; and NYSE Chicago, Inc. *See also, e.g.,* LTSE Rule 14.425(a)(1)(C) (requiring LTSE-listed issuers to adopt and publish a policy on the company's approach to diversity and inclusion).

[58] *See* Rule 146 Release, *supra* note 55, at 50064. The Exchange, along with other exchanges, currently have a number of listing standards governing a listed company's board of directors. *See, e.g.,* Nasdaq Rule 5600 Series; NYSE Listed Company Manual Section 303A.00.

[59] *See, e.g.,* Securities Exchange Act Release No. 90893 (January 11, 2021), 86 FR 4166 (January 15, 2021) (approving SR–NYSE–2020–94 relating to certain complimentary services); Securities Exchange Act Release No. 90729 (December 18, 2020), 85 FR 84434 (December 28, 2020) (approving SR–NASDAQ–2020–060 relating to certain complimentary services).

[60] *See* Amendment No. 1 to the Board Diversity Proposal at Section 3.a.V. The Exchange also states that such discussions reinforced the notion that if companies recruit by skill set and experience rather than title, diverse talent would satisfy demand. *See id.* at 19–20, 46. According to the Exchange, studies suggest that the traditional director candidate selection process may create barriers to considering qualified diverse candidates for board positions. *See id.* at 41–44, Section 3.b.II.A.

[61] *See id.* at 9. The Exchange also states that, while conducting research on the state of board diversity among its listed companies, it encountered multiple key challenges, such as: (1) Inconsistent disclosure and definitions of ''diversity'' across companies; (2) limited data on diverse characteristics outside of gender; (3) inconsistent or no disclosure of a director's race, ethnicity, or other diversity attributes (*e.g.,* nationality); (4) difficult-to-extract data because statistics are often embedded in graphics; and (5) aggregation of information, making it difficult to separate gender from other categories of diversity. *See id.* at 51. *See also id.* at 59, 107.

statistics being significantly unreliable and unusable to investors.[62] The Exchange notes that the lack of transparency creates barriers to investment analysis, due diligence, and academic study, and affects investors who are increasingly basing public advocacy, proxy voting, and direct shareholder-company engagement decisions on board diversity considerations.[63]

The Exchange asserts that the disclosure-based framework of proposed Rule 5605(f) may influence corporate conduct if a company chooses to meet the proposed diversity objectives,[64] and could help increase opportunities for Diverse candidates.[65] Moreover, the Exchange states that, if a company does not meet the proposed objectives, the disclosure under proposed Rule 5605(f)(3) would provide analysts and investors with a better understanding about a company's reasons for not doing so.[66] The Exchange believes that this disclosure would enable the investment community to conduct more informed analyses of, and have more informed conversations with, companies and improve the quality of information available to investors who rely on this information to make informed investment and voting decisions.[67]

In addition, the Exchange believes that the disclosure-based framework of proposed Rule 5606 would eliminate data collection inaccuracies, decrease investors' costs, enhance investors' ability to utilize the information disclosed, and make information available to investors who otherwise would not be able to obtain individualized disclosures.[68] The Exchange also states that proposed Rule 5606 would protect investors that view information related to board diversity as material to their investment and voting decisions, and enhance investor confidence by assisting investors in making more informed decisions.[69] Moreover, the Exchange believes that the disclosures would provide consistent information to the public and would enable investors to continually review the board composition of a company to track trends,[70] as well as simplify or eliminate the need for a company to respond to multiple investor requests for board diversity information.[71]

Many commenters who support the Board Diversity Proposal believe that investors currently do not have sufficient access to consistent, meaningful, or reliable board diversity information.[72] Many commenters believe that board diversity information is important for investment decision making,[73] investment strategies and analysis,[74] and voting decisions.[75] Some commenters also believe that the availability of board diversity information would facilitate studies on the impact of board diversity.[76] In addition, many commenters believe that the proposed board diversity disclosures would be material to investors,[77] would improve access to transparent and comparable board diversity disclosures across companies,[78] would allow more efficient and less costly access to and usage of board diversity information,[79] and would allow investors to monitor

[62] *See id.* at Sections 3.a.VI.A–B.

[63] *See id.* at 51–52. *See also id.* at Section 3.a.VI.C. (describing examples of support for board diversity disclosures).

[64] *See id.* at 121.

[65] *See id.* The Exchange also states that proposed Rule 5605(f) would empower companies to maintain decision-making authority over the composition of their boards. *See id.* at 122. The Exchange recognizes that directors may bring diverse perspectives, skills, and experiences to the board, notwithstanding that they have similar attributes; therefore, the Exchange believes that it is in the public interest to permit a company to choose whether to meet the proposed diversity objectives or explain why it does not. *See id.* at 129–30.

[66] *See id.* at 122.

[67] *See id.* at 122–23.

[68] *See id.* at 110–13.

[69] *See id.* at 110–11.

[70] The Exchange also states that the disclosures under proposed Rule 5606 would provide a means for the Exchange to assess whether companies meet the diversity objectives under proposed Rule 5605(f). *See id.* at 116.

[71] *See id.* at 112.

[72] *See, e.g.,* letter from Aron Szapiro, Head of Policy Research, Morningstar, Inc., and Michael Jantzi, Chief Executive Officer, Sustainalytics, to Vanessa Countryman, Secretary, Commission, dated January 13, 2021 (''Morningstar Letter''), at 1–2; letter from Ramiro A. Cavazos, President and CEO, United States Hispanic Chamber of Commerce, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021 (''Hispanic Chamber of Commerce Letter''), at 3; New York City Comptroller Letter at 2–3; Fairfax Letter at 7; letter from Michael W. Frerichs, Illinois State Treasurer, to Vanessa Countryman, Secretary, Commission, dated December 31, 2020 (''Illinois State Treasurer Letter''), at 2; Constance F. Armstrong, Executive Director, The Boston Club, to Vanessa Countryman, Secretary, Commission, dated December 31, 2020 (''Boston Club Letter'') at 1; letter from Roger W. Ferguson, Jr., President and CEO, Teachers Insurance and Annuity Association of America, and Jose Minaya, CEO, Nuveen, LLC, to Vanessa Countryman, Secretary, Commission, dated December 31, 2020 (''TIAA Letter''), at 2; letter from Esther Aguilera, President and CEO, Latino Corporate Directors Association, to Vanessa Countryman, Secretary, Commission, dated December 30, 2020 (''LCDA Letter''), at 9–11; letter from Robert W. Lovelace, Chief Executive Officer, Capital Research and Management Company, to Vanessa Countryman, Secretary, Commission, dated December 22, 2020 (''Capital Research and Management Company Letter''), at 2–3; letter from Rachel Stern, Executive Vice President, Chief Legal Officer and Global Head of Strategic Resources, FactSet Research Systems Inc., to Vanessa Countryman, Secretary, Commission, dated December 22, 2020 (''FactSet Letter''), at 1–2. Some commenters also note that not all investors currently have the same access to board diversity information. *See, e.g.,* Fairfax Letter at 6 (stating that collection of board diversity data on a company-by-company basis creates informational asymmetries, particularly for investors without the time or resources to effectively engage in this manner); New York City Comptroller Letter at 3 (stating that the proposal would level the playing field for smaller institutional investors who may not have the resources available to do the research and engagement necessary to ascertain the racial and ethnic diversity of boards).

[73] *See, e.g.,* BMO Letter at 1; letter from Olshan Frome Wolosky LLP to Vanessa A. Countryman, Secretary, Commission, dated January 6, 2021 (''Olshan Letter''), at 3–4; letter from Steve Nelson, Chief Executive Officer, Institutional Limited Partners Association, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021 (''Institutional Limited Partners Association Letter''), at 2; TIAA Letter at 3; LCDA Letter at 6–10; letter from Mary Pryshlak, Head of Investment Research, Wellington Management Company LLP, to Vanessa Countryman, Secretary, Commission, dated December 30, 2020 at 1–2; Ariel Letter at 1. Some commenters also specifically express support for the proposed disclosures of the reason why a company does not meet the board diversity objectives and believe that such disclosures would contribute to investment or voting decisions. *See, e.g.,* letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, to Secretary, Commission, dated December 30, 2020, at 4–5; Ariel Letter at 1.

[74] *See, e.g.,* T. Rowe Letter at 1–2; UAW Letter at 6; FactSet Letter at 1–2.

[75] *See, e.g.,* letter from Dev Stahlkopf, Corporate Vice President, General Counsel and Secretary, Microsoft Corporation, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021 (''Microsoft Letter''), at 2; New York City Comptroller Letter at 2–3.

[76] *See, e.g.,* letter from Olivia D. Morgan, Executive Director and Co-Founder, California Partners Project, to Vanessa Countryman, Secretary, Commission, dated January 3, 2020 [sic] (''California Partners Project Letter''), at 2; letter from Dieter Waizenegger, Executive Director, CtW Investment Group, to Vanessa Countryman, Secretary, Commission, dated December 31, 2020 (''CtW Letter''), at 2; Soundboard Letter at 2; UAW Letter at 6; letter from Sarah Keohane Williamson, Chief Executive Officer, Ariel Fromer Babcock, Managing Director, Head of Research, and Victoria Tellez Leal, Senior Associate, Research, FCLTGlobal, to Vanessa Countryman, Secretary, Commission, dated December 18, 2020, at 3.

[77] *See, e.g.,* letter from Fran Seegull, President, U.S. Impact Investing Alliance, to Vanessa Countryman, Secretary, Commission, dated March 5, 2021 (''Alliance Letter''), at 1; CFA Letter at 3; letter from Edgar Hernandez, Assistant Director, Capital Stewardship, Service Employees International Union, to Vanessa A. Countryman, Secretary, Commission, dated January 4, 2020 [sic] (''SEIU Letter''), at 2; Illinois State Treasurer Letter at 1–2.

[78] *See, e.g.,* BMO Letter at 1; SEIU Letter at 2; letter from Alfred P. Poor, Chief Executive Officer, Ideanomics, Inc., to Vanessa Countryman, Secretary, Commission, dated December 28, 2020 (''Ideanomics Letter''), at 1, 3; letter from Kimberly Jeffries Leonard, National President, The Links, Incorporated, to Vanessa A. Countryman, Secretary, Commission, dated December 17, 2020 (''Links Letter''), at 2.

[79] *See, e.g.,* letter from Paul M. Kinsella, Emily J. Oldshue, Jeremiah Williams, Partners, Ropes & Gray LLP, to Vanessa Countryman, Secretary, Commission, dated December 31, 2020 (''Ropes & Gray Letter''), at 4; UAW Letter at 6.

and assess companies' board diversity.[80] Moreover, some commenters believe that the proposal would enhance progress in increasing board diversity.[81]

Some commenters, by contrast, argue that the perceived investor demand for diverse boards and diversity information is overstated, and if diversity requirements increase returns, then boards, management, and shareholders would not require any regulatory mandate to adopt them.[82] Further, some commenters argue that the proposal is unnecessary and that company boards are already becoming more diverse,[83] and some commenters argue that shareholders have the power to push for diversity changes in the boardroom.[84]

In response, the Exchange states that investors are increasingly interested in board diversity data, as investors view board diversity as a key indicator of corporate governance.[85] Moreover, the Exchange states that the wave of investors increasingly calling for companies to disclose diversity metrics and diversify their boards, and basing their voting decisions on whether companies do or do not, demonstrates that investors consider diversity disclosures material to their voting and investment decisions.[86] The Exchange explains that its goal is to facilitate the collection, reliability, and uniformity of board diversity data, while expanding access to the information.[87] The Exchange also states that its proposal would level the playing field for retail and institutional investors, and decrease the cost and time associated with data collection for all investors, by providing them with accessible, comparable, and transparent information by which they could critically evaluate a company's decisions with respect to how, whether, or when to pursue board diversity.[88] And the Exchange reiterates that the proposal provides flexibility for companies that do not wish to achieve the diversity objectives or wish to do so on a different timeline.[89]

The Commission finds that the Board Diversity Proposal would provide widely available, consistent, and comparable information that would contribute to investors' investment and voting decisions. Because the Exchange would define ''Diverse'' for purposes of the proposed disclosures and would require consistent format and timing for the proposed disclosures,[90] the proposal would make it more efficient and less costly for investors to collect, use, and compare information on board diversity. The reduced cost and improved efficiency in collecting, using, and comparing such information could enhance investors' investment and voting decision-making processes, and enhance investors' ability to make informed investment and voting decisions. Because the proposal would make such information widely available on the same basis to all investors, the proposal would also mitigate any concerns regarding unequal access to information that may currently exist between certain (likely larger and more resourceful) investors who could obtain the information and other (likely smaller) investors who may not be able to do so. Accordingly, the Commission finds that the proposal is designed to 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 protect investors and the public interest.

The diverse collection of commenters who expressed interest in board diversity information, including institutional investors, investment managers, listed companies, and individual investors, as well as statements made by institutional investors, asset managers, and business organizations,[91] demonstrates the broad demand for this information.[92] Moreover, while investors may have differing views regarding whether companies should increase board diversity and whether and how board diversity affects company performance and governance, the proposed disclosures would contribute to investors' investment and voting

[80] *See, e.g.,* Fairfax Letter at 7; letter from Lisa Hayles, Investment Manager, Trillium Asset Management, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021 (''Trillium Letter''), at 3; letter from Charlotte Laurent-Ottomane, Executive Director, and Toni Wolfman, Co-Chair, Public Policy Outreach Committee, Thirty Percent Coalition, to Vanessa Countryman, Secretary, Commission, dated January 1, 2021 (''Thirty Percent Coalition Letter''), at 1; CtW Letter at 2; OPERS Letter at 1–2.

[81] *See, e.g.,* FactSet Letter at 2; letter from Fiona Ma, California State Treasurer, to Vanessa Countryman, Secretary, Commission, dated December 15, 2020 (''California State Treasurer Letter''). *See also, e.g.,* letter from Thomas Chow, Irene Liu, and Andrew Song, Co-Chairs, Bay Area Asian American General Counsel, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021, at 2 (stating that the Board Diversity Proposal provides an appropriate impetus to depart from the traditional director search process and to diversify the candidate pool).

[82] *See, e.g.,* Alliance for Fair Board Recruitment Letter at 43; CEI Letter at 1–2; letter from John Quigley to Vanessa Countryman, Secretary, Commission, dated January 25, 2021 (''Quigley Letter''), at 1; Heritage Foundation Letter at 3, 5–6; letter from Boyden Gray & Associates PLLC, dated January 4, 2020 [sic] (''Project on Fair Representation Letter''), at 5; Publius Letter at 3. *See also* NLPC Letter at 4 (stating that it is in a company's interest to promote and advertise the diversity of its board if it believes that such diversity would attract investors, regardless of, or in addition to, the economic performance of the company).

[83] *See, e.g.,* letter from Pat Toomey et al, U.S. Senators, to Allison Herren Lee, Acting Chair, Commission, dated February 12, 2021 (''Toomey Letter''), at 3; NLPC Letter at 3–4 (also arguing that information is available on a company's website with the biographical information of its board members and officers, and that investors are unlikely to access such information from the Commission); Publius Letter at 2–3.

[84] *See, e.g.,* Project on Fair Representation Letter at 5; letter from Jerry D. Guess, Founder, Chairman, and CEO, Guess & Co. Corporation, to Martha Miller, Director, Office of the Advocate for Small Business Formation, Commission, dated December 2, 2020 (''Guess Letter''), at 2.

[85] *See* Nasdaq Response Letter II at 20.

[86] *See id.* at 12.

[87] *See id.* at 20.

[88] *See id.* at 13, 25.

[89] *See id.* at 25. The Exchange also states that, absent encouragement, progress toward increased board diversity has been demonstrably slow, and that regulatory action has proven effective in removing barriers and increasing board diversity among those traditionally underrepresented in other jurisdictions. *See id.* at 15, 25–26.

[90] In particular, companies would be required to: make board-level diversity disclosures in a substantially similar format as the Board Diversity Matrix; following the first year of disclosure, disclose the current year and immediately prior year Board Diversity Matrix; provide the Board Diversity Matrix in a searchable format; and provide the required disclosures in a proxy statement or information statement (or if a company does not file a proxy, in its Form 10–K or 20–F) in advance of the company's annual shareholders meeting or provide the required disclosures on the company's website concurrently with the filing of the company's proxy statement or information statement (or, if the company does not file a proxy, its Form 10–K or 20–F).

[91] *See, e.g.,* Amendment No. 1 to the Board Diversity Proposal at 8 n.9, 54 n.142 (referencing statements from Vanguard, State Street Global Advisors, and BlackRock that call for companies to disclose board diversity information); *id.* at 54 nn.139–40 (referencing petitions for Commission rulemaking from groups of institutional investors that call for disclosures of board diversity information); *id.* at 54 n.143 (referencing an initiative by a state treasurer and group of institutional investors calling for Russell 3000 companies to disclose board diversity information); *id.* at 57 n.152 (referencing a letter from various business associations expressing support for the passage of a bill by the U.S. House of Representatives that would require board diversity disclosures).

[92] Commenters who express support for the proposed disclosures include institutional investors, investment managers, listed companies, and individual investors. *See, e.g.,* letter from Cynthia Overton to Vanessa Countryman, Secretary, Commission, dated January 3, 2021; letter from Dan Dees, Co-Head Investment Banking Division, Goldman Sachs Group, Inc., to Secretary, Commission, dated January 1, 2021 (''Goldman Sachs Letter''); letter from Marcie Frost, Chief Executive Officer, California Public Employees' Retirement System, to Vanessa Countryman, Secretary, Commission, dated December 31, 2020; TIAA Letter; letter from Jo Brickman, dated December 18, 2020. They also include listed companies. *See, e.g.,* Microsoft Letter; letter from Sheryl Sandberg, Chief Operating Officer, Facebook Inc., to Vanessa Countryman, Secretary, Commission, dated January 3, 2021; letter from Jeff Ray, CEO, Brightcove, to Vanessa Countryman, dated December 23, 2020 (''Brightcove Letter'').

decisions regardless of their views on whether board diversity is desirable or beneficial. For example, for investors who support board diversity, the proposed disclosures could inform their decision on issues related to corporate governance, including director elections, and company explanations as to why they do not meet the diversity objectives could better inform those investors as to the risks and costs of increased board diversity. And for investors who do not believe that having additional ''Diverse'' directors would be beneficial for a company, the proposed disclosures could inform their decision to vote to preserve the existing board composition in a company. The disclosures' focus on providing greater transparency regarding existing board composition and companies' approaches to board diversity—rather than mandating any particular board composition or requiring Nasdaq-listed companies to change the composition of their boards—will provide investors with board-level diversity statistics and explanations for certain companies' approaches to board diversity, which would contribute to investors' investment and voting decisions, including decisions related to companies' board compositions.

B. Potential Effects of Board Diversity on Companies and Investors

In the Board Diversity Proposal, the Exchange states that it has reviewed dozens of empirical studies and found that an extensive body of empirical research demonstrates that diverse boards are positively associated with improved corporate governance and company performance.[93] While the Exchange states that the overwhelming majority of empirical studies it has reviewed indicate that board diversity is positively associated with company performance, it acknowledges that the results of some studies on gender diversity are mixed.[94] Nevertheless, the Exchange believes that ''there is a compelling body of credible research on the association between company performance and board diversity'' and, at a minimum, the academic and empirical studies support the conclusion that board diversity does not have adverse effects on company performance.[95]

The Exchange also states that there is substantial evidence that board diversity promotes investor protection, including by enhancing the quality of a company's financial reporting, internal controls, public disclosures, and management oversight.[96] According to the Exchange, more than a dozen studies have found a positive association between gender diversity and important investor protections,[97] and some academics assert that such findings may extend to other forms of diversity, including racial and ethnic diversity.[98] The Exchange also states that it has reviewed studies suggesting that board diversity could enhance a company's ability to monitor management by reducing ''groupthink'' and improving decision-making.[99]

Some commenters similarly believe that there are benefits associated with board diversity, such as improved board decision-making,[100] corporate governance,[101] financial performance or shareholder value,[102] risk mitigation,[103] innovation,[104] investor protection,[105] investor confidence,[106] and corporate culture.[107] By contrast, some commenters argue that the Exchange has not demonstrated causation between board diversity and the benefits described in the Board Diversity Proposal, and that the supporting studies cited by the Exchange do not show that diversity on a company's board causes, rather than is merely correlated with, performance enhancement.[108] Commenters further assert that the peer-reviewed economics literature is inconclusive, with most studies showing little or no discernable effect based on the sexual, racial, or ethnic composition of corporate boards.[109] In addition, some commenters state that some studies have not found a positive correlation between board diversity and benefits, and point out the lack of research relating to LBGTQ+ board

[93] *See* Amendment No. 1 to the Board Diversity Proposal at 13. The Exchange states that studies have identified positive relationships between board diversity and commonly used financial metrics, including higher returns on invested capital, returns on equity, earnings per share, earnings before interest and taxation margin, asset valuation multiples, and credit ratings. *See id.* at 13, Section 3.a.III.A. The Exchange also points to a report that suggests that the relationship between board gender diversity and corporate performance may extend to LGBTQ+ diversity. *See id.* at 25.

[94] *See id.* at 25–28 (referencing Carter et al., *infra* note 119, and the U.S. Government Accountability Office's conclusion that the mixed nature of various academic and empirical studies may be due to differences in methodologies, data samples, and time periods).

[95] *See id.* at 28.

[96] *See id.* at 29.

[97] *See id.* at 29, Section 3.a.III.B. The Exchange states that studies have found that gender-diverse boards or audit committees are associated with: More transparent public disclosures and less information asymmetry; better reporting discipline by management; a lower likelihood of manipulated earnings through earnings management; an increased likelihood of voluntarily disclosing forward-looking information; a lower likelihood of receiving audit qualifications due to errors, non-compliance, or omission of information; and a lower likelihood of securities fraud. *See id.* at 13, Section 3.a.III.B. In addition, the Exchange states that studies found that having at least one woman on the board is associated with a lower likelihood of material weaknesses in internal control over financial reporting and a lower likelihood of material financial restatements. *See id.* at 13, Section 3.a.III.B, Section 3.b.II.B.

[98] *See id.* at 29, Section 3.a.III.B.

[99] *See id.* at Section 3.a.III.C.

[100] *See, e.g.,* letter from Kewsong Lee, Chief Executive Officer, The Carlyle Group, to Vanessa Countryman, Secretary, Commission, dated March 16, 2021 (''Carlyle Letter''), at 1; letter from Joan Haffenreffer, President, Women's Forum of New York, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021 (''Women's Forum Letter''), at 1–2; letter from Abraham Kim, Executive Director, Council of Korean Americans, to Vanessa Countryman, Secretary, Commission, dated January 3, 2021, at 1; Goldman Sachs Letter at 1; T. Rowe Letter at 1–2; Ideanomics Letter at 2, 4; letter from Aaron Meder, CEO, LGIM America, to Vanessa Countryman, Secretary, Commission, dated December 23, 2020 (''LGIM America Letter''), at 2; Goodman and Olson Letter at 1–2; letter from Mercy Investment Services, Inc., to Vanessa Countryman, Secretary, Commission, dated December 22, 2020 (''Mercy Investment Letter''), at 1; letter from Luan Jenifer, President, Miller/Howard Investments, Inc., to Vanessa Countryman, Secretary, Commission, dated December 22, 2020 (''Miller/Howard Letter''), at 1; letter from Kerrie Waring, Chief Executive Officer, International Corporate Governance Network, to Jay Clayton, Chairman, Commission, dated December 16, 2020, at 2.

[101] *See, e.g.,* Carlyle Letter at 1; letter from Dorri McWhorter, Chief Executive Officer, YWCA Metropolitan Chicago, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021; Women's Forum Letter at 2; AAAIM Letter at 2; Miller/Howard Letter at 1; letter from Seth Brody, Partner and Global Head of the Operational Excellence Practice, Apax Partners, to Vanessa Countryman, Secretary, Commission, dated December 16, 2020.

[102] *See, e.g.,* Carlyle Letter at 1; letter from Kerry E. Berchem, Akin Gump Strauss Hauer & Feld LLP, to Vanessa Countryman, Secretary, dated January 4, 2021 (''Akin Gump Letter''), at 2; Goldman Sachs Letter at 1; Capital Research and Management Company Letter at 1; FactSet Letter at 1.

[103] *See, e.g.,* Akin Gump Letter at 4; letter from Michelle Dunstan, SVP, Global Head of Responsible Investing, and Diana Lee, AVP, Director of Corporate Governance, AllianceBernstein L.P., to Vanessa A. Countryman, Secretary, Commission, dated January 4, 2021 (''AllianceBernstein Letter''), at 1; Hispanic Chamber of Commerce Letter at 3.

[104] *See, e.g.,* LGIM America Letter at 2; Miller/Howard Letter at 1.

[105] *See, e.g.,* Women's Forum Letter at 2; Miller/Howard Letter at 1; Douglas B. Sieg, Managing Partner, Lord Abbett, to Vanessa Countryman, Secretary, Commission, dated December 18, 2020, at 1.

[106] *See, e.g.,* FactSet Letter at 2; Miller/Howard Letter at 1; UAW Letter at 3–4.

[107] *See, e.g.,* Akin Gump Letter at 4; California Partners Project Letter at 2; Capital Research and Management Company Letter at 1–2.

[108] *See, e.g.,* Publius Letter II at 2; Toomey Letter at 2; Heritage Foundation Letter at 7–10; Project on Fair Representation Letter at 3–4; letter from Scott Shepard, Free Enterprise Project, National Center for Public Policy Research, to Vanessa Countryman, Secretary, Commission, dated December 30, 2020 (''Free Enterprise Project Letter''), at 2–3; Publius Letter at 4–7; letter from John Richter dated December 12, 2020 (''Richter Letter''), at 1–2.

[109] *See* Heritage Foundation Letter at 7–10. *See also, e.g.,* Alliance for Fair Board Recruitment Letter at 7–31; De La Vega Letter at 2; Richter Letter at 1.

representation and diversity relating to Underrepresented Minorities.[110] Moreover, some commenters argue that there is academic work reporting that diversifying boards can harm financial performance or shareholder value.[111] Another commenter argues that the proposal is not consistent with a free market because the proposed diversity requirement does not demonstrably improve corporate performance, and could sometimes harm it.[112] This commenter further argues that the proposal may result in increases in the size of boards, potentially hindering corporate oversight and governance.[113]

With respect to comments that disagree that board diversity is linked to enhanced company performance, innovation, long-term sustainable returns, or investor protection, the Exchange states that ''the weight of empirical evidence'' supports its belief in the benefits of board diversity for companies that choose to meet the proposed diversity objectives.[114] With respect to commenters' view that there is insufficient evidence to establish a positive relationship between LGBTQ+ diversity and board performance, the Exchange reiterates that it is reasonable and in the public interest to treat LGBTQ+ status as ''inextricably'' intertwined with gender identity.[115]

The Exchange also states that Section 6(b)(5) of the Act does not require the Exchange to show that its listing rules enhance the financial performance of listed companies.[116] With respect to the comment that adding board members to satisfy the proposal could create less effective corporate oversight and governance due to a larger board, the Exchange states that the proposal would not require that companies add or remove any directors in order to increase diversity.[117]

The conclusions from the studies together referenced by the Exchange and commenters on the effects of changes in board diversity on investors are mixed.[118] Some of the results from the studies cited by the Exchange and commenters are consistent with the view that increases in board diversity cause increases in shareholder wealth.[119] One study concludes that greater board diversity leads to better firm performance, consistent with diversity fostering more efficient (real) risk-taking, firms with greater board diversity are found to invest persistently more in research and development and have more efficient innovation processes.[120] Other studies have concluded that increases in board diversity may not be beneficial to investors. For example, one study concludes that the effect of gender diversity on firm performance is negative for some companies.[121] In addition, some studies of some board diversity mandates have concluded they are not beneficial to investors.[122] For example, studies of the effects of the board diversity mandates in Norway have presented indications that the mandates caused a decline in company performance and reduced shareholder wealth.[123] According to one study, some companies chose to go private rather than comply with the Norway board diversity mandate.[124] A more recent study, however, questions the statistical significance of these findings.[125] Taken together, studies of the effects of board diversity are generally inconclusive, and suggest that the effects of even mandated changes remain the subject of reasonable debate.

Studies of board diversity mandates, in any event, do not provide a reliable basis for evaluating the likely overall effects of the Board Diversity Proposal, which does not mandate any particular board composition. Unlike companies in those studies, Nasdaq-listed companies would have the option of providing an explanation for their board composition under the new listing standard. This is distinct from facing a fine as an alternative to compliance or possibly facing the requirement to dissolve for non-compliance. Some of the mandates requiring increased board diversity do not present companies with the option of providing an explanation rather than facing a sanction, or any other option besides compliance with the mandate.[126] According to one study, comply-or-explain corporate governance reforms have been found to increase shareholder wealth more than corporate governance mandates, on average.[127] Further, under the Board Diversity Proposal, Nasdaq-listed companies would be required to disclose board-level diversity statistics, and those companies that do not meet the proposed diversity objectives would be required to choose between providing an explanation and increasing the diversity of their boards. In responding to the disclosure requirements, companies can consider the analyses and conclusions from academic and

[110] *See, e.g.,* Toomey Letter at 2; Donnellan Letter at 1; Project on Fair Representation Letter at 6–7; Publius Letter at 6–7; Alliance for Fair Board Recruitment Letter at 26–28.

[111] *See, e.g.,* letter from Samuel S. Guzik, Guzik & Associates, to J. Matthew DeLesDernier, Assistant Secretary, Commission, dated April 5, 2021 (''Guzik Letter''), at 3–5; letter from Theo Vermaelen, dated December 29, 2020.

[112] *See* Toomey Letter at 2.

[113] *See id.* at 3. Another commenter also predicts that the proposal will weaken corporate governance. *See* De La Vega Letter at 2–3.

[114] *See* Nasdaq Response Letter II at 8–10.

[115] *See id.* at 10.

[116] *See id.*

[117] *See id.* at 28.

[118] The studies and their findings are also subject to the various caveat and limitations that are described in the studies.

[119] *See, e.g.,* Gennaro Bernile et al., Board Diversity, Firm Risk, and Corporate Policies, 127 J. Fin. Econ. 588, 605 (2018); David A. Carter et al., The Gender and Ethnic Diversity of US Boards and Board Committees and Firm Financial Performance, 18 Corporate Governance 396, 410 (2010); Jason M. Thomas & Megan Starr, The Carlyle Group, Global Insights: From Impact Investing to Investing for Impact 5 (2020). *See also* Olga Kuzmina & Valentina Melentyeva, Gender Diversity in Corporate Boards: Evidence from Quota-Implied Discontinuities (CEPR, Discussion Paper No. DP14942, 2021), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3638047;* Muhammad Nadeem et al., Women on Boards, Firm Risk and the Profitability Nexus: Does Gender Diversity Moderate the Risk and Return Relationship?, 64 Int'l Rev. Econ. & Fin. 427 (2019).

[120] *See* Bernile et al., *supra* note 119.

[121] *See* Renée B. Adams & Daniel Ferreira, Women in the Boardroom and Their Impact on Governance and Performance, 94 J. Fin. Econ. 291 (2009). This study observes that the effect of gender diversity on firm performance may be negative and in general depends on the specification of the analysis.

[122] *See* Alliance for Fair Board Recruitment Letter at 2, 24.

[123] *See, e.g.,* Kenneth R. Ahern & Amy K. Dittmar, The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation, 127 Q.J. Econ. 137 (2012); David A. Matsa & Amalia R. Miller, A Female Style in Corporate Leadership? Evidence from Quotas, 5 a.m. Econ. J. Applied Econ. 136 (2013). As an additional example, some studies of the effects of the 2018 California law requiring increased board gender diversity have reported indications of negative effects on shareholder wealth. *See, e.g.,* Daniel Greene et al., Do Board Gender Quotas Affect Firm Value? Evidence from California Senate Bill No. 826, J. Corp. Fin., (February 2020); Sunwoo Hwang et al., Mandating Women on Boards: Evidence from the United States (Kenan Institute of Private Enterprise, Research Paper No. 18–34, 2018), *available at https://ssrn.com/abstract=3265783.*

[124] *See* Øyvind Bøhren & Siv Staubo, Does Mandatory Gender Balance Work? Changing Organizational Form to Avoid Board Upheaval, 28 J. Corp. Fin. 152 (2014).

[125] *See* B. Espen Eckbo et al., Valuation Effects of Norway's Board Gender-Quota Law Revisited (ECGI, Finance Working Paper No. 463/2016, 2021), *available at https://ssrn.com/abstract=2746786.*

[126] *See* A.B. 979, 2019–2020 Leg., Reg. Sess. (Cal. 2020) (amending Cal. Corp. Code Section 301.3 and adding Cal. Corp. Code Sections 301.4 and 2115.6), *available at http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB979;* S.B. 826, 2017–2018 Leg., Reg. Sess. (Cal. 2018) (adding Cal. Corp. Code Sections 301.3 and 2115.5), *available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB826.*

[127] *See* Larry Fauver et al., Board Reforms and Firm Value: Worldwide Evidence, 125 J. Fin. Econ. 120 (2017) (providing evidence of a greater increase in firm value from comply-or-explain-based reforms than for rule-based reforms in a study of the impact of corporate board reforms on firm value across 41 countries).

other studies on the effects of changes in board composition on company performance and share value. And they may apply those conclusions to their own circumstances.

The Board Diversity Proposal is thus distinguishable from the board diversity mandates described above. Moreover, the Exchange's proposal would mitigate concerns regarding unequal access to information that may currently exist between certain (likely larger and more resourceful) investors who could obtain board diversity information and other (likely smaller) investors who may not be able to do the same. And, because the Board Diversity Proposal would not mandate any particular board composition, companies that choose to meet the diversity objectives are likely to be the ones who stand to benefit the most, or incur the least cost. Those companies which view the diversity objectives themselves as challenging are likely to choose to explain rather than incur the costs to them of meeting the objectives, and those companies for whom explaining would be challenging will have the option to list on a different exchange. For these reasons, the costs of the Board Diversity Proposal are likely to be relatively limited as compared to those regulatory regimes that have mandated board diversity and provided neither the option to explain or to opt-out of the regimes by listing elsewhere.

In light of the disclosure benefits that the Board Diversity Proposal would provide, and given that the studies of the effects of board diversity are generally inconclusive and the costs of the proposal are likely to be comparatively limited, the Commission finds that the Board Diversity Proposal is consistent with the requirements of the Act.

C. Applicability of the Board Diversity Rules

1. Definition of Diverse

In the Board Diversity Proposal, the Exchange states that current reporting of board-level diversity statistics is unreliable and unusable to investors and points to inconsistencies in the definitions of diversity characteristics across companies.[128] It notes that a transparent, consistent definition of Diverse would provide stakeholders with a better understanding of a company's current board composition and philosophy regarding diversity if the company does not meet the proposed diversity objectives.[129] In addition, the Exchange believes that having a broader definition of ''Diverse'' would permit inconsistent, non-comparable disclosures, whereas a narrower definition of ''Diverse'' focused on race, ethnicity, sexual orientation, and gender identity will promote the public interest by improving transparency and comparability.[130]

Some commenters support the proposed definition of ''Diverse'' because it would improve the transparency, consistency, and comparability of disclosures across companies, whereas a broader definition would maintain the status quo of inconsistent, non-comparable data.[131] One commenter points out that the proposal would not prevent companies from considering other attributes beyond the proposed definition of ''Diverse,'' such as veteran or disability status.[132] By contrast, other commenters object to the proposed definition of ''Diverse'' as narrow and superficial.[133] Moreover, some commenters request that the Exchange expand the proposed definition of ''Diverse'' to include individuals with disabilities,[134] veterans, or others who are not typically well-represented at the board level.[135]

In response to comments,[136] the Exchange reiterates that the proposed definition of ''Diverse'' is suitable to improve transparency and comparability of disclosures across companies.[137] The Exchange also states that companies are not precluded from using a broader definition of diversity, including persons with disabilities and other categories such as veteran status or age, provided that these companies disclose this under proposed Rule 5605(f)(3).[138]

The proposal would facilitate comparable board diversity disclosures by Nasdaq-listed companies, which would lead to more efficient collection and use of the information by investors. In connection with facilitating comparable board diversity disclosures and for the reasons discussed below, the Exchange's proposed definition of

[128] *See* Amendment No. 1 to the Board Diversity Proposal at 50–51.

[129] *See id.* at 107.

[130] *See id.* The Exchange also states that the categories it has proposed to comprise an Underrepresented Minority are consistent with the categories reported to the Equal Employment Opportunity Commission (''EEOC'') through the Employer Information Report EEO–1 Form (''EEO–1''). *See id.* at 9–10, 61. In addition, the Exchange states that, while the EEO–1 report refers to ''Hispanic or Latino'' rather than ''Latinx,'' the Exchange proposes to use the term ''Latinx'' to apply broadly to all gendered and gender-neutral forms that may be used by individuals of Latin American heritage. *See id.* at 61 n.160. The Exchange further states that the terms in the proposed definition of LGBTQ+ are similar to the identities defined in California's A.B. 979, but have been expanded to include the queer community. *See id.* at 61.

[131] *See, e.g.,* Women's Forum Letter at 2; Miller/Howard Letter at 2. *See also, e.g.,* Fairfax Letter at 8–9; CFA Letter at 4–5.

[132] *See* Goodman and Olson Letter at 2.

[133] *See, e.g.,* Toomey Letter at 1–3; Heritage Foundation Letter at 16; Richter Letter at 2–3.

[134] *See, e.g.,* letter from National LGBT Chamber of Commerce (NGLCC), National Veteran-Owned Business Association (NaVOBA), Out & Equal Workplace Advocates, U.S. Black Chambers, Inc. (USBC), United States Hispanic Chamber of Commerce (USHCC), US Pan Asian American Chamber of Commerce Education Foundation (USPAACC), and Women Impacting Public Policy (WIPP), to Vanessa Countryman, Secretary, Commission, dated April 2, 2021; letter from The Members of the National Disability Alliance, to Adena T. Friedman, President and Chief Executive Officer, Nasdaq, dated March 9, 2021; letter from Maria Town, President & CEO, American Association of People with Disabilities, and Jill Houghton, President & CEO, Disability:IN, to Allison Lee, Acting Chair, Commission, dated February 2, 2021; letter from Janice S. Lintz, CEO, Hearing Access & Innovations, Inc., dated January 25, 2021; letter from Jennifer Laszlo Mizrahi, President, RespectAbility, Carol Glazer, President, National Organization on Disability, Katherine McCary, CEO, Disability: IN DC Metro, William D. Goren, Attorney and Consultant, Americans with Disabilities, Thomas Foley, President, National Disability Institute, and Sean Luechtefeld, Senior Director Communications, ANCOR, to Vanessa Countryman, Secretary, dated January 25, 2021; letter from Zainab Alkebsi, President, Board of Directors, Deaf and Hard of Hearing Bar Association, to Vanessa Countryman, Secretary, Commission, dated January 25, 2021; letter from Victor Calise, Commissioner, New York City Mayor's Office for People with Disabilities, dated January 8, 2021; letter from Nicholas D. Lawson, J.D. Candidate, Georgetown University Law Center, to Vanessa Countryman, Secretary, Commission, dated January 15, 2021; letter from Robert Ludke, Founder, Ludke Consulting, LLC, and Regina Kline, Founder and CEO, SmartJob, LLC, to Vanessa Countryman, Secretary, Commission, dated December 31, 2020; CFA Letter at 5; Ideanomics Letter at 4; letter from James Morgan dated December 22, 2020; letter from Carol Glazer, CEO, National Organization on Disability, to Vanessa Countryman, Secretary, Commission, dated December 9, 2020.

[135] *See, e.g.,* CFA Letter at 5; Ideanomics Letter at 4–5. *See also, e.g.,* letter from Kevin R. Eckert, Partner, Task Force X Capital, to Vanessa Countryman, Secretary, Commission, dated April 20, 2021 (urging the inclusion of veterans in the definition of Diverse); letter from David A. Morken, CEO and Chairman, Bandwidth Inc., to Vanessa Countryman, Secretary, Commission, dated April 6, 2021. One commenter states that the proposal would fail to treat similarly situated categories alike, and that the proposal's distinctions are arbitrary and capricious. *See* Alliance for Fair Board Recruitment Letter at 53–54.

[136] The Exchange also points to commenters who argue that the proposal would not promote diversity because, for example, it would not prohibit homogenous boards, and Diverse directors would bring similar perspectives to those of white male board members. *See* Nasdaq Response Letter II at 10–11. The Exchange states that companies are free to consider additional diverse attributes when identifying director nominees (*e.g.,* nationality, disability, veteran status) and are free to disclose information relating to diverse attributes beyond those highlighted in the proposal. *See id.* at 11.

[137] *See id.* at 14.

[138] *See id.* The Exchange also encourages companies to disclose board diversity metrics beyond those categories identified in the proposal, to the extent a company considers it material to its investors' voting and investment decisions. *See id.*

''Diverse'' is not unreasonable. It is not unreasonable for the Exchange to propose a definition of ''Underrepresented Minority'' that is consistent with the EEO–1 categories reported to the EEOC because, among other reasons, companies may already be familiar with the EEO–1 categories, which could promote efficiency for companies in complying with the proposed rules. It is also not unreasonable for the Exchange to include LGBTQ+ in its proposed definition of ''Diverse.'' Moreover, as stated by the Exchange, companies are not precluded from considering director characteristics that do not fall within the proposed definition of ''Diverse'' and providing the disclosures under proposed Rule 5605(f)(3) if the company does not satisfy the proposed board diversity objectives.

2. Flexibility for Certain Companies

In the Board Diversity Proposal, the Exchange recognizes that the operations, size, and current board composition of each Nasdaq-listed company are unique, and states that it endeavors to provide a disclosure-based, business-driven framework to enhance board diversity that balances the need for flexibility with each company's particular circumstances.[139] According to the Exchange, the proposed disclosure framework and phase-in [140] and transition periods [141] under Rule 5605(f) recognize the differences (*e.g.,* in demographics or resources) among different types of companies and would not unfairly discriminate among companies.[142] The Exchange states that the definition of Foreign Issuer is designed to recognize that companies that are not Foreign Private Issuers but are headquartered outside of the United States are foreign companies, notwithstanding the fact that they file domestic Commission reports, and is designed to exclude companies that are domiciled in a foreign jurisdiction without having a physical presence in that country.[143] Further, according to the Exchange, because the EEOC categories of race and ethnicity may not extend to all countries globally since each country has its own unique demographic composition, and because on average women tend to be underrepresented in boardrooms across the globe, proposed Rule 5605(f)(2)(B) would allow Foreign Issuers to meet the diversity objectives by having one Female director and one Underrepresented Individual [144] (rather than Underrepresented Minority) or LGBTQ+ director, or two Female directors.[145] With respect to Smaller Reporting Companies, the Exchange states that, because these companies may not have the resources necessary to compensate an additional director or engage a search firm to search outside of directors' networks, it proposes to provide these companies with additional flexibility in their approach.[146] Moreover, in providing additional flexibility to Companies with a Smaller Board, the Exchange states that these companies may face similar resource constraints to those of Smaller Reporting Companies, but not all Companies with a Smaller Board are Smaller Reporting Companies, and therefore the alternative diversity objective that would be provided to Smaller Reporting Companies may not be available to them.[147] The Exchange further states that Companies with a Smaller Board may be disproportionately impacted if they plan to satisfy proposed Rule 5605(f)(2) by

[139] *See* Amendment No. 1 to the Board Diversity Proposal at 16–17.

[140] Proposed Rule 5605(f)(5) would specify the phase-in period for any company newly listing on the Exchange (including companies listing through an initial public offering, direct listing, transfer from another exchange or the over-the-counter market, in connection with a spin-off or carve-out from a company listed on the Exchange or another exchange, or through a merger with an acquisition company listed under IM–5101–2 (''acquisition company'')) that was not previously subject to a substantially similar requirement of another national securities exchange, and any company that ceases to be a Foreign Issuer, a Smaller Reporting Company, or an Exempt Company. In particular, any newly-listed company on the Nasdaq Global Select Market (''NGS'') or Nasdaq Global Market (''NGM'') would be permitted to satisfy the requirement to have, or explain why it does not have: (i) At least one Diverse director by the later of (a) one year from the date of listing or (b) the date the company files its proxy statement or information statement (or, if the company does not file a proxy, its Form 10–K or 20–F) for the company's first annual meeting of shareholders subsequent to the company's listing; and (ii) at least two Diverse directors by the later of (a) Two years from the date of listing or (b) the date the company files its proxy statement or information statement (or, if the company does not file a proxy, its Form 10–K or 20–F) for the company's second annual meeting of shareholders subsequent to the company's listing. *See* proposed Rule 5605(f)(5)(A). In addition, any newly-listed company on the Nasdaq Capital Market (''NCM'') would be permitted to satisfy the requirement to have, or explain why it does not have, at least two Diverse directors by the later of: (i) Two years from the date of listing; or (ii) the date the company files its proxy statement or information statement (or, if the company does not file a proxy, its Form 10–K or 20–F) for the company's second annual meeting of shareholders subsequent to the company's listing. *See* proposed Rule 5605(f)(5)(B). Moreover, any newly listed Company with a Smaller Board would be permitted to satisfy the requirement to have, or explain why it does not have, at least one Diverse director by the later of: (i) Two years from the date of listing, or (ii) the date the company files its proxy statement or information statement (or, if the company does not file a proxy, its Form 10–K or 20–F) for the company's second annual meeting of shareholders subsequent to the company's listing. *See* proposed Rule 5605(f)(5)(D). Any company that ceases to be a Foreign Issuer, Smaller Reporting Company, or Exempt Company would be permitted to satisfy the requirements of proposed Rule 5605(f) by the later of: (i) One year from the date that the company no longer qualifies as a Foreign Issuer, Smaller Reporting Company, or Exempt Company; or (ii) the date the company files its proxy statement or information statement (or, if the company does not file a proxy, its Form 10–K or 20–F) for the company's first annual meeting of shareholders subsequent to such event. *See* proposed Rule 5605(f)(5)(C).

[141] Proposed Rule 5605(f)(7) would specify the transition period for the implementation of proposed Rule 5605(f). As proposed, each company listed on the Exchange (including a Company with a Smaller Board) would be required to have, or explain why it does not have, at least one Diverse director by the later of: (i) Two calendar years after the approval date of the proposal (''First Effective Date''); or (ii) the date the company files its proxy statement or information statement (or, if the company does not file a proxy, its Form 10–K or 20–F) for the company's annual shareholders meeting during the calendar year of the First Effective Date. *See* proposed Rule 5605(f)(7)(A). In addition, each company listed on NGS or NGM must have, or explain why it does not have, at least two Diverse directors by the later of: (i) Four calendar years after the approval date of the proposal (''Second NGS/NGM Effective Date''); or (ii) the date the company files its proxy statement or information statement (or, if the company does not file a proxy, its Form 10–K or 20–F) for the company's annual shareholders meeting during the calendar year of the Second NGS/NGM Effective Date. *See* proposed Rule 5605(f)(7)(B). Moreover, each company listed on NCM must have, or explain why it does not have, at least two Diverse directors by the later of: (i) Five calendar years after the approval date of the proposal (''Second NCM Effective Date''); or (ii) the date the company files its proxy statement or information statement (or, if the company does not file a proxy, its Form 10–K or 20–F) for the company's annual shareholders meeting during the calendar year of the Second NCM Effective Date. *See* proposed Rule 5605(f)(7)(C).

[142] *See* Amendment No. 1 to the Board Diversity Proposal at Section 3.b.II.D. According to the Exchange, the proposed transition and phase-in periods are intended to provide newly listed public companies with additional time to meet the diversity objectives of proposed Rule 5605(f)(2), as newly listed public companies may have unique governance structures, such as staggered boards or director seats held by venture capital firms, that require additional timing considerations when adjusting the board's composition. *See id.* at 79. The Exchange further states that the proposed transition and phase-in periods are intended to provide additional flexibility to companies listed on NCM, as such companies are typically smaller and may face additional challenges and resource constraints when identifying additional director nominees who self-identify as Diverse. *See id.* The Exchange also states that its proposed phase-in periods are consistent with the phase-in periods it provides to companies for other board composition requirements. *See id.* at 81. *See also, e.g.,* Rules 5615(b)(1), 5615(b)(3), and 5620.

[143] *See* Amendment No. 1 to the Board Diversity Proposal at 83.

[144] The definition of Underrepresented Individual is based on the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the United Nations Declaration on the Rights of Indigenous Peoples. *See id.* at 69, 140–41.

[145] *See id.* at 81–82.

[146] *See id.* at 84–85.

[147] *See id.* at 86.

adding additional directors, which may impose additional costs in the form of director compensation and D&O insurance.[148] With respect to Exempt Companies,[149] the Exchange states that they do not have boards, do not list equity securities, list only securities with no voting rights towards the election of directors, or are not operating companies, and that holders of the securities they issue do not expect to have a say in the composition of their boards.[150] And the Exchange states that proposed Rule 5606 would provide appropriate flexibility for Foreign Issuers [151] and exceptions for certain types of Nasdaq-listed companies.[152]

Some commenters express support for the proposed additional flexibility for foreign or smaller companies, or ''other groups of issuers that are more constrained for valid reasons.'' [153] Another commenter contends, however, that the proposal is inconsistent with Section 6(b)(5) of the Act because it appears to be designed to permit unfair discrimination between issuers and impose burdens on competition that are not necessary or appropriate in furtherance of the applicable provisions of the Act.[154] One commenter further asserts that the proposal is inconsistent with Section 6(b)(5) of the Act because it unfairly discriminates among issuers by giving foreign issuers flexibility that is not available to domestic issuers.[155] One commenter also argues that the proposal would unnecessarily burden competition and unfairly discriminate between issuers who meet the proposed diversity objectives and those who do not,[156] and one commenter argues that the proposal would burden competition between exempt and non-exempt companies.[157]

In response to comments, the Exchange states that the Board Diversity Proposal would provide companies with a flexible, attainable approach to achieving a reasonable objective that is not overly burdensome or coercive.[158] The Exchange also states that the Board Diversity Proposal would align investors' demands for increased diversity with companies' needs for a flexible approach that accommodates each company's unique circumstances.[159]

The Board Diversity Proposal is consistent with Sections 6(b)(5) and 6(b)(8) of the Act. As discussed below, the proposal is not designed to permit unfair discrimination between issuers and would not impose a burden on competition between issuers that is not necessary or appropriate in furtherance of the purposes of the Act.[160] As an initial matter, even though the Board Diversity Proposal would establish different diversity objectives and disclosures for different types of Nasdaq-listed companies, it would not mandate any particular board composition for Nasdaq-listed companies, companies that do not meet the applicable diversity objectives would only need to explain their reason(s) for not meeting the objectives and would have substantial flexibility in crafting such an explanation, and directors would not be required to self-identify their Diverse characteristics for purposes of the Board Diversity Matrix.

Moreover, it is not unreasonable for the Exchange, in crafting board diversity disclosures, to recognize that the proposed definition of ''Underrepresented Minority'' for domestic companies may not be as effective in identifying underrepresented board members in foreign countries that have differing ethnic and racial compositions, and may therefore result in disclosures that are less useful for investors who seek board diversity information for Foreign Issuers. It is therefore not unreasonable for the Exchange to require Foreign Issuers to provide disclosures relating to underrepresented individuals based on national, racial, ethnic, indigenous, cultural, religious, or linguistic identity in the country of the issuer's principal executive offices. Similarly, to the extent Foreign Issuers choose to meet the proposed diversity objectives, it is not unreasonable for the Exchange to take into account the differing demographic compositions of foreign countries and to provide Foreign Issuers flexibility in recognition of the different circumstances associated with Foreign Issuers hiring Diverse directors. Moreover, investors would still have access to a Foreign Issuer's Board Diversity Matrix and any disclosures explaining why it does not meet the applicable diversity objective, and this information may still be important to investors' investment and voting decisions notwithstanding the flexibility provided to Foreign Issuers. Accordingly, it is not unfairly discriminatory, and does not impose an unnecessary or inappropriate burden on competition, for the Exchange to provide this flexibility to Foreign Issuers.

In addition, it is not unreasonable for the Exchange to recognize the unique challenges (including potential resource constraints) faced by Smaller Reporting Companies and Companies with a Smaller Board in meeting the proposed diversity objectives and to provide more flexibility to these companies to the extent they choose to meet the diversity objectives (*i.e.,* two Diverse directors, which could be satisfied with two Female directors, for a Smaller Reporting Company and one Diverse director for a Company with a Smaller Board). And, as with Foreign Issuers, investors would still have access to the Board Diversity Matrix from Smaller Reporting Companies and Companies with a Smaller Board, as well as any disclosures explaining why such companies do not meet their applicable board diversity objectives, and this

[148] *See id.* The Exchange also states that proposed Rule 5605(f)(2)(D) would avoid complexity for Companies with a Smaller Board that attempt to satisfy the diversity objectives by adding a Diverse director to their board, and prevent such companies from thereby being subject to a higher threshold (*i.e.,* that of proposed Rule 5605(f)(2)(A), (B), or (C)) as a result. *See id.* at 86–87.

[149] Proposed Rule 5605(f)(4) would exempt the following types of companies from the requirements of proposed Rule 5605(f) (''Exempt Companies''): (1) Acquisition companies; (2) asset-backed issuers and other passive issuers (as set forth in Rule 5615(a)(1)); (3) cooperatives (as set forth in Rule 5615(a)(2)); (4) limited partnerships (as set forth in Rule 5615(a)(4)); (5) management investment companies (as set forth in Rule 5615(a)(5)); (6) issuers of non-voting preferred securities, debt securities, and derivative securities (as set forth in Rule 5615(a)(6)) that do not have equity securities listed on the Exchange; and (7) issuers of securities listed under the Rule 5700 series.

[150] *See* Amendment No. 1 to the Board Diversity Proposal at 90, 150. The Exchange states that, although it is exempting acquisition companies from the requirements of proposed Rule 5605(f), upon such a company's completion of a business combination with an operating company, the post-business combination entity would be provided the same phase-in period as other newly listed companies to satisfy the requirements of proposed Rule 5605(f). *See id.* at 90–91, 151.

[151] *See id.* at 115–16. The Exchange recognizes that some Foreign Issuers may have their principal executive offices located outside of the U.S. and in jurisdictions that may impose laws limiting or prohibiting self-identification questionnaires. *See id.* at 68. The Exchange also states that the proposed definition of Underrepresented Minority may be inapplicable to a Foreign Issuer and make the Board Diversity Matrix data less relevant for such companies and not useful for investors. *See id.*

[152] *See id.* at 117–18.

[153] *See* AllianceBernstein Letter at 2. *See also, e.g.,* Stardust Letter at 2; letter from Gary A. LaBranche, FASAE, CAE, President & CEO, National Investor Relations Institute, to Vanessa Countryman, Secretary, Commission, dated December 30, 2020, at 4.

[154] *See* Guzik Letter at 1, 7–10.

[155] *See* Alliance for Fair Board Recruitment Letter at 47–49.

[156] *See* Guzik Letter at 8.

[157] *See* Project on Fair Representation Letter at 6.

[158] *See* Nasdaq Response Letter II at 4.

[159] *See id.* The Exchange also states that companies are not precluded from striving to achieve higher or lower diversity objectives. *See id.*

[160] Exchanges currently provide flexibilities to certain issuers under their listing standards. *See, e.g.,* Nasdaq Rule 5615(a)(3) (providing certain flexibility to foreign private issuers); Nasdaq Rule 5605(d)(5) (providing certain flexibility to smaller reporting companies); NYSE Listed Company Manual Section 303A.00 (providing certain flexibility to foreign private issuers and smaller reporting companies).

information may still be important to investors' investment and voting decisions even though these companies have more flexible diversity objectives. Accordingly, it is not unfairly discriminatory, and does not impose an unnecessary or inappropriate burden on competition for the Exchange to provide more flexible diversity objectives for Smaller Reporting Companies and Companies with a Smaller Board.

Moreover, the Board Diversity Proposal would not unfairly discriminate against companies that make disclosures under proposed Rule 5605(f)(3) or impose an unnecessary or inappropriate burden on competition between companies that choose to meet the diversity objectives and companies that make the disclosures under proposed Rule 5605(f)(3). Specifically, as discussed below, the Board Diversity Proposal is designed to not unduly burden Nasdaq-listed companies and would provide companies flexibility in formulating an explanation for not meeting the diversity objectives,[161] thereby minimizing any potential burdens on competition. In addition, it is not unreasonable, and mitigates the impact of different circumstances on how companies respond to the proposal, to only require companies that do not meet the proposed diversity objectives to disclose why they have not met such objectives, rather than to require all Nasdaq-listed companies (including those that already have Diverse directors on their boards sufficient to satisfy the objectives) to more generally disclose their approaches to board diversity. In addition, the proposal would not mandate any particular board composition, and there is competition among the exchanges for listings. A company may choose to meet the proposed diversity objectives or explain its reasons for not doing so, or the company may transfer its listing to another exchange if it does not wish to comply with the proposed listing rules.

Finally, the proposal would not unfairly discriminate against companies that are not exempt from the proposal or impose an unnecessary or inappropriate burden on competition between Exempt Companies and companies that are not exempt. It is not unreasonable for the Exchange to recognize the differences between operating companies that issue equity securities with voting rights that are listed on the Exchange and Exempt Companies.[162]

D. Burdens Associated With Complying With the Board Diversity Rules and Other Economic Impacts Associated With the Board Diversity Rules

In the Board Diversity Proposal, the Exchange states that collecting and disclosing the statistical data under proposed Rule 5606 would impose a minimal time and economic burden on listed companies,[163] and any such burden would be counterbalanced by the benefits that the information would provide to a company's investors.[164]

The Exchange also argues that because proposed Rule 5605(f) would allow a company to explain why it does not meet the proposed diversity objectives, it would mitigate any burdens on companies for which meeting those objectives is not cost effective, appropriate, feasible, or desirable.[165] Moreover, the Exchange states that the costs of identifying director candidates and total annual director compensation can range widely.[166] The Exchange states, however, that most, if not all, of these costs would be borne in the search for new directors regardless of the proposed rule.[167] The Exchange also notes that while the proposal may lead some companies to search for director candidates outside of already established networks, the incremental costs of doing so would be tied directly to the benefits of a broader search.[168] Moreover, the Exchange states, the proposed compliance periods would allow companies to avoid incurring immediate costs, and the proposed flexibilities for certain types of companies would reduce their compliance burden.[169]

Some commenters believe that the Board Diversity Proposal would not be burdensome because companies are already familiar with the type of disclosures required,[170] disclosures are required on an aggregate basis, and the disclosures are based on voluntary self-identification.[171] One commenter asserts that the proposal would not be burdensome, as companies could expand the size of their boards to add Diverse directors instead of replacing existing directors or could simply explain why they have not met the proposed diversity objectives.[172] Some commenters also state that finding qualified Diverse directors would not be unduly difficult.[173]

Other commenters express concern with the economic impacts of proposed Rule 5605(f), however.[174] One argues that the proposal could harm economic growth by imposing costs on public corporations, discouraging private corporations from going public, and enabling certain groups to initiate pressure campaigns against corporations with non-Diverse boards; the same commenter expresses concern that the Exchange has not undertaken a serious effort to quantify the proposal's costs and benefits.[175]

[161] *See infra* Section II.D.

[162] The Exchange currently exempts certain types of issuers from certain corporate governance requirements. *See* Nasdaq Rule 5615.

[163] *See* Amendment No. 1 to the Board Diversity Proposal at 159 (stating that, while the time and economic burden may vary based on a company's board size, the Exchange does not believe that there is any significant burden associated with gathering, preparing, and reporting this data).

[164] *See id.* at 159–60.

[165] *See id.* at 160–61.

[166] *See id.* at 161.

[167] *See id.*

[168] *See id.* at 161–62 (also stating that the Board Recruiting Service Proposal would reduce costs for companies that do not currently meet the separately proposed diversity objectives, that the Exchange has published FAQs on its Listing Center to provide guidance to companies on the application of the proposed rules in the Board Diversity Proposal, and that the Exchange will establish a dedicated mailbox for companies and their counsel to email additional questions to the Exchange regarding the application of such proposed rules).

[169] *See id.* at 162.

[170] Some commenters point out that the Board Diversity Proposal would require disclosure based on the same categories that companies already use to report workforce diversity data to the EEOC on the EEO–1 report. *See, e.g.,* Morningstar Letter at 1–2; Fairfax Letter at 7–8; Ideanomics Letter at 4; Goodman and Olson Letter at 2.

[171] *See, e.g.,* Olshan Letter at 3–4; CFA Letter at 5; Fairfax Letter at 7–8; Stardust Letter at 1–2; TIAA Letter at 3; Soundboard Letter at 2–3. *See also* letter from Theresa Whitmarsh, Executive Director, Washington State Investment Board, to Vanessa A. Countryman, Secretary, Commission, dated December 23, 2020 (''Washington State Investment Board Letter''), at 2.

[172] *See* Akin Gump Letter at 5 (also stating that boards of directors of Nasdaq-listed companies will not be confronted with any undue hardship, other than the ordinary course onboarding hurdles or drafting of requisite disclosure).

[173] *See, e.g.,* letter from Rosie Bichard and Patricia Rodriguez Christian, Co-Presidents, WomenExecs on Boards, to Jay Clayton, Chairman, Commission, dated January 4, 2021 (''WomenExecs Letter''); Ariel Letter at 1. *See also* Goodman and Olson Letter at 2–3.

[174] *See, e.g.,* CEI Letter at 4–5; Quigley Letter; IBC Letter at 1–4; letter from Matthew Glen dated December 31, 2020 (noting the need for additional services to seek Diverse candidates).

[175] *See* Toomey Letter at 1, 5–6. *See also, e.g.,* Alliance for Fair Board Recruitment Letter at 31–32 (stating that failure to cure a deficiency would result in a staff delisting determination, that the proposal would create a target for activist divestment campaigns or shareholder lawsuits alleging misrepresentations and breach of fiduciary duties, and that companies will need to spend limited resources to hire communications consultants and attorneys to evaluate the marketing and legal risks of providing an explanation for not having the applicable number of Diverse directors); Guzik Letter at 8 (expressing concern regarding pressure from activist groups, as well as litigation, for issuers that are unwilling or unable to meet the proposed diversity objectives); letter from Art Ally, President and CEO, Timothy Plan, dated March 25, 2021 (''Timothy Plan Letter''), at 1–2 (stating that the proposal may subject certain firms to

In response to such comments, the Exchange states that companies may decide where to list and that listings contracts and fees do not impede issuers from switching listing markets.[176] The Exchange also asserts that many long-term, newer, and potential public companies strongly support and value the objectives of the proposal and may affirm their choice or choose to list on Nasdaq because of it.[177] The Exchange further contends that private companies recognize the value of board diversity for public companies and would not have any misgivings about going public as a result of the proposal.[178] The Exchange additionally states that the proposal's framework would allow companies with non-Diverse boards to simply explain their approach, which would limit pressure campaigns.[179] Further, the Exchange states that it has carefully considered the potential costs on listed companies (and those considering listing), including the costs of retaining a director search firm to conduct the search for new or replacement directors, the time employees spend conducting the search and completing and providing the required disclosures, and the potential disruption to the board from these activities.[180] The Exchange states, however, because existing, new, and potential public companies would experience those costs in vastly different ways and combinations, those costs cannot be quantified with meaningful certainty.[181]

In approving the Board Diversity Proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation and finds that it would not have a material impact on efficiency, that it is reasonably designed not to unduly burden Nasdaq-listed companies, and that it would not unduly deter capital formation (*e.g.,* by affecting companies' decisions to go public and list on the Exchange).[182] As proposed, companies that choose not to meet the diversity objectives would not be required to meet those objectives. Any company that neither wishes to meet the diversity objectives nor disclose its reasons for not doing so may transfer its listing to a competing listing exchange. Moreover, the Board Diversity Proposal would provide directors with the option to not self-identify.

Further, various aspects of the two proposals would mitigate any burdens associated with compliance, as well as any related impact on capital formation. In particular, the Board Diversity Proposal would provide: Flexibility in formulating an explanation for not meeting the diversity objectives; flexibility for Foreign Issuers, Smaller Reporting Companies, and Companies with a Smaller Board; Flexibility with respect to the location of the required disclosures (*i.e.,* in the company's proxy statement or information statement (or if the company does not file a proxy, in its Form 10–K or 20–F),[183] or on the company's website); phase-in periods for companies newly listing on the Exchange, companies switching listing tiers on the Exchange, and companies that cease to be Foreign Issuers, Smaller Reporting Companies, or Exempt Companies to comply with the proposed rules; a cure period for a company that previously satisfied proposed Rule 5605(f) but subsequently ceases to meet the diversity objective due to a vacancy on its board; and transition periods for companies to comply with the proposals after they are approved.[184] Additionally, the Board Recruiting Service Proposal—which is separately approved by this order—would offer a one-year complimentary board recruiting service that would mitigate costs associated with hiring additional Diverse directors.[185] Moreover, the Board Diversity Proposal would provide reasonable time periods for companies that fail to maintain compliance to regain compliance and avoid being delisted from the Exchange: A company that does not comply with proposed Rule 5605(f)(2) would be provided until the later of its next annual shareholders meeting or 180 days from the event that caused the deficiency to cure the deficiency, and a company that does not comply with proposed Rule 5606 would have 45 calendar days to submit a plan of compliance to the Exchange and upon review of such plan, Exchange staff may provide the company with up to 180 days to regain compliance.

Finally, the proposals may promote competition for listings among exchanges by allowing the Exchange to update its disclosure rules and related listing services in a way that better attracts and retains the listings of companies that prefer to be listed on an exchange that provides investors with the information required by the Board Diversity Proposal. While some companies that do not prefer the Board Diversity Proposal's required

harassment, including legal threats); letter from Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce's Center for Capital Markets Competitiveness, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021, at 2 (expressing support for the Board Diversity Proposal while suggesting ongoing careful assessment of how the proposal could affect Emerging Growth Companies, as well as the potential effect that the proposed new listing standards could have on the future of initial public offerings).

[176] *See* Nasdaq Response Letter II at 28–29.

[177] *See id.* at 29.

[178] *See id.* The Exchange specifically states that, among the many elements companies consider when becoming public, board composition is growing in importance among pre-public company stakeholders. *See id.* (noting Goldman Sach's new standard for taking companies public (*i.e.,* the company must have at least one diverse board member), and citing Washington State Investment Board Letter at 2, which states that many private equity general partners are already moving toward ''new and improved'' diversity standards, and Institutional Limited Partners Association Letter at 2, which states that, given the frequency of private equity and venture-backed companies exiting through an IPO, the proposal will likely result in positive movement on board diversity of portfolio companies owned by private funds). The Exchange also states that Amendment No. 1 to the Board Diversity Proposal would provide a newly listed company with a reasonable amount of time to publish its board disclosure and to have Diverse directors in alignment with the proposed diversity objectives after going public. *See id.*

[179] *See id.* at 30.

[180] *See id.*

[181] *See id.* The Exchange states that it has taken multiple steps to mitigate the potential costs of the proposal (*e.g.,* proposing to offer the complimentary recruiting service, proposing the alternative of an explanation if a company chooses to not meet the proposed diversity objectives). *See id.*

[182] *See* 15 U.S.C. 78c(f). *See also* Section II.A.2. (discussing the efficiencies that could result from the Board Diversity Proposal).

[183] To account for the fact that not every company files a proxy statement, the Exchange amended the Board Diversity Proposal in Amendment No. 1 to allow such companies to provide the disclosures in a Form 10–K or 20–F.

[184] In response to comments, the Exchange amended the Board Diversity Proposal to provide a grace period under proposed Rule 5605(f)(6)(B) for a company that satisfied the objectives of proposed Rule 5605(f)(2) but ceases to meet the objectives due to a vacancy on its board of directors, to provide additional time for newly listed companies to satisfy the requirements of proposed Rule 5605(f) and to better align the phase-in and transition periods with a company's proxy season. *See also* letter from Stephen J. Kastenberg, Ballard Spahr LLP, to Vanessa Countryman, Secretary, Commission, dated January 14, 2021 (''Ballard Spahr Letter''), at 1–2 (submitted on behalf of the Exchange) (stating that the Exchange has received requests to: allow additional time for companies listed on the NGS, NGM, and NCM to comply with the diversity objectives of proposed Rule 5605(f)(2); provide a ''cure'' period for a listed company that does not comply with the diversity objectives of proposed Rule 5605(f)(2) as a result of an unanticipated departure of a Diverse director; and amend the effective date of the proposed rules to better align disclosure requirements with annual meetings and proxy requirements).

[185] The Exchange proposes to provide certain Nasdaq-listed companies with one-year of complimentary access for two users to a board recruiting service, which would provide access to a network of board-ready diverse candidates, allowing companies to identify and evaluate Diverse board candidates. *See* proposed IM–5900–9; Amendment No. 1 to the Board Recruiting Service Proposal at 10–11. According to the Exchange, this service has an approximate retail value of $10,000 per year. *See* proposed IM–5900–9. As proposed, until December 1, 2022, any Eligible Company that requests access to this service through the Nasdaq Listing Center will receive complimentary access for one year from the initiation of the service. *See id.*

disclosures may choose to not go public and list on the Exchange, or they may delist from the Exchange, the proposal contains terms to mitigate adverse effects. Moreover, some companies may shift their listings to the Exchange, or may choose to go public on the Exchange rather than remain private, in response to the Board Diversity Proposal's requirements because of the interest shown in comparable and consistent board diversity information, which could benefit investors by increasing the number of publicly listed companies.

E. The Exchange's Authority for the Board Diversity Rules

Section 6(b)(5) of the Act requires, among other things, that the rules of a national securities exchange not be designed to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the exchange. In the Board Diversity Proposal, the Exchange argues that the proposal is related to corporate governance standards for listed companies and is therefore not designed to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.[186] While the Exchange recognizes that U.S. states are increasingly proposing and adopting board diversity requirements, the Exchange states that certain of its current corporate governance listing rules relate to areas that are also regulated by states (*e.g.,* quorums, shareholder approval of certain transactions).[187] The Exchange states that adopting Exchange rules relating to such matters (and the proposed rule changes described herein) would ensure uniformity of such rules among its listed companies.[188]

The Exchange also states that it can establish practices that would assist in carrying out its mandate to protect investors and remove impediments from the market through the Board Diversity Proposal.[189] The Exchange believes that it is within its delegated authority to propose listing rules designed to enhance transparency, provided that they do not conflict with existing federal securities laws.[190] The Exchange states that, for example, it already requires its listed companies to publicly disclose compensation or other payments by third parties to a company's directors or nominees, notwithstanding that such disclosure is not required by federal securities laws.[191] The Exchange further states that it has designed the proposal to avoid a conflict with existing disclosure requirements under Regulation S–K and to mitigate additional burdens for companies by providing them with flexibility to provide such disclosure on their website, in their proxy statement or information statement, or, if a company does not file a proxy, in its Form 10–K or 20–F, and by not requiring companies to adopt a diversity policy.[192]

Some commenters argue that the Board Diversity Proposal is impermissibly designed to address political and social issues and would redefine the purpose of businesses in a way that is unrelated to traditional business purposes (*e.g.,* profitability, obligation to shareholders, satisfying customers, and treating workers and suppliers fairly).[193] One commenter also asserts that the proposal does not relate to any traditional corporate governance matter.[194] Moreover, some commenters argue that the proposal is not within the purposes of the Act and exceeds the authority of national securities exchanges under the Act.[195]

In response, the Exchange states that the Act provides the standards for approval of rules proposed by SROs, which are different from rulemaking by the Commission.[196] The Exchange states that it is performing its duties as an exchange to fashion listing rules that promote good corporate governance.[197] The Exchange also notes that it is expected and required, in its role operating an exchange, to develop and enforce listing rules that, among other things, ''remove impediments to and perfect the mechanisms of a free and open market'' and ''protect investors and the public interest.'' [198] With respect to the comment that the proposal contributes to the federalization of corporate governance, the Exchange states that it develops listing rules regarding corporate governance standards to promote uniformity among its listed companies, even if the same areas are regulated by states.[199] In addition, the Exchange states that companies voluntarily list on the Exchange, as a private entity, and choose to submit to the Exchange's listing rules.[200] Moreover, national securities exchanges may adopt different approaches.[201]

The Board Diversity Proposal would make consistent and comparable information relating to the corporate governance of Nasdaq-listed companies (*i.e.,* information regarding board diversity) widely available on the same basis to investors, which would increase efficiency for investors that gather and use this information. In addition, the proposal would not redefine the purpose of Nasdaq-listed companies' businesses in a way that is unrelated to traditional business purposes, as claimed by certain commenters. Rather, it could enhance investors' investment and voting decisions and, as discussed throughout this order, is consistent with Section 6 of the Act, which requires that the rules of an exchange be designed to, among other things, remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest.

Exchanges have historically adopted listing rules that require disclosures in addition to those required by Commission rules.[202] National securities exchanges may choose to

[186] *See* Amendment No. 1 to the Board Diversity Proposal at Section 3.b.II.E.

[187] *See id.* at 155–56. The Exchange recognizes that several states have enacted or proposed legislation relating to board diversity and that Congress is considering legislation to require Commission-registered companies to provide board diversity statistics and disclose whether they have a board diversity policy. *See id.* at 16.

[188] *See id.* at 156.

[189] *See id.* at 53.

[190] *See id.* at 58.

[191] *See id.* at 58–59. Various provisions under the federal securities laws may require disclosure of third party compensation arrangements with or payments to nominees and/or board members. *See* Securities Exchange Act Release No. 78223 (July 1, 2016), 81 FR 44400, 44403 (July 7, 2016).

[192] *See* Amendment No. 1 to the Board Diversity Proposal at 60.

[193] *See, e.g.,* Timothy Plan Letter at 1–2 (also supporting Toomey Letter); CEI Letter at 1; Toomey Letter at 4; Heritage Foundation Letter at 3–5, 17–18; Guess Letter at 1. Another commenter argues that the Board Diversity Proposal raises concerns about increasing costs and parallels to socialism. *See* letter from Henryk A Kowalczyk dated January 6, 2021 (''Kowalczyk Letter'') (reproducing a December 18, 2020 article published in Medium titled ''Socialists Are Taking Over Wall Street'').

[194] *See* Alliance for Fair Board Recruitment Letter at 49–50.

[195] *See, e.g.,* Guzik Letter at 1; Alliance for Fair Board Recruitment Letter at 49–50; Heritage Foundation Letter at 2; Project on Fair Representation Letter at 7–11; letter from Christopher A. Iacovella, Chief Executive Officer, American Securities Association, to Vanessa Countryman, Secretary, Commission, dated December 31, 2020, at 1–2; Publius Letter at 4–5.

[196] *See* Nasdaq Response Letter II at 22.

[197] *See id.* at 23–24.

[198] *See id.* at 24.

[199] *See id.*

[200] *See id.*

[201] *See id.*

[202] *See, e.g.,* Nasdaq IM–5250–2 (requiring Nasdaq-listed companies to publicly disclose the material terms of all agreements and arrangements between any director or nominee and any person or entity (other than the listed company) relating to compensation or other payment in connection with that person's candidacy or service as a director); LTSE Rule 14.425(a)(1)(C) (requiring LTSE-listed issuers to adopt and publish a policy on the company's approach to diversity and inclusion).

adopt disclosure requirements in their listing rules that supplement or overlap with disclosure requirements otherwise imposed under the federal securities laws, and disclosure-related listing standards that provide investors with information that facilitates informed investment and voting decisions contribute to the maintenance of fair and orderly markets.[203] Accordingly, the proposal would not cause the Exchange to regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act or the administration of the Exchange.

F. Comments on Constitutional Scrutiny of the Board Diversity Proposal

Some commenters argue that the Board Diversity Proposal, if approved by the Commission, would constitute impermissible government action,[204] is discriminatory as it is based on sex, race, ethnicity, and sexual orientation,[205] and would require Nasdaq-listed companies to discriminate in hiring and, if approved, would violate the Fifth Amendment to the U.S. Constitution.[206] According to one commenter, all racial classifications, both disadvantaging and benefitting minorities, are subject to strict scrutiny, and the government must demonstrate that the racial classifications are narrowly tailored to further a compelling government interest.[207] This commenter asserts that ''Diversity'' itself and ''outright racial balancing'' are not compelling interests.[208] In addition, this commenter argues that the proposed objective to have at least one director who self-identifies as a female is a gender quota that, like the racial quota, if adopted, would violate the Fifth Amendment.[209] Other commenters argue that the Board Diversity Proposal is akin to affirmative action or is distinguishable from permissible affirmative action plans.[210] Finally, some commenters argue that the Board Diversity Proposal would violate the First Amendment because it would require companies to engage in compelled disclosure.[211]

The Exchange states that it is not a state actor, and the proposal does not constitute state action subject to constitutional scrutiny.[212] As support, the Exchange notes that courts have uniformly concluded that SROs like the Exchange are not state actors.[213] The Exchange also argues that the Board Diversity Proposal does not satisfy the test for determining whether actions are fairly attributable to the government because there is no Commission rule or action requiring or encouraging the Exchange to adopt the proposed Exchange rules, and the Commission's approval of a private entity's action does not convert private action into state action.[214]

With respect to concerns expressed by commenters regarding Equal Protection under the Fifth Amendment to the U.S. Constitution, the Exchange states that, even if it were found to be a state actor, the proposal would not mandate any particular number of Diverse directors and would therefore survive scrutiny.[215] The Exchange further notes that proposed Rule 5605(f) establishes aspirational diversity objectives, and proposed Rule 5606 is a disclosure requirement for demographic data on all directors serving on the boards of Nasdaq-listed companies.[216] The Exchange states that, accordingly, the proposal does not impose a burden on or confer a benefit to the exclusion of others based on a suspect classification, and ''rational basis'' would be the appropriate standard of review.[217] The Exchange also states that the proposal reflects several legitimate government interests, such as increasing transparency about board diversity so that investors can make investment decisions based on consistent and readily accessible data.[218]

The Exchange also argues that even if the proposal triggered heightened scrutiny, proposed Rule 5605(f) would survive strict scrutiny because it is necessary to achieve a compelling state interest[219] and is narrowly tailored to achieve that interest.[220] The Exchange further contends that, with respect to gender and LGBTQ+ status, proposed Rule 5605(f) would satisfy intermediate scrutiny because it is necessary to achieve an important government interest,[221] and is substantially related to that important interest.[222]

The Exchange also argues that the proposal is not a form of affirmative action because proposed Rule 5605(f) would allow for explanation as a path to compliance.[223] Even assuming the proposal constitutes affirmative action, the Exchange contends, comparable programs that do not include mandates are lawful.[224]

With respect to commenters' concerns that the proposal would violate the First Amendment because it would require companies to engage in compelled speech, the Exchange again argues that it is not a state actor.[225] The Exchange also argues that the proposal does not result in compelled speech because it allows a voluntary association of private companies bound together by contract to engage in truthful and lawful speech on the subject of board diversity.[226] The Exchange also states that, even if it were a state actor and the proposal were interpreted as the government requiring speech, the particular speech at issue would not constitute compelled speech.[227] According to the Exchange, proposed Rule 5606's disclosures about board composition are the kinds of disclosures that are routinely permitted,[228] and the proposed Rule 5605(f) disclosures containing a company's explanation for not meeting the proposed diversity objectives do not compel a company to convey any specific message.[229] Moreover, the Exchange states that even if it were a state actor and the proposal implicated the compelled speech doctrine, the proposal would be constitutional in light of the substantial body of studies

[203] *See* 2016 Approval Order, *supra* note 23.

[204] *See, e.g.,* letter from Thomas J. Fitton, President, Judicial Watch, Inc., to Vanessa Countryman, Secretary, Commission, dated December 29, 2020 (''Judicial Watch Letter''), at 5–6; Project on Fair Representation Letter at 12–13. One commenter argues that the proposal constitutes state action, and that even if the proposal of the board diversity rules is free from government coercion or encouragement, the enforcement of the rules is not. *See* Alliance for Fair Board Recruitment Letter at 59–64.

[205] *See, e.g.,* letter from Colin Gallagher dated January 8, 2021; Heritage Foundation Letter at 12–16; letter from Eugene Kelly to Jay Clayton, Chairman, Commission, dated December 29, 2020; Richter Letter at 3.

[206] *See, e.g.,* NLPC Letter at 4–6; Project on Fair Representation Letter at 12–15; Judicial Watch Letter at 2–7.

[207] *See* Judicial Watch Letter at 3–4. *See also, e.g.,* Free Enterprise Project Letter at 2 (arguing that the Board Diversity Proposal is impermissibly vague).

[208] *See* Judicial Watch Letter at 3–4. *See also* Alliance for Fair Board Recruitment Letter at 67–68.

[209] *See* Judicial Watch Letter at 4. *See also* Alliance for Fair Board Recruitment Letter at 64–66 (arguing that the proposal relating to female directors would not satisfy heightened scrutiny); NLPC Letter at 4–6.

[210] *See, e.g.,* Richter Letter at 3; NLPC Letter at 5; Judicial Watch Letter at 3.

[211] *See* Alliance for Fair Board Recruitment Letter at 70–72; Project on Fair Representation Letter at 15–16.

[212] *See* Nasdaq Response Letter I at 2, 9–13.

[213] *See id.* at 9–10.

[214] *See id.* at 11–12.

[215] *See id.* at 14.

[216] *See id.* at 15.

[217] *See id.*

[218] *See id.* at 15–16.

[219] *See id.* at 17–18.

[220] *See id.* at 18–22.

[221] *See id.* at 22–24.

[222] *See id.* at 24.

[223] *See id.* at 8.

[224] *See id.*

[225] *See id.* at 25.

[226] *See id.* at 25–26.

[227] *See id.* at 27.

[228] *See id.*

[229] *See id.*

showing the benefits of diverse boards.[230]

Numerous courts (and the Commission) have repeatedly held that SROs generally are not state actors,[231] and commenters identify no persuasive basis for reaching a different conclusion with respect to the Exchange's Board Diversity Proposal. The Commission's ''[m]ere approval'' of the proposal as consistent with the requirements of the Act is ''not sufficient'' to convert it into state action.[232] Similarly, the fact that the Exchange is subject to ''extensive and detailed'' regulation by the Commission—including, for example, the Commission's role in reviewing the Exchange's enforcement of its listing standards—''does not convert [its] actions into those of the [Commission].'' [233] In any event, the proposal would survive constitutional scrutiny because the objectives set forth in the proposal are not mandates, and the disclosures that the proposal requires are factual in nature and advance important interests as described throughout this order.

G. Comments on the Applicability of Other Laws to the Board Diversity Proposal

1. Comments on the Materiality Standard

One commenter argues that the Board Diversity Proposal would violate materiality principles that the commenter believes govern securities disclosures because the disclosures would not help a reasonable investor evaluate a company's performance.[234] Another commenter argues that the proposal would conflict with the Commission's existing regulatory framework for diversity disclosures.[235] In response, the Exchange notes the Commission's statement that ''it is within the purview of a national securities exchange to impose heightened governance requirements, consistent with the Act, that are designed to improve transparency and accountability into corporate decision making and promote investor confidence in the integrity of the securities markets.'' [236] The Exchange also states its concern that the current lack of transparency and consistency in board diversity information makes it difficult for investors to determine the state of diversity among listed companies and boards' philosophy regarding diversity.[237] The Exchange believes that it is within its authority to propose listing rules designed to enhance transparency, provided that they do not conflict with existing federal securities laws.[238]

As the Commission has previously stated, national securities exchanges may adopt disclosure requirements in their listing rules designed to improve governance, as well as transparency and accountability into corporate decision making for listed issuers, including imposing heightened standards over that which the Commission currently requires.[239] Disclosure-related listing standards that provide investors with information that facilitates informed investment and voting decisions contribute to the maintenance of fair and orderly markets.[240] Accordingly, to the extent the proposal would result in disclosures that are not currently required by Commission rules, such disclosures would not conflict with the Commission's regulatory framework for diversity disclosures.

2. Comments on Reporting Fraud

One commenter argues that the proposal would be subject to reporting fraud,[241] and another commenter argues that reliance on self-identification for board diversity disclosures would pose unique liability concerns under the antifraud and reporting provisions of the federal securities laws.[242] In response, the Exchange states that voluntary self-identification of personal characteristics is generally accepted as accurate without a ''truth test'' and that the Exchange would not judge the accuracy of a director's self-identification.[243] The Exchange also states that some directors may feel that a ''truth test'' would violate their privacy rights and right to choose their self-identification.[244] Moreover, the Exchange states that any legal risk that may arise from the proposed disclosures would be nominal and are outweighed by transparency benefits.[245]

The Board Diversity Proposal would not pose unique liability concerns as a result of its requirement for companies to disclose their directors' self-identified Diverse characteristics, and the proposed disclosures would not cause a company to be subject to reporting fraud any differently from other types of company disclosures required by an exchange rule. Rather, a company would be obligated to accurately disclose the self-reported information it receives from its directors, and any failure to do so would be comparable to a failure to accurately disclose any other information the company is obligated to disclose.

3. Comments on Director Privacy

Some commenters believe that the proposed aggregated board-level diversity statistics disclosures would respect individual directors' privacy,[246] including in particular because no individual directors would be identified as members of an underrepresented minority group or as LGBTQ+.[247] Some commenters also point out that directors would not be required to disclose information about their diversity attributes and, in cases where they did not, companies would note their status as ''undisclosed.'' [248] Other commenters, however, express concern that the proposed disclosures would violate directors' privacy.[249] Some also argue that individuals do not wish to be characterized by their ethnicity, gender, or sexual orientation [250] and suggest that requiring certain board seats to be filled by specific demographic groups could invite criticism of such board members' achievements and potentially worsen

[230] *See id.*

[231] *See, e.g.,* Charles C. Fawcett, IV, Securities Exchange Act Release No. 56770, 91 SEC. Docket 2594 (November 8, 2007); *D.L. Cromwell Invs., Inc.* v. *NASD Regulation, Inc.,* 279 F.3d 155, 162 (2d Cir. 2002); *Desiderio* v. *National Ass'n of Secs. Dealers, Inc.,* 191 F.3d 198, 206–07 (2d Cir. 1999); *Jones* v. *SEC,* 115 F.3d 1173, 1183 (4th Cir. 1997); *First Jersey Secs., Inc.* v. *Bergen,* 605 F.2d 690, 698 (3d Cir. 1979).

[232] *Blum* v. *Yaretsky,* 457 U.S. 991, 1004 (1982). *See also Desiderio,* 191 F.3d at 207 (Commission's approval of FINRA's Form U–4).

[233] *Desiderio,* 191 F.3d at 207 (quoting *Jackson* v. *Metropolitan Edison Co.,* 419 U.S. 345, 350 (1974)).

[234] *See* Toomey Letter at 1, 3–4.

[235] *See* Alliance for Fair Board Recruitment at 54–56.

[236] *See* Nasdaq Response Letter II at 13.

[237] *See id.*

[238] *See id.*

[239] *See* 2016 Approval Order, *supra* note 23 at 44403.

[240] *See id.*

[241] *See* Richter Letter at 2.

[242] *See* Toomey Letter at 4–5.

[243] *See* Nasdaq Response Letter II at 19.

[244] *See id.*

[245] *See id.* at 19–20.

[246] *See, e.g.,* Skadden Letter at 3; CFA Letter at 5; letter from Gary A. LaBranche, President & CEO, National Investor Relations Institute, to Vanessa Countryman, Secretary, Commission, dated December 30, 2020 (''NIRI Letter''), at 3; Ideanomics Letter at 3.

[247] *See* NIRI Letter at 3.

[248] *See, e.g.,* Fairfax Letter at 7–8; Ideanomics Letter at 3; Goodman and Olson Letter at 2. *See also* letter from Heidi W. Hardin, MFS Investment Management, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021.

[249] *See, e.g.,* CEI Letter at 4; Kowalczyk Letter at 3; IBC Letter at 5 (expressing particular concern for small boards where aggregated data would provide little protection); Publius Letter at 10; Richter Letter at 2.

[250] *See, e.g.,* Kowalczyk Letter at 3; Publius Letter at 10–11; letter from John P. Reddy to Adena Friedman, President and CEO, Nasdaq, dated December 5, 2020 (''Reddy Letter'').

stereotypes and prejudices against these groups.[251]

In response, the Exchange states that directors may choose not to disclose their race, gender, or LGBTQ+ status.[252] The Exchange further notes that when directors choose to self-identify, the Board Diversity Matrix requires aggregated disclosures only.[253]

The proposed disclosures are reasonably designed to address potential privacy concerns. Specifically, the disclosures under proposed Rule 5606 would be based on directors' voluntary self-identification and would be provided on an aggregated basis. Moreover, for domestic issuers, while the number of directors who fall under a specific race and ethnicity would be broken down by gender categories, information regarding the number of directors who self-identify as LGBTQ+ would not be broken down, which would further lower the likelihood that a specific director's Diverse characteristics could be identified from the Board Diversity Matrix and further mitigate privacy concerns. Similarly, Foreign Issuers would not be required to break down the number of directors who are Underrepresented Individuals or who self-identify as LGBTQ+ by gender, which again would further mitigate privacy concerns.

4. Other Comments

Some commenters argue that the Board Diversity Proposal would be inconsistent with the principles underpinning the Civil Rights Act of 1964, which makes it an unlawful employment practice for an employer to limit, segregate, or classify its employees because of such individual's race, color, religion, sex, or national origin.[254] One commenter also states that even if independent directors are not covered by Title VII of the Civil Rights Act, directors selected from among the company's employees are covered; and a company employee who is denied a board position because he or she lacks a particular sex, race, or sexual orientation trait would have a cognizable Title VII claim.[255] In response, the Exchange argues that Title VII does not apply to most directors of Nasdaq-listed companies because they are not employees and, even if Title VII applied, the proposal would not discriminate or encourage discrimination because the proposed board diversity objectives are not mandatory.[256]

Commenters' concerns that the proposal is inconsistent with the principles underlying Title VII are unwarranted in light of the proposal's framework. Moreover, individual employment decisions would continue to be governed by Title VII to the extent they are covered by that statute.

Additionally, although some commenters also express concern that the Board Diversity Proposal may cause Nasdaq-listed companies to violate their legal fiduciary obligations to their shareholders [257] and argue that corporate governance is a matter of state law,[258] the proposal would not cause companies to violate their fiduciary obligations or violate state laws because, as discussed above, the proposal would not mandate any particular board composition and would not require Nasdaq-listed companies to hire directors based solely on whether they fall within the proposed definition of ''Diverse.'' If a company believes that it cannot meet the proposed diversity objectives because it has concerns regarding compliance with other laws, rules, or obligations, then the company would only need to disclose its reasons for not meeting the objectives.[259] In addition, companies that choose not to meet the diversity objectives and not explain their reasons for not meeting the objectives may transfer their listings to a different exchange.

One commenter argues that the Board Diversity Proposal violates the Paperwork Reduction Act.[260] The Board Diversity Proposal, however, contains no ''collection of information'' requirements within the meaning of the Paperwork Reduction Act, because the disclosure contemplated under the Board Diversity Proposal is not being done ''by or for an agency.'' [261] Other commenters believe that the proposal could violate various federal statutes, including the federal RICO statute, the Equal Pay Act, and the Genetic Information Nondiscrimination Act.[262] Nothing contemplated in the Board Diversity Proposal constitutes impermissible activity under the federal RICO statute,[263] wage discrimination between employees on the basis of sex under the Equal Pay Act,[264] or discrimination based on genetic information under the Genetic Information Nondiscrimination Act.[265]

One commenter argues that approval of the Board Diversity Proposal would be unconstitutional because the Commission's commissioners are unlawfully insulated from Presidential control.[266] But the Commission's independent structure complies with constitutional requirements.[267] Contrary to the views of one commenter, the Supreme Court's decision in *Seila Law LLC* v. *CFPB,* 140 S. Ct. 2183 (2020), does not alter that conclusion. There, the Court—twice—expressly declined to ''revisit'' its earlier decisions affirming Congress's authority to ''create expert agencies led by a *group* of principal officers removable by the President only for good cause.'' [268] Instead, the Court made clear that it was ''the CFPB's leadership by a single independent Director'' that ''violate[d] the separation of powers.'' [269] And the Court invited Congress to remedy the ''problem'' by ''converting the CFPB into a multimember agency'' like the Commission.[270]

[251] *See* CEI Letter at 2–3; Quigley Letter; Kowalczyk Letter at 3; Publius Letter at 10–11; Independent Women's Forum Letter at 1–2.

[252] *See* Nasdaq Response Letter II at 27. *See also* Nasdaq Response Letter I at 13–14.

[253] *See* Nasdaq Response Letter II at 27.

[254] *See, e.g.,* Alliance for Fair Board Recruitment Letter at 56–58; letter from A. Christians to Vanessa Countryman, Secretary, Commission, dated February 2, 2021 (''A. Christians Letter''); Heritage Foundation Letter at 12–15; letter from Concerned American Executives dated January 2, 2021. Other commenters also generally assert discrimination concerns. *See, e.g.,* Donnellan Letter at 2; letter from Samuel Sloniker, dated December 17, 2020 (comment letter submitted to File No. SR–NASDAQ–2020–082).

[255] *See* Alliance for Fair Board Recruitment at 57–58.

[256] *See* Nasdaq Response Letter I at 1, 6–8. The Exchange states that only one of the comment letters that raises constitutional or discrimination concerns with the Board Diversity Proposal was submitted by a Nasdaq-listed company that would be subject to the proposal. *See id.* at 4–5.

[257] *See, e.g.,* Toomey Letter at 1–3; Free Enterprise Project Letter at 3.

[258] *See* NLPC Letter at 7–8; Heritage Foundation Letter at 20.

[259] Similarly, the disclosures under proposed Rule 5606 would be required only ''to the extent permitted by applicable law.''

[260] *See* NLPC Letter at 6–7.

[261] 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

[262] *See* letter from Werner Lind to Vanessa Countryman, Secretary, Commission, dated February 6, 2021; A. Christians Letter.

[263] 18 U.S.C. 1961(1).

[264] 29 U.S.C. 206(d).

[265] 42 U.S.C. 2000ff–1(a).

[266] *See* Alliance for Fair Board Recruitment Letter at 77–78. This commenter also argues that by making certain public statements related to diversity, some Commissioners have prejudged the Board Diversity Proposal and must recuse themselves. *See id.* at 75–77. But recusal is unwarranted. It is settled law that an official may take public positions like the statements cited by the commenter without diminishing the presumption that the official will act fairly and impartially in any particular matter. *See, e.g., Nuclear Info. & Res. Serv.* v. *NRC,* 509 F.3d 562, 571 (DC Cir. 2007).

[267] *See, e.g., Free Enter. Fund* v. *Pub. Co. Accounting Oversight Bd.,* 561 U.S. 477, 487, 509 (2010).

[268] *Seila Law LLC,* 140 S. Ct. at 2192, 2206.

[269] *Id.* at 2207.

[270] *Id.* at 2211. The same commenter's challenge based on the supposition that the proposals would be approved by the acting director of the Commission's Division of Trading and Markets, *see* Alliance for Fair Board Recruitment Letter at 74–

Continued

H. Commenter Suggestions on the Board Diversity Proposal

The Exchange revised the Board Diversity Proposal in response to certain commenter suggestions and explained why it did not revise the proposal in response to others. The Exchange's decision not to incorporate certain suggestions does not render the current proposal without a rational basis or inconsistent with the Act. As described throughout this order, the Board Diversity Proposal satisfies the statutory and regulatory requirements for approval. The comments the Exchange did not incorporate into its proposal are nonetheless briefly described below.

Some commenters suggest that the Board Diversity Proposal should impose a diversity requirement rather than provide for a ''comply-or-disclose'' framework.[271] As discussed above, the Exchange asserts that its proposal appropriately balances the calls of investors for companies to increase diverse representation on their boards with the need for companies to maintain flexibility and decision-making authority over their board composition.[272]

One commenter suggests that the concept of cognitive diversity (or diversity of thought) should be introduced into the proposed rules and disclosures.[273] Another commenter states that the proposed definition of ''Diverse'' is pragmatic, and that it is important that the proposal include the flexibility to modify or expand the set of included demographic groups.[274] Another commenter encourages the Exchange to assess whether the proposed definition of ''Diverse'' should be expanded.[275] The Exchange responds that companies would not be precluded from using a broader definition of diversity, provided that the company discloses this under proposed Rule 5605(f)(3).[276] With respect to commenters' views that the definition of Diverse should be expanded, the Exchange states that its proposal inherently recognizes the cognitive diversity and broader range of experiences that diverse directors bring to the boardroom.[277]

One commenter argues that the Board Diversity Proposal would create structural competition among minorities,[278] and some commenters request that the proposal explicitly require two Black or African American directors [279] or require one African American (or another racial/ethnic minority) director and a director who is a member of the LGBTQ community, one of whom might also be female.[280] One commenter suggests that the proposal be limited to individuals of underrepresented racial minorities.[281] Another commenter states that the proposal would not address how a director of Central Asian descent would be classified and that the proposal would potentially preclude them from being considered ''Diverse,'' as it would with persons of North African or Middle Eastern descent.[282] In response, the Exchange states that it chose its definition of ''Diverse'' to ensure that more categories of historically underrepresented individuals are included and to allow companies the flexibility to diversify their boards in a manner that fits their unique circumstances and stakeholders.[283] The Exchange states that companies may choose to meet the proposed diversity objectives by, for example, having two directors who self-identify as Black or African American, or by having two directors who self-identify in racial or ethnic categories beyond those included in the EEO–1 report (*e.g.,* Middle Eastern, North African, Central Asian) and describing that the company considers diversity more broadly than the proposed definition of ''Diverse.'' [284]

One commenter suggests that the Exchange expand the definition of ''Diverse'' to ensure that companies with operations in other countries do not simply use the availability of candidates in those countries to fill a director or officer role when the people within those countries could be considered a minority in the U.S.[285] In response, the Exchange states that a company is not precluded from satisfying proposed Rule 5605(f)(2) with a director who is not a U.S. citizen or resident,[286] and that it is solely in the company's discretion to identify qualified director nominees who reflect diverse backgrounds that are reflective of the company's communities, employees, investors, or other stakeholders, regardless of the director's nationality.[287]

Some commenters suggest that more than two Diverse directors may be necessary to have a strong voice in the boardroom.[288] Another commenter believes that two Diverse directors is a reasonable minimum standard to escalate market awareness of listed companies with limited diversity.[289] In response, the Exchange states that the Board Diversity Proposal would provide companies with a flexible, attainable approach to achieving a reasonable objective that is not overly burdensome or coercive.[290] The Exchange also states that the proposed objective of two Diverse directors would align investors' demands for increased board diversity with companies' needs for a flexible approach that accommodates each company's unique circumstances.[291]

Some commenters suggest that diversity statistics should be disclosed on a director-by-director basis,[292] or that companies should at least be permitted to disclose diversity statistics on a director-by-director basis.[293] Some commenters encourage companies to also disclose a skills matrix for the board, aligned with the companies' strategic needs and succession planning, and a policy on board refreshment.[294]

75, is inapplicable because the Commission, not the Division of Trading and Markets pursuant to delegated authority, is approving the proposed rule change.

[271] *See, e.g.,* letter from Marc H. Morial, President and CEO, National Urban League, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021 (''NUL Letter''), at 4–5; CtW Letter at 2.

[272] *See* Nasdaq Response Letter II at 6–7.

[273] *See* letter from Snowdon Beinn, Snowdon Beinn Ltd., to Vanessa Countryman, Secretary, Commission, dated January 4, 2021.

[274] *See* Carlyle Letter at 2.

[275] *See* Alliance Letter at 2.

[276] *See* Nasdaq Response Letter II at 14.

[277] *See id.*

[278] *See* NUL Letter at 2–5.

[279] *See* letter from Aldrin K. Enis, President, One Hundred Black Men, Inc., dated January 4, 2021.

[280] *See* NUL Letter at 4.

[281] *See* letter from Omar A. Karim, President, Banneker Ventures, and Chairman, The Collective, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021 (''Collective Letter'').

[282] *See* letter from David A. Bell, Co-Chair, Corporate Governance, Fenwick & West LLP, to Vanessa Countryman, Secretary, Commission, dated January 4, 2021, at 2.

[283] *See* Nasdaq Response Letter II at 15–16 (also noting that the Exchange based its proposed definition of Underrepresented Minority on the categories reported to the EEOC through the EEO–1 report and that the Exchange included a category for LGBTQ+ status in recognition of the Supreme Court's decision in *Bostock* v. *Clayton Cnty., Ga.,* 140 S. Ct. 1731, 1742 (2020), which held that sexual orientation and gender status are ''inextricably'' intertwined with sex).

[284] *See id.* at 16.

[285] *See* Ideanomics Letter at 4.

[286] *See* Nasdaq Response Letter II at 16.

[287] *See id.*

[288] *See, e.g.,* CtW Letter at 2; letter from Mark Ferguson and Miguel Nogales, Co-Chief Investment Officers, Global Equity Strategy, Generation Investment Management LLP, at 1.

[289] *See* LGIM America Letter at 3.

[290] *See* Nasdaq Response Letter II at 4.

[291] *See id.*

[292] *See, e.g.,* New York City Controller Letter at 1.

[293] *See* Ropes & Gray Letter at 2–3. *See also* Skadden Letter at 3; Trillium Letter at 2.

[294] *See, e.g.,* WomenExecs Letter; New York City Comptroller Letter at 3; Ropes & Gray Letter at 3. One commenter asserts that if the Commission ''chooses to countenance diversity statistical reporting, it should require reporting of types of diversity that are more relevant to business success than the immutable racial, ethnic or sexual characteristics of its directors.'' *See* Heritage Foundation Letter, at 4, 20.

One commenter also suggests that directors should be subject to regular re-election based on satisfactory evaluation of their contribution to the board, and that a report from the nomination committee explaining how it considered the representation of women and/or other minorities in director selection and board evaluation would also be useful.[295] One commenter encourages the Exchange and the Commission to consider whether the disclosure requirements should extend to board nominees.[296] In response, the Exchange states that the proposal seeks a balance between obtaining key board diversity data and respecting the privacy of directors (with respect to the suggestions for director-by-director disclosures) and that limiting the disclosures to current directors optimizes the consistency and comparability of board diversity statistical information across companies (with respect to the suggestions for disclosures relating to board nominees).[297] Moreover, the Exchange states that a company would not be prohibited from disclosing more detail than required by the Board Diversity Matrix.[298]

Some commenters suggest that the Board Diversity Matrix should be included in companies' annual shareholders meeting proxy or information statement filed with the Commission, rather than solely posted on the web.[299] In response, the Exchange states that it is in the public interest to allow companies the flexibility to publish board diversity information through alternatives other than Commission filings, because it would avoid imposing additional disclosure and filing obligations on companies while providing shareholders with access to information in a recognized channel of distribution.[300]

One commenter states that the phase-in periods under proposed Rule 5605(f) are too long.[301] Another suggests that companies should have two Diverse directors within one calendar year after the approval date of proposed Rule 5605(f).[302] A different commenter suggests reducing the proposed two-, four-, and five-year phase-in periods by one year each.[303] Some commenters instead express support for the proposed phase-in and transition periods.[304] In response, the Exchange notes that an accelerated timeframe may increase challenges for companies seeking to meet the objectives of proposed Rule 5605(f), particularly smaller companies.[305]

One commenter requests that the Exchange commit to publishing a study of the impact of the proposals on board diversity and the relationship between diversity and corporate governance and financial results.[306] In response, the Exchange states that the greater benefit of publicly disclosing board diversity data would be that all interested parties can adequately conduct their own analyses of the impact of the proposal on board diversity and its relationship with company performance and that the Exchange welcomes these analyses.[307]

I. Board Recruiting Service Proposal

As described above, the Board Recruiting Service Proposal would provide certain Nasdaq-listed companies with one year of complimentary access for two users to a board recruiting service, which would provide access to a network of board-ready diverse candidates for companies to identify and evaluate. In the proposal, the Exchange states that offering a board recruiting service would assist listed companies with increasing diverse board representation, which the Exchange believes could result in improved corporate governance, strengthening of market integrity, and improved investor confidence.[308] The Exchange further states that offering this service would help companies to achieve compliance with the Board Diversity Proposal, if it were approved.[309] The Exchange states that utilization of the complimentary board recruiting service would be optional, and no company would be required to use the service.[310]

The Exchange further argues that it is reasonable and not unfairly discriminatory to offer the board recruiting service only to Eligible Companies because the Exchange believes these companies have the greatest need to identify diverse board candidates, particularly if these companies elect to meet the diversity objectives in the Board Diversity Proposal, if approved, rather than disclosing why they have not met the objectives.[311] Additionally, the Exchange believes that companies that already have two Diverse directors have demonstrated by their current board composition that they do not need additional assistance provided by the Exchange to identify diverse candidates for their boards.[312] Finally, the Exchange believes that offering this service would help it compete to attract and retain listings.[313]

Some commenters express general support for the Board Recruiting Service Proposal,[314] while others oppose the Board Recruiting Service Proposal.[315] The commenters supporting the proposal state that the proposed service would assist companies that choose to diversify their boards [316] and would be of particular benefit to smaller companies.[317] One commenter opposing the proposal argues that the Exchange does not identify how it would address the potential conflicts of interest between establishing a regulatory standard and concurrently promoting a revenue-generating compliance solution.[318] Another argues that the

[295] *See* WomenExecs Letter.

[296] *See* CFA Letter at 5–6.

[297] *See* Nasdaq Response Letter II at 18.

[298] *See id.*

[299] *See, e.g.,* Thirty Percent Coalition Letter at 2; Boston Club Letter at 2; Ropes & Gray Letter at 2.

[300] *See* Nasdaq Response Letter II at 17.

[301] *See* NUL Letter at 5.

[302] *See* Collective Letter at 2.

[303] *See* Olshan Letter at 3.

[304] *See, e.g.,* Fairfax Letter at 13; Skadden Letter at 2–3; Microsoft Letter at 2; Ariel Letter at 2; T. Rowe Letter at 2; Brightcove Letter; Mercy Investment Letter at 2; letter from Faye Sahai, Partner, Mirai Global, to Vanessa Countryman, Secretary, Commission, dated December 14, 2020.

[305] *See* Nasdaq Response Letter II at 5–6.

[306] *See* letter from Suzanne Rothwell, Managing Member, Rothwell Consulting LLC, to Vanessa Countryman, Secretary, Commission, dated December 23, 2020, at 3.

[307] *See* Nasdaq Response Letter II at 16.

[308] *See* Amendment No. 1 to the Board Recruiting Service Proposal at 10. The Exchange states that research demonstrates diverse boards are positively associated with improved corporate governance and company performance. *See id.* at 6. Moreover, the Exchange states that investors and investor groups are calling for diversification in the boardroom, and legislators at the federal and state level are increasingly taking action to respond to those calls. *See id.* at 9–10.

[309] *See id.* at 10.

[310] *See id.* at 13, 15.

[311] *See id.*

[312] *See id.* at 13–14. Although proposed Rule 5605(f)(2)(D) would require a Company with a Smaller Board to have, or explain why it does not have, at least one Diverse director on its board, such a company would be considered an Eligible Company if it does not have at least one director who self-identifies as Female and at least one director who self-identifies as an Underrepresented Minority or LGBTQ+, which the Exchange believes would help promote greater diversity on boards of all sizes. *See id.* at 11 n.20.

[313] *See id.* at 14.

[314] *See, e.g.,* Ideanomics Letter at 4; Goodman and Olson Letter at 2–3; Capital Research and Management Company Letter at 2; UAW Letter at 3.

[315] *See, e.g.,* Toomey Letter at 3; letter from Matthew Glen dated December 31, 2020 (comment letter submitted to File No. SR–NASDAQ–2020–082) (''Glen Letter''); letter from Eugene Kelly to Vanessa Countryman, Secretary, Commission, dated December 13, 2020 (''Kelly Letter'').

[316] *See, e.g.,* Ideanomics Letter at 4; Goodman and Olson Letter at 2–3; Capital Research and Management Company Letter at 2; UAW Letter at 3; California State Treasurer Letter.

[317] *See* UAW Letter at 3.

[318] *See* Toomey Letter at 3.

Board Recruiting Service Proposal would divert funds from the efficient administration of the Exchange, reducing the order and efficiency of markets that the Commission was created to promote.[319] Finally, another commenter opposing the proposal argues that the proposed complimentary recruiting service would be an extension of the ''unlawful'' and ''discriminatory'' quota policy contained in the Board Diversity Proposal by seeking to move Nasdaq-listed companies towards intentionally implementing ''discriminatory hiring practices.'' [320]

In response, the Exchange states that it is not generating any revenue from its partnership with the proposed provider of the board recruiting service, Equilar, and instead is offering these services to companies at its own expense.[321] The Exchange also states that the complimentary service does not introduce any conflict of interest because the Exchange is not in the board recruitment services business.[322] In addition, the Exchange states that there is no requirement that listed companies take advantage of the complimentary service, and there is no requirement that they pay for the service if they choose to utilize it.[323] Moreover, the Exchange states that whether a listed company takes advantage of the complimentary board recruiting service has no relationship to how, or whether, the Exchange would enforce proposed Rule 5605(f), and there are no circumstances under which the Exchange would penalize a company solely for its decision to not take advantage of a complimentary board recruiting service.[324]

The Board Recruiting Service Proposal is consistent with the requirements of Section 6 of the Act, including Sections 6(b)(4) and 6(b)(5).[325] The proposal is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. And the proposal is consistent with Section 6(b)(8) [326] because it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission finds that it is consistent with the Act for the Exchange to provide a one-year complimentary board recruiting service to Eligible Companies.[327] The board recruiting service would provide access to a network of board-ready diverse candidates, allowing companies to identify and evaluate such candidates. The board recruiting service would also assist Eligible Companies that choose to use the service to increase diverse representation on their boards and would help Eligible Companies to meet (or exceed, in the case of a Company with a Smaller Board) the proposed diversity objectives under the Board Diversity Proposal.[328]

It is also consistent with the Act for the Exchange to offer the complimentary board recruiting service only to Eligible Companies because, by definition, those companies do not have a specified number of Diverse directors and therefore may have a greater interest or feel a greater need to identify diverse board candidates by utilizing the board recruiting service than non-Eligible Companies.[329] The provision of the service only to Eligible Companies is thus an equitable allocation of complimentary services and does not unfairly discriminate among issuers.[330]

Further, offering the one-year complimentary service would help the Exchange compete to attract and retain listings, particularly in light of the diversity objective in the separately approved Board Diversity Proposal. The Exchange has indicated that individual listed companies would not be given specially negotiated packages of products or services to list, or remain listed; that no other company will be required to pay higher fees as a result of the proposal; and that providing the complimentary board recruiting service will have no impact on the resources available for its regulatory programs.[331] No commenter has provided any reason to doubt these indications as to how the service will be run. Accordingly, the proposal reflects the current competitive environment for listings among national securities exchanges,[332] does not impose any unnecessary or inappropriate burden on competition between individual listed companies, and is therefore appropriate and consistent with Section 6(b)(8) of the Act.[333]

In addition, describing in the Exchange's rules the products and services available to listed companies and their associated values also adds greater transparency to the rules and applicable fees and will ensure that individual listed companies are not given specially negotiated packages of products or services to list, or remain listed, that would raise unfair discrimination issues under the Act.

Finally, with respect to concerns that the Exchange's offering of the board recruiting service may create a conflict of interest or divert funds from the efficient administration of the Exchange, the Exchange has indicated that providing the proposed complimentary service would have no impact on the resources available for its regulatory programs and that it will not generate any revenue from the service, nor is it in the board recruitment services business.[334] The Exchange further explains that utilization of the board recruiting service will not impact the manner in which it enforces compliance with the Board Diversity Proposal.[335] With respect to a concern that the recruiting service may influence a Nasdaq-listed company's hiring practice, the Exchange has emphasized that utilization of the service would be optional, and no company would be required to use it.[336] Here again, commenters have provided no reason for the Commission to doubt the Exchange's indication about how the service will be run. Accordingly, the Exchange's representations and the optionality of the board recruiting service are sufficient to address commenters' concerns that the provision of the complimentary service

[319] *See* Glen Letter.

[320] *See* Kelly Letter.

[321] *See* Nasdaq Response Letter II at 20–21.

[322] *See id.* at 21.

[323] *See id.* at 21–22.

[324] *See id.*

[325] 15 U.S.C. 78f, 78f(b)(4)–(5). In approving the Board Recruiting Service Proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[326] 15 U.S.C. 78f(b)(8).

[327] The Commission has previously approved the provision of complimentary services by the Exchange to varying categories of eligible listed companies. *See, e.g.,* Securities Exchange Act Release Nos. 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (SR–NASDAQ–2011–122) and 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (SR–NASDAQ–2014–058).

[328] *See* Amendment No. 1 to the Board Recruiting Service Proposal at 10.

[329] *See id.* at 13–14.

[330] The Commission has previously found that the specific needs of differently situated categories of listings (*e.g.,* new listings, transfers, larger capitalized issuers) is a sufficient basis for providing additional services, or varying the types of services provided, to different categories of listings, and thereby does not raise unfair discrimination issues under the Act. *See, e.g.,* Securities Exchange Act Release Nos. 78806 (September 9, 2016), 81 FR 63523 (September 15, 2016) (order approving SR–NASDAQ–2016–098); 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (order approving SR–NASDAQ–2014–058).

[331] *See* Amendment No. 1 to the Board Recruiting Service Proposal at 12, 15.

[332] *See supra* notes 56–59 (describing this competitive environment for exchange listings).

[333] 15 U.S.C. 78f(b)(8).

[334] *See supra* notes 321–322 and 331 and accompanying text.

[335] *See supra* note 324 and accompanying text.

[336] *See supra* note 310 and accompanying text.

may create a conflict of interest, divert funds from the efficient administration of the Exchange, or unduly influence listed companies.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[337] that: (1) The proposed rule change (SR–NASDAQ–2020–081), as modified by Amendment No. 1, be, and hereby is, approved, and (2) the proposed rule change (SR–NASDAQ–2020–082), as modified by Amendment No. 1, be, and hereby is, approved.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17179 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–360, OMB Control No. 3235–0409]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rules 17Ad–15

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'') is soliciting comments on the existing collection of information provided for in Rule 17Ad–15 (17 CFR 240.17Ad–15) (''Rule 17Ad–15'') under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17Ad–15 requires every registered transfer agent to establish written standards for the acceptance of guarantees of securities transfers from eligible guarantor institutions. Every registered transfer agent is also required to establish procedures, including written guidelines where appropriate, to ensure that the transfer agent uses those standards to determine whether to accept or reject guarantees from eligible guarantor institutions. In implementing these requirements, the Commission's purpose is to ensure that registered transfer agents treat eligible guarantor institutions equitably.

Additionally, Rule 17Ad–15 requires every registered transfer agent to make and maintain records in the event the transfer agent determines to reject signature guarantees from eligible guarantor institutions. Registered transfer agents' records must include, following the date of rejection, a record of the rejected transfer, along with the reason for rejection, the identification of the guarantor, and an indication whether the guarantor failed to meet the transfer agent's guarantee standards.

Rule 17Ad–15 requires registered transfer agents to maintain these records for a period of three years. The Commission designed these mandatory recordkeeping requirements to assist the Commission and other regulatory agencies with monitoring registered transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

The Commission estimates that approximately 366 registered transfer agents will spend a total of approximately 14,640 hours per year complying with recordkeeping requirements of Rules 17Ad–15 (40 hours per year per registered transfer agent).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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

Please direct your written comments to: (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or send email to: *PRA_Mailbox@sec.gov.*

Dated: August 6, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17154 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–521, OMB Control No. 3235–0579]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Regulation BTR

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation Blackout Trade Restriction (''Regulation BTR'') (17 CFR 245.100–245.104) clarifies the scope and application of Section 306(a) of the Sarbanes-Oxley Act of 2002 (''Act'') (15 U.S.C. 7244(a)). Section 306(a)(6) [15 U.S.C.7244(a)(6)] of the Act requires an issuer to provide timely notice to its directors and executive officers and to the Commission of the imposition of a blackout period that would trigger the statutory trading prohibition of Section 306(a)(1) [15 U.S.C. 7244(a)(1)]. Section 306(a) of the Act prohibits any director or executive officer of an issuer of any equity security, directly or indirectly, from purchasing, selling or otherwise acquiring or transferring any equity security of that issuer during any blackout period with respect to such equity security, if the director or executive officer acquired the equity security in connection with his or her service or employment. Approximately 1,230 issuers file Regulation BTR notices approximately 5 times a year for a total of 6,150 responses. We estimate that it takes approximately 2 hours to prepare the blackout notice for a total annual burden of 2,460 hours. The issuer prepares 75% of the 2,460 annual burden hours for a total reporting burden of (1,230 issuers × 2 hours per issuer × 0.75) 1,845 hours. In addition, we estimate that an issuer distributes a

[337] 15 U.S.C. 78s(b)(2).

notice to five directors and executive officers at an estimated 5 minutes per notice (1,230 blackout period × 5 notices × 5 minutes) for a total reporting burden of 512 hours. The combined annual reporting burden is (1,845 hours + 512 hours) 2,357 hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 6, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17159 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92592; File No. SR–NYSEAMER–2021–35]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Equities Price List and Fee Schedule

August 6, 2021.

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 July 30, 2021, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Equities Price List and Fee Schedule (''Price List'') to offer an optional monthly per security credit to Electronic Designated Market Makers (''eDMM'') that elect to receive a lower transaction credit per share credit for adding liquidity to the Exchange. The proposed 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 Price List to offer an optional monthly per security credit to eDMMs that elect to receive a lower transaction credit per share credit for adding liquidity to the Exchange.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for eDMMs to increase quoting on, and send additional displayed liquidity to, the Exchange.

The Exchange proposes to implement the fee changes effective August 2, 2021.

Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [5] Indeed, cash equity trading is currently dispersed across 16 exchanges,[6] numerous alternative trading systems,[7] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 17% market share.[8] Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange currently has less than 1% market share of executed volume of cash equities trading.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[6] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

The Exchange proposes an optional monthly credit per security (''Credit Per Security'') to eDMMs, up to a maximum credit of $550 per month across all assigned securities, provided that the eDMM agrees to a lower transaction credit of $0.0030, from $0.0045 currently, for adding displayed liquidity for all assigned securities. An eDMM electing the additional Credit Per Security must notify the Exchange prior to the start of a month if the eDMM elects to change their credit either to or from the Credit Per Security for all the eDMM's assigned securities.

The Credit Per Security will be available for the following month for each assigned security where the eDMM meets the following quoting requirements:

- An eDMM quoting at the National Best Bid or Offer (''NBBO'') for a minimum average of 25% of the time would be entitled a $100 Credit Per Security per month, or
- An eDMM quoting at the NBBO for a minimum average of 40% of the time would be entitled a $250 Credit Per Security per month, or
- Finally, an eDMM quoting at the NBBO for a minimum average of 50% of the time would be entitled to the maximum $550 Credit Per Security per month.

The Exchange believes that providing Exchange eDMMs with the option to receive a lower per share transaction credit for increased quoting and adding displayed liquidity in exchange for monthly rebates per assigned security would foster liquidity provision and stability in the marketplace and lessen eDMM reliance on transaction fees, to the benefit of the marketplace and all market participants.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. 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.'' [12]

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange by offering further incentives for eDMMs to quote on, and send additional displayed liquidity to, the Exchange.

The Exchange believes that providing eDMMs with the option to receive a lower per share transaction credit for adding displayed liquidity in exchange for monthly rebates per assigned security, up to a maximum credit of $550 per month across all eDMM assigned securities, is reasonable because it would foster liquidity provision and stability in the marketplace and lessen eDMM reliance on transaction fees, to the benefit of the marketplace and all market participants. Moreover, the proposal is reasonable because it would balance the increased risks and heightened quoting and other obligations that eDMMs on the Exchange have and that other market participants do not. The Exchange also believes that assigning a maximum credit of $550 per month for the Credit Per Security is reasonable and will provide a further incentive for eDMMs to quote and trade a greater number of securities on the Exchange and will generally allow the Exchange and eDMMs to better compete for order flow, and thus enhance competition.

The Proposed Fee Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees and credits among its market participants. The Exchange believes that it is equitable to offer eDMMs the option to receive a lower per share transaction credit for adding displayed liquidity in exchange for monthly rebates per assigned security because it would balance the increased risks and heightened quoting and other obligations that eDMMs on the Exchange have and that other market participants do not have. As such, it is equitable to offer eDMMs the option to receive a flat per security credit based on the eDMM's quoting in that symbol, coupled with a lower transaction fee. The requirement is also equitable because it would apply equally to all eDMM firms, who would have the option to elect (or not elect) to participate on a monthly basis. Moreover, the Exchange believes that the proposal is equitable because eDMMs would be required to meet prescribed quoting requirements in order to qualify for the payments, as described above. All eDMMs would be eligible to elect to receive a Credit Per Security and could do so by notifying the Exchange and meeting the per symbol quoting requirement.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory. In the prevailing competitive environment, market participants, including eDMMs, are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The Exchange believes it is not unfairly discriminatory to offer eDMMs the option to receive a flat per security credit coupled with a lower transaction fee for orders that provide displayed liquidity assigned securities as the proposed credits would be provided on an equal basis to all such participants. The Credit Per Security would apply equally to all eDMM firms, who would have the option to elect (or not elect) to participate on a monthly basis. Further, the Exchange believes the proposed incremental credits would incentivize eDMMs that meet the proposed quoting requirements to send more orders to the Exchange to qualify for a higher Credit Per Security. The proposal to introduce an additional eDMM credit neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] *See* Regulation NMS, *supra* note 6, 70 FR at 37499.

because the proposed threshold would be applied to all similarly situated eDMMs, who would all be eligible for the same credit on an equal basis. Accordingly, no eDMM already operating on the Exchange would be disadvantaged by this allocation of fees.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[13] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed fee change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery, and transparency and enhancing order execution opportunities for market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [14]

Intramarket Competition. The Exchange believes the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to attract additional liquidity to the Exchange. The Exchange believes that the proposed credit and lower fee would incentivize eDMMs to increase quoting on the Exchange in assigned securities and to direct liquidity providing orders to the Exchange. Increased eDMM quoting and greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality and continuing to encourage ETP Holders to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange currently has less than 1% market share of executed volume of equities trading. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging greater quoting on, and additional orders being sent to, the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [15] of the Act and subparagraph (f)(2) of Rule 19b–4 [16] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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) [17] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2021–35 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–2021–35. 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 Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2021–35 and should be submitted on or before September 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17176 Filed 8–11–21; 8:45 am]

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[13] 15 U.S.C. 78f(b)(8).

[14] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92595; File No. SR–NYSEArca–2021–64)]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 8.601–E (Active Proxy Portfolio Shares) To Provide for the Use of Custom Baskets

August 6, 2021.

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 July 28, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 8.601–E (Active Proxy Portfolio Shares) to provide for the use of ''Custom Baskets'' consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Active Proxy Portfolio Shares. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 8.601–E (Active Proxy Portfolio Shares) [4] to provide for the use of ''Custom Baskets'' consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 [5] applicable to a series of Active Proxy Portfolio Shares.

To effectuate this change, the Exchange proposes the following amendments to Rule 8.601–E.

First, a new section 4 would be added to Rule 8.601–E(c) (Definitions) defining ''Custom Basket'' to mean a portfolio of securities that is different from the Proxy Portfolio (as defined in Rule 8.601–E(c)(3)) and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Active Proxy Portfolio Shares. Current sections (4) and (5) of Rule 8.601–E(c) would be renumbered (5) and (6), respectively. The definition of ''Active Proxy Portfolio Share'' in NYSE Arca Rule 8.601–E(c)(1) would be amended to provide for creations of shares in return for a deposit by the purchaser of, and redemptions of shares at a holder's request in return for, a Custom Basket rather than a Proxy Portfolio to the extent permitted by a fund's exemptive relief. In addition, the definition of ''Reporting Authority'' in respect of a particular series of Active Proxy Portfolio Shares in current section 4 (proposed section 5) of Rule 8.601E(c) would be amended to provide for Custom Baskets to the extent permitted by a fund's exemptive relief. Currently, ''Reporting Authority'' in respect of a particular series of Active Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Active Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, NAV, the Actual Portfolio, Proxy Portfolio or other information relating to the issuance, redemption or trading of Active Proxy Portfolio Shares. The rule further provides that a series of Active Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions. The Exchange would add ''Custom Basket'' to the non-exclusive list of information relating to Active Proxy Portfolio Shares that a Reporting Authority calculates and reports, *i.e.,* including, but not limited to, NAV, the Actual Portfolio, Proxy Portfolio, Custom Basket, or other information relating to the issuance, redemption or trading of Active Proxy Portfolio Shares.

Second, Rule 8.601–E(d) (Initial and Continued Listing), which currently provides criteria that Active Proxy Portfolio Shares must satisfy for initial and continued listing on the Exchange, would be amended to incorporate specific initial and continued listing criteria for Custom Baskets. Specifically, current Rule 8.601–E(d)(1)(B) provides that the Exchange shall obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per share for the series shall be calculated daily and that the NAV, the Proxy Portfolio, and the Actual Portfolio shall be made publicly available to all market participants at the same time. These requirements would become proposed Rule 8.601–E(d)(1)(B)(i) & (ii). The Exchange proposes a third romanette providing that the Exchange shall also obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the issuer and any person acting on behalf of the series of Active Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Securities Exchange Act of 1934, including with respect to any Custom Basket.

Third, a new section (d)(2)(B)(ii) would be added to Rule 8.601–E providing that, with respect to each Custom Basket utilized by a series of Active Proxy Portfolio Shares, each business day, before the opening of trading in the Core Trading Session (as defined in Rule 7.34–E(a)), the investment company shall make publicly available on its website the composition of any Custom Basket

[4] NYSE Arca Rule 8.601–E(c)(1) defines the term ''Active Proxy Portfolio Share'' as a security that (a) is issued by an ''Investment Company'' registered under the Investment Company Act of 1940 (''1940 Act'') (15 U.S.C. 80a) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (''NAV''); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

[5] 15 U.S.C. 80a *et seq.*

transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash. Rule 8.601–E(d)(2)(B), which is currently titled ''Proxy Portfolio,'' would be amended to read ''Proxy Portfolio and Custom Basket.''

Finally, the Exchange would make conforming amendments to Commentary .04 and Commentary .05 of Rule 8.601–E, as follows.

First, Commentary .04 to NYSE Arca Rule 8.601–E provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Commentary .04 further provides that any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio and/or Proxy Portfolio, or has access to non-public information regarding the Investment Company's Actual Portfolio and/or the Proxy Portfolio, or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or the Proxy Portfolio, or changes thereto.

Commentary .04 would be amended to provide for Custom Baskets to the extent permitted by a fund's exemptive relief. As proposed, Commentary .04 would provide that if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable. In addition, Commentary .04 would provide that any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or has access to non-public information regarding the Investment Company's Actual Portfolio, the Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio, the Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto.

Second, Commentary .05 to Rule 8.601–E provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

Commentary .05 would similarly be amended to provide for Custom Baskets to the extent permitted by a fund's exemptive relief. As proposed, Commentary .05 would be amended to provide that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio, or the Proxy Portfolio, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio, the Proxy Portfolio, or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that amending Rule 8.601–E to incorporate specific initial and continued listing criteria required to be met by Active Proxy Portfolio Shares that utilize Custom Baskets is designed to prevent fraudulent and manipulative acts and practices. The Exchange believes that the daily dissemination of the composition of any Custom Basket transacted on the previous day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash, together with the right of Authorized Participants to create and redeem each day at the NAV, will enable market participants to value and trade shares in a manner that will not lead to significant deviations between the Bid/Ask Price and NAV of shares of a series of Active Proxy Portfolio Shares. Further, including Custom Baskets in the requirements of Commentaries .04 and .05 would act as a safeguard against any misuse and improper dissemination of nonpublic information related to a fund's Custom Basket or changes thereto. The requirement that any person or entity implement procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Custom Basket will act to prevent any individual or entity from sharing such information externally and the internal ''fire wall'' requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purposes.

As such, the Exchange believes that the proposed amendment of Rule 8.601–E is designed to prevent fraudulent and manipulative acts and practices.

The proposed rule change is also designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will permit use of Custom Baskets consistent with an issuer's exemptive relief in a manner that will benefit investors by increasing efficiencies in the creation/redemption process. The Exchange believes this will

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

enhance competition among market participants, to the benefit of investors and the marketplace. Similarly, the Exchange believes that the proposed initial and continued listing standards are designed to promote disclosure and transparency with respect to the use of Custom Baskets consistent with an issuer's exemptive relief. Specifically, the Exchange believes that requiring as an initial listing condition that an issuer and any person acting on behalf of the series of Active Proxy Portfolio Shares comply with Regulation Fair Disclosure under the Securities Exchange Act of 1934, including with respect to any Custom Basket, would further the full and fair disclosure objectives of Regulation Fair Disclosure to the benefit of the investing public and all market participants. Further, the Exchange believes that requiring as a continued listing condition that, with respect to each Custom Basket utilized by a series of Active Proxy Portfolio Shares, each business day, before the opening of trading in the Core Trading Session (as defined in Rule 7.34–E(a)), an investment company make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash, also furthers the goals of transparency and full and fair disclosure, to the benefit of investors and the public interest.

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 believes the proposed rule change, by permitting use of Custom Baskets consistent with an issuer's exemptive relief, would introduce additional competition among various ETF products to the benefit of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2021–64 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–2021–64. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2021–64, and should be submitted on or before September 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17173 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92597; File No. SR–CBOE–2021–044]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Relating to the Options Regulatory Fee

August 6, 2021.

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 August 2, 2021, 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 its Fees Schedule relating to the Options Regulatory Fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 reduce the Options Regulatory Fee (''ORF'') from $0.0023 per contract to $0.0017 per contract, effective August 2, 2021, in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

The ORF is assessed by Cboe Options to each Trading Permit Holder (''TPH'') for options transactions cleared by the TPH that are cleared by the Options Clearing Corporation (''OCC'') in the customer range, regardless of the exchange on which the transaction occurs.[3] In other words, the Exchange imposes the ORF on all customer-range transactions cleared by a TPH, even if the transactions do not take place on the Exchange. The ORF is collected by OCC on behalf of the Exchange from the Clearing Trading Permit Holder (''CTPH'') or non-CTPH that ultimately clears the transaction. With respect to linkage transactions, Cboe Options reimburses its routing broker providing Routing Services pursuant to Cboe Options Rule 5.36 for options regulatory fees it incurs in connection with the Routing Services it provides.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of TPH customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as human resources, legal, compliance, information technology, facilities and accounting. These indirect expenses are estimated to be approximately 27% of Cboe Options' total regulatory costs for 2021. Thus, direct expenses are estimated to be approximately 73% of total regulatory costs for 2021. In addition, it is Cboe Options' practice that revenue generated from ORF not exceed more than 75% of total annual regulatory costs.

The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs in a given year, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange also notifies TPHs of adjustments to the ORF via an Exchange Notice.[4] Based on the Exchange's most recent semi-annual review, the Exchange is proposing to reduce the amount of ORF that will be collected by the Exchange from $0.0023 per contract side to $0.0017 per contract side. The proposed decrease is based on the Exchange's estimated projections for its regulatory costs, which have decreased, balanced with recent options volumes, which has increased. For example, total options contract volume in March 2021 was approximately 34% higher than the total options contract volume in March 2020 and the total options contract volume in June 2021 was approximately 25% higher than the total options contract volume in June 2020.[5] In fact, March 2021 was the highest, and June 2021 was the second highest, options volume month in the history of U.S. equity options industry.[6] Below is also industry data from OCC which illustrates the significant increase in volume from January 2021 through March 2021.[7] Moreover, the options volume in the first quarter of 2021 was higher than the fourth quarter of 2020.[8] Also April and May 2021 volumes remain significantly high as compared to 2020 options volume in general.[9]

Volume	January 2021	February 2021	March 2021	April 2021	May 2021
Total	838,339,790	823,412,827	898,653,388	711,388,828	718,368,993
Customer	784,399,878	782,113,450	837,247,059	667,208,963	659,913,862
Total ADV	44,123,146.84	43,337,517.20	39,071,886.40	33,875,658.50	35,918,449.70
Customer ADV	41,284,204.11	41,163,865.79	36,402,046.04	36,402,046.04	32,995,693.10

These expectations are estimated, preliminary and may change. There can be no assurance that the Exchange's final costs for 2021 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with the Exchange's other non-ORF regulatory fees and fines, the revenue being generated by ORF using the current rate results in revenue that is running in excess of the Exchange's estimated regulatory costs for the year.[10] Particularly, as discussed above, the options market has seen a substantial increase in volume over the first half of the year, up even from last year's unprecedented spike in volatility and volume. This increase resulted in higher volume than was originally projected by the Exchange (thereby resulting in higher ORF revenue than projected). Moreover, in addition to projected reductions in regulatory expenses, the Exchange experienced further unanticipated reductions in costs, in connection with the continuing COVID–

[3] The Exchange notes ORF also applies to customer-range transactions executed during Global Trading Hours.

[4] The Exchange endeavors to provide TPHs with such notice at least 30 calendar days prior to the effective date of the change. The Exchange notified TPHs of the proposed rate change for August 2, 2021 on July 1, 2021. *See* Exchange Notice, C2021070103 ''Cboe Options Exchanges Regulatory Fee Update Effective August 2, 2021.''

[5] *See https://www.theocc.com/Newsroom/Press-Releases/2021/04-05-OCC-March-2021-Total-Volume-Up-34-8-Percent* and *https://www.theocc.com/Newsroom/Press-Releases/2021/07-02-OCC-June-2021-Total-Volume-Up-25-6-Percent-f.*

[6] *Id.*

[7] *See* data from OCC at: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Volume-by-Account-Type.*

[8] *Id.*

[9] *Id.*

[10] Consistent with Rule 2.2 (Regulatory Revenue), the Exchange notes that notwithstanding the excess ORF revenue collected to date, it has not used such revenue for nonregulatory purposes.

19 pandemic (*e.g.,* continued reduction in travel expenses).[11] Accordingly, because revenue generated by the current ORF rates, when combined with the Exchange's other non-ORF regulatory fees and fines, is expected to exceed the Exchange's regulatory costs for the year, the Exchange proposes to decrease its ORF rate. Particularly, the Exchange believes that by [sic] decreasing the ORF, as amended, when combined with all of the Exchange's other regulatory fees and fines, would allow the Exchange to continue covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the current rate.[12]

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

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.[13] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[14] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because customer transactions will be subject to a lower ORF fee than the current rate. Moreover, the proposed reduction is necessary in order to lessen the potential that the Exchange collects revenue in excess of its anticipated regulatory costs, in combination with other regulatory fees and fines, which is consistent with the Exchange's practices. The Exchange had designed the ORF to generate revenues that would be less than or equal to 75% of the Exchange's regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after its semi-annual review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it would be collecting revenue in excess of 75% of its regulatory costs. Indeed, the Exchange notes that when taking into account the recent options volume, coupled with the projected reduction in regulatory costs, it estimates the ORF will generate revenues that would cover more than the approximated 75% of the Exchange's projected regulatory costs. Moreover, when coupled with the Exchange's other regulatory fees and revenues, the Exchange estimates ORF to generate over 100% of the Exchange's projected regulatory costs. As such, the Exchange believes it's reasonable and appropriate to decrease the ORF amount from $0.0023 to $0.0017 per contract side.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all TPHs on all their transactions that clear in the customer range at the OCC. The Exchange believes the ORF ensures fairness by assessing higher fees to those TPHs that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (*e.g.,* staff and travel expenses), as well as investigations into customer complaints and the terminations of Registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* TPH proprietary transactions) of its regulatory program.[16] Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to its TPHs' activities, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity irregardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'') [17] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to its TPH's customer trading activity.

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. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the

[11] The Exchange notes that in connection with proposed ORF rate changes, it provides the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a breakout of its projected regulatory expenses, including both direct and indirect allocations.

[12] The Exchange notes that its regulatory responsibilities with respect to TPH compliance with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78f(b)(5).

[16] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on TPH proprietary transactions if the Exchange deems it advisable.

[17] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

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 [18] and paragraph (f) of Rule 19b–4 [19] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2021–044 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CBOE–2021–044. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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 Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2021–044, and should be submitted on or before September 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17172 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–518, OMB Control No. 3235–0576]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Regulation G

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation G (17 CFR 244.100—244.102) under the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. 78a *et seq.*) requires publicly reporting companies that disclose or releases financial information in a manner that is calculated or presented other than in accordance with generally accepted accounting principles (''GAAP'') to provide a reconciliation of the non-GAAP financial information to the most directly comparable GAAP financial measure. Regulation G implemented the requirements of Section 401 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7261). We estimate that approximately 14,000 public companies must comply with Regulation G approximately six times a year for a total of 84,000 responses annually. We estimated that it takes approximately 0.5 hours per response ($84{,}000 \times 0.5$ hours) for a total reporting burden of 42,000 hours annually.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 6, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17160 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92600; File No. SR–NASDAQ–2021–057]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NOM's Options Regulatory Fee

August 6, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend The Nasdaq Options Market LLC's (''NOM'') Pricing Schedule at Options 7, Section 5 related to the Options Regulatory Fee or ''ORF''.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on October 1, 2021.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, NOM assesses an ORF of $0.0020 per contract side as specified in NOM's Pricing Schedule at Options 7, Section 5. The Exchange proposes to waive its ORF from October 1, 2021 to January 31, 2022, and then recommence the ORF on February 1, 2022.

By way of background, the options industry has experienced extremely high options trading volumes and volatility. This historical anomaly of persistent increased options volumes has impacted NOM's ORF collection which, in turn, has caused the Exchange to continue to revisit its financial forecast to reflect the sustained elevated options volumes and volatility. As the Exchange continues to monitor the amount of revenue collected from the ORF to ensure that our ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs, the Exchange has found it difficult to determine when volumes will return to more normal levels. In order to avoid iterative rule changes to amend its ORF, the Exchange believes it is prudent to instead waive its ORF from October 1, 2021 to January 31, 2022, to permit the Exchange to plan future forecasts without the need to account for any ORF collection during that timeframe. This proposal would ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, would not exceed the Exchange's total regulatory costs. NOM would recommence assessing its current ORF rate of $0.0020 per contract side as of February 1, 2022. Furthermore, prior to February 1, 2022, NOM will examine its ORF rate to determine if the $0.0020 per contract side ORF is justified given the current volumes in 2022 as well as the current Exchange regulatory expenses at that time. NOM would file a proposed rule change to amend its per contract ORF if changes are necessary to ensure an equitable allocation of reasonable ORF, if *e.g.,* the Exchange believes that the volumes NOM experiences in the second half of 2021 are likely to persist throughout 2022. Of note, NOM proposes to continue to operate with the ORF fee waived in January 2022 to allow its Participants [3] and other broker dealers time to align their systems for February 1, 2022, allowing for time after the holiday period which traditionally have year-end code freezes in place.

Collection of ORF

Currently, NOM assesses its ORF for each customer option transaction that is either: (1) Executed by a Participant on NOM; or (2) cleared by a NOM Participant at The Options Clearing Corporation (''OCC'') in the customer range,[4] even if the transaction was executed by a non-Participant of NOM, regardless of the exchange on which the transaction occurs.[5]

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of Participant customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as Office of the General Counsel, technology, and internal audit. Indirect expenses are estimated to be approximately 42% of the total regulatory costs for 2021. Thus, direct

[3] The term ''Options Participant'' or ''Participant'' mean a firm, or organization that is registered with the Exchange pursuant to Options 2A of these Rules for purposes of participating in options trading on NOM as a ''Nasdaq Options Order Entry Firm'' or ''Nasdaq Options Market Maker''. *See* Options 1, Section 1(a)(39). All NOM Participants must be an existing member or become a member of the Exchange, pursuant to the 1000 rules series, and continue to abide by the requirements of the 1000 Series with respect to participation in NOM. *See* Options 2A, Section 1(b)(3).

[4] Participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that Participants mark orders with the correct account origin code.

[5] The Exchange uses reports from OCC when assessing and collecting the ORF.

expenses are estimated to be approximately 58% of total regulatory costs for 2021.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

Proposal

Based on the Exchange's most recent review, the Exchange proposes to waive ORF from October 1, 2021 to January 31, 2022, to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. NOM would recommence assessing its current ORF rate of $0.0020 per contract side as of February 1, 2022. The Exchange issued an Options Trader Alert on July 2, 2021 indicating the proposed rate change for October 1, 2021.[6]

The proposed waiver is based on recent options volume which has remained at abnormally and unexpectedly high levels. Options volume in 2021 remains significantly high when that volume is compared to 2019 and 2020 options volume. For example, total options contract volume in November 2020 was 71% higher than the total options contract volume in November 2019.[7] Below is industry data from OCC [8] which illustrates the significant increase in volume during the fourth quarter of 2020.

Volume	October 2020	November 2020	December 2020	Q4 2020
Total	633,365,184	673,660,858	753,568,354	2,060,594,396
Customer	587,707,301	630,297,252	708,037,956	1,926,042,509
Total ADV	28,789,326.55	33,683,042.90	34,253,107.00	32,196,787.44
Customer ADV	26,713,968.23	31,514,862.60	32,183,543.45	30,094,414.20

Below is industry data from OCC [9] which illustrates the significant increase in volume from January 2021 through March 2021. The options volume in the first quarter of 2021 was higher than the fourth quarter of 2020. Also, April and May 2021 volumes remain significantly high as compared to 2020 options volume in general.

Volume	January 2021	February 2021	March 2021	April 2021	May 2021
Total	838,339,790	823,412,827	898,653,388	711,388,828	718,368,993
Customer	784,399,878	782,113,450	837,247,059	667,208,963	659,913,862
Total ADV	44,123,146.84	43,337,517.20	39,071,886.40	33,875,658.50	35,918,449.70
Customer ADV	41,284,204.11	41,163,865.79	36,402,046.04	31,771,855.38	32,995,693.10

As a result of the historical anomaly created by these high options volumes, NOM has no assurance that the Exchange's final costs for 2021 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with regulatory fees and fines, the revenue being generated utilizing the current ORF rate may result in revenue in excess of the Exchange's estimated regulatory costs for the year. Particularly, as noted above, the options market has seen a substantial increase in volume in 2021 as compared to 2020, due in large part to the continued extreme volatility in the marketplace as a result of the COVID–19 pandemic. This unprecedented spike in volatility resulted in significantly higher volume than was originally projected by the Exchange (thereby resulting in substantially higher ORF revenue than projected). The Exchange therefore proposes to waive ORF from October 1, 2021 to January 31, 2022 to ensure it does not exceed its regulatory costs for 2021. Particularly, the Exchange believes that waiving ORF from October 1, 2021 to January 31, 2022 and considering all of the Exchange's other regulatory fees and fines would allow the Exchange to continue covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the current rate.[10]

NOM would recommence assessing its current ORF rate of $0.0020 per contract side as of February 1, 2022. Until October 1, 2021, the Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange would also continue monitoring the amount of revenue collected from the ORF when it recommences assessing ORF on February 1, 2022. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission and notifying [11] its Participants via an Options Trader Alert.[12]

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. [13] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act, [14] which provides that Exchange rules may provide for the equitable allocation of reasonable dues,

[6] *See* Options Trader Alert 2021–41.

[7] *See* data from OCC at: *https://www.businesswire.com/news/home/20201202005584/en/OCC-November-2020-Total-Volume-Up-71-Percent-From-a-Year-Ago.*

[8] *See* data from OCC at: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Volume-by-Account-Type.*

[9] *Id.*

[10] The Exchange notes that its regulatory responsibilities with respect to Participant compliance with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

[11] The Exchange will provide Participants with such notice at least 30 calendar days prior to the effective date of the change.

[12] The Exchange notes that in connection with this proposal, it provided the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a projected regulatory expenses.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee waiver is reasonable because customer transactions will be subject to no ORF from October 1, 2021 to January 31, 2022. Moreover, the proposed waiver is necessary, so the Exchange does not collect revenue in excess of its anticipated regulatory costs, in combination with other regulatory fees and fines, which is consistent with the Exchange's practices.

The Exchange designed the ORF to generate revenues that would be less than the amount of the Exchange's regulatory costs to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it may be collecting revenue in excess of its regulatory costs. Indeed, the Exchange notes that when considering the recent options volume, which included an increase in customer options transactions, it estimates the ORF may generate revenues that may cover more than the approximated Exchange's projected regulatory costs. As such, the Exchange believes it's reasonable and appropriate to waive ORF from October 1, 2021 to January 31, 2022 and recommence assessing ORF on February 1, 2022.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory as no Participant would be assessed an ORF from October 1, 2021 to January 31, 2022. While the Exchange has assessed and collected ORF from January through September, 2021, but will not collect ORF, with this proposal, from October 2021 through January 2022, the Exchange does not believe that it is unfairly discriminatory to not assess the ORF from October 2021 through January 2022 because the ORF is designed and intended to recover a portion of the Exchange's regulatory costs without collecting in excess of those costs. Unexpectedly high and sustained customer volume has resulted in higher revenues from the ORF that, if not suspended, will likely result in over-collection of ORF, which would be inconsistent with the Exchange's prior representations and undertaking to not collect ORF in excess of regulatory expenses. The Exchange did not decrease the amount of the ORF earlier in 2021 because it did not expect, based on its prior experience, that customer volume would remain abnormally high. Also, it is equitable and not unfairly discriminatory to recommence the assessment of the ORF on February 1, 2022 because assessing the ORF to each Participant for options transactions cleared by OCC in the customer range where the execution occurs on another exchange and is cleared by aa NOM Participant is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.[16]

The Exchange believes recommencing the ORF on February 1, 2022 at the same rate, unless options volumes at that time warrant a proposed rule change, continues to ensure fairness by assessing higher fees to those Participants that require more Exchange regulatory services based on the amount of customer options business they conduct. As noted in prior ORF rule changes which set the current ORF rate of $0.0020 per contract side, regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (*e.g.,* staff expenses), as well as investigations into customer complaints and the terminations of registered persons.[17]

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 Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market or inter-market burden on competition for several reasons. First, ORF has been amended several times since its inception in 2011.[18] For example, NOM amended its ORF rate from $0.0021 to $0.0027 per contract side as of August 1, 2017. Participants who either executed a transaction on NOM or cleared a transaction at OCC in the customer range would have been assessed a higher ORF for a transaction executed on NOM on August 1, 2017 ($0.0027 per contract side) as compared to July 31, 2017 ($0.0021 per contract side). There have been ORF amendments which have caused NOM to assess different ORF rates to Participants for different time periods causing Participants to have paid different ORFs since 2011. For example, if NOM received payment of a fine from a disciplinary action, that fine would offset regulatory costs and would cause NOM to require less regulatory revenue for a particular period. The changing regulatory costs would impact the ORF assessed by NOM to Participants. In the past, the Exchange has amended ORF to be higher or lower,[19] thereby impacting the amount paid by Participants in a calendar year. Third, options markets assess ORF at different rates. For

[15] 15 U.S.C. 78f(b)(5).

[16] If the OCC clearing member is a NOM Participant, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA); and (2) if the OCC clearing member is not a NOM Participant, ORF is collected only on the cleared customer contracts executed at NOM, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

[17] *See* Securities Exchange Act Release No. 81344 (August 8, 2017), 82 FR 37955 (August 14, 2017) (SR–NASDAQ–2017–068) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise the NASDAQ Options Market LLC Rules Regarding the Options Regulatory Fee). The Exchange also noted in this rule change that, ''As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-Customer component (*e.g.* Participant proprietary transactions) of its regulatory program.'' *See* 82 FR 37956. Further, the Exchange notes that it has broad regulatory responsibilities with respect to activities of its Participants, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity regardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'') the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to customer trading activity of its Participants.

[18] *See* Securities Exchange Act Release Nos. 81344 (August 8, 2017), 82 FR 37955 (August 14, 2017) (SR–NASDAQ–2017–068); 78360 (July 19, 2016), 81 FR 48475 (July 25, 2016) (SR–NASDAQ–2016–096); and 76950 (January 21, 2016), 81 FR 4687 (January 27, 2016) (SR–NASDAQ–2016–003).

[19] *Id.*

instance, today, Nasdaq MRX, LLC (''MRX'') assesses a lower ORF of $0.0004 per contract side.[20] MRX has assessed this rate since February 1, 2019.[21] Depending on where a customer order is executed, a Participant could be assessed a much different ORF. For example, in the case where a customer order is sent to NOM and routed to MRX, and a non-Participant cleared that transaction, the NOM ORF of $0.0020 would not be assessed to the Participant who executed the transaction or cleared the transaction, rather the MRX rate of $0.0004 per contract side would be assessed. In that same scenario presuming a non-Participant cleared the transaction, if the customer order could have executed on NOM instead of routing away the Participant would have been assessed the NOM ORF of $0.0020 per contract side. The customer, in that instance, would have no knowledge of where the order could be executed, as the liquidity profile of each exchange may differ at that exact moment. Therefore, Participants could be assessed a different ORF on the same day on the same transaction based on routing decisions, and in those cases the Participant would continue to benefit from the regulatory program available on each market and discover where the liquidity is available, irrespective of any ORF rate differentials across markets.

The Exchange believes recommencing the ORF on February 1, 2022 at the same rate, unless options volumes or the Exchange's regulatory expenses at that time warrant a proposed rule change, does not create an undue burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. Recommencing the assessment of the current ORF does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

[20] *See* Securities Exchange Act Release Nos. 85127 (February 13, 2019), 84 FR 5173 (February 20, 2019) (SR–MRX–2019–03).

[21] Of note, prior to February 1, 2019, MRX assessed no ORF thereby creating a calendar year where Participants were assessed no ORF for a period similar to what is proposed.

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 is effective upon filing pursuant to Section 19(b)(3)(A)[22] of the Act and subparagraph (f)(2) of Rule 19b–4[23] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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)[24] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2021–057 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 No. SR–NASDAQ–2021–057. 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 Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2021–057, and should be submitted on or before September 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17177 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(2).

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–433, OMB Control No. 3235–0489]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 17a–6

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'') is soliciting comments on the collection of information provided for in Rule 17a–6 (17 CFR 240.17a–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to

the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17a– permits national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board (''MSRB'') (collectively, ''SROs'') to destroy or convert to microfilm or other recording media records maintained under Rule 17a–1, if they have filed a record destruction plan with the Commission and the Commission has declared the plan effective.

There are currently 35 SROs: 24 national securities exchanges, 1 national securities association, the MSRB, and 9 registered clearing agencies. Of the 35 SROs, only 2 SRO respondents have filed a record destruction plan with the Commission. The staff calculates that the preparation and filing of a new record destruction plan should take 160 hours. Further, any existing SRO record destruction plans may require revision, over time, in response to, for example, changes in document retention technology, which the Commission estimates will take much less than the 160 hours estimated for a new plan. The Commission estimates that each SRO that has filed a destruction plan will spend approximately 30 hours per year making required revisions. Thus, the total annual time burden is estimated to be approximately 60 hours per year based on two respondents (30×2). The approximate internal compliance cost per hour is $428, resulting in a total internal cost of compliance for these respondents of approximately $25,680 per year (60 hours at $428 per hour).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 6, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17153 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–336, OMB Control No. 3235–0379]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form F–X

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–X (17 CFR 239.42) is used to appoint an agent for service of process by Canadian issuers registering securities on Forms F–7, F–8, F–9 or F–10 under the Securities Act of 1933(15 U.S.C. 77a *et seq.*), or filing periodic reports on Form 40–F under the Exchange Act of 1934(15 U.S.C. 78a *et seq.*). The information collected must be filed with the Commission and is publicly available. We estimate that it takes approximately 2 hours per response to prepare Form F–X and that the information is filed by approximately 114 respondents for a total annual reporting burden of 228 hours (2 hours per response $\times$ 114 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 6, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17158 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92594; File No. SR–CboeBZX–2021–014]

Self-Regulatory Organizations; Cboe BZX Exchange, 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 Allow Invesco Focused Discovery Growth ETF and Invesco Select Growth ETF To Strike and Publish Multiple Intraday Net Asset Values

August 6, 2021.

On January 22, 2021, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow Invesco Focused Discovery Growth ETF and Invesco Select Growth ETF to strike and publish multiple intraday net asset values. The proposed rule change was published for comment in the **Federal Register** on February 10, 2021.[3]

On March 24, 2021, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91064 (February 4, 2021), 86 FR 8935 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On May 11, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change.[7] The Commission has not received any comment letters on the proposed rule change.

Section 19(b)(2) of the Exchange Act[8] provides that, after initiating disapproval 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 by not more than 60 days if the Commission determines that a longer period is appropriate and publishes reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on February 10, 2021. August 9, 2021 is 180 days from that date, and October 8, 2021 is 240 days from that date.

The Commission finds it 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. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[9] designates October 8, 2021 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–CboeBZX–2021–014).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17170 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* Securities Exchange Act Release No. 91398, 86 FR 16650 (March 30, 2021). The Commission designated May 11, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 91845, 86 FR 26767 (May 17, 2021).

[8] 15 U.S.C. 78s(b)(2).

[9] *Id.*

[10] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–662, OMB Control No. 3235–0720]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form 1–K

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 1–K (17 CFR 239.91) is used to file annual reports by Tier 2 issuers under Regulation A, an exemption from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Tier 2 issuers under Regulation A conducting offerings of up to $50 million within a 12-month period are required to file Form 1–K. Form 1–K provides audited year-end financial statements and information about the issuer's business operation, ownership, management, liquidity, capital resources and operations on an annual basis. In addition, Part I of the Form 1–K collects information on any offerings under Regulation A that have been terminated or completed unless it has been previous reported on Form 1–Z. The purpose of the Form 1–K is to better inform the public about companies that have conducted Tier 2 offerings under Regulation A. We estimate that approximately 36 issuers file Form 1–K annually. We estimate that Form 1–K takes approximately 600 hours to prepare. We estimate that 75% of the 600 hours per response (450 hours) is prepared by the company for a total annual burden of 16,200 hours (450.0 hours per response × 36 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 6, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17155 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–620, OMB Control No. 3235–0675]

Proposed Collection[s]; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 15Ga–2 and Form ABS–15G

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15Ga–2 and Form ABS–15G (17 CFR 249.1400) is used for reports of information required under Rule 15Ga–1 and Rule 15Ga–2 (17 CFR 240.15Ga–1) (17 CFR 240.15Ga–2) of the Exchange Act of 1934 (''Exchange Act''). Exchange Act Rule 15Ga–1 requires asset-backed securitizers to provide disclosure regarding fulfilled an unfulfilled repurchase requests with respect to asset-backed securities. The purpose of the information collected on Form ABS–15G is to implement the disclosure requirements of Section 943 of the Dodd-Frank Wall Street Reform and

Consumer Protection Act to provide information regarding the use of representations and warranties in the asset-backed securities markets. Rule 15Ga-1 had a one-time reporting requirement that expired on February 14, 2012. We estimate that approximately 1,343 securitizers will file Form ABS–15G annually at estimated (19.307 hours) burden hours per response. In addition, we estimate that 75% of the 19.307 hours per response (14.48 hours) is carried internally by the securitizers for a total annual reporting burden of 19,447 hours (14.48 hours per response × 1,343 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 6, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17161 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92596; File No. SR–C2–2021–012]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Relating to the Options Regulatory Fee

August 6, 2021.

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 August 2, 2021, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') 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 C2 Exchange, Inc. (the ''Exchange'' or ''C2 Options'') proposes to amend its Fees Schedule relating to the Options Regulatory Fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to reduce the Options Regulatory Fee (''ORF'') from $0.0004 per contract to $0.0003 per contract, effective August 2, 2021, in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

The ORF is assessed by C2 Options to each Trading Permit Holder (''TPH'') for options transactions cleared by the TPH that are cleared by the Options Clearing Corporation (''OCC'') in the customer range, regardless of the exchange on which the transaction occurs.[3] In other words, the Exchange imposes the ORF on all customer-range transactions cleared by a TPH, even if the transactions do not take place on the Exchange. The ORF is collected by OCC on behalf of the Exchange from the Clearing Trading Permit Holder (''CTPH'') or non-CTPH that ultimately clears the transaction. With respect to linkage transactions, C2 Options reimburses its routing broker providing Routing Services pursuant to C2 Options Rule 5.36 for options regulatory fees it incurs in connection with the Routing Services it provides.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of TPH customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as human resources, legal, information technology, facilities and accounting. These indirect expenses are estimated to be approximately 20% of C2's total regulatory costs for 2021. Thus, direct expenses are estimated to be approximately 80% of total regulatory

[3] The Exchange notes ORF also applies to customer-range transactions executed during Global Trading Hours.

costs for 2021. In addition, it is Cboe Options' [sic] practice that revenue generated from ORF not exceed more than 75% of total annual regulatory costs.

The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs in a given year, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange also notifies TPHs of adjustments to the ORF via Exchange Notice.[4] Based on the Exchange's most recent semi-annual review, the Exchange is proposing to reduce the amount of ORF that will be collected by the Exchange from $0.0004 per contract side to $0.0003 per contract side. The proposed decrease is based on the Exchange's estimated projections for its regulatory costs, which have decreased, balanced with recent options volumes, which has increased. For example, total options contract volume in March 2021 was approximately 34% higher than the total options contract volume in March 2020 and the total options contract volume in June 2021 was approximately 25% higher than the total options contract volume in June 2020.[5] In fact, March 2021 was the highest, and June 2021 was the second highest, options volume month in the history of U.S. equity options industry.[6] Below is also industry data from OCC which illustrates the significant increase in volume from January 2021 through March 2021.[7] Moreover, the options volume in the first quarter of 2021 was higher than the fourth quarter of 2020.[8] Also April and May 2021 volumes remain significantly high as compared to 2020 options volume in general.[9]

Volume	January 2021	February 2021	March 2021	April 2021	May 2021
Total	838,339,790	823,412,827	898,653,388	711,388,828	718,368,993
Customer	784,399,878	782,113,450	837,247,059	667,208,963	659,913,862
Total ADV	44,123,146.84	43,337,517.20	39,071,886.40	33,875,658.50	35,918,449.70
Customer ADV	41,284,204.11	41,163,865.79	36,402,046.04	36,402,046.04	32,995,693.10

These expectations are estimated, preliminary and may change. There can be no assurance that the Exchange's final costs for 2021 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with the Exchange's other non-ORF regulatory fees and fines, the revenue being generated by ORF using the current rate results in revenue that is running in excess of the Exchange's estimated regulatory costs for the year.[10] Particularly, as discussed above, the options market has seen a substantial increase in volume over the first half of the year, up even from last year's unprecedented spike in volatility and volume. This increase resulted in higher volume than was originally projected by the Exchange (thereby resulting in higher ORF revenue than projected). Moreover, in addition to projected reductions in regulatory expenses, the Exchange experienced further unanticipated reductions in costs, in connection with the continuing COVID–19 pandemic (*e.g.,* continued reduction in travel expenses).[11] Accordingly, because revenue generated by the current ORF rates, when combined with the Exchange's other non-ORF regulatory fees and fines, is expected to exceed the Exchange's regulatory costs for the year, the Exchange proposes to decrease its ORF rate. Particularly, the Exchange believes that by decreasing the ORF, as amended, when combined with all of the Exchange's other regulatory fees and fines, would allow the Exchange to continue covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the current rate.[12]

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

The Exchange lastly proposes to update two outdated rule references in the notes under the Options Regulatory Fee section of the Fees Schedule (*i.e.,* C2 Options Rule 6.15 and Cboe Options Rule 15.1). First, the Exchange notes that it recently updated various rule numbers in its Rulebook to better align with the Rulebook of its affiliate Cboe Exchange, Inc. (''Cboe Options''), including former C2 Options Rule 6.15 which was renumbered to C2 Options Rule 5.36.[13] Similarly, Cboe Options had reorganized its Rulebook during its technology migration which resulted in a number of rules being relocated to different rule numbers, including Cboe Options Rule 15.1 which was renumbered to Cboe Options Rule 7.1.[14] The Exchange inadvertently did not update these corresponding rule references in the Fees Schedule when those updates were first made and seeks to do so now. As such, the Exchange proposes to (i) update the rule reference to C2 Options Rule 6.15 to C2 Options Rule 5.36 and (ii) update the rule reference to Cboe Options Rule 15.1 to Cboe Options Rule 7.1 in the Fees Schedule.

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

[4] The Exchange endeavors to provide TPHs with such notice at least 30 calendar days prior to the effective date of the change. The Exchange notified TPHs of the proposed rate change for August 2, 2021 on July 1, 2021. *See* Exchange Notice, C2021070103 ''Cboe Options Exchanges Regulatory Fee Update Effective August 2, 2021.''

[5] *See https://www.theocc.com/Newsroom/Press-Releases/2021/04-05-OCC-March-2021-Total-Volume-Up-34-8-Percent* and *https://www.theocc.com/Newsroom/Press-Releases/2021/07-02-OCC-June-2021-Total-Volume-Up-25-6-Percent-f.*

[6] *Id.*

[7] *See* data from OCC at: *https://www.theocc.com/Market-Data/Market-DataReports/Volume-and-Open-Interest/Volume-by-Account-Type.*

[8] *Id.*

[9] *Id.*

[10] Consistent with Rule 2.2 (Regulatory Revenue), the Exchange notes that notwithstanding the excess ORF revenue collected to date, it has not used such revenue for nonregulatory purposes.

[11] The Exchange notes that in connection with proposed ORF rate changes, it provides the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a breakout of its projected regulatory expenses, including both direct and indirect allocations.

[12] The Exchange notes that its regulatory responsibilities with respect to TPH compliance with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

[13] *See* Exchange Act Release No. 92051 (May 27, 2021), 86 FR 29852 (June 3, 2021) (SR–C2–2021–009).

[14] *See* Exchange Act Release No. 87216 (October 3, 2019), 84 FR 54234 (October 9, 2019) (SR–CBOE–2019–073).

Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[16] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because customer transactions will be subject to a lower ORF fee than the current rate. Moreover, the proposed reduction is necessary in order to lessen the potential that the Exchange collects revenue in excess of its anticipated regulatory costs, in combination with other regulatory fees and fines, which is consistent with the Exchange's practices. The Exchange had designed the ORF to generate revenues that would be less than or equal to 75% of the Exchange's regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after its semi-annual review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it would be collecting revenue in excess of 75% of its regulatory costs. Indeed, the Exchange notes that when taking into account the recent options volume, coupled with the projected reduction in regulatory costs, it estimates the ORF will generate revenues that would cover more than the approximated 75% of the Exchange's projected regulatory costs. Moreover, when coupled with the Exchange's other regulatory fees and revenues, the Exchange estimates ORF to generate over 100% of the Exchange's projected regulatory costs. As such, the Exchange believes it's reasonable and appropriate to decrease the ORF amount from $0.0004 to $0.0003 per contract side.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all TPHs on all their transactions that clear in the customer range at the OCC. The Exchange believes the ORF ensures fairness by assessing higher fees to those TPHs that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (*e.g.,* staff and travel expenses), as well as investigations into customer complaints and the terminations of Registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* TPH proprietary transactions) of its regulatory program.[18] Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to its TPHs' activities, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity irregardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'')[19] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to its TPH's customer trading activity.

Lastly, the Exchange believes updating outdated rulebook cross-references in the Fees Schedule to reflect current rule numbers maintains clarity in the Fees Schedule, as well as reduces potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

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. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

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[20] and paragraph (f) of Rule 19b–4[21] 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

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78f(b)(5).

[18] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on TPH proprietary transactions if the Exchange deems it advisable.

[19] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–C2–2021–012 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 No. SR–C2–2021–012. 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 Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–C2–2021–012, and should be submitted on or before September 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17174 Filed 8–11–21; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2020–0063]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a New Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Office of Personnel Management (OPM).

This matching agreement sets forth the terms, conditions, and safeguards under which OPM will provide SSA with civil service benefit and payment data. This disclosure will provide SSA with information necessary to verify an individual's self-certification of eligibility for the Extra Help with Medicare Prescription Drug Plan Costs program (Extra Help). It will also enable SSA to identify individuals who may qualify for Extra Help as part of the agency's Medicare outreach efforts.

DATES: The deadline to submit comments on the proposed matching program is September 13, 2021. The matching program will be applicable on September 13, 2021, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2020–0063 so that we may associate your comments with the correct regulation.

CAUTION: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2020–0063 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (410) 966–0869.

3. *Mail:* Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Matthew.Ramsey@ssa.gov.* Comments are also available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Melissa Feldhan, Division Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore MD 21235–6401, at telephone: (410) 965–1416, or send an email to *Melissa.Feldhan@ssa.gov.*

SUPPLEMENTARY INFORMATION: None.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies

SSA and OPM.

Authority for Conducting the Matching Program

The legal authority for OPM to disclose information under this agreement is 42 U.S.C. 1383(f).

The legal authority for SSA to conduct this computer matching is 1144(a)(1) and (b)(1) and 1860D–14(a)(3) of the Social Security Act (42 U.S.C. 1320b–14(a)(1) and (b)(1) and 1395w–114(a)(3)).

Purpose(s)

This matching agreement sets forth the terms, conditions, and safeguards under which OPM will provide SSA with civil service benefit and payment data. This disclosure will provide SSA with information necessary to verify an individual's self-certification of eligibility for the Extra Help with

[22] 17 CFR 200.30–3(a)(12).

Medicare Prescription Drug Plan Costs program (Extra Help). It will also enable SSA to identify individuals who may qualify for Extra Help as part of the agency's Medicare outreach efforts.

Categories of Individuals

The individuals whose information is involved in this matching program are individuals who self-certify their eligibility for the Extra Help program.

Categories of Records

OPM's data file will consist of approximately 75,000 records of updated payment information for new civil service annuitants and annuitants whose civil service annuity has changed. SSA's comparison file consists of approximately 111 million records from the Medicare Database file.

OPM will provide SSA with electronic files containing civil service benefit and payment data for individuals who apply for the Extra Help program. The file includes:

a. Payee Name and Date of Birth,

b. Payee Social Security number,

c. Payee Civil Service Claim Number, and

d. Amount of current gross civil service benefits.

System(s) of Records

OPM will provide SSA with electronic files containing civil service benefit and payment data from its system of records (SOR) titled OPM/Central–1, Civil Service Retirement and Annuitant Records, last fully published at 73 FR 15013 (March 20, 2008), and amended at 80 FR 74815 (Nov. 30, 2015).

SSA will match OPM data with the SSA SOR 60–0321, ''Medicare Database File,'' last fully published at 71 FR 42159 (July 25, 2006), and amended at 72 FR 69723 (December 10, 2007) and 83 FR 54969 (November 1, 2018).

[FR Doc. 2021–17269 Filed 8–11–21; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 11498]

Designation of Sidan Ag Hitta and Salem ould Breihmatt as Specially Designated Global Terrorists

Acting under the authority of and in accordance with section 1(a)(ii)(B) of E.O. 13224, I hereby determine that (a) the person known as Sidan Ag Hitta, also known as Asidan Ag Hitta, also known as Abu Qarwani, also known as Abu Abdelhakim al-Kidali, also known as Abu 'Abd al-Hakim and (b) the person known as Salem ould Breihmatt, also known as Abu Hamza al-Shanqiti, also known as Abu Hamza al-Shinqiti, also known as Hamza al-Mauritani, also known as Hamza Nitrik, also known as Cheikh ould Mohamed Saleck ould Abed, are leaders of Jama'at Nusrat al-Islam wal-Muslimin, a group whose property and interests in property are blocked pursuant to a prior determination by the Secretary of State pursuant to E.O. 13224.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to these determinations who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This determination shall be published in the **Federal Register**.

Authority: E.O. 13224, Section 1(a)(ii).

Dated: July 28, 2021.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2021–17283 Filed 8–11–21; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 11496]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Underground Modernist: E. McKnight Kauffer'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Underground Modernist: E. McKnight Kauffer'' at the Cooper Hewitt, Smithsonian Design Museum, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–17249 Filed 8–11–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11495]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Art Along the Rivers: A Bicentennial Celebration'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Art Along the Rivers: A Bicentennial Celebration'' at Saint Louis Art Museum, at Saint Louis, Missouri, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C.

6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–17245 Filed 8–11–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 11494]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Ramses and the Gold of the Pharaohs'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Ramses and the Gold of the Pharaohs'' at the Houston Museum of Natural Science, in Houston, Texas, the Fine Arts Museums of San Francisco, de Young Museum, in San Francisco, California, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–17243 Filed 8–11–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11499]

Designation of Ali Mohamed Rage and Abdikadir Mohamed Abdikadir as Specially Designated Global Terrorists

Acting under the authority of and in accordance with section 1(a)(ii)(B) of E.O. 13224, I hereby determine that (a) the person known as Ali Mohamed Rage, also known as Ali Mohammed Rage, also known as Ali Dheere, also known as Ali Dhere, and (b) the person known as Abdikadir Mohamed Abdikadir, also known as Abdukadir Mohamed Abdukadir, also known as Abdulkadir Mohamed Abdulkadir, also known as Ikrima, are leaders of al-Shabaab, a group whose property and interests in property are blocked pursuant to a prior determination by the Secretary of State pursuant to E.O. 13224.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to these determinations who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This determination shall be published in the **Federal Register**.

Authority: E.O. 13224, Section 1(a)(ii).

Dated: July 28, 2021.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2021–17284 Filed 8–11–21; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 11497]

Designation of Bonomade Machude Omar as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of E.O. 13224 of September 23, 2001, as amended by E.O. 13268 of July 2, 2002, E.O. 13284 of January 23, 2003, and E.O. 13886 of September 9, 2019, I hereby determine that the person known as Bonomade Machude Omar, also known as Abu Sulayfa Muhammad, also known as Abu Suraqa Suraqa Filho, also known as Abu Surakha, also known as Ibn Omar, is a leader of ISIS-Mozambique, a group whose property and interests in property are blocked pursuant to a prior determination by the Secretary of State pursuant to E.O. 13224.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Authority: E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786.

Dated: July 28, 2021.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2021–17277 Filed 8–11–21; 8:45 am]

BILLING CODE 4710–ad–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release of Land Affecting Federal Grant Assurance Obligations at California Redwood Coast-Humboldt County Airport, Arcata, Humboldt County, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of request to release airport land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal and invites public comment to change a portion of the airport from aeronautical use to non-aeronautical use at California Redwood Coast-Humboldt County Airport (ACV), Arcata, Humboldt County, California. The proposal consists of three parcels containing 11.1 acres of airport land, located outside of the airfield, east of Baadsgaard Avenue, northeast of Airport Road and west of Central Avenue.

DATES: Comments must be received on or before September 13, 2021.

ADDRESSES: Comments on the request may be mailed or delivered to the FAA at the following address: Ms. Laurie J. Suttmeier, Manager, San Francisco Airports District Office, Federal

Aviation Administration, 1000 Marina Boulevard, Suite 220, Brisbane, California, 94005–1835. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Cody Roggatz, C.M., Director of Aviation, County of Humboldt, Department of Aviation, 3561 Boeing Avenue, McKinleyville, California 95519.

SUPPLEMENTARY INFORMATION: The land (5.36-acres of the 11.1-acre parcel) was originally acquired from the federal government as surplus land, via quitclaim deed issued by the War Assets Administration on April 15, 1957. The County in two separate transactions purchased the remaining balance of 5.74-acres from private sellers. The land will be leased for non-aeronautical revenue generation. Such use of the land represents a compatible land use that will not interfere with the airport or its operation, thereby protecting the interests of civil aviation. The airport will be compensated for the fair market value of the use of the land.

In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 75), this notice must be published in the **Federal Register** 30 days before the DOT Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

Issued in El Segundo, California, on August 9, 2021.

Brian Q. Armstrong,

Manager, Safety and Standards Branch, Airports Division, Western-Pacific Region.

[FR Doc. 2021–17258 Filed 8–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release of an Easement Restriction; Phoenix-Mesa Gateway Airport, Mesa, Maricopa County, Arizona

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of request to release airport land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal and invites public comment to release a perpetual easement restriction at the Phoenix-Mesa Gateway Airport (IWA), Mesa, Maricopa County, Arizona. The proposal consists of a 16.69- acres perpetual easement, located outside of the airfield, adjacent to the southeast corner of Ellsworth Rd and the State Route 24 extension.

DATES: Comments must be received on or before September 13, 2021.

ADDRESSES: Comments on the request may be mailed or delivered to the FAA at the following address: Mr. Mike N. Williams, Manager, Phoenix Airports District Office, Federal Aviation Administration, 3800 N Central Ave, Suite 1025, 10th Floor, Phoenix, Arizona, 85012. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. J. Brian O'Neill, Executive Director/CEO, Phoenix-Mesa Gateway Airport, 5835 S Sossaman Rd, Mesa, Arizona 85212.

FOR FURTHER INFORMATION CONTACT:

Mr. Mike N. Williams, Manager, Phoenix Airports District Office, 602–792–1061

Mr. J. Brian O'Neill, Executive Director/CEO, Phoenix-Mesa Gateway Airport, 480–988–7608

SUPPLEMENTARY INFORMATION: The perpetual easement was transferred to the Phoenix-Mesa Gateway Airport Authority in 1992 from the United States Air Force as part of the Base Realignment and Closure process. The land will be released to the adjacent property owner for compatible non-aeronautical development. Such use of the land represents a compatible land use that will not interfere with the airport or its operation, thereby protecting the interests of civil aviation. The airport will be compensated for the fair market value of the use of the land.

In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the DOT Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

Issued in El Segundo, California, on August 9, 2021.

Brian Q. Armstrong,

Manager, Safety and Standards Branch, Airports Division, Western-Pacific Region.

[FR Doc. 2021–17257 Filed 8–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0124]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From ZF Group's Commercial Vehicle Control Systems (CVCS) Division

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for exemption from ZF Group's Commercial Vehicle Control Systems Division (ZF CVCS) to allow its advanced driver-assistance systems to be mounted lower in the windshield on commercial motor vehicles than is currently permitted.

DATES: Comments must be received on or before September 13, 2021.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2021–0124 using any of the following methods:

- *Website: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. E.T., Monday-Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, 1200 New Jersey

Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

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

Public participation: The *http://www.regulations.gov* website is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* website as well as the DOT's *http://docketsinfo.dot.gov* website. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Jose R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–5541, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2021–0124), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2021–0124'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31315(b) to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. ZF CVCS's Application for Exemption

The Federal Motor Carrier Safety Regulations require devices meeting the definition of ''vehicle safety technology,'' including ZF CVCS's advanced driver-assistance systems, such as Collision Mitigation Systems, Adaptive Cruise Control, Lane Departure Warning, Lane Keeping Assist, Collision Mitigation, High Beam Assist, and Traffic Sign Recognition, to be mounted (1) not more than 4 inches below the upper edge of the area swept by the windshield wipers, or (2) not more than 7 inches above the lower edge of the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals. ZF CVCS has applied for an exemption from 49 CFR 393.60(e)(1) to allow its advanced driver-assistance systems to be mounted lower in the windshield than is currently permitted. A copy of the application is included in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on ZF CVCS's application for an exemption from 49 CFR 393.60(e)(1). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–17203 Filed 8–11–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0169]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: LOVIN LIFE (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this

notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before September 13, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0169 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0169 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0169, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email James.Mead@*dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel LOVIN LIFE is:

—*Intended Commercial Cse of Vessel:* ''To passenger charter for pleasure in Florida.''
—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Destin, FL).
—*Vessel Length and Type:* 55′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021–0169 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0169 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–17225 Filed 8–11–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0166]

Coastwise Endorsement Eligibility Determination for a Foreign-built Vessel: LIVE WIDE (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-

flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before September 13, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0166 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0166 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0166, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email James.Mead@*dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel LIVE WIDE is:

—*Intended Commercial Use of Vessel:* ''The vessel will be used for luxury day charter, sunset sails, overnight charter, tourist excursions, and sport fishing.''

—*Geographic Region Including Base of Operations:* ''Connecticut, Rhode Island, Maine, Massachusetts, Maryland, New York, Virginia, North Carolina, South Carolina, Georgia, Florida, Puerto Rico, and the USVI'' (Base of Operations: Pasadena, MD).

—*Vessel Length and Type:*′ 44′ Sail (Catamaran)

The complete application is available for review identified in the DOT docket as MARAD 2021–0166 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0166 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–17223 Filed 8–11–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0182]

Coastwise Endorsement Eligibility Determination for a Foreign-built Vessel: NATURAL (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this

notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before September 13, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0182 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Search MARAD–2021–0182 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0182, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov*.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel NATURAL is:

—*Intended Commercial Use of Vessel:* ''Six passenger for hire recreational fishing charter boat''

—*Geographic Region Including Base Of Operations:* ''Texas, Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, and North Carolina'' (Base of Operations: Port Aransas, TX)

—*Vessel Length and Type:* 41′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021–0182 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0182 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov*. Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–17224 Filed 8–11–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0167]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: DUSHI (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, Transportation (DOT).

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from

interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before September 13, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0167 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0167 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0167, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel DUSHI is:

—*Intended Commercial Use of Vessel:* ''Day sailing in the Fajardo Bay, Puerto Rico''

—*Geographic Region Including Base of Operations:* ''Puerto Rico'' (Base of Operations: Fajardo, PR)

—*Vessel Length and Type:* 35′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2021–0167 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0167 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–17221 Filed 8–11–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0165]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: JERICO 5 (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, Transportation (DOT).

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the

requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before September 13, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0165 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Search MARAD–2021–0165 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0165, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov*.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel JERICO 5 is:

—Intended Commercial Use of Vessel: ''Yacht charters''
—Geographic Region Including Base of Operations: ''Florida'' (Base of Operations: Miami, FL)
—Vessel Length and Type: 90′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021–0165 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0165 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov*. Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–17222 Filed 8–11–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0168]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: IT'S ALL GOOD (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before September 13, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0168 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0168 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0168, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email James.Mead@*dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel IT'S ALL GOOD is:

—*Intended Commercial Use of Vessel:* ''Charter service coastwise for small passenger groups no more than 10 passengers at a time''

—*Geographic Region Including Base of Operations:* ''New York and New Jersey'' (Base of Operations: Jersey City, NJ)

—*Vessel Length and Type: 53.3′ Motor*

The complete application is available for review identified in the DOT docket as MARAD 2021–0168 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0168 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–17226 Filed 8–11–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Transportation (DOT).

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before September 13, 2021.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of

comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 5, 2021.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data—Granted			
14193–M	Honeywell International Inc ...	172.101(h)	To modify the special permit to add additional portable tanks.
14518–M	Federal Cartridge Company ..	172.301(c), 173.56(b), 173.62	To modify the special permit to authorize primers to be shipped without an EX approval.
15515–M	National Aeronautics and Space Administration.	173.301(a)(1), 173.301(f)(1), 173.301(h)(3), 173.302(f)(2), 173.302(f)(4), 173.302a(a).	To modify the special permit to authorize additional outer shipping containers.
15689–M	AVL Test Systems, Inc	172.200, 172.301(c), 177.834(h).	To modify the special permit to authorize a new bottle with protected head/valve cover and a new mounting method.
20549–M	Cellblock FCS, LLC	172.400, 172.700(a), 172.102(c)(1), 172.200, 172.300.	To modify the special permit to authorize an increase in the maximum watt hour rating up to 1,000 for shipping ever larger damaged or defective lithium batteries.
20602–M	The Boeing Company	173.56(b), 173.62, 173.185(a), 173.185(b), 173.201, 173.302(a), 173.304(a), 177.848(d), 173.203.	To modify the special permit to authorize an additional Class 3 hazmat.
20639–M	ICC The Compliance Center Inc.	172.200, 172.300, 172.600, 172.700(a), 172.400, 172.500, 173.185(f).	To modify the special permit to authorize the use of EXTOVER fire suppressant material in shipments.
20881–M	Arkema Inc	172.102(c)(7)	To modify the special permit to authorize additional tanks.
21008–M	Lucid USA, Inc	172.101(j), 173.220(d), 173.185(a)(1), 173.185(b)(5).	To modify the special permit to authorize additional cells within the batteries.
21154–N	Erickson Incorporated	172.101(j), 172.200, 172.301(c), 172.302(c), 173.315(j)(1), 175.30.	To authorize the transportation in commerce of certain materials attached to or suspended from an aircraft in support of construction operations when no other suitable means are available or impracticable or when an aircraft is the only safe means of transportation without being subject to certain hazard communication requirements, quantity limitations, packing or loading and storage requirements.
21186–N	Cryogenic Industrial Solutions LLC.	172.203(a), 172.301(c), 180.211(c)(2)(i).	To authorize the repair of certain DOT 4L cylinders without requiring pressure testing.
21193–N	KULR Technology Corporation.	172.200, 172.300, 172.700(a), 172.400.	To authorize manufacture, mark, sale, and use of UN specification packagings for the transportation in commerce of batteries including damaged, defective, or recalled lithium ion cells and batteries and lithium metal cells and batteries and those contained in or packed with equipment.
21200–M	National Aeronautics and Space Administration.	173.301(a)(1), 173.301(f)(1), 173.301(h)(3), 173.302(a)(1), 173.302(f)(2).	To modify the special permit to add Nitrogen to the permit and to expand the authorized locations the permit may be utilized for refilling of breathing cylinders for the International Space Station.
21208–N	LG Energy Solution, Ltd.	172.101(j)	To authorize the transportation in commerce of lithium ion modules and battery packs exceeding 35 kg aboard cargo-only aircraft.
21216–N	Bren-Tronics, Inc	172.101(j)	To authorize the transportation in commerce of certain lithium ion modules and batteries that exceed 35 kg in non-DOT specification packaging aboard cargo-only aircraft.
21222–N	Bren-Tronics, Inc	172.101(j), 173.185(b)(1)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg in non-DOT specification packaging by cargo-only aircraft.
21249–N	Romeo Systems, Inc	172.101(j)	To authorize the transportation in commerce of certain lithium ion battery modules and battery packs each with a net weight exceeding 35 kg aboard cargo-only aircraft.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21250–N	NASA/George C Marshall Space Flight Center.	173.304a	To authorize the transportation of Lithium-ion batteries and refrigerant gases in non-specification packaging (spacecraft). (mode 1)
Special Permits Data—Denied			
16011–M	Americase, LLC	172.200, 172.300, 172.600, 172.700(a), 172.400, 172.500, 173.185(f).	To modify the special permit to authorize shipment of damaged/defective batteries up to 1500Wh without full hazmat training of employees.
20425–M	Composite Advanced Technologies, LLC.	173.302(a)	To modify the special permit to waive the annual batch test for composite cylinders.
21127–N	Sodastream USA Inc	178.35(b)(1), 178.70(e)	To authorize the manufacture of cylinders by a foreign entity without requiring Independent Inspection Agency inspection and analysis.
Special Permits Data—Withdrawn			
16016–M	ISI Automotive Austria Gmbh	173.301, 173.302a, 173.305 ..	To modify the special permit to authorize the addition of a further tube material for the pressure vessel shell of vessels with an outer diameter of 30mm.

[FR Doc. 2021–17150 Filed 8–11–21; 8:45 am]
BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Transportation (DOT).

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 13, 2021.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC. This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 05, 2021.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data			
21258–N	Veolia Es Technical Solutions, LLC.	173.224(c), 173.21(f), 173.124(a)(2)(iii)(C), 173.124(a)(2)(iii)(D).	To authorize the one-time one-way transportation of self-reactive waste for disposal. (mode 1)
21261–N	Korean Airlines Co., Ltd	172.101(j)(1), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1).	To authorize the transportation in commerce of certain explosives that are forbidden for transportation by cargo aircraft only. (mode 4)
21262–N	The Chemours Company FC LLC.	173.301(f)(2), 177.840(a)(1) ..	To authorize the transportation in commerce of certain Division 2.1 gases in cylinders without the pressure relief device (PRD) being in communication with the vapor space. (mode 1)
21264–N	National Air Cargo Group, Inc	172.101(j), 172.204(c)(3), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1).	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only. (mode 4)
21265–N	Marine Fire Systems, LLC	173.56, 173.56	To authorize the transportation of samples of a pyrotechnic extinguishing agent for testing in support of a DOT SBIR research project. (mode 1)

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21266–N	Richmond Pacific Railroad Corp.	172.203(a), 174.24, 174.26	To authorize the use of electronic means to maintain and communicate on-board train consist information in lieu of paper documentation when hazardous materials are transported by rail. (mode 2)
21267–N	Synchronous LLC	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft. (mode 4)
21268–N	Watco Companies, LLC	174.85	To authorize the transportation in commerce of hazardous materials by rail with one buffer car between placarded cars and the engines. (mode 2)
21269–N	Porsche Logistik Gmbh	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft. (mode 4)
21271–N	Orion Engineered Carbons LLC.	171.23(a)(1), 171.23(a)(5)	To authorize the transportation in commerce of Dinitrogen Tetroxide in non-DOT specification cylinders. (mode 3)
21272–N	General Motors LLC	173.220(d), 173.185(a)(1)	To authorize the transportation in commerce via motor vehicle of production batteries that have not been proven to be of a type that meets the testing requirements of the UN Manual of Test and Criteria Section 38.3. (mode 1)
21273–N	Spaceflight, Inc	173.185(e)(3)	To authorize the transportation in commerce of low production and prototype lithium batteries contained in equipment by motor vehicle. (mode 1)

[FR Doc. 2021–17148 Filed 8–11–21; 8:45 am]
BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modifications to Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Transportation (DOT).

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 27, 2021.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 5, 2021.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
14206–M	Hexagon Digital Wave LLC	180.205, 172.203(a), 172.301(c).	To modify the special permit to authorize DOT–SP 14157 and DOT–SP 13488 cylinders. (modes 1, 2, 3, 4, 5)
14287–M	Troxler Electronic Laboratories, Inc.	173.465, 173.410, 173.411, 173.412, 173.415.	To modify the special permit to authorize additional portable nuclear gauges. (modes 1, 3, 4)
20336–M	Geotek Coring Inc	173.3(d)	To modify the special permit to authorize up to 36 salvage cylinders in an ISO container. (modes 1, 3)
21139–M	KULR Technology Corporation.	172.200, 172.700(a)	To modify the special permit to authorize the transportation of lithium batteries transported for purposes of recycling, reuse, refurbishment, repurposing, or evaluation. (modes 1, 2)
21195–M	Panasonic Energy Corporation of America.	173.185(c)	To modify the special permit to authorize additional packaging. (mode 1)
21249–M	Romeo Systems, Inc.	172.101(j)	To modify the special permit to authorize the use of two additional production modules. (mode 4)

[FR Doc. 2021–17149 Filed 8–11–21; 8:45 am]
BILLING CODE P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; COVID Relief Programs: Homeowner Assistance Fund and Emergency Rental Assistance

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before October 12, 2021.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, by any of the following methods:

- *Federal eR-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number TREAS–DO–2021–0013 and the specific Office of Management and Budget (OMB) control numbers 1505–0266, 1505–0269, or 1505–0270.
- *Mail:* Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: For questions related to these programs, please contact Vikram Viswanathan by emailing *Vikram.viswanathan@treasury.gov,* or calling (202) 380–8654. Additionally, you can view the information collection requests at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

1. Title: Emergency Rental Assistance Program (ERA1).

OMB Control Number: 1505–0266.

Type of Review: Extension of a currently approved collection.

Description: On December 27, 2020, the President signed the Consolidated Appropriations Act, 2021 (the ''Act''), Public Law 116–260. Division N, Title V, Section 501(a)(1) of the Act established the Emergency Rental Assistance (ERA 1) program and provides $25 billion for the U.S. Department of the Treasury (Treasury) to make payments to States (defined to include the District of Columbia), U.S. Territories (Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), Indian tribes or Tribally Designated Housing Entities, as applicable, the Department of Hawaiian Home Lands, and certain local governments with more than 200,000 residents (collectively the ''eligible grantees'') to provide financial assistance and housing stability services to eligible households.

Forms: Award and Payment Forms, Compliance Reporting Forms.

Affected Public: State, Territorial, Tribal, and certain Local Governments.

Estimated Number of Respondents: 1,150.

Frequency of Response: Once, Monthly, Quarterly.

Estimated Total Number of Annual Responses: 4,276.

Estimated Time per Response: 15 minutes to 1 hour for award and payment forms, 4 hours to 30 hours for compliance reporting.

Estimated Total Annual Burden Hours: 47,598.

2. Title: Homeowner Assistance Fund.

OMB Control Number: 1505–0269.

Type of Review: Extension of a currently approved collection.

Description: On March 11, 2021, the President signed the American Rescue Plan Act of 2021 (the ''Act''), Public Law 117–2. Title III, Subtitle B, Section 3206 of the Act established the Homeowner Assistance Fund and provides $9.961 billion for the U.S. Department of the Treasury (Treasury) to make payments to States (defined to include the District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), Indian tribes or Tribally Designated Housing Entities, as applicable, and the Department of Hawaiian Home Lands (collectively the ''eligible entities'') to mitigate financial hardships associated with the coronavirus pandemic, including for the purposes of preventing homeowner mortgage delinquencies, defaults, foreclosures, loss of utilities or home energy services, and displacements of homeowners experiencing financial hardship after January 21, 2020, through qualified expenses related to mortgages and housing.

Forms: Award and Payment Forms, Title VI Assurance Form, and Grantee Templates and Term Sheets.

Affected Public: State and Tribal Governments.

Estimated Number of Respondents: 651.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 3,906.

Estimated Time per Response: 15 minutes to 2 hours.

Estimated Total Annual Burden Hours: 2,768.

3. Title: Emergency Rental Assistance Program (ERA2).

OMB Control Number: 1505–0270.

Type of Review: Extension of a currently approved collection.

Description: On March 11, 2021, the President signed the American Rescue Plan Act of 2021 (the ''Act''), Public Law 117–2. Title III, Subtitle B, Section 3201 of the Act authorized the Emergency Assistance (ERA 2) program and provides $21.55 billion for the U.S. Department of the Treasury (Treasury) to make payments to States (defined to include the District of Columbia), U.S. Territories (Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), and certain local governments with more than 200,000 residents (collectively the ''eligible grantees'') to provide financial assistance and housing stability services to eligible households, and cover the costs for other affordable rental housing and eviction prevention activities for eligible households.

Forms: Awards and Payment Forms, Title VI Assurance Form, Compliance Reporting Forms.

Affected Public: State, Territorial and certain Local Governments.

Estimated Number of Respondents: 482.

Frequency of Response: Once, Monthly, Quarterly.

Estimated Total Number of Annual Responses: 4,078.

Estimated Time per Response: 15 minutes for award and payment forms, 30 minutes for Title VI Assurances, 1 hour to 30 hours for compliance reporting.

Estimated Total Annual Burden Hours: 46,731.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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 of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase

of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: August 9, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2021–17264 Filed 8–11–21; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0166]

Agency Information Collection Activity Under OMB Review: Application for Ordinary Life

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice 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. Refer to ''OMB Control No. 2900–0166.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0166'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Application for Ordinary Life—VA Form 29–8700, 29–8700a, 29–8700b, 29–8700c, 29–8700d, 29–8700e, 29–8701, 29–8701a, 29–8701b, 29–8701c, 29–8701d, 29–8701e, 29–8485 and 29–8485a.

OMB Control Number: 2900–0166.

Type of Review: Reinstatement of a currently approved collection.

Abstract: These forms are used by the policyholder to apply for replacement insurance for Modified Life Reduced at Age 65 and 70. The information is required by law, 38 U.S.C Section 1904. The expiration date is being added to the forms.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 30685 on June 9, 2021, pages 30685 and 30686.

Affected Public: Individuals and Households.

Estimated Annual Burden: 1,284.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 15,400.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–17198 Filed 8–11–21; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 86 Thursday,
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Part II

Securities And Exchange Commission

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Establish the Securities Financing Transaction Clearing Service and Make Other Changes; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92570; File No. SR–NSCC–2021–010]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Establish the Securities Financing Transaction Clearing Service and Make Other Changes

August 5, 2021.

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 July 22, 2021, National Securities Clearing Corporation (''NSCC'') 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 proposed modifications to the NSCC Rules & Procedures (''Rules'')[4] that would (i) establish new membership categories and requirements for sponsoring members and sponsored members whereby existing Members would be permitted to sponsor certain institutional firms into membership, (ii) establish a new membership category and requirements for agent clearing members whereby existing Members would be permitted to submit, on behalf of their customers, transactions to NSCC for novation, (iii) establish the securities financing transaction clearing service (''Securities Financing Transaction Clearing Service'' or ''SFT Clearing Service'') to make central clearing available at NSCC for equity securities financing transactions, which are, broadly speaking, transactions where the parties exchange equity securities against cash and simultaneously agree to exchange the same securities and cash, plus or minus a rate payment, on a future date (collectively, ''Securities Financing Transactions'' or ''SFTs''), and (iv) make other amendments and clarifications to the Rules, as described in greater detail below.

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 purpose of this proposed rule change is to (i) establish new membership categories and requirements for sponsoring members and sponsored members whereby existing Members would be permitted to sponsor certain institutional firms into membership, (ii) establish a new membership category and requirements for agent clearing members whereby existing Members would be permitted to submit, on behalf of their customers, transactions to NSCC for novation, (iii) establish the SFT Clearing Service to make central clearing available at NSCC for SFTs, and (iv) make other amendments and clarifications to the Rules, as described in greater detail below.

(i) Background

NSCC is proposing to introduce central clearing for SFTs, which are, broadly speaking, securities lending transactions where parties exchange equity securities against cash and simultaneously agree to exchange the same securities and cash, plus or minus a rate payment, on a future date. In particular, the proposed SFT Clearing Service would expand central clearing at NSCC to include SFTs with a one Business Day term (*i.e.,* overnight SFTs) in eligible equity securities that are entered into by Members, institutional firms that are sponsored into NSCC by a Sponsoring Member (as defined below and in the proposed rule change), or Agent Clearing Members (as defined below and in the proposed rule change) on behalf of Customers (as defined below and in the proposed rule change), as applicable.

SFTs involve the owner of securities (typically a registered investment company, pension plan, sovereign wealth fund or other institutional firm) transferring those securities temporarily to a borrower (typically a hedge fund). SFTs are often facilitated and intermediated by broker-dealers and agent lenders (*i.e.,* custodial banks or other institutions that lend out securities as agent on behalf of institutional firms). In return for the lent securities, the borrower transfers collateral, and a net rate payment is typically transferred to either the lender or the borrower that reflects the liquidity of the lent securities, as well as interest on any cash collateral.[5] NSCC understands that SFTs provide liquidity to markets and facilitates the ability of market participants to make delivery on short-sales, and thereby avoid failures to deliver, ''naked'' shorts, and similar situations. On a typical Business Day, The Depository Trust Company (''DTC''), an NSCC affiliate, processes deliver orders related to securities lending transactions on securities having a value of approximately $150 billion.

Capital Efficiency Opportunities

The Basel III[6] capital and leverage requirements, as implemented by the U.S. banking regulators, constrain the ability of agent lenders and brokers to intermediate and facilitate SFTs.[7] NSCC believes central clearing of SFTs would be able to address these constraints, which may otherwise impair market participants' ability to engage in SFTs.

For example, NSCC believes it is uniquely positioned to create balance sheet netting opportunities for market participants (*i.e.,* the ability to offset

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NSCC filed this proposed rule change as an advance notice (SR–NSCC–2021–803) 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 http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[4] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[5] This rate payment is typically calculated in a manner similar to interest on the principal balance of a loan and accrues on a daily basis. As a result, the rate payment is typically calculated as the product of a specified balance (typically the amount of cash collateral unless the collateral consists of securities) and a specified rate (reflecting both the liquidity of the securities and the ability of the lender to re-use the cash collateral), divided by 360 or a similar day count fraction.

[6] Basel III is an internationally agreed set of measures developed by the Basel Committee on Banking Supervision in response to the financial crisis of 2007–2009.

[7] *See, e.g.,* 12 CFR part 3 (Office of the Comptroller of the Currency—Capital Adequacy Standards); 12 CFR part 217 (Federal Reserve—Capital Adequacy of Bank Holding Companies, Savings and Loan Holding Companies, and State Member Banks); 12 CFR part 252, subpart Q (Single Counterparty Credit Limits); 12 CFR part 324 (Federal Deposit Insurance Corporation—Capital Adequacy of FDIC-Supervised Institutions).

cash payables and receivables versus NSCC) by becoming the legal counterparty to both pre-novation counterparties to an SFT through novation. Specifically, market participants that borrow securities through NSCC and then onward lend those securities, or other securities, to another NSCC Member through the proposed SFT Clearing Service may have the ability to net down the cash collateral return obligations and entitlements related to such SFTs. By contrast, for bilateral SFTs, market participants may be required to record those payables and receivables on their balance sheets on a gross (rather than netted) basis. A netted balance sheet can create significant capital benefits for market participants because it can reduce the amount of regulatory capital they must hold against SFTs under the U.S. ''supplementary leverage ratio'' and other capital requirements that favor a netted balance sheet.[8]

In addition, under Basel III, bank holding companies that have broker-dealer subsidiary borrowers are required to reserve capital against their exposures to institutional firm lenders of securities in relation to the cash collateral posted by such borrowers. Those capital requirements can vary depending on the credit profile of the institutional firm lender, and generally are well in excess of those applied to exposures to qualifying central counterparties, such as NSCC.[9] The counterparty risk weight of a qualifying central counterparty, like NSCC, is 2%,[10] which may result in considerable capital savings to these bank holding companies, to the extent they participate in central clearing.

Moreover, agent lending banks and bank holding company parents of broker-dealer borrowers that participate in central clearing could receive beneficial treatment under the single counterparty credit limits, which exempt exposures to qualifying central counterparties.[11]

In light of the potential for central clearing to alleviate the aforementioned capital constraints otherwise applicable to bilateral SFTs, NSCC believes that central clearing of SFTs may increase the capacity of market participants to engage in SFTs.[12]

Fire Sale Risk Mitigation

In addition to creating capital efficiency opportunities for market participants, NSCC believes that broadening the scope of central clearing at NSCC to SFTs would also reduce the potential for market disruption from fire sales.

In the case of securities lending transactions, the primary risk of fire sales[13] relates to the reinvestment of cash collateral by institutional firms that are the lenders in securities lending transactions. Those institutional firms will typically reinvest the cash collateral they receive from the borrower into other securities. If the borrower of the securities thereafter defaults, the institutional firm lenders generally need to quickly liquidate the securities representing the reinvestment in order to raise cash to purchase the originally lent security. A substantial number of disconnected and competing liquidations by multiple lenders can create fire sale conditions for the securities being liquidated, which can harm not only the institutional firm lenders by potentially lowering the amount of cash they can raise in the sale of such securities, but also create market losses for all holders of such securities.[14]

Moreover, if an institutional firm lender should default and fail to return the cash collateral back to its borrowers, the borrowers would typically be looking to liquidate the borrowed securities in order to make themselves whole for the cash collateral they delivered to the institutional firm lender. Competing and disconnected sales of such securities could similarly create fire sale conditions and not only harm the borrowers to the extent the value of the securities decline, but also create market losses for all holders of the borrowed securities.

NSCC believes that broadening the scope of central clearing at NSCC to SFTs would reduce the potential for market disruption from fire sales for a number of reasons. First, in the event of a default, NSCC would conduct a centralized, orderly liquidation of the defaulter's SFT Positions (as defined below and in the proposed rule change). Such an organized liquidation should result in substantially less price depreciation and market disruption than multiple independent non-defaulting parties racing against one another to liquidate the positions. Second, NSCC would only need to liquidate the defaulter's net positions. By contrast, in the context of a default by a broker-dealer intermediary that runs a matched book in the bilateral securities market, both the ultimate lender and the ultimate borrower need to liquidate the defaulter's gross positions. Limiting the positions that need to be liquidated to the defaulter's net positions should reduce the volume of required sales activity, which in turn should limit the price and market impact of the close-out of the defaulter's positions. Lastly, NSCC would use its risk management resources to provide confidence to market participants that they will receive back their cash or securities, as applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario.

Liquidity Drain Risk Mitigation

Liquidity risk may also arise if, in the context of a stressed market scenario, borrowers or lenders concerned about their counterparties' creditworthiness seek to unwind their securities lending transactions and obtain the return of their cash collateral or securities. This occurred to a certain extent in 2008, when borrowers began demanding to return borrowed securities in exchange for the cash collateral the borrowers had posted to institutional firm lenders.[15] These ''runs'' may require institutional firm lenders to quickly sell off securities that are the subject of their cash reinvestments to raise cash to return to the borrowers, thereby also creating potential fire sale conditions with respect to the reinvestment securities, as described above. Similarly, borrowers may need to purchase or re-borrow securities in stressed market conditions, leading to potentially significant losses.

NSCC believes that having SFTs be centrally cleared by NSCC would lower the risk of a liquidity drain in a stress scenario. Specifically, NSCC believes that having it clear SFT activity would provide confidence to borrowers and lenders that they will receive back their cash or securities and thereby lessen parties' inclination to rush to unwind their transactions in a stressed market scenario.

[8] *See* 12 CFR 217.10(c)(4)(ii)(E)–(F).

[9] *See* 12 CFR 217.32 and 217.37 generally.

[10] *See* 12 CFR 217.35(c)(3).

[11] *See* 12 CFR 252.77(a)(3).

[12] Members should discuss this matter with their accounting and regulatory capital experts.

[13] Fire sale risk is the risk of rapid sales of assets in large amounts that temporarily depress market prices of such assets and create financial instability.

[14] *See* Financial Stability Board, Strengthening Oversight and Regulation of Shadow Banking: Policy Framework for Addressing Shadow Banking Risks in Securities Lending and Repos, at 5 (August 29, 2013) *available at https://www.fsb.org/wp-content/uploads/r_130829b.pdf?page_moved=1.* *See* also United States Securities and Exchange Commission: Securities Lending and Short Sale Roundtable Transcript (September 29, 2009), Former Chairman Schapiro's Remarks, at 2–3, *available at https://www.sec.gov/news/openmeetings/2009/roundtable-transcript-092909.pdf.*

[15] *See, e.g., id.*

Addition of New Membership Categories for Institutional Firm SFT Activity

When evaluating the opportunity to expand its cleared offerings to SFTs, NSCC engaged in extensive discussions with numerous market participants, including agent lenders, brokers, institutional firms, and critical third parties, such as matching service providers and books and records service providers. NSCC also organized several industry working groups to discuss the possibility of clearing SFTs. Each constituency has a unique perspective on the proposed SFT Clearing Service. By capturing their differing viewpoints in the design, NSCC has sought to ensure that the proposed SFT Clearing Service would reflect their needs and facilitate industry adoption of the proposed SFT Clearing Service.

There was a considerable amount of discussion between NSCC and market participants regarding the appropriate model(s) through which institutional firms should access central clearing. Some market participants expressed interest in allowing Members to sponsor institutional firms into NSCC membership in a manner similar to that provided for under the sponsoring member/sponsored member program at the Government Securities Division (''GSD'') of Fixed Income Clearing Corporation (''FICC''), an NSCC affiliate (''FICC's Sponsoring Member/Sponsored Member Program'').[16] Under FICC's Sponsoring Member/Sponsored Member Program, sponsoring members may submit to FICC transactions entered into on a principal-to-principal basis between the sponsoring member and the sponsored member.[17] On the other hand, certain other market participants, including in particular certain agent lending banks, requested that the central clearing service accommodate agent-style trading (*i.e.,* where the agent lender enters into the transaction on behalf of the institutional firm, rather than as principal counterparty). As NSCC understands it, agent-style trading is the way such agent lenders are typically approved to transact in securities lending transactions on behalf of their institutional firm clients today.[18]

NSCC considered all of this input, as well as the recent experiences of FICC in expanding the suite of both transactions and participants eligible for FICC's Sponsoring Member/Sponsored Member Program,[19] and ultimately decided to incorporate both the sponsoring/sponsored membership type (to facilitate principal style trading for institutional firms and their sponsoring members) as well as the Agent Clearing Member membership type (to facilitate agent-style trading by agent lenders on behalf of institutional firm clients) into the proposed SFT Clearing Service.[20] NSCC expects these proposed new membership types would help expand access to central clearing for institutional firms and facilitate industry adoption of the proposed SFT Clearing Service.

The proposed SFT Clearing Service would also allow for the submission of broker-to-broker activity as well as client-to-client activity (credit intermediated by Sponsoring Members and/or Agent Clearing Members) into the NSCC system.

(ii) Key Parameters of the Proposed SFT Clearing Service

Overnight SFTs

NSCC is proposing central clearing for SFTs with a one Business Day term (*i.e.,* overnight SFTs) in eligible equity securities that are entered into by Members, institutional firms that are sponsored into NSCC by Sponsoring Members, or Agent Clearing Members on behalf of customers. NSCC has determined that overnight term SFTs with a daily pair off option are more appropriate for the proposed SFT Clearing Service than open transactions with mark-to-market collections. This is because, as NSCC understands it, open transactions are not eligible for balance sheet netting given they do not have a scheduled off-leg/settlement date. As described above, the proposed SFT Clearing Service is designed to offer both balance sheet netting and capital efficiency opportunities to market participants. NSCC therefore finds it appropriate to make overnight term SFTs with a scheduled date for Final Settlement (as defined below and in the proposed rule change) of the next Business Day, rather than open transactions, eligible for central clearing through the proposed SFT Clearing Service.

For example, assume that a Transferor (as defined below and in the proposed rule change) and Transferee (as defined below and in the proposed rule change) enter into an SFT pursuant to which: (i) In the Initial Settlement (as defined below and in the proposed rule change) on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. In the Final Settlement on Tuesday, the Transferee will return 100 shares of security X to the Transferor for $100 per share. The Rate Payment (as defined below and in the proposed rule change) would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process.

SFT Counterparties

The proposed SFT Clearing Service would only be available for SFTs entered into between (i) a Member and another Member, (ii) a Sponsoring Member and its Sponsored Member (as defined below and in the proposed rule change), and (iii) an Agent Clearing Member acting on behalf of a Customer and either (x) a Member or (y) the same or another Agent Clearing Member acting on behalf of a Customer. As used in the Rules, ''Member'' includes full-service NSCC clearing members, but not Sponsored Members.[21] In addition, as

[16] *See* Rule 3A (Sponsoring Members and Sponsored Members) of the FICC GSD Rulebook (''GSD Rules''), *available at http://dtcc.com/~media/Files/Downloads/legal/rules/ficc_gov_rules.pdf*.

[17] FICC's Sponsoring Member/Sponsored Member Program also allows sponsoring members to submit to FICC transactions entered into between a sponsored member and a third-party netting member. However, based on feedback from market participants, NSCC has decided to address this type of trading via the proposed agent clearing model for SFT.

[18] In addition, certain other agent lenders who are not themselves banks or broker-dealers (and so are not eligible to become Members of NSCC) preferred a model where the institutional firm client becomes the direct member of NSCC with no obligations running between the agent lender and the clearing agency.

[19] *See* Securities Exchange Act Release Nos. 80563 (May 1, 2017), 82 FR 21284 (May 5, 2017) (SR–FICC–2017–003) (Expand the types of entities that are eligible to participate in FICC as Sponsored Members), 85470 (March 29, 2019), 84 FR 13328 (April 4, 2019) (SR–FICC–2018–013) (Expand Sponsoring Member Eligibility in the GSD Rulebook), and 88262 (February 21, 2020), 85 FR 11401 (February 27, 2020) (SR–FICC–2019–007) (Close-Out and Funds-Only Settlement Processes Associated with the Sponsoring Member/Sponsored Member Service).

[20] NSCC decided at this time not to incorporate a direct model for institutional firm clearing into the proposed SFT Clearing Service because in its experience with a similar model in FICC (the CCIT Service), the requirements that a clearing agency, such as NSCC, would be required to apply to an institutional firm that participated as a direct member (*e.g.,* Clearing Fund and loss allocation) would, as a general matter, not likely be compatible with the regulatory requirements and investment guidelines applicable to many of the regulated institutional firms that NSCC anticipates would be interested in participating in the proposed SFT Clearing Service.

[21] As defined in Rule 1 (Definitions and Descriptions), the term ''Member'' means any Person specified in Section 2.(i) of Rule 2 who has qualified pursuant to the provisions of Rule 2A. As

proposed, the only SFTs entered into by Sponsored Members that would be eligible for novation to NSCC would be SFTs between the Sponsored Member and its Sponsoring Member.[22]

Approved SFT Submitters

Consistent with the manner in which NSCC accepts cash market transactions, SFTs would be required to be submitted to NSCC on a locked-in/matched basis by an Approved SFT Submitter (as defined below and in the proposed rule change) in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Approved SFT Submitters would be selected by the SFT Members (as defined below and in the proposed rule change), subject to NSCC's approval. An Approved SFT Submitter could either be a Member or a third-party vendor. SFTs submitted to NSCC by an Approved SFT Submitter would be valid and binding obligations of each SFT Member designated by the Approved SFT Submitter as a party thereto.

Eligible Equity Securities and per Share Price Minimum

NSCC will maintain eligibility criteria for the securities that may underlie an SFT that NSCC will accept for novation. Consistent with NSCC's general approach to eligibility for securities, the eligibility criteria would not be a rule, but a separate document maintained by NSCC and available to Members. It is currently contemplated that eligible securities for SFTs in the proposed SFT Clearing Service will be limited to CNS-eligible securities.

In light of the fact that central clearing of SFTs would be a new service for NSCC, and market participants would be able to elect which of their eligible SFTs to novate to NSCC (*i.e.,* central clearing of SFTs would not be mandatory for Members), NSCC is not able to anticipate at this time the size and composition of the SFT portfolios that would be novated to NSCC. Due to this lack of history, NSCC would, as an initial matter, provide proposed SFT Clearing Service for only those SFTs where the underlying securities are CNS-eligible equity securities that have a per share price of $5 or more. NSCC selected $5 as the per share price minimum for underlying equity securities that could be the subject of a novated SFT because $5 is a common share price minimum adopted in brokerage margin eligibility schedules.

This proposed share price limitation would be implemented systemically by NSCC as one of the eligibility criteria for determining whether an equity security is eligible to be the subject of a novated SFT (rather than as a rule), and such per share price limitation could be modified by NSCC[23] at a later date after NSCC gains more experience with the nature of the SFT portfolios submitted for clearing. In addition, if the share price of underlying securities of an SFT that has already been novated to NSCC falls below $5, such SFT would continue to be novated to NSCC, but the Required SFT Deposit (as defined below and in the proposed rule change) for the affected Members would include an amount equal to 100% of the market value of such underlying securities until such time as the per share price of the underlying securities equals or exceeds $5.

Cash Collateral

Consistent with the cash market transactions NSCC clears today where cash is used to satisfy Members' purchase obligations in eligible securities, cash would likewise be the only eligible form of collateral for novated SFTs under the proposed SFT Clearing Service.[24] More specifically, NSCC would limit the SFTs that it is willing to novate to SFTs that have SFT Cash (as defined below and in the proposed rule change) equal to or greater than 100% market value of the lent securities, and would not novate any obligations to return collateral consisting of securities.[25]

NSCC would novate the Final Settlement obligations of an SFT as of the time the Initial Settlement of such SFT is completed, unless the SFT is a Bilaterally Initiated SFT (as defined below and in the proposed rule change) or a Sponsored Member Transaction (as defined below and in the proposed rule change), in which case novation of the Final Settlement obligations would occur upon NSCC reporting to the Approved SFT Submitter that the SFT has been validated and novated to NSCC.

As described above, each SFT would be collateralized by cash equal to no less than 100% of the market value of the lent securities. In addition, in order to address regulatory and investment guideline requirements applicable to certain institutional firms,[26] a Member would be permitted (but not required) to transfer an additional cash haircut above 100% (*e.g.,* 102%) to such institutional firms, *i.e.,* Independent Amount SFT Cash (as defined below and in the proposed rule change), as part of the Initial Settlement of the SFT. The Sponsoring Member or Agent Clearing Member, as applicable, that receives the Independent Amount SFT Cash in the Initial Settlement would also receive a commensurate Clearing Fund call, *i.e.,* an Independent Amount SFT Cash Deposit Requirement (as defined below and in the proposed rule change), from NSCC to reflect the value received by such Member above the market price of the equity security lent. NSCC's novation of Final Settlement obligations related to Independent Amount SFT Cash would be tied to the time the Sponsoring Member or Agent Clearing Member, as applicable, satisfies the related Independent Amount SFT Cash Deposit Requirement in cash.

RVP/DVP Settlement at DTC

The Final Settlement obligations of each SFT, other than a Sponsored Member Transaction, that is novated to NSCC would settle receive-versus-payment/delivery-versus-payment (''RVP/DVP'') at DTC.[27] SFT deliver orders would be processed in accordance with DTC's rules and procedures, including provisions relating to risk controls. DTC would accept delivery instructions for an SFT from NSCC, as agent for DTC participants that are SFT Members.[28]

Pre-novation counterparties to an SFT that is due to settle may elect to pair off (*i.e.,* offset) the Final Settlement

such, the term ''Member'' does not include a Sponsored Member. *Supra* note 4.

[22] *See* Section 5 of proposed Rule 56, which provides that a Sponsoring Member shall be permitted to submit to NSCC SFTs between itself and its Sponsored Members.

[23] The per share price limitation could be modified by NSCC without any regulatory filings; however, any change in the per share price limitation would be announced by NSCC via an Important Notice posted to its website.

[24] This is referred to as ''SFT Cash'' in the proposed rule text.

[25] *See* Section 5(a) of proposed Rule 56 and the definition of ''Securities Financing Transaction''.

[26] As an example, a registered investment company that lends securities through an agent may be required under Section 17(f) of the Investment Company Act of 1940 and Rule 17f–2 thereunder to collect cash collateral equal to no less than 102% of the market value of the lent securities. *See, e.g.,* The Adams Express Company, SEC No-Action Letter (Oct. 8, 1984). Other institutional firms may be subject to similar requirements under their established investment guidelines or applicable rules, regulations or guidance.

[27] As described below, the Final Settlement and other obligations of each Sponsored Member Transaction would, at the direction of NSCC, settle on the books and records of the relevant Sponsoring Member.

[28] On July 22, 2021, DTC submitted a proposed rule change to provide DTC participants that are also NSCC Members with settlement services in connection with NSCC's proposed SFT Clearing Service. *See* SR–DTC–2021–014, which was filed with the Commission but has not yet been published in the **Federal Register**. A copy of this proposed rule change is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

obligations of such SFT against the Initial Settlement obligations of a new SFT between the same parties on the same securities. NSCC believes that such offsets would minimize the operational burden of settling overnight obligations. NSCC would calculate and process the difference in cash collateral between the paired off SFTs, *i.e.,* Price Differential (as defined below and in the proposed rule change). Price Differential would also be processed in accordance with DTC rules and procedures, including provisions relating to risk controls. DTC would accept Price Differential payment orders for an SFT from NSCC, as agent for DTC participants that are SFT Members.

Settlement of the Rate Payment obligations and payment obligations arising from certain mandatory corporate actions and cash dividends would be processed as part of NSCC's end-of-day final money settlement process.

As an example of an SFT with a full pair off (*i.e.,* offset), assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to pair off the parties' Final Settlement obligations on the Settling SFT (as defined below and in the proposed rule change) with a Linked SFT (as defined below and in the proposed rule change) pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 100 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 100 shares of security X to the Transferor against $99 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in connection with the pair off. In addition, the Rate Payment for the Settling SFT would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process. In the Final Settlement on Wednesday, the Transferee will return 100 shares of security X to the Transferor for $99 per share. The Rate Payment for the Linked SFT would be passed by NSCC as between the Transferor and Transferee on Wednesday as part of NSCC's end-of-day final money settlement process.

As an example of an SFT with a partial pair off (*i.e.,* offset), assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to partially pair off the parties' Final Settlement obligations on the Settling SFT with a Linked SFT pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 25 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 25 shares of security X to the Transferor against $99 per share. In the Final Settlement on Tuesday for the remaining Settling SFT, the Transferee will return 75 shares of security X to the Transferor for $100 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in relation to the shares subject to pair off (*i.e.,* 25 shares of security X). In addition, the Rate Payment for the Settling SFT (*i.e.,* 100 shares of security X) would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process. In the Final Settlement on Wednesday for the Linked SFT, the Transferee will return 25 shares of security X to the Transferor for $99 per share. The Rate Payment on the Linked SFT (*i.e.,* 25 shares of security X) would be passed by NSCC as between the Transferor and Transferee on Wednesday as part of NSCC's end-of-day final money settlement process.

Buy-In, Recall and Accelerated Settlement

It is occasionally the case in the securities lending market that a borrower is solvent and able to satisfy its general obligations as they become due but unable to deliver the lent securities to the lender within the timeline requested by the lender. The contractual remedy that has developed in the bilateral securities lending market for these situations is a ''buy-in.'' Under this remedy, the lender may purchase securities equivalent to the borrowed securities in the market and charge the borrower for the cost of this purchase. This serves to benefit the lender because it allows the lender to recover the securities within its required timeline, and it benefits the borrower by avoiding a situation in which the borrower's failure to perform under a single transaction results in an event of default and close-out of all of its securities lending transactions (and potentially other positions through a cross-default). Similarly, in the bilateral space, securities borrowers may have the need to accelerate settlement of securities lending transactions if they lose a ''permitted purpose'' for such loans under Regulation T. The proposed SFT Clearing Service would seek to retain the buy-in and acceleration mechanisms, as they ensure the smooth functioning of securities markets without causing unnecessary and disorderly defaults or regulatory violations.[29]

Consistent with their rights under industry-standard documentation for bilateral SFTs, as proposed, Transferors would have the right to submit a Recall Notice (as defined below and in the proposed rule change) to NSCC in respect of a novated SFT for which Final Settlement obligations have not yet been satisfied. If the Transferee does not return the lent securities by the Recall Date (as defined below and in the proposed rule change) specified in such notice, and the Transferor would be eligible to Buy-In (as defined below and in the proposed rule change), in accordance with such timeframes and deadlines as established by NSCC for such purpose, such securities.

For example, assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on

[29] NSCC does not believe retaining the buy-in and acceleration mechanisms would undermine novation because NSCC would remain the obligor and obligee in respect of the Final Settlement, Rate Payment, and Distribution Payment (as defined below and in the proposed rule change) entitlements and obligations. These mechanisms simply affect the timing and manner in which those obligations are discharged.

Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to pair off (*i.e.,* offset) the parties' Final Settlement obligations on the Settling SFT with a Linked SFT pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 100 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 100 shares of security X to the Transferor against $99 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in connection with the pair off. In addition, the Rate Payment for the Settling SFT would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process.

Later in the day on Tuesday, the Transferor determines it now needs 100 shares of security X back in its inventory, and so the Approved SFT Submitter submits a Recall Notice to NSCC, prior to the deadline established by NSCC, on behalf of the Transferor for 100 shares of security X with a Recall Date of Thursday. At the end of day on Tuesday, the share price of security X is $98 per share. Upon receipt of the Recall Notice, the SFT would be treated as a Non-Returned SFT (as defined below and in the proposed rule change) by NSCC pursuant to Section 9(e) of proposed Rule 56 (Securities Financing Transaction Clearing Service). Accordingly, pursuant to Section 9(a) of proposed Rule 56, the Final Settlement Date (as defined below and in the proposed rule change) of the SFT would be rescheduled to Thursday, and NSCC would, on Wednesday collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee on the Non-Returned SFT. The Rate Payment for the Non-Returned SFT would also be passed by NSCC as between the Transferor and Transferee on Wednesday as part of NSCC's end-of-day final money settlement process.

Assume further that the Transferee does not transfer the 100 shares of security X on Wednesday and that the end of day price of security X on Wednesday is $97 per share. On Thursday, NSCC would again collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee on the Non-Returned SFT. The Rate Payment for the Non-Returned SFT would also be passed by NSCC as between the Transferor and Transferee on Thursday as part of NSCC's end-of-day final money settlement process. In addition, since the Recall Notice specified Thursday as the Recall Date, the Transferor would be entitled to purchase (or deem itself to have purchased) 100 shares of security X in accordance with the provisions of Section 9(b) of proposed Rule 56. Assuming that the Transferor paid a price of $95 per share for security X and submitted a written notice to NSCC of its Buy-In Costs (as defined below and in the proposed rule change) on Thursday, the Transferor would owe NSCC a Buy-In Amount (as defined below and in the proposed rule change) of $2 per share ($100 per share of SFT Cash received by the Transferor at the Initial Settlement of the SFT, less the $95 per share Buy-In Costs of the Transferor, minus $3 per share Price Differential paid by the Transferor to NSCC), and such Buy-In Amount would be debited by NSCC from the Transferor and credited to the Transferee as part of NSCC's end-of-day final money settlement process on Friday.

Similarly, consistent with their rights under industry-standard documentation for bilateral SFTs, Transferees would have the right to accelerate the scheduled Final Settlement of a novated SFT through notice from the Approved SFT Submitter to NSCC of such accelerated settlement.

For example, assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to net the parties' Final Settlement obligations on the Settling SFT with a Linked SFT pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 100 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 100 shares of security X to the Transferor against $99 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in connection with the pair off. Later in the day on Tuesday, the Transferee loses permitted purpose under Regulation T for the borrowing of 100 shares of security X. Therefore, pursuant to Section 11 of proposed Rule 56 (Securities Financing Transaction Clearing Service), the Approved SFT Submitter submits a notice to NSCC on behalf of the Transferee to accelerate the Final Settlement of the Linked SFT to Tuesday. The Transferee then on Tuesday returns 100 shares of security X to NSCC for $99 per share, and NSCC returns 100 shares of security X to the Transferor for $99 per share. The Rate Payment would be passed by NSCC for the Settling SFT as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process.

Risk Management of SFT Positions

Under the proposal, NSCC is requiring a deposit to the Clearing Fund [30] for SFT Positions, *i.e.,* Required SFT Deposit. From a market risk standpoint, SFT activity would be risk managed by NSCC in a manner consistent with Members' CNS positions but would be margined independently of the Member's other positions,[31] and a Required SFT Deposit would be collected by NSCC for all SFT activity of an SFT Member, subject to a $250,000 minimum deposit.[32] Specifically, NSCC is proposing to calculate an SFT Member's Required SFT Deposit by applying the sections of Procedure XV (Clearing Fund Formula and Other Matters) specified in Section 12 of proposed Rule 56 (*i.e.,* Sections I.(A)(1)(a), (b), (d), (f), (g), (h) of Procedure XV as well as the additional Clearing Fund formula in Section I.(B)(5) (Intraday Mark-to-Market Charge) of Procedure XV as such sections apply to CNS Transactions, and the additional Clearing Fund formula in Sections I.(B)(1) (Additional Deposits

[30] As currently defined in Rule 1 (Definitions and Descriptions), the term ''Clearing Fund'' means the fund created pursuant to Rule 4. *Supra* note 4.

[31] NSCC is not proposing at this time to portfolio margin a Member's SFT Positions with any CNS positions of the Member. NSCC may reconsider this position after it obtains a reasonable amount of experience observing the nature and volume of SFT activity submitted by Members to NSCC for novation through the proposed SFT Clearing Service.

[32] This $250,000 minimum deposit is a requirement that is separate from NSCC's proposed change to a Member's minimum (non-SFT) Clearing Fund deposit requirement, although it is designed to be consistent with such proposed change. *See* Securities Exchange Act Release No. 91809 (May 10, 2021), 86 FR 26588 (May 14, 2021) (SR–NSCC–2021–005).

for Members on the Watch List); (2) (Excess Capital Premium), (3) (Backtesting Charge), (4) (Bank Holiday Charge); Minimum Clearing Fund and Additional Deposit Requirements in Sections II.(A)1(a)–(b), II.(B), II.(C); as well as Section III (Collateral Value of Eligible Clearing Fund Securities) of Procedure XV, as such sections apply to Members). Furthermore, NSCC would require an additional Required SFT Deposit for Non-Returned SFTs that is intended to mirror the premium charged for CNS Fails Positions. NSCC would also apply the Independent Amount SFT Cash Deposit Requirement for SFTs that have Incremental Additional Independent Amount SFT Cash. NSCC is also proposing that, for the purpose of applying Section I.(A)(1)(h) of Procedure XV (Margin Liquidity Adjustment (''MLA'') charge), SFT Positions shall be netted with Net Unsettled Positions.[33]

Consistent with the manner in which clearing fund requirements are satisfied by members of FICC for their cleared securities financing transactions, NSCC would require that (i) a minimum of 40% of an SFT Member's Required SFT Deposit consist of a combination of cash and Eligible Clearing Fund Treasury Securities and (ii) the lesser of $5,000,000 or 10% of an SFT Member's Required SFT Deposit (but not less than $250,000)[34] consist of cash.[35] NSCC would also have the discretion to require an SFT Member to post its Required SFT Deposit in proportion of cash higher than would otherwise be required as described above. NSCC's determination to impose any such requirement would be made in view of market conditions and other financial and operational capabilities of the relevant SFT Member. For example, as proposed in Section 12 of Rule 56, if NSCC had specific concerns about a particular SFT Member's financial or operational capabilities, but NSCC had not yet come to the determination that ceasing to act for the SFT Member would be appropriate (but could potentially become appropriate within the near term), NSCC may request that a greater portion of the SFT Member's Required SFT Deposit to the Clearing Fund be in the form of cash in order to simplify any potential close-out liquidation required in the event of that SFT Member's default. Separately, pursuant to Section II.(A)1(a) of Procedure XV, if an SFT Member's deposit of Eligible Clearing Fund Agency Securities or Eligible Clearing Fund Mortgage-Backed Securities is in excess of 25% of the SFT Member's Required Fund Deposit, NSCC would subject the deposit to an additional haircut.

The Sponsoring Member Required Fund Deposits (as defined below and in the proposed rule change) and Agent Clearing Member Required Fund Deposits (as defined below and in the proposed rule change) would each be calculated on a gross basis, and no offsets for netting of positions as between different Sponsored Members or different Customers,[36] as applicable, would be permitted. This is to ensure that NSCC's volatility-based Clearing Fund deposit requirements represent the sum of each individual institutional firm's activity.

As proposed, the SFT Clearing Service would mitigate NSCC's liquidity risk associated with satisfaction of Final Settlement obligations owing to non-defaulting SFT Members on novated SFTs in the event of an SFT Member default by providing for satisfaction of such Final Settlement obligations to occur in accordance with the normal settlement cycle for the purchase or sale of securities, as applicable.[37] NSCC would accordingly be able to satisfy such Final Settlement obligations through market action (if necessary) rather than through its own liquidity resources. More specifically, NSCC would be able to sell the securities lent by a Defaulting SFT Member (as defined below and in the proposed rule change) and/or purchase the securities borrowed by a Defaulting SFT Member and use the proceeds of such sales and/or the securities purchased to satisfy the Defaulting SFT Member's Final Settlement obligations to non-defaulting SFT Members. In the absence of this provision, NSCC would need to rely exclusively on its liquidity resources to satisfy Final Settlement obligations owing to non-defaulting SFT Members, since it would not receive the proceeds of any market action to liquidate the Defaulting SFT Member's SFT Positions until after Final Settlement obligations were due.

The proposal would also provide that NSCC could further delay its satisfaction of Final Settlement obligations to non-defaulting SFT Members beyond the normal settlement cycle for the purchase or sale of securities to the extent NSCC determines that taking market action to close-out some or all of the defaulted SFT Member's novated SFT Positions would create a disorderly market in the relevant SFT Securities.[38] For example, to the extent that market action is required by NSCC to close-out the positions of a Defaulting SFT Member, and selling out or buying in (as applicable) the entire quantity of securities would move the market and create disorder, NSCC would adhere to pre-determined market volume limits as set forth in NSCC's internal procedures and execute its hedging strategy in order to meet its default management objectives. In such a situation, non-defaulting SFT Members would not be able to effect a recall or an associated buy-in, since such market activity would exacerbate the disorderly conditions that NSCC's delay is designed to prevent, nor would non-defaulting SFT Members otherwise be able to or accelerate the delayed Final Settlement obligations, as any such acceleration would frustrate the purpose of the delay, *i.e.,* to avoid creating a disorderly market in the relevant SFT Securities.

However, in any case, until NSCC has satisfied the Final Settlement obligations owing to non-defaulting SFT Members, NSCC would continue paying to and receiving from non-defaulting SFT Members the applicable Price Differential (*i.e.,* the change in market value of the relevant securities) with respect to their novated SFTs.[39] By continuing to process these Price

[33] ''Net Unsettled Positions'' include a Member's net of unsettled Regular Way, When-Issued and When-Distributed pending positions (*i.e.,* net positions that have not yet passed Settlement Date) and fail positions (*i.e.,* net positions that did not settle on Settlement Date). *See* Procedure XV, *supra* note 4.

[34] This $250,000 minimum cash deposit requirement is designed to be consistent with NSCC's proposed change to the minimum amount of cash that must be used to satisfy a Member's (non-SFT) Clearing Fund deposit requirement. *See* Securities Exchange Act Release No. 91809 (May 10, 2021), 86 FR 26588 (May 14, 2021) (SR–NSCC–2021–005). NSCC believes a $250,000 minimum cash deposit would serve to strengthen NSCC's liquidity resources. Cash may also be easier to access upon a Member's default, further reducing the risk of losses and using non-defaulting Member's securities or funds, or NSCC funds.

[35] These requirements are designed to be consistent with FICC GSD's clearing fund requirements of its members given that NSCC anticipates that there would be considerable overlap between the membership of FICC GSD that participate in FICC for purposes of clearing their securities financing transaction activity (including in particular sponsored repo activity) and the Members that would elect to participate in the proposed SFT Clearing Service. Specifically, FICC GSD Rule 4, Section 3 requires (i) a minimum of 40 percent of a member's required fund deposit to be in the form of cash and/or eligible clearing fund treasury securities and (ii) the lesser of $5,000,000 or 10 percent of the required fund deposit, with a minimum of $100,000, be made and maintained in cash. *See* Rule 4 (Clearing Fund and Loss Allocation) of the FICC GSD Rulebook, *supra* note 16.

[36] *See* Section 7(c) of proposed Rule 2C and Section 6(c) of proposed 2D.

[37] *See* proposed Rule 56, Section 14(b)(viii).

[38] *Id.*

[39] *See* proposed Rule 56, Section 14(b)(ix).

Differential payments until Final Settlement occurs, NSCC would ensure that non-defaulting SFT Members are kept in the same position as if the Defaulting SFT Member had not defaulted and the pre-novation counterparties had instead agreed to roll the SFTs. To the extent NSCC is required to pay a Price Differential to a non-defaulting SFT Member, NSCC would rely on the NSCC Clearing Fund, including the Required SFT Deposit, in order to cover the liquidity need associated with any such Price Differential obligation.[40] In addition, NSCC would anticipate being in regular communication with the non-defaulting SFT Members as to the timing of the satisfaction of any Final Settlement obligations related to a defaulting SFT Member.

(iii) Sponsoring Members and Sponsored Members

NSCC is proposing a sponsored membership program to allow Members to play the role of pre-novation counterparty and credit intermediary for their institutional firm clients in clearing.

NSCC has modeled a number of the aspects of the proposed sponsored member program, including the eligibility criteria and many of the risk management requirements, on FICC's Sponsoring Member/Sponsored Member Program. FICC's Sponsoring Member/Sponsored Member Program allows an FICC Netting Member to sponsor an entity that satisfies certain requirements and submit to FICC for novation certain securities transactions between the Netting Member and the sponsored entity. These securities transactions generally include the off-leg of repurchase transactions on U.S. government or agency securities or straight purchase and sales of such securities. Such transactions present similar risk management, legal, accounting, and operation considerations to SFTs, as both involve an obligation of a sponsored member and a sponsoring member to exchange cash against securities. Since 2005, FICC has worked with its members to improve its Sponsoring Member/Sponsored Member Program to address these considerations. Based on feedback from Members and its own internal assessments, NSCC believes that leveraging the provisions of FICC's Sponsoring Member/Sponsored Member program and the learning over the past decade and a half would allow NSCC to provide a sponsored member program that has a solid risk management, accounting, legal and operational foundation.

Sponsoring Members

Under the proposal, all Members would be eligible to apply to become Sponsoring Members in NSCC, subject to credit criteria that are designed to be substantially similar to those applicable to category 2 sponsoring members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members.'' [41] A Member whose application to become a Sponsoring Member has been approved by the Board of Directors or NSCC, as applicable, pursuant to proposed Rule 2C (''Sponsoring Member'') would be permitted to sponsor their institutional firm clients into membership as Sponsored Members. Such Sponsoring Members would then be able to facilitate their institutional firm clients' cleared activity via two back-to-back principal SFTs, *i.e.,* client-to-Sponsoring Member and Sponsoring Member-to-broker (or to another institutional firm client that the Sponsoring Member has sponsored into membership), and each of such transactions would be eligible for novation to NSCC.

Consistent with the requirements applicable to sponsoring members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' a Sponsoring Member would be responsible for (i) submitting data on its Sponsored Members' SFTs to NSCC or appointing a third-party Approved SFT Submitter to do so, (ii) posting to NSCC all of the Clearing Fund associated with the SFT activity of its Sponsored Members, which would be calculated on a gross basis (*i.e.,* SFT activity would not be netted across Sponsored Members for Clearing Fund purposes), (iii) providing an unconditional guaranty to NSCC for its Sponsored Members' Final Settlement and other obligations to NSCC, and (iv) covering any default loss allocable to its Sponsored Members (in addition to its own default loss allocation as a Member).

[40] For example, assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. Assume further that at midnight on Monday, NSCC ceases to act for the Transferor.

On Tuesday, NSCC executes a sale of 100 shares of security X for $99 per share. In accordance with the regular way settlement cycle for purchases and sales of equity securities, this sale will settle on Thursday.

Pursuant to Section 14(b)(viii) of proposed Rule 56 (Securities Financing Transaction Clearing Service), NSCC would likewise settle the Final Settlement obligations of the defaulting Transferor's SFT with the non-defaulting Transferee on Thursday.

Assume further that the end-of-day price of security X on Tuesday is $99 per share. On Wednesday, NSCC would pay $1 per share in Price Differential to the non-defaulting Transferee pursuant to Section 14(b)(ix) of proposed Rule 56. Assume further that the end-of-day price of security X on Wednesday is $98 per share.

On Thursday, NSCC would pay an additional $1 per share in Price Differential to the non-defaulting Transferee pursuant to Section 14(b)(ix) of proposed Rule 56. The Transferee would then return 100 shares of security X to NSCC and receive $98 per share (*i.e.,* the current market price for security X) from NSCC. As such, the non-defaulting Transferee would be made whole by NSCC for the $100 per share it transferred in the Initial Settlement of the Defaulted-Related SFT (as defined below and in the proposed rule change) since NSCC would have transferred to it $98 per share in Final Settlement plus an additional $2 per share in Price Differential.

NSCC would incur a net loss of $1 per share in this example since it would have sold security X for $99 per share and paid the non-defaulting Transferee a total of $100 per share (*i.e.,* $98 per share in Final Settlement proceeds plus $2 per share in Price Differential). NSCC would be entitled to deduct this amount from the defaulted Transferor's Clearing Fund deposits (including its SFT Deposit).

[41] If a Member is a Registered Broker-Dealer, then such Member would only be eligible to apply to become a Sponsoring Member if it satisfies the credit criteria in proposed Rule 2C (Sponsoring Members and Sponsored Members) (*i.e.,* if it has (i) Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million). Such credit criteria are comparable to the credit criteria applicable to category 2 sponsoring members that are registered broker-dealers in FICC's Sponsoring Member/Sponsored Member Program. A Sponsoring Member applicant would be viewed and surveilled as the credit counterparty to NSCC in respect to its Sponsored Member Sub-Account(s) (as defined below and in the proposed rule change) in light of its responsibility to NSCC as the processing agent and unconditional guarantor of its Sponsored Members' performance to NSCC.

In addition, NSCC may require that a Person be a Member for a time period deemed necessary by NSCC before that Person may be considered to become a Sponsoring Member. This requirement may be imposed by NSCC on a new Member that has yet to demonstrate a track record of financial responsibility and operational capability.

Furthermore, as proposed, the application of a Member to be a Sponsoring Member at NSCC that is an Agent Clearing Member or an existing FICC sponsoring member would not be required to be approved by the NSCC Board of Directors. NSCC believes this approach to Board of Director's approval for Sponsoring Members is appropriate in light of the fact that the critical components of the FICC sponsoring member application as well as the NSCC Sponsoring Member and Agent Clearing Member applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are substantially similar. Nonetheless, NSCC would apply the same rigorous counterparty credit review process to any Member applying to be a Sponsoring Member at NSCC, whether or not the Member is an existing FICC sponsoring member.

Specifically, as proposed, a Sponsoring Member would be permitted to submit to NSCC for novation Sponsored Member Transactions, subject to an activity limit designed to be substantially similar to that applicable to category 2 sponsoring members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members.'' Under the proposal, if the sum of the Volatility Charges (as defined below and in the proposed rule change) applicable to a Sponsoring Member's Sponsored Member Sub-Accounts (as defined below and in the proposed rule change) and its other accounts at NSCC exceeds its Net Member Capital (as defined below and in the proposed rule change), the Sponsoring Member would not be permitted to submit activity into its Sponsored Member Sub-Accounts, unless otherwise determined by NSCC in order to promote orderly settlement. As defined in Section 5 of proposed Rule 2C, Sponsored Member Transactions are SFTs between a Sponsoring Member and its Sponsored Members.

The Sponsoring Member would establish one or more accounts at NSCC for its Sponsored Members' positions arising from such Sponsored Member Transactions, *i.e.,* Sponsored Member Sub-Accounts, which would be separate from the Sponsoring Member's proprietary accounts. For operational and administrative purposes, NSCC would interact solely with the Sponsoring Member as agent of its Sponsored Members.

Sponsoring Members would be responsible for providing NSCC with a Sponsoring Member Guaranty (as defined below and in the proposed rule change) whereby the Sponsoring Member guarantees to NSCC the payment and performance by its Sponsored Members of their obligations under the Sponsored Member Transactions submitted by the Sponsoring Member for novation. Although Sponsored Members are principally liable to NSCC for their own settlement obligations under such transactions in accordance with the Rules, the Sponsoring Member Guaranty requires the Sponsoring Member to satisfy those settlement obligations on behalf of a Sponsored Member if the Sponsored Member defaults and fails perform its settlement obligations.

In addition, a Sponsoring Member would be responsible for posting to NSCC all of the Clearing Fund associated with the Sponsored Member Transactions (which would not be netted across Sponsored Members for Clearing Fund purposes) and covering any default loss allocable to its Sponsored Members, as well as its own default loss allocation as a Member.[42]

As proposed, consistent with FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' NSCC would also provide a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Transactions between the Sponsoring Member and such Sponsored Member that have been novated to NSCC.[43]

Sponsored Members

Consistent with the requirements applicable to sponsored members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' any Person that has been approved by NSCC to be sponsored into membership by a Sponsoring Member pursuant to proposed Rule 2C (''Sponsored Member'') would be required to be either a ''qualified institutional buyer'' as defined by Rule 144A[44] under the Securities Act of 1933, as amended (''Securities Act''),[45] or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i)(H) of Rule 144A under the Securities Act, satisfies the financial requirements necessary to be a ''qualified institutional buyer'' as specified in that paragraph.

(iv) Agent Clearing Members and Customers

NSCC is proposing an agent clearing membership designed to allow Members to play the role of agent and credit intermediary for their institutional firm clients in clearing. This membership type is being proposed in response to the request of certain market participants, including in particular certain agent lending banks, that the proposed SFT Clearing Service accommodate agent-style trading (*i.e.,* where the agent lender enters into the transactions on behalf of its institutional firm clients with a third-party market participant, rather than acting as its institutional firm clients' principal pre-novation counterparty). Agent-style trading is the manner in which such agent lenders are typically approved to transact in securities lending transactions on behalf of their institutional firm clients. Under the proposal, a Member that enters into transactions on behalf of its institutional firm clients in accordance with the provisions of proposed Rule 2D (''Agent Clearing Member'') would be permitted to submit SFTs executed by it (as agent on behalf of its institutional firm clients, with each such client referred to as a ''Customer'') with a Member participating in the proposed SFT Clearing Service (which could include a Member acting in a proprietary capacity within the proposed SFT Clearing Service as well as an Agent Clearing Member).

All Members would be eligible to apply to become Agent Clearing Members in NSCC, subject to credit criteria that are substantially similar to those applicable to Sponsoring Members as well as category 2 sponsoring members in FICC's Sponsoring Member/Sponsored Member Program.[46]

[42] The following example illustrates how loss allocation would occur with respect to Sponsoring Members and Sponsored Members: Assume NSCC incurs a $100 million aggregate loss from a Defaulting Member Event. In addition, assume that the Corporate Contribution amount that NSCC would first apply to any loss from a Defaulting Member Event is $25 million. This means NSCC would allocate the remaining $75 million losses (*i.e.,* $100 million minus $25 million) to Members pursuant to Section 4 of Rule 4 (Clearing Fund), including Sponsored Member Sub-Accounts as if each were a Member. If the allocated losses to a Sponsoring Member's Sponsored Member Sub-Accounts is $1 million and the allocated losses to its Sponsoring Member in its capacity as a Member is $2 million, the Sponsoring Member would be responsible for a total of $3 million loss allocation ($1 million for its Sponsored Member Sub-Account loss allocation amount and $2 million for its own default loss allocation as a Member).

[43] *See* Section 14 of proposed Rule 2C (Sponsoring Members and Sponsored Members).

[44] 17 CFR 230.144A.

[45] 15 U.S.C. 77a *et seq.*

[46] If a Member is a Registered Broker-Dealer, then such Member would only be eligible to apply to become an Agent Clearing Member if it satisfies the credit criteria in proposed Rule 2D (*i.e.,* if it has (i) Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million). Such credit criteria are comparable to the credit criteria applicable to sponsoring members that are registered broker-dealers in FICC's Sponsoring Member/Sponsored Member Program. Similar to the review of a Sponsoring Member applicant, an Agent Clearing Member applicant would also be viewed and surveilled as the credit counterparty to NSCC in light of its role as the Member with respect to its Agent Clearing Member Customer Omnibus Account(s).

In addition, NSCC may require a Person be a Member for a time period deemed necessary by NSCC before that Person may be considered to become an Agent Clearing Member. This requirement may be imposed by NSCC on a new Member that has yet to demonstrate a track record of financial responsibility and operational capability.

Furthermore, as proposed, the application of a Member to be an Agent Clearing Member at NSCC that is a Sponsoring Member or an existing FICC

Under the proposal, the requirements to be imposed on Agent Clearing Members would largely mirror those imposed on Sponsoring Members. However, NSCC is not proposing to impose the same types of requirements on an Agent Clearing Member's Customers as it does on Sponsored Members because a Customer would not be a direct member of NSCC.

Specifically, as proposed, an Agent Clearing Member would be permitted to submit to NSCC for novation Agent Clearing Member Transactions (as defined below and in the proposed rule change), on behalf of one or more of its Customers, subject to an activity limit. Specifically, under the proposal, if the sum of the Volatility Charges applicable to an Agent Clearing Member's Agent Clearing Member Customer Omnibus Account(s) (as defined below and in the proposed rule change) and its other accounts at NSCC exceeds its Net Member Capital, the Agent Clearing Member would not be permitted to submit activity into its Agent Clearing Member Customer Omnibus Account(s), unless otherwise determined by NSCC in order to promote orderly settlement. As defined in Section 4 of proposed Rule 2D, Agent Clearing Member Transactions are SFTs that an Agent Clearing Member submits to NSCC on behalf of one or more Customers.

The Agent Clearing Member would establish one or more accounts at NSCC for its Customers' positions, *i.e.,* an Agent Clearing Member Customer Omnibus Account, that would be in the name of the Agent Clearing Member for the benefit of its Customers; however, each Agent Clearing Member Customer Omnibus Account may only contain activity where the Agent Clearing Member is acting as Transferor on behalf of its Customers, or as Transferee on behalf of its Customers, but not both (*i.e.,* activity would not be netted across Customers for Clearing Fund purposes). Under the proposal, the Agent Clearing Member would act solely as agent of its Customers in connection with the clearing of Agent Clearing Member Transactions; however, the Agent Clearing Member would remain fully liable for the performance of all obligations to NSCC arising in connection with Agent Clearing Member Transactions.

In addition, as proposed under the sponsoring/sponsored membership model, the Agent Clearing Member would be responsible for posting to NSCC all of the Clearing Fund associated with the activity of its Customers and covering any default loss allocable to its Customers, as well as its own default loss allocation as a Member;[47] however, unlike a Sponsoring Member, an Agent Clearing Member would not be required to provide an unconditional guaranty to NSCC for its Customer's obligations. This is because, as described above, the Agent Clearing Member would be fully liable for all obligations of its Customers under the Agent Clearing Member Transactions that it submitted to NSCC as the Member.

As proposed, NSCC would also provide a mechanism by which an Agent Clearing Member may, upon a default of a Customer and consent of NSCC, transfer Agent Clearing Member Transactions of the Customer established in one or more of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts from such Agent Clearing Member Customer Omnibus Accounts to the Agent Clearing Member's proprietary account at NSCC as a Member.[48]

(v) Sponsoring Member/Sponsored Member vs. Agent Clearing Member/Customers

The direct costs of central clearing (*i.e.,* Clearing Fund, loss allocation, fees and performance on behalf of an institutional firm clients) would be largely equivalent as between what NSCC proposes to apply to a Sponsoring Member and what NSCC proposes to apply to an Agent Clearing Member. Likewise, the capital costs to Sponsoring Members and Agent Clearing Members of intermediating institutional firm activity as between the two buy-side clearing models would be largely equivalent. That being said, because Sponsoring Members would be required to ensure that (i) each of their clients separately onboards with NSCC as a Sponsored Member (which NSCC understands is generally required from an accounting perspective in order for the Sponsoring Member to net on its balance sheet its SFTs with Sponsored Members against the Sponsoring Member's other NSCC-cleared SFTs),[49] (ii) each of their client's SFTs is individually submitted to NSCC for clearing, and (iii) each Sponsored Member continues to remain in compliance with the financial standards applicable to Sponsored Members throughout the course of its membership, Sponsoring Members may incur more legal, onboarding, operational and ongoing administrative costs than Agent Clearing Members with respect to their institutional firm clearing activity.

However, the sponsoring/sponsored membership model allows for principal-style trading between a Sponsoring Member and its Sponsored Member where the Sponsoring Member and Sponsored Member are pre-novation counterparties, which would generally create the opportunity for a Sponsoring Member to make an economic spread between its trade with its Sponsored Member and its offsetting trades with other NSCC Members or Sponsored Members. The opportunity for such economic spread and the ability of a Sponsoring Member to achieve balance sheet netting and capital efficiency on such trading activity through the novation of SFTs to NSCC could, for some market participants, offset the indirect additional costs associated with acting as a Sponsoring Member, rather than acting as an Agent Clearing Member.

On the other hand, as NSCC understands it, for some market participants, particularly agent lenders, their business models are not typically predicated on principal-style trading. Rather, these agency businesses typically charge fees for their services (rather than taking economic spreads) and their business models and their agreed upon investment guidelines with their institutional firm customers may only permit agented (rather than principal-style) trading for securities lending transactions. So, for such

sponsoring member would not be required to be approved by the NSCC Board of Directors. NSCC believes this approach to the Board of Director's approval for Agent Clearing Members is appropriate in light of the fact that the critical components of the FICC sponsoring member application as well as the NSCC Sponsoring Member and Agent Clearing Member applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are substantially similar. Nonetheless, NSCC would apply the same rigorous counterparty credit review process to any Member applying to be an Agent Clearing Member at NSCC, whether or not the Member is an existing FICC sponsoring member.

[47] The following example illustrates how loss allocation would occur with respect to Agent Clearing Members: Assume NSCC incurs a $100 million aggregate loss from a Defaulting Member Event. In addition, assume that the Corporate Contribution amount that NSCC would first apply to any loss from a Defaulting Member Event is $25 million. This means NSCC would allocate the remaining $75 million losses (*i.e.,* $100 million minus $25 million) to Members pursuant to Section 4 of Rule 4 (Clearing Fund), including Agent Clearing Member Customer Omnibus Accounts as if each were a Member. If the allocated losses to an Agent Clearing Member's Agent Clearing Member Customer Omnibus Account is $1 million and the allocated losses to the Agent Clearing Member in its capacity as a Member is $2 million, the Agent Clearing Member would be responsible for a total of $3 million loss allocation ($1 million for its Agent Clearing Member Customer Omnibus Account loss allocation amount and $2 million for its own default loss allocation as a Member).

[48] *See* Section 11 of proposed Rule 2D (Agent Clearing Members).

[49] *Supra* note 11.

market participants, participating in clearing at NSCC as an Agent Clearing Member may be a better fit for their overall business model.

From the perspective of an institutional firm client, the costs of clearing that may be passed through to it by its intermediary (depending on their commercial arrangements) would be largely equivalent. That said, some institutional firms that engage in securities lending may be prohibited from acting as Sponsored Members and engaging in principal-style trading with their intermediary in clearing for regulatory and/or investment guideline reasons. For those institutional firms, being able to transact SFTs as a Customer within an Agent Clearing Member Customer Omnibus Account would offer them a means to access central clearing that would otherwise not be available to them if the sponsoring/sponsored membership model were the only model available for buy-side clearing.

(vi) Proposed Rule Changes

(A) Proposed Rule 2C—Sponsoring Members and Sponsored Members

NSCC is proposing to add Rule 2C, entitled ''Sponsoring Members and Sponsored Members.'' This new rule would govern the proposed sponsored membership and would be comprised of 14 sections, each of which is described below.

Proposed Rule 2C, Section 1 (General)

Section 1 of proposed Rule 2C would be a general provision regarding the Rules applicable to Sponsoring Members and Sponsored Members.

Section 1 of proposed Rule 2C would provide that NSCC will permit the establishment of a sponsored membership relationship between a Member that is approved as a Sponsoring Member and one or more Persons that are accepted by NSCC as Sponsored Members of that particular Sponsoring Member. Section 1 of proposed Rule 2C would further provide that the rights, liabilities and obligations of Sponsoring Members and Sponsored Members shall be governed by proposed Rule 2C, and that references to the term ''Member'' in other Rules would not apply to Sponsoring Members and to Sponsored Members, in their respective capacities as such, unless specifically noted as such in proposed Rule 2C or in such other Rules.

Section 1 of proposed Rule 2C would also provide that a Sponsoring Member shall continue to have all of the rights, liabilities and obligations as set forth in the Rules and in any agreement between it and NSCC pertaining to its status as a Member, and such rights, liabilities and obligations shall be separate from its rights, liabilities and obligations as a Sponsoring Member except as contemplated under Sections 7, 8 and 9 of proposed Rule 2C and under the Sponsoring Member Guaranty.

Proposed Rule 2C, Section 2 (Qualifications of Sponsoring Members, the Application Process and Continuance Standards)

Section 2 of proposed Rule 2C would establish the eligibility requirements for Members that wish to become Sponsoring Members, the membership application process that would be required of each Member to become a Sponsoring Member, the on-going membership requirements that would apply to Sponsoring Members, as well as the requirements regarding a Sponsoring Member's election to voluntarily terminate its membership.

Under Section 2(a) of proposed Rule 2C, any Member would be eligible to apply to become a Sponsoring Member; however, if a Member is a Registered Broker-Dealer, such Member would only be permitted to apply to become a Sponsoring Member if it has (1) Net Worth (as defined below and in the proposed rule change) of at least $25 million and (2) excess net capital over the minimum net capital requirement imposed by the Commission (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million.[50] In connection therewith, NSCC is proposing ''Net Worth'' to mean, as of a particular date, the amount equal to the excess of the assets of a Person over the liabilities of such Person, computed in accordance with generally accepted accounting principles, and for Registered Broker-Dealers, Net Worth shall include liabilities that are subordinated to the claims of creditors pursuant to a satisfactory subordination agreement, as defined in Appendix D to Rule 15c3–1 of the Act.[51] As proposed, NSCC may require that a Person be a Member for a certain time period before that Person may be considered to become a Sponsoring Member.

Section 2(b) of proposed Rule 2C would provide that each Member applicant to become a Sponsoring Member would be required to provide an application and other information requested by NSCC. Sponsoring Member applications shall first be reviewed by NSCC and would require the Board of Directors' approval, unless the Member applicant is already an Agent Clearing Member under proposed Rule 2D or a sponsoring member of FICC.[52] NSCC believes this approach to the Board of Director's approval for Sponsoring Members is appropriate in light of the fact that the critical components of the FICC sponsoring member application as well as the NSCC Sponsoring Member and Agent Clearing Member applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are substantially similar.

Under Section 2(c) of proposed Rule 2C, if the Sponsoring Member application is denied, such denial would be handled in accordance with Section 1 of Rule 2A (Initial Membership Requirements).

As proposed in Section 2(d) of proposed Rule 2C, NSCC may impose additional financial requirements on a Sponsoring Member applicant based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transaction such applicant proposes to process through NSCC as a Sponsoring Member and the overall financial condition of such applicant. Under the proposal, with respect to an application of a Member to become a Sponsoring Member that requires the Board of Directors' approval, the Board of Directors shall also approve any increased financial requirements imposed by NSCC in connection with the approval of the application, and NSCC would thereafter regularly review such Sponsoring Member regarding its

[50] NSCC is proposing these financial minimums for Registered Broker-Dealer Sponsoring Member applicants to reflect the additional responsibility that the applicant would undertake as a Sponsoring Member. These financial minimums are determined based on NSCC's assessment of the minimum capital that would be necessary for a broker-dealer to conduct meaningful level of NSCC-cleared activity while serving as a credit counterparty in respect of others' trades. In its assessment, NSCC considered various factors, such as the amount of a Registered Broker-Dealer Member's capital and its impact on such Member's financial responsibility and operational capability, comparability with the financial requirements of other clearing agencies, and the desire to strike a balance between credit risk mitigation and member accessibility. For the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' these financial minimums are also designed to be consistent with the requirements applicable to registered broker/dealers that are sponsoring members in FICC's Sponsoring Member/Sponsored Member Program.

[51] 17 CFR 240.15c3–1d.

[52] It is NSCC's understanding that FICC is evaluating a change to the GSD Rules to provide that the application of an FICC sponsoring member applicant that is already an NSCC Sponsoring Member or Agent Clearing Member would not require approval of FICC's board of directors.

compliance with the increased financial requirements.[53]

In addition, under Section 2(e) of proposed Rule 2C, NSCC may require each Sponsoring Member or any Sponsoring Member applicant to furnish adequate assurances of such Sponsoring Member or Sponsoring Member applicant's financial responsibility and operational capability within the meaning of Rule 15 (Assurances of Financial Responsibility and Operational Capability), as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC, its participants, creditors or investors, to safeguard securities and funds in the custody or control of NSCC and for which NSCC is responsible, or to promote the prompt and accurate clearance, settlement and processing of securities transactions.[54]

Section 2(f) of proposed Rule 2C would provide that each Member whose Sponsoring Member application is approved would sign and deliver to NSCC (i) an agreement between NSCC and the Member and specifies the terms and conditions deemed by NSCC to be necessary in order to protect itself and its participants (''Sponsoring Member Agreement''), (ii) a guaranty, in the form and substance acceptable to NSCC, whereby the Member, in its capacity as a Sponsoring Member, guarantees to NSCC the payment and performance by its Sponsored Members of their obligations under the Rules in respect of the Sponsoring Member's Sponsored Member Sub-Accounts, including, without limitation all of the settlement obligations of its Sponsored Members in respect of such Sponsored Member Sub-Accounts (''Sponsoring Member Guaranty''), and a related legal opinion in a form satisfactory to NSCC. In addition, Section 2(f) of proposed Rule 2C would provide that nothing in the Rules shall prohibit a Sponsoring Member from seeking reimbursement from a Sponsored Member for payments made by the Sponsoring Member (whether pursuant to the Sponsoring Member Guaranty, out of Clearing Fund deposits or otherwise) with respect to obligations as to which the Sponsored Member is a principal obligor under the Rules, or as otherwise may be agreed by the Sponsored Member and Sponsoring Member.

Section 2(g) of proposed Rule 2C would provide that each Sponsoring Member shall submit to NSCC, within the timeframes and in the formats required by NSCC, the reports and information that all Members are required to submit regardless of type of Member and the reports and information required to be submitted for its respective type of Member, all pursuant to Section 2 of Rule 2B (Ongoing Membership Requirements and Monitoring) and, if applicable, Addendum O (Admission of Non-US Entities as Direct NSCC Members).

Section 2(h) of proposed Rule 2C would provide that a Sponsoring Member's books and records, insofar as they relate to the Sponsored Member Transactions submitted to NSCC, shall be open to the inspection of the duly authorized representatives of NSCC to the same extent provided in Rule 2A (Initial Membership Requirements) for other Members.

Section 2(i) of proposed Rule 2C would provide that a Sponsoring Member shall promptly inform NSCC, both orally and in writing, if it is no longer in compliance with the relevant standards and qualifications for applying to become a Sponsoring Member set forth in the proposed Rule 2C. Notification must take place immediately and in no event later than 2 Business Days from the date on which the Sponsoring Member first learns of its non-compliance. As proposed, NSCC would assess a fine in accordance with the Fine Schedule in Addendum P against any Sponsoring Member that fails to so notify NSCC.[55] If the Sponsoring Member fails to remain in compliance with the relevant standards and qualifications, NSCC would, if necessary, undertake appropriate action to determine the status of the Sponsoring Member and its continued eligibility as such. In addition, NSCC may review the financial responsibility and operational capability of the Sponsoring Member, and otherwise require from the Sponsoring Member additional reports of its financial or operational condition at such intervals and in such detail as NSCC shall determine. In addition, if NSCC has reason to believe that a Sponsoring Member may fail to comply with any of the Rules applicable to Sponsoring Members, it may require the Sponsoring Member to provide it, within such timeframe, and in such detail, and pursuant to such manner as NSCC shall determine, with assurances in writing of a credible nature that the Sponsoring Member shall not, in fact, violate any of the Rules.

Section 2(j) of proposed Rule 2C would provide that in the event that a Sponsoring Member fails to remain in compliance with the relevant requirements of the Rules, the Sponsoring Member Agreement or the Sponsoring Member Guaranty, NSCC shall have the right to cease to act for the Sponsoring Member in its capacity as a Sponsoring Member pursuant to Section 10 of proposed Rule 2C, unless the Sponsoring Member requests that such action not be taken and NSCC determines that, depending upon the specific circumstances and the record of the Sponsoring Member, it is appropriate instead to establish for such Sponsoring Member a time period, which shall be determined by NSCC and which shall be no longer than 30 calendar days unless otherwise determined by NSCC, during which the Sponsoring Member must resume compliance with such requirements. As proposed, in the event that the Sponsoring Member is unable to satisfy such requirements within the time period specified by NSCC, NSCC shall, pursuant to the Rules, cease to act for the Sponsoring Member in its capacity as a Sponsoring Member pursuant to Section 10 of the proposed Rule 2C.

Section 2(k) of proposed Rule 2C would provide that if the sum of the Volatility Charges applicable to a Sponsoring Member's Sponsored Member Sub-Accounts and its other accounts at NSCC exceeds its Net Member Capital (as defined below and in the proposed rule change), the Sponsoring Member shall not be permitted to submit activity into its Sponsored Member Sub-Accounts, unless otherwise determined by NSCC in order to promote orderly settlement.[56] As proposed, ''Volatility

[53] If the increased financial requirements are imposed in connection with a Sponsoring Member application that does not require the Board of Directors' approval, the increased financial requirements would not be subject to the Board of Directors' approval. Nonetheless, once a Sponsoring Member application is approved with increased financial requirements, NSCC would thereafter regularly review such Sponsoring Member regarding its continued adherence to such increased financial requirements as well as determine whether such increased financial requirements are still appropriate. If the Sponsoring Member is unable to adhere to the increased financial requirements, the Board of Directors may, pursuant to Section 10 of proposed Rule 2C, suspend, prohibit or limit the Sponsoring Member's access to NSCC's services.

[54] As an example, NSCC may require a Sponsoring Member or a Sponsoring Member applicant to furnish adequate assurances of such Sponsoring Member or Sponsoring Member applicant's financial responsibility and operational capability if NSCC has concerns about such Sponsoring Member or Sponsoring Member applicant's overall financial health or credit rating.

[55] *See* Addendum P (Fine Schedule), *supra* note 4.

[56] NSCC selected the Volatility Charges and Net Member Capital as the criteria for purposes of establishing the activity limit for Sponsoring Members. This is because a Sponsoring Member's total Volatility Charges being in excess of its Net Member Capital is an important indicator that the Sponsoring Member's financial resources, as

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Charge'' would mean, in respect to a Member, the amount of its Required Fund Deposit calculated by NSCC by applying Sections I.(A)(1)(a)(i)–(iv) of Procedure XV (Clearing Fund Formula and Other Matters); ''Net Member Capital'' would mean Net Capital (as defined below and in the proposed rule change), net assets or equity capital, as applicable to a Member, based on the type of regulation, and in particular the capital requirements, to which the Member is subject; and ''Net Capital'' would mean, as of a particular date, the amount equal to the net capital of a Registered Broker-Dealer as defined in Rule 15c3–1(c)(2) of the Act,[57] or any successor rule or regulation thereto.

Section 2(l) of proposed Rule 2C would provide that a Sponsoring Member may voluntarily elect to terminate its status as a Sponsoring Member, with respect to all Sponsored Members or with respect to one or more Sponsored Members from time to time, by providing NSCC with a written notice from a Sponsoring Member to NSCC that the Sponsoring Member is voluntarily electing to terminate its status as a Sponsoring Member with respect to all of its Sponsored Members or with respect to one or more of its Sponsored Members (''Sponsoring Member Voluntary Termination Notice''). The Sponsoring Member shall specify in the Sponsoring Member Voluntary Termination Notice the Sponsored Member(s) in respect of which the Sponsoring Member is terminating its status (the ''Former Sponsored Members'') and a desired date for such termination, which date shall not be prior to the scheduled Final Settlement Date of any remaining obligation owed by the Sponsoring Member to NSCC with respect to the Former Sponsored Members as of the time such Sponsoring Member Voluntary Termination Notice is submitted to NSCC, unless otherwise approved by NSCC.

Section 2(l) of proposed Rule 2C would also provide that such termination would not be effective until accepted by NSCC, which shall be no later than 10 Business Days after the receipt of the Sponsoring Member Voluntary Termination Notice from such Sponsoring Member. NSCC's acceptance shall be evidenced by a notice to NSCC's participants announcing the termination of the Sponsoring Member's status as such with respect to the Former Sponsored Members and the date on which the termination of the Sponsoring Member's status as a Sponsoring Member becomes effective (''Sponsoring Member Termination Date''). As proposed, after the close of business on the Sponsoring Member Termination Date, the Sponsoring Member shall no longer be eligible to submit Sponsored Member Transactions on behalf of the Former Sponsored Members, and each Former Sponsored Member shall cease to be a Sponsored Member unless it is the Sponsored Member of another Sponsoring Member. If any Sponsored Member Transactions is submitted to NSCC by the Sponsoring Member on behalf of a Former Sponsored Member that is scheduled to settle after the Sponsoring Member Termination Date, such Sponsoring Member's Sponsoring Member Voluntary Termination Notice would be deemed void, and the Sponsoring Member would remain subject to the proposed Rule 2C as if it had not given such Sponsoring Member Voluntary Termination Notice.

Section 2(m) of proposed Rule 2C would provide that a Sponsoring Member's voluntary termination of its status as such, in whole or in part, shall not affect its obligations to NSCC, or the rights of NSCC, including under the Sponsoring Member Guaranty, with respect to Sponsored Member Transactions submitted to NSCC before the applicable Sponsoring Member Termination Date. Any such Sponsored Member Transactions that have been novated to NSCC shall continue to be processed by NSCC. The return of the Sponsoring Member's Clearing Fund deposit shall be governed by Section 7 of Rule 4 (Clearing Fund). If an Event Period were to occur after a Sponsoring Member has submitted the Sponsoring Member Voluntary Termination Notice but on or prior to the Sponsoring Member Termination Date, in order for the Sponsoring Member to benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4, the Sponsoring Member would need to comply with the provisions of Section 6 of Rule 4 and submit a Loss Allocation Withdrawal Notice, which notice, upon submission, shall supersede and void any pending Sponsoring Member Voluntary Termination Notice previously submitted by the Sponsoring Member.

Section 2(n) of proposed Rule 2C would provide that any non-public information furnished to NSCC pursuant to proposed Rule 2C shall be held in confidence as may be required under the laws, rules and regulations applicable to NSCC that relate to the confidentiality of records. Section 2(n) would also provide that each Sponsoring Member shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such Sponsoring Member's obligations under the Rules or as otherwise required by applicable law. Section 2(n) would further provide that each Sponsoring Member acknowledges that a breach of its confidentiality obligations under the Rules may result in serious and irreparable harm to NSCC and/or DTCC for which there is no adequate remedy at law. In addition, Section 2(n) would provide that in the event of such a breach by the Sponsoring Member, NSCC and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages thereunder.[58]

Proposed Rule 2C, Section 3 (Qualifications of Sponsored Members, Approval Process and Continuance Standards)

Section 3 of proposed Rule 2C would establish the eligibility requirements for Sponsored Members, the membership application process that would be required of each Sponsored Member, the on-going membership requirements that would apply to Sponsored Members, as well as the requirements regarding a Sponsored Member's election to voluntarily terminate its membership.

Section 3(a) of proposed Rule 2C would provide that a Person shall be eligible to apply to become a Sponsored Member if: (x) It is sponsored into membership by a Sponsoring Member, and (y) it (1) is a ''qualified institutional buyer'' as defined by Rule 144A [59] under the Securities Act,[60] or (2) is a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i)(H) of Rule 144A under the Securities Act, satisfies the financial requirements necessary to be a ''qualified institutional buyer'' as specified in that paragraph. NSCC would have the right to rely on the representation provided by the

measured by its Net Capital, net assets or equity capital, may be insufficient to meet the largest component of its Required Fund Deposit (*i.e.,* Volatility Charges).

[57] 17 CFR 240.15c3–1(c)(2).

[58] Section 2(n) of proposed Rule 2C is designed to be consistent with NSCC's proposed change to revise certain provisions in the Rules relating to the confidentiality of information furnished by participants. *See* Securities Exchange Act Release No. 92334 (July 7, 2021), 86 FR 36815 (July 13, 2021) (SR–NSCC–2021–007).

[59] 17 CFR 230.144A.

[60] 15 U.S.C. 77a *et seq.*

Sponsoring Member regarding satisfaction of (y).

Section 3(b) of proposed Rule 2C would provide that each time that a Sponsoring Member wishes to sponsor a Person into membership, it shall provide NSCC with the representation referred to in Section 3(a) of proposed Rule 2C, as well as any additional information in such form as may be prescribed by NSCC. NSCC shall approve or disapprove Persons as Sponsored Members. If NSCC denies the request of a Sponsoring Member to add a Person as a Sponsored Member, such denial shall be handled in the same manner as set forth in Section 1 of Rule 2A (Initial Membership Requirements) with respect to membership applications except that the written statement referred to therein shall be provided to both the Sponsoring Member and the Person seeking to become a Sponsored Member.

Section 3(c) of proposed Rule 2C would provide that each Person to become a Sponsored Member shall sign and deliver to NSCC an agreement whereby the Person shall agree to any terms and conditions deemed by NSCC to be necessary in order to protect itself and its participants (the ''Sponsored Member Agreement''). Each Person to become a Sponsored Member that shall be an FFI Member must be FATCA Compliant.

Section 3(d) of proposed Rule 2C would provide that a Sponsored Member shall immediately inform its Sponsoring Member, both orally and in writing, if the Sponsored Member is no longer in compliance with the requirements of Section 3(a) of proposed Rule 2C. A Sponsoring Member shall promptly inform NSCC, both orally and in writing, if a Sponsored Member is no longer in compliance with the requirements of Section 3(a) of proposed Rule 2C. Notification to NSCC by the Sponsoring Member must take place within one (1) Business Day from the date on which the Sponsoring Member first learns of the Sponsored Member's non-compliance. NSCC would assess a fine in accordance with the Fine Schedule in Addendum P against any Sponsoring Member that fails to so notify NSCC.[61]

Section 3(e) of proposed Rule 2C would provide that a Sponsored Member may voluntarily elect to terminate its membership by providing NSCC with a written notice from the Sponsored Member to NSCC that the Sponsored Member is voluntarily electing to terminate its membership (''Sponsored Member Voluntary Termination Notice''). The Sponsored Member shall specify in the Sponsored Member Voluntary Termination Notice a desired date for the termination, which date shall not be prior to the scheduled Final Settlement Date of any remaining obligation owed by the Sponsored Member to NSCC as of the time such Sponsored Member Voluntary Termination Notice is submitted to NSCC, unless otherwise approved by NSCC.

In addition, Section 3(e) of proposed Rule 2C would provide that such termination would not be effective until accepted by NSCC, which shall be no later than 10 Business Days after the receipt of the Sponsored Member Voluntary Termination Notice from such Sponsored Member. NSCC's acceptance shall be evidenced by a notice to NSCC's participants announcing the termination of the Sponsored Member and the date on which the termination of the Sponsored Member becomes effective (''Sponsored Member Termination Date''). After the close of business on the Sponsored Member Termination Date, the relevant Sponsoring Member shall no longer be eligible to submit Sponsored Member Transactions on behalf of the Sponsored Member. If any Sponsored Member Transaction is submitted to NSCC by the relevant Sponsoring Member on behalf of the Sponsored Member that is scheduled to settle after the Sponsored Member Termination Date, such Sponsored Member's Sponsored Member Voluntary Termination Notice would be deemed void, and the Sponsored Member would remain subject to the proposed Rule 2C as if it had not given such Sponsored Member Voluntary Termination Notice.

Section 3(f) of proposed Rule 2C would provide that a Sponsored Member's voluntary termination shall not affect its obligations to NSCC, or the rights of NSCC, including under the Sponsoring Member Guaranty, with respect to Sponsored Member Transactions submitted to NSCC before the Sponsored Member Termination Date, and the Sponsoring Member Guaranty shall remain in effect to cover all outstanding obligations of the Sponsored Member to NSCC that are within the scope of such Sponsoring Member Guaranty.

Proposed Rule 2C, Section 4 (Compliance With Laws)

Section 4 of proposed Rule 2C would provide that each Sponsoring Member and Sponsored Member shall comply in all material respects with all applicable laws, including applicable laws relating to securities, taxation and money laundering, as well as global sanctions laws, in connection with the use of NSCC's services.

Proposed Rule 2C, Section 5 (Sponsored Member Transactions)

Section 5 of proposed Rule 2C would provide that a Sponsoring Member shall be permitted to submit to NSCC SFTs between itself and its Sponsored Members (''Sponsored Member Transactions'') in accordance with proposed Rule 56, as described below. Section 5 of proposed Rule 2C would further provide that NSCC directs each Sponsored Member and Sponsoring Member to settle all Final Settlement, Rate Payment, Price Differential, and other securities delivery and payment obligations arising under a Sponsored Member Transaction that has been novated to NSCC by causing the relevant cash and securities to be transferred to the Transferor or Transferee, as applicable, on the books and records of the Sponsoring Member, and each Sponsored Member and Sponsoring Member agrees that any such transfer shall satisfy NSCC's corresponding obligation with respect to such Sponsored Member Transaction.

Proposed Rule 2C, Section 6 (Sponsoring Member Agent Obligations)

Section 6 of proposed Rule 2C would provide that a Sponsored Member shall appoint its Sponsoring Member to act as agent with respect to the Sponsored Member's satisfaction of its settlement obligations arising under Sponsored Member Transactions between the Sponsored Member and the Sponsoring Member and for performing all functions and receiving reports and information set forth in the Rules. NSCC's provision of such reports and information to the Sponsoring Member shall constitute satisfaction of any obligation of NSCC to provide such reports and information to the affected Sponsored Members. As proposed, notwithstanding the foregoing and any other activities the Sponsoring Member may perform in its capacity as agent for Sponsored Members, each Sponsored Member shall be obligated as principal to NSCC with respect to all settlement obligations under the Rules, and the Sponsoring Member shall not be a principal under the Rules with respect to settlement obligations of its Sponsored Members.

Proposed Rule 2C, Section 7 (Clearing Fund Obligations)

Section 7 of proposed Rule 2C would set forth the Clearing Fund obligations.

[61] *See* Addendum P (Fine Schedule), *supra* note 4.

Section 7(a) of proposed Rule 2C would provide that NSCC shall maintain a ledger maintained on the books and records of NSCC for a Sponsoring Member that reflects the outstanding SFTs that a Sponsoring Member enters into in respect of a Sponsored Member and that have been novated to NSCC, the SFT Positions or SFT Cash associated with those transactions and any debits or credits of cash associated with such transactions effected pursuant to Rule 12 (Settlement) (each a ''Sponsored Member Sub-Account''). Each Sponsoring Member shall make and maintain so long as such Member is a Sponsoring Member a deposit to the Clearing Fund as a Required Fund Deposit to support the activity in its Sponsored Member Sub-Accounts (the ''Sponsoring Member Required Fund Deposit''). Deposits to the Clearing Fund would be held by NSCC or its designated agents, to be applied as provided in the Rules.

Section 7(b) of proposed Rule 2C would provide that, in the ordinary course, for purposes of satisfying the Sponsoring Member's Clearing Fund requirements under the Rules for its Member activity, its Sponsoring Member activity, and, to the extent applicable, its Agent Clearing Member activity, the Sponsoring Member's proprietary accounts, its Sponsored Member Sub-Accounts, and its Agent Clearing Member Customer Omnibus Account(s), if any, shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time and without prior notice to the Sponsoring Member (but being obligated to give notice to the Sponsoring Member as soon as possible thereafter) and whether or not the Sponsoring Member or any of its Sponsored Members is in default of its obligations to NSCC, treat the Sponsoring Member's accounts as a single account for the purpose of applying Clearing Fund deposits; apply Clearing Fund deposits made by the Sponsoring Member with respect to any account as necessary to ensure that the Sponsoring Member meets all of its obligations to NSCC under any other account(s); and otherwise exercise all rights to offset and net against the Clearing Fund deposits any net obligations among any or all of the accounts, whether or not any other Person is deemed to have any interest in such account.[62]

Section 7(c) of proposed Rule 2C would provide that the Sponsoring Member Required Fund Deposit for each Sponsored Member Sub-Account shall be calculated separately based on the Sponsored Member Transactions in such Sponsored Member Sub-Account, and the Sponsoring Member shall, as principal, be required to satisfy the Sponsoring Member Required Fund Deposit for each of the Sponsoring Member's Sponsored Member Sub-Accounts.

Section 7(d) of proposed Rule 2C would provide that Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Rule 4 (Clearing Fund) shall apply to the Sponsoring Member Required Fund Deposit with respect to obligations of a Sponsoring Member under the Rules, including its obligations arising under the Sponsored Member Sub-Accounts, and the obligations of a Sponsoring Member under its Sponsoring Member Guaranty to the same extent as such sections apply to any Required Fund Deposit and any other obligations of a Member. For purposes of Section 1 of Rule 4, obligations and liabilities of a Member to NSCC that shall be secured shall include, without limitation, a Member's obligations as a Sponsoring Member under the Rules, including, without limitation, any obligation of any such Sponsoring Member to provide the Sponsoring Member Required Fund Deposit, such Sponsoring Member's obligations arising under the Sponsored Member Sub-Accounts of such Sponsoring Member and such Sponsoring Member's obligations under its Sponsoring Member Guaranty.

Section 7(e) of proposed Rule 2C would provide that a Sponsoring Member shall be subject to such fines as may be imposed in accordance with the Rules for any late satisfaction of a Clearing Fund deficiency call.

Proposed Rule 2C, Section 8 (Right of Offset)

Section 8 of proposed Rule 2C would provide that in the ordinary course, with respect to satisfaction of any Sponsored Member's obligations under the Rules, the Sponsoring Member's Sponsored Member Sub-Accounts, the Sponsoring Member's proprietary accounts, and the Sponsoring Member's Agent Clearing Member Customer Omnibus Accounts, if any, at NSCC shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time any obligation of the Sponsoring Member arises under the Sponsoring Member Guaranty to pay or perform thereunder with respect to any Sponsored Member, exercise a right of offset and net any such obligation of the Sponsoring Member under its Sponsoring Member Guaranty against any obligations of NSCC to the Sponsoring Member in respect of such Sponsoring Member's proprietary accounts at NSCC.[63] NSCC would generally anticipate exercising this right if, upon a Sponsoring Member default, the Sponsoring Member owed an amount under the Sponsoring Member Guaranty and was owed an amount by NSCC in relation to the Sponsoring

[62] NSCC believes it unlikely that it would exercise this authority, as the Clearing Fund deposits associated with each Sponsored Member Sub-Account, Agent Clearing Member Customer Omnibus Account and proprietary account of a Sponsoring Member are designed to be sufficient to cover the obligations of such account or sub-account. However, if a Sponsoring Member defaults or fails to perform and the Clearing Fund deposits associated with a given account or sub-account of such Sponsoring Member are not sufficient to discharge the Sponsoring Member's obligations in relation to such account or sub-account, NSCC would look to the Clearing Fund deposits related to the Sponsoring Member's other accounts or sub-accounts. For example, if NSCC ceased to act for a Sponsoring Member and the close-out of the SFT Positions established in the Sponsoring Member's Sponsored Member Sub-Accounts resulted in a loss to NSCC in excess of the Clearing Fund previously posted by the Sponsoring Member in relation to such SFT Positions, NSCC may apply to the excess any other Clearing Fund deposits posted by the Sponsoring Member to NSCC, such as Clearing Fund posted in connection with the proprietary positions of the Sponsoring Member. Similarly, if a Sponsoring Member failed to perform under the Sponsoring Member Guaranty outside the context of a cease-to-act situation and the Clearing Fund previously posted by the Sponsoring Member in relation to the SFT Positions established in the Sponsoring Member's Sponsored Member Sub-Accounts was not sufficient to satisfy the obligations under the Sponsoring Member Guaranty, NSCC may apply to the remainder any other Clearing Fund deposits posted by the Sponsoring Member to NSCC.

NSCC believes this is appropriate because the Clearing Fund deposits of a Sponsoring Member are the proprietary assets of the Sponsoring Member, and NSCC generally has the right to apply the Clearing Fund deposits of a Member to any of the Member's obligations to NSCC, regardless of whether those were the obligations that generated the Clearing Fund deposit requirement. NSCC therefore believes that, consistent with the FICC Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' a Sponsoring Member's Clearing Fund deposits should be available to satisfy any of the Sponsoring Member's guaranty or other obligations to NSCC.

[63] NSCC believes the most likely circumstance in which it would exercise this authority would be in the context of a Sponsoring Member default. If, in such circumstance, NSCC realizes a profit in closing out the positions associated with a proprietary account of the Sponsoring Member, but incurs a loss in closing out the positions associated with the Sponsored Member Sub-Accounts of the Sponsoring Member, it would offset its obligation to turn over to the Sponsoring Member the gains in relation to the Sponsoring Member's proprietary account against the obligations of the Sponsoring Member under the Sponsoring Member Guaranty.

Member's proprietary or other obligations.

Proposed Rule 2C, Section 9 (Loss Allocation Obligations)

Section 9 of proposed Rule 2C would establish loss allocation obligations under the sponsored membership model.

Section 9(a) of proposed Rule 2C would provide that Sponsored Members shall not be obligated for allocations, pursuant to Rule 4 (Clearing Fund), of loss or liability incurred by NSCC. To the extent that a loss or liability is determined by NSCC to arise in connection with Sponsored Member Transactions (*i.e.,* in connection with the insolvency or default of a Sponsoring Member), the Sponsored Members shall not be responsible for or considered in the loss allocation calculation, but rather such loss shall be allocated to other Members in accordance with the principles set forth in Section 4 of Rule 4.

Section 9(b) of proposed Rule 2C would provide that, to the extent NSCC incurs a loss or liability from a Defaulting Member Event or a Declared Non-Default Loss Event and a loss allocation obligation arises, that would be the responsibility of a Sponsored Member Sub-Account as if the Sponsored Member Sub-Account were a Member, NSCC shall calculate such loss allocation obligation as if the affected Sponsored Member were subject to such allocations pursuant to Section 4 of Rule 4, but the Sponsoring Member shall be responsible for satisfying such obligations.

Section 9(c) of proposed Rule 2C would provide that the entire amount of the Required Fund Deposit associated with the Sponsoring Member's proprietary accounts at NSCC and the entire amount of the Sponsoring Member Required Fund Deposit may be used to satisfy any amount allocated against a Sponsoring Member, whether in its capacity as a Member, a Sponsoring Member, or otherwise. With respect to an obligation to make payment due to any loss allocation amounts assessed on a Sponsoring Member pursuant to Section 9(b) of proposed Rule 2C, the Sponsoring Member may instead elect to terminate its membership in NSCC pursuant to Section 6 of Rule 4 and thereby benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4; however, for the purpose of determining the Loss Allocation Cap for such Sponsoring Member, its Required Fund Deposit shall be the sum of its Required Fund Deposits associated with its proprietary accounts at NSCC (including its proprietary SFT Account (as defined below and in the proposed rule change) pursuant to proposed Rule 56), its Sponsoring Member Required Fund Deposit, and its Agent Clearing Member Required Fund Deposits, if any, for each of its Agent Clearing Member Customer Omnibus Accounts.

Proposed Rule 2C, Section 10 (Restrictions on Access to Services by a Sponsoring Member)

Section 10 of proposed Rule 2C would establish the rights of NSCC to restrict a Sponsoring Member's access to NSCC's services.

Section 10(a) of proposed Rule 2C would provide that the Board of Directors may at any time, upon NSCC providing notice to a Sponsoring Member pursuant to Section 5 of Rule 45 (Notices), suspend a Sponsoring Member in its capacity as a Sponsoring Member from any service provided by NSCC either with respect to a particular transaction or transactions or with respect to transactions generally or prohibit or limit such Sponsoring Member's access to services offered by NSCC in the event that one or more of the factors set forth in Section 1 of Rule 46 (Restrictions on Access to Services) is present with respect to the Sponsoring Member.

Section 10(b) of proposed Rule 2C would provide that Rule 46 shall apply with respect to a Sponsoring Member in the same way as it applies to Members, including the Board of Directors' right to summarily suspend the Sponsoring Member and to cease to act for such Sponsoring Member. As under Rule 46, the Board of Directors would need to make the determination of whether to suspend, prohibit or limit a Sponsoring Member's access to services offered by NSCC on the basis of the factors set forth in that rule.

Section 10(c) of proposed Rule 2C would provide that if NSCC ceases to act for a Sponsoring Member in its capacity as a Sponsoring Member, Section 14 of proposed Rule 56 shall apply and NSCC shall decline to accept or process data from the Sponsoring Member on Sponsored Member Transactions and NSCC shall cease to act for all of the Sponsored Members of the affected Sponsoring Member (unless such Sponsored Members are also Sponsored Members of other Sponsoring Members). Section 10(c) would also provide that if NSCC suspends, prohibits or limits a Sponsoring Member in its capacity as a Sponsoring Member with respect to such Sponsoring Member's access to services offered by NSCC, NSCC shall decline to accept or process data from the Sponsoring Member on Sponsored Member Transactions and shall suspend the Sponsored Members of the affected Sponsoring Member (unless they are also Sponsored Members of other Sponsoring Members) for so long as NSCC is suspending, prohibiting or limiting the Sponsoring Member. Any Sponsored Member Transactions which have been novated to NSCC shall continue to be processed by NSCC. In addition, Section 10(c) would provide that NSCC, in in sole discretion, shall determine whether to close-out the affected Sponsored Member Transactions or permit the Sponsored Members to complete their settlement.

This is different from how NSCC would treat Agent Clearing Member Transactions of an Agent Clearing Member under Section 9 of proposed Rule 2D if NSCC ceased to act for the Agent Clearing Member. Specifically, for Agent Clearing Member Transactions, as proposed, NSCC would close-out any Agent Clearing Member Transactions which have been novated to NSCC; however, with respect to Sponsored Member Transactions, consistent with FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' NSCC would have the option to either terminate or settle a Sponsored Member's novated positions after ceasing to act for the Sponsoring Member. NSCC would have the practical and legal capability to make such an election because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customers' novated positions.

Proposed Rule 2C, Section 11 (Restrictions on Access to Services by a Sponsored Member)

Section 11 of proposed Rule 2C would establish the rights of NSCC to restrict a Sponsored Member's access to NSCC's services.

Section 11(a) of proposed Rule 2C would provide that the Board of Directors may at any time upon NSCC providing notice to a Sponsored Member and its Sponsoring Member pursuant to Section 5 of Rule 45 (Notices), suspend a Sponsored Member from any service provided by NSCC either with respect to a particular transaction or transactions or with respect to transactions generally, or prohibit or limit such Sponsored Member with respect to access to services offered by NSCC in the event that one or more of the factors set forth in Section 1 of Rule 46 (Restrictions on Access to Services) is present with respect to the Sponsored Member.

Section 11(b) of proposed Rule 2C would provide that Rule 46 shall apply with respect to a Sponsored Member in the same way as it applies to Members, including the Board of Directors' right to summarily suspend a Sponsored Member and to cease to act for such Sponsored Member. As under Rule 46, the Board of Directors would need to make the determination of whether to suspend, prohibit or limit a Sponsored Member's access to services offered by NSCC on the basis of the factors set forth in that rule.

Section 11(c) of proposed Rule 2C would provide that if NSCC ceases to act for a Sponsored Member, Section 14 of proposed Rule 56 shall apply.

Section 11(d) of proposed Rule 2C would provide that NSCC shall cease to act for a Sponsored Member that is no longer in compliance with the requirements of Section 3(a) of proposed Rule 2C.

Proposed Rule 2C, Section 12 (Insolvency of a Sponsoring Member)

Section 12(a) of proposed Rule 2C would provide that a Sponsoring Member shall be obligated to immediately notify NSCC that (a) it fails, or is unable, to perform its contracts or obligations or (b) it is insolvent, as required by Section 1 of Rule 20 (Insolvency) for other Members. A Sponsoring Member shall be treated by NSCC in all respects as insolvent under the same circumstances set forth in Section 2 of Rule 20 for other Members. Section 3 of Rule 20 shall apply, in the same manner in which such section applies to other Members, in the case where NSCC treats a Sponsoring Member as insolvent.

Section 12(b) of proposed Rule 2C would provide that in the event that NSCC determines to treat a Sponsoring Member as insolvent pursuant to Rule 20 (Insolvency), NSCC shall have the right to cease to act for the insolvent Sponsoring Member pursuant to Section 10 of the proposed Rule 2C. If NSCC ceases to act for the insolvent Sponsoring Member, NSCC shall decline to accept or process data from the Sponsoring Member, including Sponsored Member Transactions, and NSCC shall terminate the membership of all of the insolvent Sponsoring Member's Sponsored Members unless they are the Sponsored Members of another Sponsoring Member. Any Sponsored Member Transactions which have been novated to NSCC shall continue to be processed by NSCC. NSCC, in its sole discretion, shall determine whether to close-out the affected Sponsored Member Transactions and/or permit the Sponsored Members to complete their settlement. This is different from how NSCC would treat Agent Clearing Member Transactions. As described above, NSCC would close-out any Agent Clearing Member Transactions which have been novated to NSCC. However, with respect to Sponsored Member Transactions, consistent with FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' NSCC would have the option to either terminate or settle a Sponsored Member's novated positions after ceasing to act for the Sponsoring Member. This is because NSCC would have the practical and legal capability to make such an election because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customers' novated positions.

Proposed Rule 2C, Section 13 (Insolvency of a Sponsored Member)

Section 13 of proposed Rule 2C would establish NSCC's rights in the event of an insolvency of a Sponsored Member.

Section 13(a) of proposed Rule 2C would provide that a Sponsored Member and its Sponsoring Member (to the extent it has knowledge thereof) shall be obligated to immediately notify NSCC that the Sponsored Member is insolvent or that the Sponsored Member would be unable to perform any of its material contracts, obligations or agreements in the same manner as required by Section 1 of Rule 20 (Insolvency) for other Members. For purposes of Section 13 of proposed Rule 2C, a Sponsoring Member shall be deemed to have knowledge that a Sponsored Member is insolvent or would be unable to perform on any of its material contracts, obligations or agreements if one or more duly authorized representatives of the Sponsoring Member, in its capacity as such, has knowledge of such matters. A Sponsored Member shall be treated by NSCC in all respects as insolvent under the same circumstances set forth in Section 2 of Rule 20 for other Members. Section 3 of Rule 20 shall apply, in the same manner in which such section applies to other Members, in the case where NSCC treats a Sponsored Member as insolvent.

Section 13(b) of proposed Rule 2C would provide that in the event that NSCC determines to treat a Sponsored Member as insolvent pursuant to Rule 20 (Insolvency), NSCC shall have the right to cease to act for the insolvent Sponsored Member pursuant to Section 11 of the proposed Rule 2C. If NSCC ceases to act for the insolvent Sponsored Member, Section 14 of proposed Rule 56 shall apply with respect to the close-out of the insolvent Sponsored Member's Sponsored Member Transactions.

Proposed Rule 2C, Section 14 (Liquidation of Sponsored Member and Related Sponsoring Member Positions)

Section 14 of proposed Rule 2C would provide a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Transactions between the Sponsoring Member and its Sponsored Member that have been novated to NSCC. Specifically, in the event (i) the Sponsoring Member triggers the termination of a Sponsored Member's positions or (ii) NSCC ceases to act for the Sponsored Member and the Sponsoring Member does not continue to perform the obligations of the Sponsored Member, both the Sponsored Member's positions and the Sponsoring Member's corresponding positions arising from the Sponsored Member Transactions between the Sponsoring Member and the Sponsored Member would be terminated. Thereupon, the Sponsoring Member would calculate a net liquidation value of such terminated positions, which liquidation value would be paid either

to or by the Sponsored Member by or to the Sponsoring Member. NSCC would not, as a practical matter, be involved in such settlement and would not need to take any market action because the termination of the Sponsored Member's positions and the corresponding Sponsoring Member's positions would leave NSCC flat. Additionally, the Sponsoring Member would indemnify NSCC for any claim by a Sponsored Member arising out of the Sponsoring Member's calculation of the net liquidation value.

Section 14(a) of proposed Rule 2C would specify the scope of positions to which Section 14 of proposed Rule 2C applies. It would state that Section 14 only applies with respect to the liquidation of positions resulting from Sponsored Member Transactions that have been novated to NSCC.

Section 14(a) of proposed Rule 2C would further state that such section would only apply if (i) a Sponsoring Member is a Defaulting Member and NSCC has not ceased to act for the Sponsoring Member and (ii) a Corporation Default has not occurred. This is because, as described above in Section 12(b) of proposed Rule 2C, NSCC would have discretion in the event it ceases to act for a Sponsoring Member to close-out the positions of Sponsored Members for which the defaulting Sponsoring Member was responsible or to allow them to settle. If NSCC does close-out such positions, it would do so in accordance with Section 14 of proposed Rule 56. If a Corporation Default has occurred with respect to NSCC, each Sponsored Member's positions would be closed out in accordance with Section 17 of proposed Rule 56.

Section 14(b) of proposed Rule 2C would set out the process by which a Sponsoring Member or NSCC may cause the termination of a Sponsored Member's positions. It would provide that on any Business Day, the Sponsoring Member or NSCC may cause such termination by delivering a notice to NSCC or the Sponsoring Member, respectively. NSCC anticipates that each Sponsored Member and Sponsoring Member would agree in the bilateral documentation between them as to what circumstances or events give rise to the ability of the Sponsoring Member to deliver a notice to NSCC terminating the Sponsored Member's positions.[64]

The notice submitted by a Sponsoring Member to NSCC (or vice versa) would cause the termination of all of the SFT Positions of the Sponsored Member established in the Sponsored Member Sub-Account. The notice would also cause the immediate termination of the corresponding SFT Positions of the Sponsoring Member established in the Sponsoring Member's proprietary SFT Account. The effect of such terminations would be to leave NSCC flat.

Section 14(b) of proposed Rule 2C would also provide that the termination of the Sponsored Member's positions (and the Sponsoring Member's corresponding positions) would be effected by the Sponsoring Member's establishment of a final net settlement position for each eligible security with a distinct CUSIP number (''Final Net Settlement Position'').

Section 14(c) of proposed Rule 2C would specify how the Final Net Settlement Positions established pursuant to Section 14(b) of proposed Rule 2C would be liquidated (*i.e.,* how such positions would be converted into an amount payable). It would also provide how the amount payable arising from the liquidation of the Final Net Settlement Positions would be discharged.

Specifically, Section 14(c) of proposed Rule 2C would first provide that the Sponsoring Member would liquidate the Final Net Settlement Positions established pursuant to Section 14(b) of proposed Rule 2C by establishing (i) a single liquidation amount in respect of the Sponsored Member's Final Net Settlement Positions (a ''Sponsored Member Liquidation Amount'') and (ii) a single liquidation amount in respect of the Sponsoring Member's Final Net Settlement Positions (a ''Sponsoring Member Liquidation Amount''). The Sponsored Member Liquidation Amount would be owed either by NSCC to the Sponsored Member or by the Sponsored Member to NSCC because it would relate to the Sponsored Member's Final Net Settlement Positions with NSCC, while the Sponsoring Member Liquidation Amount would be owed either by NSCC to the Sponsoring Member or by the Sponsoring Member to NSCC because it would relate to the Sponsoring Member's Final Net Settlement Positions with NSCC.

Because the Final Net Settlement Positions of the Sponsoring Member would be identical to, but in the opposite direction of, the Final Net Settlement Positions of the Sponsored Member, the Sponsored Member Liquidation Amount would equal the Sponsoring Member Liquidation Amount. Therefore, if NSCC were to owe the Sponsored Member Liquidation Amount to the Sponsored Member, the Sponsoring Member would owe the Sponsoring Member Liquidation Amount to NSCC. By the same token, if the Sponsored Member were to owe the Sponsored Member Liquidation Amount to NSCC, NSCC would owe the Sponsoring Member the Sponsoring Member Liquidation Amount. In all instances, NSCC would owe and be owed the same amount of money.

Section 14(c) of proposed Rule 2C would also provide how the Sponsoring Member may calculate the Sponsoring Member Liquidation Amount. It would state that the Sponsoring Member may calculate the Sponsoring Member Liquidation Amount based on prevailing market prices of the relevant securities and/or the gains realized and losses incurred by the Sponsoring Member in hedging its risk associated with the liquidation of the Sponsoring Member's Final Net Settlement Positions. Section 14(c) of proposed Rule 2C would further clarify that such Sponsoring Member Liquidation Amount may also take into account any losses and expenses incurred by the Sponsoring Member in connection with the liquidation of the positions.

Section 14(c) of proposed Rule 2C would further provide that, if a Sponsored Member Liquidation Amount is due to NSCC, the Sponsoring Member would be obligated to pay such Sponsored Member Liquidation Amount to NSCC under the Sponsoring Member Guaranty and that this obligation would, automatically and without further action, be set off against the obligation of NSCC to pay the corresponding Sponsoring Member Liquidation Amount to the Sponsoring Member. By virtue of such setoff, the Sponsored Member's obligation to NSCC would be discharged, as would NSCC's obligation to the Sponsoring Member. The Sponsoring Member would, however, have a reimbursement claim against the Sponsored Member in an amount equal to the Sponsored Member Liquidation Amount. This reimbursement claim

[64] It bears noting in this regard that termination of the Sponsored Member's positions would not be the exclusive mechanism by which a Sponsoring Member may limit its credit risk. As described above, under Section 2(m) of proposed Rule 2C, a Sponsoring Member may voluntarily elect to terminate its status as a Sponsoring Member in respect of one or more Sponsored Members. Such a termination would not affect the settlement of the Sponsored Member's existing positions but would restrict the ability of the Sponsored Member to have its future trades accepted for novation by NSCC through such Sponsoring Member. The proposed rule change in Section 14(b) of proposed Rule 2C would not affect the functioning of the proposed rule change in Section 2(m) of proposed Rule 2C or the general ability of a Sponsoring Member and the Sponsored Member to agree on the circumstances of when the Sponsoring Member may terminate its status as Sponsoring Member for the Sponsored Member.

would arise as a matter of law by virtue of the Sponsoring Member's performance under Sponsoring Member Guaranty, though Sponsoring Members and Sponsored Members may specify terms related to the reimbursement claim in their bilateral submission. NSCC would have no rights or obligations in respect of any such reimbursement claim.

If a Sponsored Member Liquidation Amount were owed by NSCC to the Sponsored Member, Section 14(c) of proposed Rule 2C would provide for the Sponsoring Member to satisfy that obligation by transferring the Sponsored Member Liquidation Amount to the Sponsoring Member's account at its Settling Bank (''Sponsoring Member Settling Bank Omnibus Account''). Section 14(c) of proposed Rule 2C would state that, to the extent the Sponsoring Member makes such a transfer, it would discharge NSCC's obligation to transfer the Sponsored Member Liquidation Amount to the Sponsored Member and the Sponsoring Member's corresponding obligation to transfer the Sponsoring Member Liquidation Amount to NSCC.

Section 14(d) of proposed Rule 2C would provide for the Sponsoring Member to indemnify NSCC and its employees, officers, directors, shareholders, agents, and Members (collectively, the ''Sponsoring/Sponsored Membership Program Indemnified Parties'' or ''SMP Indemnified Parties'') for any and all losses, liability, or expenses arising from any claim by an affected Sponsored Member disputing the Sponsoring Member's calculation of any Sponsored Member Liquidation Amount or Sponsoring Member Liquidation Amount.

Section 14(e) of proposed Rule 2C would provide that NSCC acknowledges that a Sponsoring Member may take a security interest in NSCC's obligations to a Sponsored Member in respect of its transactions that have been novated to NSCC by such Sponsoring Member and established in the Sponsoring Member's Sponsored Member Sub-Account for the Sponsored Member. Such security interest would not impose new obligations on NSCC but could allow the Sponsoring Member to direct NSCC to submit payments due to the Sponsored Member to the Sponsoring Member, so that the Sponsoring Member can apply such amounts to the Sponsored Member's unsatisfied obligations to the Sponsoring Member.

(B) Proposed Rule 2D—Agent Clearing Members

NSCC is proposing to add Rule 2D, entitled ''Agent Clearing Members.'' This new rule would govern the proposed agent clearing membership and would be comprised of 12 sections, each of which is described below.

Proposed Rule 2D, Section 1 (General)

Section 1 of proposed Rule 2D would be a general provision regarding the Rules applicable to Agent Clearing Members.

Section 1 of proposed Rule 2D would provide that NSCC will permit a Member that is approved to be an Agent Clearing Member to submit transactions to NSCC for novation on behalf of one or more of the Agent Clearing Member's Customers. Section 1 of proposed Rule 2D would further provide that the rights, liabilities and obligations of Agent Clearing Members shall be governed by proposed Rule 2D, and that references to the term ''Member'' in other Rules would not apply to Agent Clearing Members, in their respective capacities as such, unless specifically noted as such in proposed Rule 2D or in such other Rules.

Section 1 of proposed Rule 2D would also provide that an Agent Clearing Member shall continue to have all of the rights, liabilities and obligations as set forth in the Rules and in any agreement between it and NSCC pertaining to its status as a Member, and such rights, liabilities and obligations shall be separate from its rights, liabilities and obligations as an Agent Clearing Member except as contemplated under Sections 6, 7 and 8 of proposed Rule 2D.

Proposed Rule 2D, Section 2 (Qualifications of Agent Clearing Members, the Application Process and Continuance Standards)

Section 2 of proposed Rule 2D would establish the eligibility requirements for Members that wish to become Agent Clearing Members, the membership application process that would be required of each Member to become an Agent Clearing Member, the on-going membership requirements that would apply to Agent Clearing Members, as well as the requirements regarding an Agent Clearing Member's election to voluntarily terminate its membership.

Under Section 2(a) of proposed Rule 2D, any Member would be eligible to apply to become an Agent Clearing Member; however, if a Member is a Registered Broker-Dealer, such Member would only be permitted to apply to become an Agent Clearing Member if it has (1) Net Worth of at least $25 million and (2) excess net capital over the minimum net capital requirement imposed by the Commission (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million.[65] As proposed, NSCC may require that a Person be a Member for a certain time period before that Person may be considered to become an Agent Clearing Member.

Section 2(b) of proposed Rule 2D would provide that each Member applicant to become an Agent Clearing Member would be required to provide an application and other information requested by NSCC. Agent Clearing Member applications shall first be reviewed by NSCC and would require the Board of Directors' approval, unless the Member applicant is already a Sponsoring Member under proposed Rule 2C or a sponsoring member of FICC. NSCC believes this approach to the Board of Directors' approval for Agent Clearing Members is appropriate in light of the fact that the critical components of the FICC sponsoring member applications as well as the NSCC Agent Clearing Member and Sponsoring Member applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are substantially similar.

Under Section 2(c) of proposed Rule 2D, if the Agent Clearing Member application is denied, such denial would be handled in accordance with Section 1 of Rule 2A (Initial Membership Requirements).

As proposed in Section 2(d) of proposed Rule 2D, NSCC may impose additional financial requirements on an

[65] NSCC is proposing these financial minimums for Registered Broker-Dealer Agent Clearing Member applicants to reflect the additional responsibility that the applicant would undertake as an Agent Clearing Member. These financial minimums are determined based on NSCC's assessment of the minimum capital that would be necessary for a broker-dealer to conduct meaningful level of NSCC-cleared activity while serving as a credit counterparty in respect of others' trades. In addition, NSCC is proposing these financial minimums for Registered Broker-Dealer Agent Clearing Member applicants to be consistent with proposed requirements applicable to Registered Broker-Dealer Sponsoring Member applicants. NSCC believes this approach to financial minimums is appropriate because both Sponsoring Members and Agent Clearing Members would be viewed and surveilled as the credit counterparties to NSCC in respect of the transactions that they submit for clearing in respect of Sponsoring Member Sub-Accounts and Agent Clearing Member Customer Omnibus Accounts, respectively. Although the model of clearing would differ as between Sponsoring Members and Agent Clearing Members, both would be types of Members that would be standing behind the credit of their clients. Accordingly, NSCC believes it is appropriate to use consistent financial minimums.

Agent Clearing Member applicant based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transaction such applicant proposes to process through NSCC as an Agent Clearing Member and the overall financial condition of such applicant. Under the proposal, with respect to an application of a Member to become an Agent Clearing Member that requires the Board of Directors' approval, the Board of Directors shall also approve any increased financial requirements imposed by NSCC in connection with the approval of the application, and NSCC would thereafter regularly review such Agent Clearing Member regarding its compliance with the increased financial requirements.[66]

In addition, under Section 2(e) of proposed Rule 2D, NSCC may require each Agent Clearing Member or any Agent Clearing Member applicant to furnish adequate assurances of such Agent Clearing Member or Agent Clearing Member applicant's financial responsibility and operational capability within the meaning of Rule 15 (Assurances of Financial Responsibility and Operational Capability), as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC, its participants, creditors or investors, to safeguard securities and funds in the custody or control of NSCC and for which NSCC is responsible, or to promote the prompt and accurate clearance, settlement and processing of securities transactions.[67]

Section 2(f) of proposed Rule 2D would provide that each Member whose Agent Clearing Member application is approved would sign and deliver to NSCC an agreement between NSCC and the Member and specifies the terms and conditions deemed by NSCC to be necessary in order to protect itself and its participants (''Agent Clearing Member Agreement'') and a related legal opinion in a form satisfactory to NSCC.

Section 2(g) of proposed Rule 2D would provide that each Agent Clearing Member shall submit to NSCC, within the timeframes and in the formats required by NSCC, the reports and information that all Members are required to submit regardless of type of Member and the reports and information required to be submitted for its respective type of Member, all pursuant to Section 2 of Rule 2B (Ongoing Membership Requirements and Monitoring) and, if applicable, Addendum O (Admission of Non-US Entities as Direct NSCC Members).

Section 2(h) of proposed Rule 2D would provide that an Agent Clearing Member's books and records, insofar as they relate to the Agent Clearing Member Transactions submitted to NSCC, shall be open to the inspection of the duly authorized representatives of NSCC to the same extent provided in Rule 2A (Initial Membership Requirements) for other Members.

Section 2(i) of proposed Rule 2D would provide that an Agent Clearing Member shall promptly inform NSCC, both orally and in writing, if it is no longer in compliance with the relevant standards and qualifications for applying to become an Agent Clearing Member set forth in the proposed Rule 2D. Notification must take place immediately and in no event later than 2 Business Days from the date on which the Agent Clearing Member first learns of its non-compliance. As proposed, NSCC would assess a fine in accordance with the Fine Schedule in Addendum P against any Agent Clearing Member that fails to so notify NSCC.[68] If the Agent Clearing Member fails to remain in compliance with the relevant standards and qualifications, NSCC would, if necessary, undertake appropriate action to determine the status of the Agent Clearing Member and its continued eligibility as such. In addition, NSCC may review the financial responsibility and operational capability of the Agent Clearing Member, and otherwise require from the Agent Clearing Member additional reports of its financial or operational condition at such intervals and in such detail as NSCC shall determine. In addition, if NSCC has reason to believe that an Agent Clearing Member may fail to comply with any of the Rules applicable to Agent Clearing Members, it may require the Agent Clearing Member to provide it, within such timeframe, and in such detail, and pursuant to such manner as NSCC shall determine, with assurances in writing of a credible nature that the Agent Clearing Member shall not, in fact, violate any of the Rules.

Section 2(j) of proposed Rule 2D would provide that in the event that an Agent Clearing Member fails to remain in compliance with the relevant requirements of the Rules or the Agent Clearing Member Agreement, NSCC shall have the right to cease to act for the Agent Clearing Member in its capacity as an Agent Clearing Member in accordance with Section 9 of proposed Rule 2D or as a Member more generally, unless the Agent Clearing Member requests that such action not be taken and NSCC determines that, depending upon the specific circumstances and the record of the Agent Clearing Member, it is appropriate instead to establish for such Agent Clearing Member a time period, which shall be determined by NSCC and which shall be no longer than 30 calendar days unless otherwise determined by NSCC, during which the Agent Clearing Member must resume compliance with such requirements. As proposed, in the event that the Agent Clearing Member is unable to satisfy such requirements within the time period specified by NSCC, NSCC shall, pursuant to the Rules, cease to act for the Agent Clearing Member in its capacity as an Agent Clearing Member pursuant to Section 9 of the proposed Rule 2D or as a Member more generally.

Section 2(k) of proposed Rule 2D would provide that if the sum of the Volatility Charges applicable to an Agent Clearing Member's Agent Clearing Member Customer Omnibus Account(s) and its other accounts at NSCC exceeds its Net Member Capital, the Agent Clearing Member shall not be permitted to submit activity into its Agent Clearing Member Customer Omnibus Account(s), unless otherwise determined by NSCC in order to promote orderly settlement.[69] As proposed, an ''Agent Clearing Member Customer Omnibus Account'' would mean a ledger maintained on the books and records of NSCC that reflects the outstanding Agent Clearing Member

[66] If the increased financial requirements are imposed in connection with an Agent Clearing Member application that does not require the Board of Directors' approval, the increased financial requirements would not be subject to the Board of Directors' approval. Nonetheless, once an Agent Clearing Member application is approved with increased financial requirements, NSCC would thereafter regularly review such Agent Clearing Member regarding its continued adherence to such increased financial requirements as well as determine whether such increased financial requirements are still appropriate. If the Agent Clearing Member is unable to adhere to the increased financial requirements, the Board of Directors may, pursuant to Section 9 of proposed Rule 2D, suspend, prohibit or limit the Agent Clearing Member's access to NSCC's services.

[67] As an example, NSCC may require an Agent Clearing Member or an Agent Clearing Member applicant to furnish adequate assurances of such Agent Clearing Member or Agent Clearing Member applicant's financial responsibility and operational capability if NSCC has concerns about such Agent Clearing Member or Agent Clearing Member applicant's overall financial health or credit rating.

[68] *See* Addendum P (Fine Schedule), *supra* note 4.

[69] NSCC selected the Volatility Charges and Net Member Capital as the criteria for purposes of establishing the activity limit for Agent Clearing Members. This is because an Agent Clearing Member's total Volatility Charges being in excess of its Net Member Capital is an important indicator that the Agent Clearing Member's financial resources, as measured by its Net Capital, net assets or equity capital, may be insufficient to meet the largest component of its Required Fund Deposit (*i.e.,* Volatility Charges).

Transactions that an Agent Clearing Member enters into on behalf of Customers and that have been novated to NSCC, the SFT Positions or SFT Cash associated with those transactions, and any debits or credits of cash associated with such transactions effected pursuant to Rule 12 (Settlement).

Section 2(l) of proposed Rule 2D would provide that an Agent Clearing Member may voluntarily elect to terminate its status as an Agent Clearing Member by providing NSCC with a written notice from an Agent Clearing Member to NSCC that the Agent Clearing Member is voluntarily electing to terminate its status as an Agent Clearing Member (''Agent Clearing Member Voluntary Termination Notice''). The Agent Clearing Member shall specify in the Agent Clearing Member Voluntary Termination Notice a desired date for such termination, which date shall not be prior to the scheduled Final Settlement Date of any remaining obligation owed by the Agent Clearing Member to NSCC as of the time such Agent Clearing Member Voluntary Termination Notice is submitted to NSCC, unless otherwise approved by NSCC.

Section 2(l) of proposed Rule 2D would also provide that such termination would not be effective until accepted by NSCC, which shall be no later than 10 Business Days after the receipt of the Agent Clearing Member Voluntary Termination Notice from such Agent Clearing Member. NSCC's acceptance shall be evidenced by a notice to NSCC's participants announcing the termination of the Agent Clearing Member's status as such and the date on which the termination of the Agent Clearing Member's status as an Agent Clearing Member becomes effective (''Agent Clearing Member Termination Date''). As proposed, after the close of business on the Agent Clearing Member Termination Date, the Agent Clearing Member shall no longer be eligible to submit Agent Clearing Member Transactions. If any Agent Clearing Member Transaction is submitted to NSCC by the Agent Clearing Member that is scheduled to settle after the Agent Clearing Member Termination Date, such Agent Clearing Member's Agent Clearing Member Voluntary Termination Notice would be deemed void, and the Agent Clearing Member would remain subject to the proposed Rule 2D as if it had not given such Agent Clearing Member Voluntary Termination Notice.

Section 2(m) of proposed Rule 2D would provide that an Agent Clearing Member's voluntary termination of its status as such shall not affect its obligations to NSCC, or the rights of NSCC, with respect to Agent Clearing Member Transactions submitted to NSCC before the applicable Agent Clearing Member Termination Date. Any such Agent Clearing Member Transactions that have been novated to NSCC shall continue to be processed by NSCC. The return of the Agent Clearing Member's Clearing Fund deposit shall be governed by Section 7 of Rule 4 (Clearing Fund). If an Event Period were to occur after an Agent Clearing Member has submitted the Agent Clearing Member Voluntary Termination Notice but on or prior to the Agent Clearing Member Termination Date, in order for the Agent Clearing Member to benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4, the Agent Clearing Member would need to comply with the provisions of Section 6 of Rule 4 and submit a Loss Allocation Withdrawal Notice, which notice, upon submission, shall supersede and void any pending Agent Clearing Member Voluntary Termination Notice previously submitted by the Agent Clearing Member.

Section 2(n) of proposed Rule 2D would provide that any non-public information furnished to NSCC pursuant to proposed Rule 2D shall be held in confidence as may be required under the laws, rules and regulations applicable to NSCC that relate to the confidentiality of records. Section 2(n) would also provide that each Agent Clearing Member shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such Agent Clearing Member's obligations under the Rules or as otherwise required by applicable law. Section 2(n) would further provide that each Agent Clearing Member acknowledges that a breach of its confidentiality obligations under the Rules may result in serious and irreparable harm to NSCC and/or DTCC for which there is no adequate remedy at law. In addition, Section 2(n) would provide that in the event of such a breach by the Agent Clearing Member, NSCC and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages thereunder.[70]

[70] Section 2(n) of proposed Rule 2D is designed to be consistent with NSCC's proposed change to revise certain provisions in the Rules relating to the confidentiality of information furnished by participants. *See* Securities Exchange Act Release No. 92334 (July 7, 2021), 86 FR 36815 (July 13, 2021) (SR–NSCC–2021–007).

Proposed Rule 2D, Section 3 (Compliance With Laws)

Section 3 of proposed Rule 2D would provide that each Agent Clearing Member shall comply in all material respects with all applicable laws, including applicable laws relating to securities, taxation and money laundering, as well as global sanctions laws, in connection with the use of NSCC's services.

Proposed Rule 2D, Section 4 (Agent Clearing Member Transactions)

Section 4 of proposed Rule 2D would provide that an Agent Clearing Member shall be permitted to submit to NSCC on behalf of one or more Customers' Securities Financing Transactions (''Agent Clearing Member Transactions'') in accordance with proposed Rule 56, as described below.

Proposed Rule 2D, Section 5 (Agent Clearing Member Agent Obligations)

Section 5 of proposed Rule 2D would establish rules-based obligations for Agent Clearing Members and the establishment of Agent Clearing Member Customer Omnibus Accounts.

Section 5(a) of proposed Rule 2D would provide that an Agent Clearing Member shall be permitted to submit to NSCC for novation Agent Clearing Member Transactions entered into by the Agent Clearing Member as agent on behalf of one or more Customers. Any such submission shall be in accordance with proposed Rule 2D. As proposed, subject to the provisions of the Rules, an Agent Clearing Member's clearing of Agent Clearing Member Transactions for Customers (''Customer Clearing Service'') may be provided by an Agent Clearing Member to its Customers on any terms and conditions mutually agreed to by the Agent Clearing Member and its Customers; provided, that each Agent Clearing Member shall, before providing Customer Clearing Service to any Customer, enter into an agreement with that Customer that binds the Customer to the provisions of the Rules applicable to Agent Clearing Member Transactions and Customers.

Section 5(b) of proposed Rule 2D would provide that, with respect to an Agent Clearing Member that submits Agent Clearing Member Transactions to NSCC for novation on behalf of its Customers, NSCC shall maintain one or more Agent Clearing Member Customer Omnibus Accounts in the name of the

Agent Clearing Member for the benefit of its Customers. Each Agent Clearing Member Customer Omnibus Account would be permitted to contain only (i) SFTs entered into by the Agent Clearing Member, on behalf of a Customer, as Transferor or (ii) SFTs entered into by the Agent Clearing Member, on behalf of a Customer, as a Transferee. An Agent Clearing Member would not be permitted to combine SFTs entered into as Transferee and Transferor in the same Agent Clearing Member Customer Omnibus Account. This is designed to ensure that NSCC's volatility-based Clearing Fund deposit requirements represent the sum of each individual Customer's activity (*i.e.,* that the positions are margined on a gross basis).[71]

Section 5(c) of proposed Rule 2D would provide that an Agent Clearing Member shall act solely as agent of its Customers in connection with the clearing of Agent Clearing Member Transactions; provided that the Agent Clearing Member shall remain fully liable for the performance of all obligations to NSCC arising in connection with Agent Clearing Member Transactions; and provided further, that the liabilities and obligations of NSCC with respect to Agent Clearing Member Transactions entered into by the Agent Clearing Member shall extend only to the Agent Clearing Member. Section 5(c) of proposed Rule 2D would further provide that, without limiting the generality of the foregoing, NSCC shall not have any liability or obligation arising out of or with respect to any Agent Clearing Member Transaction to any Customer on behalf of whom an Agent Clearing Member entered into the Agent Clearing Member Transaction.

Section 5(d) of proposed Rule 2D would provide that nothing in the Rules shall prohibit an Agent Clearing Member from seeking reimbursement from a Customer for payments made by the Agent Clearing Member (whether out of Clearing Fund deposits or otherwise) under the Rules, or as otherwise may be agreed between the Agent Clearing Member and the Customer.

Proposed Rule 2D, Section 6 (Clearing Fund Obligations)

Section 6 of proposed Rule 2D would set forth the Clearing Fund obligations.

Section 6(a) of proposed Rule 2D would provide that NSCC shall maintain one or more Agent Clearing Member Customer Omnibus Accounts for an Agent Clearing Member. Each Agent Clearing Member shall make and maintain so long as such Member is an Agent Clearing Member a deposit to the Clearing Fund as a Required Fund Deposit to support the activity in its Agent Clearing Member Customer Omnibus Account(s) (the ''Agent Clearing Member Required Fund Deposit''). Deposits to the Clearing Fund would be held by NSCC or its designated agents, to be applied as provided in the Rules.

Section 6(b) of proposed Rule 2D would provide that, in the ordinary course, for purposes of satisfying the Agent Clearing Member's Clearing Fund requirements under the Rules for its Member activity, its Agent Clearing Member activity, and, to the extent applicable, its Sponsoring Member activity, the Agent Clearing Member's proprietary accounts, its Agent Clearing Member Customer Omnibus Account(s), and its Sponsored Member Sub-Accounts, if any, shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time and without prior notice to the Agent Clearing Member (but being obligated to give notice to the Agent Clearing Member as soon as possible thereafter) and whether or not the Agent Clearing Member is in default of its obligations to NSCC, treat the Agent Clearing Member's accounts as a single account for the purpose of applying Clearing Fund deposits; apply Clearing Fund deposits made by the Agent Clearing Member with respect to any account as necessary to ensure that the Agent Clearing Member meets all of its obligations to NSCC under any other account(s); and otherwise exercise all rights to offset and net against the Clearing Fund deposits any net obligations among any or all of the accounts, whether or not any other Person is deemed to have any interest in such account.[72]

Section 6(c) of proposed Rule 2D would provide that the Agent Clearing Member Required Fund Deposit for each Agent Clearing Member Customer Omnibus Account shall be calculated separately based on the Agent Clearing Member Transactions in such Agent Clearing Member Customer Omnibus Account, and the Agent Clearing Member shall, as principal, be required to satisfy the Agent Clearing Member Required Fund Deposit for each of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts.

Section 6(d) of proposed Rule 2D would provide that Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Rule 4 (Clearing Fund) shall apply to the Agent Clearing Member Required Fund Deposit with respect to obligations of an Agent Clearing Member under the Rules, including its obligations arising under the Agent Clearing Member Customer Omnibus Account(s), to the same extent as such sections apply to any Required Fund Deposit and any other obligations of a Member. For purposes of Section 1 of Rule 4, obligations and liabilities of a Member to NSCC that shall be secured shall include, without limitation, a Member's obligations as an Agent Clearing Member under the Rules, including, without limitation, any obligation of any such Agent Clearing Member to provide the Agent Clearing Member Required Fund Deposit and such Agent Clearing Member's obligations arising under SFTs established in the Agent Clearing Member Customer Omnibus Accounts of such Agent Clearing Member.

Section 6(e) of proposed Rule 2D would provide that an Agent Clearing Member shall be subject to such fines as may be imposed in accordance with the Rules for any late satisfaction of a Clearing Fund deficiency call.

Proposed Rule 2D, Section 7 (Right of Offset)

Section 7 of proposed Rule 2D would provide that in the ordinary course, with respect to satisfaction of any Agent Clearing Member's obligations under the Rules, the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts, the Agent Clearing Member's proprietary accounts, and the Agent Clearing Member's Sponsored Member Sub-Accounts, if any, at NSCC shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time any obligation of

[71] If an Agent Clearing Member were permitted to maintain SFTs entered into as both Transferee and Transferor in the same Agent Clearing Member Customer Omnibus Account, the Required Fund Deposit obligations of the Agent Clearing Member could potentially be reduced by offsetting SFT Positions of different Customers in the same SFT Security.

[72] NSCC believes this is appropriate because the Clearing Fund deposits of an Agent Clearing Member are the proprietary assets of the Agent Clearing Member and NSCC generally has the right to apply the Clearing Fund deposits of a Member to any of the Member's obligations to NSCC, regardless of whether those were the obligations that generated the Clearing Fund deposit requirement. NSCC therefore believes that, consistent with the FICC Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' an Agent Clearing Member's Clearing Fund deposits should be available to satisfy any of the Agent Clearing Member's obligations to NSCC.

the Agent Clearing Member arises in respect of any Agent Clearing Member Customer Omnibus Account, exercise a right of offset and net any such obligation against any obligations of NSCC to the Agent Clearing Member in respect of such Agent Clearing Member's proprietary accounts at NSCC.

Proposed Rule 2D, Section 8 (Loss Allocation Obligations)

Section 8 of proposed Rule 2D would establish loss allocation obligations for Agent Clearing Members.

Section 8(a) of proposed Rule 2D would provide that, to the extent NSCC incurs a loss or liability from a Defaulting Member Event or a Declared Non-Default Loss Event and a loss allocation obligation arises, that would be the responsibility of the Agent Clearing Member Customer Omnibus Account as if the Agent Clearing Member Customer Omnibus Account were a Member, NSCC shall calculate such loss allocation obligation and the Agent Clearing Member shall be, as principal, responsible for satisfying such obligations.

Section 8(b) of proposed Rule 2D would provide that the entire amount of the Required Fund Deposit associated with the Agent Clearing Member's proprietary accounts at NSCC and the entire amount of the Agent Clearing Member Required Fund Deposit may be used to satisfy any amount allocated against an Agent Clearing Member, whether in its capacity as a Member, an Agent Clearing Member, or otherwise. With respect to an obligation to make payment due to any loss allocation amounts assessed on an Agent Clearing Member pursuant to Section 8(a) of proposed Rule 2D, the Agent Clearing Member may instead elect to terminate its membership in NSCC pursuant to Section 6 of Rule 4 and thereby benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4; however, for the purpose of determining the Loss Allocation Cap for such Agent Clearing Member, its Required Fund Deposit shall be the sum of its Required Fund Deposits associated with its proprietary accounts at NSCC (including its proprietary SFT Account pursuant to proposed Rule 56), its Agent Clearing Member Required Fund Deposit for each of its Agent Clearing Member Customer Omnibus Accounts, and its Sponsoring Member Required Fund Deposit, if any.

Proposed Rule 2D, Section 9 (Restrictions on Access to Services by an Agent Clearing Member)

Section 9 of proposed Rule 2D would establish the rights of NSCC to restrict an Agent Clearing Member's access to NSCC's services.

Section 9(a) of proposed Rule 2D would provide that the Board of Directors may at any time upon NSCC providing notice to an Agent Clearing Member pursuant to Section 5 of Rule 45 (Notices), suspend an Agent Clearing Member in its capacity as an Agent Clearing Member from any service provided by NSCC either with respect to a particular transaction or transactions or with respect to transactions generally, or prohibit or limit such Agent Clearing Member's access to services offered by NSCC in the event that one or more of the factors set forth in Section 1 of Rule 46 (Restrictions on Access to Services) is present with respect to the Agent Clearing Member.

Section 9(b) of proposed Rule 2D would provide that Rule 46 shall apply with respect to an Agent Clearing Member in the same way as it applies to Members, including the Board of Directors' right to summarily suspend the Agent Clearing Member and to cease to act for such Agent Clearing Member. As under Rule 46, the Board of Directors would need to make the determination of whether to suspend, prohibit or limit an Agent Clearing Member's access to services offered by NSCC on the basis of the factors set forth in that rule.

Section 9(c) of proposed Rule 2D would provide that if NSCC ceases to act for an Agent Clearing Member in its capacity as an Agent Clearing Member, Section 14 of proposed Rule 56 shall apply and NSCC shall decline to accept or process data from the Agent Clearing Member on Agent Clearing Member Transactions and close-out any Agent Clearing Member Transactions that have been novated to NSCC. Section 9(c) would also provide that if NSCC suspends, prohibits or limits an Agent Clearing Member in its capacity as an Agent Clearing Member with respect to such Agent Clearing Member's access to services offered by NSCC, NSCC shall decline to accept or process data from the Agent Clearing Member on Agent Clearing Member Transactions for so long as NSCC is suspending, prohibiting or limiting the Agent Clearing Member. Furthermore, Section 9(c) would state that, in addition, NSCC would close-out any Agent Clearing Member Transactions which have been novated to NSCC.

This is different from how NSCC would treat Sponsored Member Transactions of a Sponsoring Member under Section 10 of proposed Rule 2C if NSCC ceases to act for the Sponsoring Member. With respect to such transactions, NSCC would have the option to either terminate or settle a Sponsored Member's positions after ceasing to act for the Sponsoring Member. The reason for this difference is that NSCC would have the practical and legal capability to make such an election because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customer's novated positions.

Proposed Rule 2D, Section 10 (Insolvency of an Agent Clearing Member)

Section 10(a) of proposed Rule 2D would provide that an Agent Clearing Member shall be obligated to immediately notify NSCC that (a) it fails, or is unable, to perform its contracts or obligations or (b) it is insolvent as required by Section 1 of Rule 20 (Insolvency) for other Members. An Agent Clearing Member shall be treated by NSCC in all respects as insolvent under the same circumstances set forth in Section 2 of Rule 20 for other Members. Section 3 of Rule 20 shall apply, in the same manner in which such section applies to other Members, in the case where NSCC treats an Agent Clearing Member as insolvent.

Section 10(b) of proposed Rule 2D would provide that in the event that NSCC determines to treat an Agent Clearing Member as insolvent pursuant to Rule 20 (Insolvency), NSCC shall have the right to cease to act for the insolvent Agent Clearing Member pursuant to Section 9 of proposed Rule 2D. If NSCC ceases to act for the insolvent Agent Clearing Member, NSCC shall decline to accept or process data from the Agent Clearing Member, including Agent Clearing Member Transactions. As proposed, NSCC would close-out any Agent Clearing Member Transactions which have been novated to NSCC.

This is different from how NSCC would treat Sponsored Member Transactions. As described above, NSCC would have the option to either terminate or settle a Sponsored

Member's novated positions after ceasing to act for the Sponsoring Member. However, with respect to Agent Clearing Member Transactions, NSCC would close-out any such transactions which have been novated to NSCC. This is because NSCC would have the practical and legal capability to make such an election with respect to Sponsored Member Transactions because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customers' novated positions.

Proposed Rule 2D, Section 11 (Transfer of Agent Clearing Member Transactions in Agent Clearing Member Customer Omnibus Accounts)

Section 11 of proposed Rule 2D would (i) permit an Agent Clearing Member, upon a default of a Customer and consent of NSCC, to transfer Agent Clearing Member Transactions of the Customer established in one or more of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts from such Agent Clearing Member Customer Omnibus Accounts to the Agent Clearing Member's proprietary account at NSCC as a Member and (ii) govern how the transfer would be effectuated.

Section 11(a) of proposed Rule 2D would clarify the scope to which Section 11 of proposed Rule 2D applies. It would state that Section 11 would not apply if either (i) the relevant Agent Clearing Member is a Defaulting Member or (ii) a Corporation Default has occurred. This is because, as described above with respect to Section 10(b) of proposed Rule 2D, NSCC would close-out all Agent Clearing Member Transactions for which the defaulting Agent Clearing Member was responsible. If a Corporation Default has occurred with respect to NSCC, each Agent Clearing Member's positions would be closed out in accordance with Section 17 of proposed Rule 56.

Section 11(b) of proposed Rule 2D would set out the process by which an Agent Clearing Member may transfer the Agent Clearing Member Transactions of a defaulting Customer in one or more of Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts. It would provide that, to the extent permitted under applicable laws and regulations, an Agent Clearing Member may, upon a default of a Customer and the consent of NSCC, transfer the Agent Clearing Member Transactions of the Customer established in one or more of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts from such Agent Clearing Member Customer Omnibus Accounts to the Agent Clearing Member's proprietary account at NSCC as a Member. As proposed, any such transfer shall occur by novation, such that the obligations between NSCC and the relevant Customer in respect of the Agent Clearing Member Transactions shall be terminated and replaced with identical obligations between NSCC and the Agent Clearing Member, acting as principal. Section 11(b) would also provide the Agent Clearing Member shall indemnify NSCC, and its employees, officers, directors, shareholders, agents, and Members, for any and all losses, liability, or expenses incurred by them arising from, or in relation to, any such transfer.

Proposed Rule 2D, Section 12 (Customer Acknowledgments)

Section 12 of proposed Rule 2D would provide that each Agent Clearing Member on behalf of each of its Customers agrees that such Customer, by participating in and entering into Agent Clearing Member Transactions through the Agent Clearing Member, understands, acknowledges, and agrees that: (a) The service provided by NSCC with regard to the Customer Clearing Service would be subject to and governed by the Rules; (b) the Rules shall govern the novation of Agent Clearing Member Transactions and all transactions between the Customer and its Agent Clearing Member resulting in the novation of such transactions, and at the time of novation of an Agent Clearing Member Transaction, the Customer on whose behalf it was submitted would be bound by the Agent Clearing Member Transaction automatically and without any further action by the Customer or by its Agent Clearing Member, and the Customer agrees to be bound by the applicable provisions of the Rules in all respects; (c) NSCC shall be under no obligation to deal directly with the Customer, and NSCC may deal exclusively with the Customer's Agent Clearing Member; (d) NSCC shall have no obligations to the Customer with respect to any Agent Clearing Member Transactions submitted by an Agent Clearing Member on behalf of the Customer, including with respect to any payment or delivery obligations; and (e) the Customer shall have no right to receive from NSCC, or any right to assert a claim against NSCC with respect to, nor shall NSCC be liable to the Customer for, any payment or delivery obligation in connection with any Agent Clearing Member Transactions submitted by an Agent Clearing Member on behalf of the Customer, and NSCC shall make any such payments or redeliveries solely to the relevant Agent Clearing Member.

(C) Proposed Rule 56—Securities Financing Transaction Clearing Service

NSCC is proposing to add Rule 56, entitled ''Securities Financing Transaction Clearing Service.'' This new rule would govern the proposed SFT Clearing Service and would be comprised of 18 sections, each of which is described below.

In connection with the proposed SFT Clearing Service, NSCC is proposing to add the following terms and definitions, as described below.

The term ''Aggregate Net SFT Close-out Value'' would mean, with respect to an SFT Member, the sum of the SFT Close-out Value (as defined below and in the proposed rule change) for each SFT Position to which the SFT Member is a party.

The term ''Approved SFT Submitter'' would mean a provider of transaction data on an SFT that the parties to the SFT have selected and NSCC has approved, subject to such terms and conditions as to which the Approved SFT Submitter and NSCC may agree.

The term ''Bilaterally Initiated SFT'' would mean an SFT, the Initial Settlement of which occurred prior to the submission of such SFT to NSCC.

The term ''Buy-In Amount'' would mean a net amount equal to (x) the Buy-In Costs or Deemed Buy-In Costs (as defined below and in the proposed rule change) of the SFT Securities in respect of which a Transferor has effected a Buy-In, less (y) the amount of the SFT Cash for the relevant SFT (unless the Transferor effected a Buy-In in respect of some, but not all, of the SFT Securities that are the subject of the SFT, in which case (y) shall be the amount of the Corresponding SFT Cash (as defined below and in the proposed rule change)).

The term ''Contract Price'' would mean, with respect to SFT Securities

subject to an SFT, the price of such securities at the time the SFT is submitted to NSCC for novation, which price shall be determined by the SFT Member parties to the relevant SFT and provided by an Approved SFT Submitter to NSCC in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose; provided that if no such price is provided by the time required by NSCC, the ''Contract Price'' shall be the Current Market Price of the SFT Securities.

The term ''Corresponding SFT Cash'' would mean (a) in respect of a Recalled SFT (as defined below and in the proposed rule change) for which a Transferor has effected a Buy-In in respect of some, but not all, of the SFT Securities that are the subject of the SFT, the portion of the SFT Cash for such SFT equal to the product of (i) the percentage of the SFT Securities in respect of which the Transferor effected a Buy-In and (ii) the SFT Cash of the SFT; and (b) in respect of a Settling SFT which has a greater quantity of SFT Securities as its subject than the corresponding Linked SFT, the portion of the SFT Cash of the Settling SFT equal to the product of (i) the percentage of the SFT Securities of the Settling SFT that the Linked SFT has as its subject and (ii) the SFT Cash of the Settling SFT.

The term ''Deemed Buy-In Costs'' would mean the product of the number of SFT Securities subject to the relevant Buy-In and the per-share price therefor on the date of the Buy-In obtained from a generally recognized source or the last bid quotation from such a source at the most recent close of trading for the SFT Security.

The term ''Defaulting SFT Member'' would mean an SFT Member for which NSCC has declined or ceased to act in accordance with Section 14 of proposed Rule 56, as described below.

The term ''Distribution'' would mean, with respect to any SFT Security at any time, any cash payment of amounts equivalent to dividends and other distributions on the SFT Security.

The term ''Distribution Amount'' would mean, in respect of an SFT, an amount of cash equal to the product of: (a) The amount per security in respect of (x) a cash dividend on the SFT Securities that are the subject of the SFT or (y) an exchange of the SFT Securities that are the subject of the SFT for cash; and (b) the number of the relevant SFT Securities subject to the SFT.

The term ''Distribution Payment'' would mean an amount payable by one party to an SFT to the other party to the SFT during the term of the SFT in respect of a Distribution on the SFT Securities subject to the SFT.

The term ''Existing Master Agreement'' would mean, in respect of an SFT, a written agreement that (i) exists at the time transaction data for the SFT is submitted to NSCC by an Approved SFT Submitter, (ii) provides for, among other things, terms governing the payment and delivery obligations of the parties and (iii) the parties have established (by written agreement, oral agreement, course of conduct or otherwise) would govern such SFT.

The term ''Final Settlement'' would mean the exchange of SFT Securities for SFT Cash described in clause (b) of the proposed definition of Securities Financing Transaction.

The term ''Final Settlement Date'' would mean the Business Day on which the final settlement of a transaction is scheduled to occur. If the transaction is an SFT, the Final Settlement Date means the Business Day on which the Final Settlement of the SFT is scheduled to occur in accordance with proposed Rule 56 or, if the SFT is accelerated in accordance with proposed Rule 56, the date to which the Final Settlement obligations have been accelerated.

The term ''Incremental Additional Independent Amount SFT Cash'' would mean, (a) in respect of a Linked SFT, the excess, if any, of the Independent Amount SFT Cash of the Linked SFT over the Independent Amount SFT Cash of the Settling SFT; (b) in respect of a Non-Returned SFT, the portion of the Price Differential payable by the Transferee, if any, that is attributable to the Independent Amount SFT Cash of the SFT (which shall be calculated by multiplying such Priced Differential by the excess, if any, of the Independent Amount Percentage (as defined below and in the proposed rule change) over 100%); and (c) in respect of any other SFT, the Independent Amount SFT Cash of such SFT.

The term ''Independent Amount Percentage'' would mean, in respect of an SFT, a percentage obtained by dividing the SFT Cash of such SFT by the Market Value SFT Cash (as defined below and in the proposed rule change) of such SFT.

The term ''Independent Amount SFT Cash'' would mean the portion, if any, of the SFT Cash for an SFT equal to the amount by which the SFT Cash for such SFT at the time of the Initial Settlement exceeds the Contract Price of the SFT Securities that are the subject of such SFT.

The term ''Ineligibility Date'' would mean, with respect to an SFT, the date on which the SFT Security that is the subject of the SFT becomes an Ineligible SFT Security (as defined below and in the proposed rule change).

The term ''Ineligible SFT'' would mean an SFT that has, as its subject, SFT Securities that have become Ineligible SFT Securities.

The term ''Ineligible SFT Security'' would mean an SFT Security that is not eligible to be the subject of a novated SFT.

The term ''Initial Settlement'' would mean the exchange of SFT Securities for SFT Cash described in clause (a) of the proposed definition of Securities Financing Transaction.

The term ''Linked SFT'' would mean an SFT entered into by the pre-novation SFT Member parties to a Settling SFT that has the same Transferor, Transferee and subject SFT Securities (including CUSIP) as the Settling SFT. As proposed, a Linked SFT would include an SFT that has as its subject fewer SFT Securities than the corresponding Settling SFT but would not include an SFT that has as its subject more SFT Securities than the corresponding Settling SFT.

The term ''Market Value SFT Cash'' would mean the portion of the SFT Cash for an SFT equal to the amount of the SFT Cash for such SFT minus the Independent Amount SFT Cash of such SFT.

The term ''Price Differential'' would mean (a) for purposes of the discharge of offsetting Final Settlement and Initial Settlement obligations, (i) the SFT Cash for the Settling SFT (or if the Settling SFT has a greater quantity of SFT Securities as its subject than the corresponding Linked SFT, the Corresponding SFT Cash) minus (ii) the SFT Cash for the Linked SFT; and (b) for all other purposes, (i) the SFT Cash for the SFT minus (ii) the product of the Independent Amount Percentage, if any, and the Current Market Price of the SFT Securities.

The term ''Rate Payment'' would mean an amount payable from one party to an SFT to the other party to the SFT at the Final Settlement expressed as a percentage of the amount of SFT Cash for the SFT. As an example, if the Rate Payment is specified as 0.02%, the amount payable would be the product 0.02% and the SFT Cash for the SFT.

The term ''Recall Date'' would mean, in respect of a Recall Notice, the second Business Day following NSCC's receipt of such Recall Notice.

The term ''Recall Notice'' would mean a notice that triggers the provisions of Section 9(b) of proposed Rule 56, relating to a Buy-In in respect of an SFT and that is submitted by an Approved SFT Submitter on behalf of a Transferor

in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose.

The term ''Recalled SFT'' would mean an SFT that has been novated to NSCC in respect of which a Recall Notice has been submitted.

The term ''Securities Financing Transaction'' or ''SFT'' would mean a transaction between two SFT Members pursuant to which (a) one SFT Member agrees to transfer specified SFT Securities to another SFT Member versus the SFT Cash; and (b) the Transferee agrees to retransfer such specified SFT Securities or equivalent SFT Securities (including quantity and CUSIP) to the Transferor versus the SFT Cash on the following Business Day.

The term ''Settling SFT'' would mean, as of any Business Day, an SFT that has been novated to NSCC, the Final Settlement of which is scheduled to occur on that Business Day.

The term ''SFT Account'' would mean a ledger maintained on the books and records of NSCC that reflects the outstanding SFTs that an SFT Member enters into and that have been novated to NSCC, the SFT Positions or SFT Cash associated with those transactions and any debits or credits of cash associated with such transactions effected pursuant to Rule 12 (Settlement). As proposed, the term ''SFT Account'' would include any Agent Clearing Member Customer Omnibus Account and any Sponsored Member Sub-Account.

The term ''SFT Cash'' would mean the specified amount of U.S. dollars that the Transferee agrees to transfer to the Transferor at the Initial Settlement of an SFT, (i) plus any Price Differential paid by NSCC to the SFT Member as Transferor or by the SFT Member as Transferee to NSCC during the term of the SFT and (ii) less any Price Differential paid by NSCC to the SFT Member as Transferee or by the SFT Member as Transferor to NSCC during the term of the SFT.

The term ''SFT Close-out Value'' would mean, with respect to an SFT Position of an SFT Member, an amount equal to: (i) If the SFT Member is the Transferor of the SFT Securities that are the subject of such SFT, (a) the CNS Market Value of the SFT Securities that are the subject of such SFT minus (b) the SFT Cash for such SFT; and (ii) if the SFT Member is a Transferee of the SFT Securities that are the subject of such SFT, (a) the SFT Cash for such SFT minus (b) the CNS Market Value of the SFT Securities that are the subject of such SFT.

The term ''SFT Long Position'' would mean the number of units of an SFT Security which an SFT Member is entitled to receive from NSCC at Final Settlement of an SFT against payment of the SFT Cash.

The term ''SFT Member'' would mean any Member, Sponsored Member acting in its principal capacity, Sponsoring Member acting in its principal capacity or Agent Clearing Member acting on behalf of a Customer, in each case that is a party to an SFT, permitted to participate in NSCC's SFT Clearing Service.

The term ''SFT Position'' would mean an SFT Member's SFT Long Position or SFT Short Position (as defined below and in the proposed rule change) in an SFT Security that is the subject of an SFT that has been novated to NSCC.

The term ''SFT Security'' would mean a security that is eligible to be the subject of an SFT novated to NSCC and is included in the list for which provision is made in proposed Section 1(g) of Rule 3 (Lists to be Maintained), as described below. As proposed, if any new or different security is exchanged for any SFT Security in connection with a recapitalization, merger, consolidation or other corporate action, such new or different security shall, effective upon such exchange, become an SFT Security in substitution for the former SFT Security for which such exchange is made.

The term ''SFT Short Position'' would mean the number of units of an SFT Security that an SFT Member is obligated to deliver to NSCC at Final Settlement of an SFT against payment of the SFT Cash.

The term ''Transferee'' would mean the SFT Member party to an SFT that agrees to receive SFT Securities from the other SFT Member party to the SFT in exchange for SFT Cash in connection with the Initial Settlement of the SFT.

The term ''Transferor'' would mean the SFT Member party to an SFT that agrees to transfer SFT Securities to the other SFT Member party to the SFT in exchange for SFT Cash in connection with the Initial Settlement of the SFT.

Proposed Rule 56, Section 1 (General)

Section 1 of proposed Rule 56 would be a general provision regarding the SFT Clearing Service applicable to Members, Sponsoring Members and Agent Clearing Members that participate in the proposed SFT Clearing Service.

Section 1(a) of proposed Rule 56 would establish that NSCC may accept for novation SFTs entered into between (i) a Member and another Member, (ii) a Sponsoring Member and its Sponsored Member, or (iii) an Agent Clearing Member acting on behalf of a Customer and either (x) a Member or (y) the same or another Agent Clearing Member acting on behalf of a Customer.

Section 1(b) of proposed Rule 56 would provide that any SFT that is submitted to NSCC for novation, and any Member and Sponsored Member that enters into an SFT (and any Customer on behalf of whom an Agent Clearing Member enters into an SFT) shall be subject to the provisions of proposed Rule 56; provided that Sections 15 and 16 of proposed Rule 56 shall only apply to Sponsoring Members, Agent Clearing Members, Sponsored Members and Customers, as applicable.

Section 1(c) of proposed Rule 56 would further provide that any amount of cash described in proposed Rule 56 may be rounded up to the nearest one cent, five cents, 10 cents, 25 cents or dollar according to the rounding convention requested by the SFT Member parties to the relevant SFT as conveyed to NSCC in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose.

Proposed Rule 56, Section 2 (Eligibility for SFT Clearing Service: SFT Member)

Section 2 of proposed Rule 56 would establish the eligibility requirements for using the proposed SFT Clearing Service.

Under Section 2 of proposed Rule 56, NSCC may permit any Member acting in its principal capacity, Sponsored Member acting in its principal capacity, or Agent Clearing Member acting on behalf of a Customer to be an SFT Member and participate in the proposed SFT Clearing Service.

Section 2 of proposed Rule 56 would provide that the rights, liabilities and obligations of SFT Members in their capacity as such shall be governed by the proposed Rule 56. References to a Member would not apply to an SFT Member in its capacity as such, unless specifically noted in the proposed Rule 56 or in such other Rules as applicable to an SFT Member.

Section 2 of proposed Rule 56 would also provide that an SFT Member that participates in NSCC in another capacity pursuant to another Rule, or which has entered into an agreement with NSCC independent from proposed Rule 56, shall continue to have all the rights, liabilities and obligations set forth in such other Rule or pursuant to such agreement, and such rights, liabilities and obligations shall be separate from its rights, liabilities and obligations as an SFT Member, except as contemplated under Sections 15 and 16 of proposed Rule 56, as described below.

Proposed Rule 56, Section 3 (Membership Documents)

Section 3 of proposed Rule 56 would govern the documents that SFT Member applicants would be required to complete and deliver to NSCC. Specifically, Section 3 of proposed Rule 56 would provide that to become an SFT Member, each applicant shall complete and deliver to NSCC documents in such forms as may be prescribed by NSCC from time to time and any other information requested by NSCC.

Proposed Rule 56, Section 4 (Securities Financing Transaction Data Submission)

Section 4 of proposed Rule 56 would govern the submission of transaction data for SFTs into NSCC for novation by Approved SFT Submitters on behalf of Transferors (*e.g.,* lenders) and Transferees (*e.g.,* borrowers).

Section 4(a) of proposed Rule 56 would provide that in order for an SFT to be submitted to NSCC, the transaction data for the SFT must be submitted to NSCC by an Approved SFT Submitter in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Any such transaction data shall be submitted to NSCC on a locked-in basis. In determining whether to accept transaction data from an Approved SFT Submitter, NSCC may require the Approved SFT Submitter to provide a Cybersecurity Confirmation. This is consistent with the existing requirement in Section 6 of Rule 7 (Comparison and Trade Recording Operation (Including Special Representative/Index Receipt Agent)) for organizations reporting trade data to NSCC.[73]

Section 4(b) of proposed Rule 56 would provide that NSCC would not act upon any instruction received from an Approved SFT Submitter in respect of an SFT unless each SFT Member (other than an SFT Member that is a Sponsored Member) designated by the Approved SFT Submitter as a party to such SFT has consented, in a writing delivered to NSCC, to the Approved SFT Submitter acting on behalf of the SFT Member in respect of SFTs.

Section 4(c) of proposed Rule 56 would provide that the obligations reflected in the transaction data on an SFT shall be deemed to have been confirmed and acknowledged by each SFT Member designated by the Approved SFT Submitter as a party thereto and to have been adopted by such SFT Member and, for the purposes of determining the rights and obligations between NSCC and such SFT Member under the proposed Rule 56 and such other Rules applicable to SFTs, shall be valid and binding upon such SFT Member. In addition, Section 4(c) would provide that an SFT Member which has been so designated by an Approved SFT Submitter shall resolve any differences or claims regarding the rights and obligations reflected in the transaction data submitted by the Approved SFT Submitter with the Approved SFT Submitter, and NSCC shall have no responsibility in respect thereof or to adjust its records or the accounts of the SFT Member in any way, other than pursuant to the instructions of the Approved SFT Submitter. Section 4(c) would also provide that any such adjustment shall be in the sole discretion of NSCC.

Section 4(d) of proposed Rule 56 would provide that NSCC makes no representation, whether expressed or implied, as to the complete and timely performance of an Approved SFT Submitter's duties and obligations. Section 4(d) would also provide that NSCC assumes no liability to any SFT Member for any act or failure to act by an Approved SFT Submitter in connection with any information received by NSCC or given to the SFT Member by NSCC via the Approved SFT Submitter, as the case may be.

Section 4(e) of proposed Rule 56 would provide that the submission of each SFT to NSCC and the performance of any obligation under such SFT shall constitute a representation to NSCC and covenant by the Transferor and the Transferee, any Sponsoring Member that is acting on behalf of the Transferor or Transferee and any Agent Clearing Member that is acting on behalf of a Customer in connection with such SFT that its participation in such SFT is in compliance, and would continue to comply, with all applicable laws and regulations, including without limitation Rule 15c3–3 and all other applicable rules and regulations of the Commission, any applicable provisions of Regulation T, Regulation U and Regulation X of the Board of Governors of the Federal Reserve System, and the rules of FINRA and any other regulatory or self-regulatory organization to which the Transferor, the Transferee, any Sponsoring Member that is acting on behalf of the Transferor or Transferee or any Agent Clearing Member that is acting on behalf of a Customer is subject.

Section 4(f) of proposed Rule 56 would provide that the submission of each SFT to NSCC shall constitute an authorization to NSCC by the Transferor, the Transferee and any Agent Clearing Member that is acting on behalf of a Customer for NSCC to give instructions regarding the SFT to DTC in respect of the relevant accounts of the Transferor, Transferee and Agent Clearing Member at DTC.

Proposed Rule 56, Section 5 (Novation of Securities Financing Transactions)

Section 5 of proposed Rule 56 would govern the nature and timing of the novation to NSCC of obligations related to an SFT.

Section 5(a) of proposed Rule 56 would provide that NSCC to only novate an SFT if, at the time of novation, the Final Settlement of such transaction is scheduled to occur one Business Day following the Initial Settlement and the SFT Cash is no less than 100% of the Contract Price of the SFT.

Section 5(b) of proposed Rule 56 would provide that each SFT that is a Bilaterally Initiated SFT, including any Sponsored Member Transaction, and validated pursuant to the Rules shall be novated to NSCC as of the time NSCC provides the Approved SFT Submitter for such SFT a report confirming such novation in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 5(b) would also provide that each SFT that is neither a Bilaterally Initiated SFT nor a Sponsored Member Transaction and that is validated pursuant to the Rules shall be novated to NSCC as of the time (x) the Initial Settlement of such SFT has completed by (i) the Transferor instructing DTC to deliver from the relevant DTC account of the Transferor to NSCC's account at DTC the subject SFT Securities versus payment of the amount of the SFT Cash, (ii) NSCC instructing DTC to deliver from NSCC's account at DTC to the relevant DTC account of the Transferee the subject SFT Securities versus payment of the amount of SFT Cash and (iii) DTC processes the deliveries in accordance with the rules and procedures of DTC, or (y) the Initial Settlement obligations of such SFT have been discharged in accordance with Section 8 of proposed Rule 56, as described below. In addition, Section 5(b) would provide that if the Initial Settlement obligations of an SFT that is neither a Bilaterally Initiated SFT nor a Sponsored Member Transaction are not discharged in accordance with clause (x) or (y), then such SFT shall be deemed void *ab initio.*

[73] Section 6 of Rule 7 (Comparison and Trade Recording Operation (Including Special Representative/Index Receipt Agent)) provides that NSCC may require organizations that deliver trade data to NSCC as described in that Rule to provide a Cybersecurity Confirmation before agreeing to accept such trade data. *Supra* note 4.

Section 5(c) of proposed Rule 56 would provide that, subject to Sections 5(d) and 5(e) of proposed Rule 56 as described below, the novation of SFTs shall consist of the termination of the Final Settlement, Rate Payment and Distribution Payment obligations and entitlements between the parties to the SFT with respect to such SFT and their replacement with obligations and entitlements to and from NSCC to perform, in accordance with the Rules, the Final Settlement, Rate Payment, and Distribution Payment obligations and entitlements under the SFT.

Section 5(d) of proposed Rule 56 would govern the novation of SFTs having Incremental Additional Independent Amount SFT Cash and provides when the obligation to return Independent Amount SFT Cash for which an associated Clearing Fund deposit has not been made will be novated away from a Transferor to NSCC. Specifically, Section 5(d)(i) of proposed Rule 56 would provide that if an SFT has Incremental Additional Independent Amount SFT Cash, then, unless the SFT is a Sponsored Member Transaction and the Sponsoring Member is the Transferee,[74] the obligation of the Transferor to return the Incremental Additional Independent Amount SFT Cash to the Transferee shall not be terminated and novated to NSCC (nor shall NSCC otherwise be required to return such Incremental Additional Independent Amount SFT Cash), except to the extent that the Transferor, Sponsoring Member or Agent Clearing Member, as applicable, has satisfied the associated Independent Amount SFT Cash Deposit Requirement. As proposed, to the extent the associated Clearing Fund deposit has not been made in respect of Independent Amount SFT Cash at the time of the Initial Settlement, the obligation to return the Independent Amount SFT Cash would not be novated to NSCC.

Section 5(d)(ii) of proposed Rule 56 would provide that to the extent the Transferor, Sponsoring Member or Agent Clearing Member has not satisfied the associated Independent Amount SFT Cash Deposit Requirement, the Transferor's (or in the case of a Non-Returned SFT, NSCC's) obligation to return the Incremental Additional Independent Amount SFT Cash shall: (1) If the SFT is an Agent Clearing Member Transaction for which the Agent Clearing Member, acting on behalf of the Customer, is the Transferor, be terminated and replaced with an obligation of the Agent Clearing Member, in its capacity as principal, to return the Incremental Additional Independent Amount SFT Cash to the Transferee; or (2) otherwise, remain (or in the context of a Non-Returned SFT, be terminated and replaced with) a bilateral obligation of the Transferor to the Transferee. As proposed, if the associated Clearing Fund deposit has not been made in respect of Independent Amount SFT Cash, the Independent Amount SFT Cash would be owed by the Transferor to the Transferee as a bilateral principal-to-principal obligation, unless the Transferor is a Customer of an Agent Clearing Member, in which case the obligation to return the Independent Amount SFT Cash in respect of which the Clearing Fund has not been made would be novated from the Customer to the Agent Clearing Member, and the Agent Clearing Member would owe the Independent Amount SFT Cash back to the Transferee as principal.[75]

Section 5(d)(iii) of proposed Rule 56 would provide that each SFT Member agrees that any obligation to return Incremental Additional Independent Amount SFT Cash that is novated to an Agent Clearing Member or that remains (or becomes) a bilateral obligation of the Transferor to the Transferee in accordance with Section 5(d)(ii) of proposed Rule 56, is a binding and enforceable obligation of the Agent Clearing Member or Transferor, as applicable, regardless of whether the Transferee has entered into an Existing Master Agreement with the Agent Clearing Member or Transferor. In addition, Section 5(d)(iii) would provide that each SFT Member further agrees that any such obligation shall only be due and payable to the Transferee upon the final discharge of NSCC's Final Settlement obligations to the Transferor under the portion of the SFT that has been novated to NSCC in accordance with Section 5(b) of proposed Rule 56, as described above.

Section 5(d)(iv) of proposed Rule 56 would provide that, until the Transferor, Sponsoring Member or Agent Clearing Member has satisfied in full its Independent Amount SFT Cash Deposit Requirement, the SFT Cash of the SFT shall, for purposes of determining the obligations owing to and from NSCC under such SFT, equal the SFT Cash of the SFT less the Incremental Additional Independent Amount SFT Cash.

Section 5(d)(v) of proposed Rule 56 would provide that once the Transferor, Sponsoring Member or Agent Clearing Member, as applicable, has satisfied in full its Independent Amount SFT Cash Deposit Requirement, the obligation of the Transferor to return the Incremental Additional Independent Amount SFT Cash to the Transferee (or, in the case of an SFT that is an Agent Clearing Member Transaction, any obligation of the Agent Clearing Member to return the Incremental Additional Independent Amount SFT Cash to the Transferee) shall be novated to NSCC, and the SFT Cash of the SFT shall, for purposes of determining the obligations owing to and from NSCC under the SFT, include the full amount of the SFT Cash of such SFT.

Section 5(e) of proposed Rule 56 would govern novation in respect of certain corporate actions and provide that NSCC would (i) have an obligation to pay the cash distribution to the Transferor and the Transferee would have an obligation to pay the cash distribution to NSCC, and (ii) not novate any obligations related to unsupported corporate actions and distributions. Specifically, Section 5(e)(i) of proposed Rule 56 would provide that regardless of anything to the contrary in any Existing Master Agreement (including a provision addressing when an issuer pays different amounts to different security holders due to withholding tax or other reasons), the Distribution Payment obligations and entitlements between NSCC and each party to an SFT that has been novated to NSCC shall be the obligation of NSCC to pay to the Transferor and the obligation of the Transferee to pay to NSCC the Distribution Amount in respect of each Distribution and the corresponding entitlements of the Transferor and NSCC, in each case, in accordance with the Rules.

Section 5(e)(ii) of proposed Rule 56 would provide that NSCC shall maintain a list of corporate actions and distributions that NSCC does not support with respect to SFTs. Section 5(e)(ii) would further provide that no Final Settlement, Rate Payment, Distribution Payment or other obligation resulting from a corporate action or distribution that is not supported by NSCC shall be novated to NSCC. In addition, Section 5(e)(ii) would provide that none of such unsupported corporate action shall modify the Final Settlement, Rate Payment, Distribution

[74] Where the Transferor is a Sponsored Member receiving Independent Amount SFT Cash, NSCC would not be requiring Independent Amount SFT Cash Deposit Requirement. This is because in the case of the Sponsored Member's default, the party giving the Independent Amount SFT Cash, *i.e.,* Sponsoring Member, is the guarantor of the settlement obligation of the Sponsored Member Independent Amount SFT Cash back to NSCC.

[75] This interim novation is designed to avoid any credit concerns that would manifest if the Customer and the Transferee had to have a principal bilateral obligation to each other for the Independent Amount SFT Cash.

Payment or other obligations of NSCC, Transferor and Transferee under an SFT that has been novated to NSCC. Section 5(e)(ii) would also provide that each SFT Member agrees that any obligation under an SFT resulting from a corporate action or distribution not supported by NSCC shall remain a binding and enforceable bilateral obligation between the Transferor and the Transferee, regardless of whether the Transferor and Transferee have entered into an Existing Master Agreement.

Section 5(f) of proposed Rule 56 would provide that the novation of SFTs shall not affect the fundamental substance of the SFT as a transfer of securities by one party in exchange for a transfer of cash by the other party and an agreement by each party to return the property it received and shall not affect the economic obligations or entitlements of the parties under the SFT except that following novation, the Final Settlement, Rate Payment and Distribution Payment obligations and entitlements shall be owed to and by NSCC rather than the original counterparty under the SFT.

Section 5(g) of proposed Rule 56 would provide that the representations and warranties made by each of the parties to an SFT that has been novated to NSCC under the parties' Existing Master Agreement, if any, shall (x) to the extent that they are inconsistent with the Rules, be eliminated and replaced with the Rules and (y) to the extent that they are not inconsistent with the Rules, remain in effect as between the parties to the original SFT, but shall not impose any additional obligations on NSCC.

Proposed Rule 56, Section 6 (Rate and Distributions)

Section 6 of proposed Rule 56 would govern the settlement of Rate Payments and supported Distributions by NSCC for novated SFTs. Section 6(a) of proposed Rule 56 would provide that NSCC shall debit and credit the Rate Payment from and to the SFT Accounts of the SFT Member parties to an SFT that has been novated to NSCC as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service) on the scheduled Final Settlement Date for the SFT, irrespective of whether Final Settlement of such SFT occurs on such date.

Section 6(b) of proposed Rule 56 would provide that if (x) a cash dividend is made on or in respect of an SFT Security that is the subject of an SFT that has been novated to NSCC or (y) cash is exchanged, in whole or in part, for such an SFT Security in a merger, consolidation or similar transaction, and the Transferor under the SFT would have been entitled to a cash payment related to the event described in clause (x) or (y) had it not transferred the SFT Securities that are the subject of the SFT to the Transferee in the Initial Settlement, then NSCC shall, within the time period determined by NSCC from time to time, credit the Distribution Amount to the Transferor's SFT Account and debit the Distribution Amount from the Transferee's SFT Account as part of its end of day final money settlement process in accordance with Rule 12 and Procedure VIII. Section 6(b) would further provide that if cash is exchanged in whole for such an SFT Security, then the completion of the actions described in the preceding sentence shall discharge NSCC's Final Settlement obligations to the relevant Transferor and the Transferee's Final Settlement obligations to NSCC.

Proposed Rule 56, Section 7 (Final Settlement of Securities Financing Transactions)

Section 7 of proposed Rule 56 would govern the mechanics of Final Settlement of SFTs by providing that, subject to Section 11 of proposed Rule 56, as described below, the Final Settlement of an SFT that has been novated to NSCC shall be scheduled to occur on the Business Day immediately following the date the SFT was novated to NSCC. Section 7 would further provide that unless the Final Settlement obligations under such an SFT are discharged in accordance with Section 8 of proposed Rule 56, as described below, Final Settlement of the SFT shall occur by (x) NSCC instructing DTC to (i) deliver from the relevant DTC account of the Transferee to NSCC's account at DTC the subject SFT Securities versus payment of the amount of SFT Cash and (ii) deliver from NSCC's account at DTC to the relevant DTC account of the Transferor the subject SFT Securities versus payment of the amount of SFT Cash, and (y) the processing of such deliveries by DTC in accordance to the rules and procedures of DTC; provided that if such transfers do not occur and a Buy-In does not occur in respect of the SFT, then the Final Settlement Date shall be rescheduled for the following Business Day as described in Section 9 of proposed Rule 56, as described below. The obligation of a Transferor (or a Sponsoring Member that guarantees to NSCC the obligation of a Transferor or an Agent Clearing Member that is responsible for the performance of the obligation under an SFT that is an Agent Clearing Member Transaction to return SFT Cash to NSCC) in respect of the Final Settlement of an SFT that has been novated to NSCC shall be to pay the SFT Cash and, if applicable, the Rate Payment to NSCC against the transfer of the relevant SFT Securities by NSCC. The obligation of a Transferee (or a Sponsoring Member that guarantees to NSCC the obligation of a Transferee or an Agent Clearing Member that is responsible for the performance of the obligation under an SFT that is an Agent Clearing Member Transaction to return SFT Securities to NSCC) in respect of the Final Settlement of an SFT that has been novated to NSCC shall be to transfer the SFT Securities and, if applicable, the Rate Payment to NSCC against the transfer of SFT Cash by NSCC.

Section 7 of proposed Rule 56 would also provide that an SFT, or a portion thereof, shall be deemed complete and final upon Final Settlement of the SFT, or such portion, whether pursuant to Sections 7, 8, 9(d) or 13(c) of proposed Rule 56. Section 7 would also provide that from and after the Final Settlement of an SFT, or a portion thereof, pursuant to any Sections 7, 8, 9(d) or 13(c) of proposed Rule 56, NSCC shall be discharged from its obligations to the Transferor and the Transferee, and NSCC shall have no further obligation in respect of the SFT or such portion. This is to make it clear to SFT Members the point at which settlement of an SFT is deemed to be complete and final.[76]

Proposed Rule 56, Section 8 (Discharge of Offsetting Final Settlement and Initial Settlement Obligations)

Section 8 of proposed Rule 56 would govern the ''roll'' (*i.e.,* pair off or offset) process whereby the Final Settlement obligations on one SFT (*i.e.,* the Settling SFT) between two parties can be offset with the Initial Settlement obligations on another SFT between the same parties (*i.e.,* the Linked SFT) through the debiting and crediting of the difference in cash collateral between the two offsetting SFTs (*i.e.,* the Price Differential).

Section 8(a) of proposed Rule 56 would provide that, subject to the provisions of Section 13(c) of proposed Rule 56, as described below, if, on any Business Day, the pre-novation SFT Member parties to a Settling SFT enter

[76] With respect to an SFT between a Sponsoring Member and its Sponsored Member, the SFT would settle on the books of the Sponsoring Member because the Sponsored Member are not participants at DTC and thus would not have accounts at DTC. Accordingly, the finality of the settlement of such SFT would occur when the Sponsoring Member credits the securities and cash on its or the relevant custodian's books and records.

into a Linked SFT and the Approved SFT Submitter provides an appropriate instruction to NSCC in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose, the Final Settlement obligations of the parties to the Settling SFT and the Initial Settlement obligations of the parties to the Linked SFT shall be discharged once NSCC has instructed DTC to debit and credit the relevant DTC accounts, of the SFT Member parties, as described below in Section 8(b) of proposed Rule 56, and DTC processes such debits and credits in accordance with the rules and procedures of DTC. To the extent the Price Differential is not processed by DTC in accordance with the rules and procedures of DTC, NSCC shall debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service). If the Price Differential is positive, NSCC shall (x) credit an amount equal to the Price Differential to the Transferee's SFT Account and (y) debit an amount equal to the Price Differential from the Transferor's SFT Account. If the Price Differential is negative, NSCC shall (x) credit an amount equal to the absolute value of the Price Differential to the Transferor's SFT Account and (y) debit an amount equal to the absolute value of the Price Differential from the Transferee's SFT Account. However, if the Linked SFT has as its subject fewer SFT Securities than the Settling SFT, then only the following Final Settlement obligations under the Settling SFT shall be discharged in accordance with Section 8 of proposed Rule 56: (i) the Transferee's and NSCC's Final Settlement obligations in respect of a quantity of SFT Securities equal to the quantity of SFT Securities that are the subject of the Linked SFT and (ii) the Transferor's and NSCC's Final Settlement obligations in respect of the Corresponding SFT Cash.

Section 8(b) of proposed Rule 56 would provide that if the Price Differential is positive, NSCC shall (x) instruct DTC to debit an amount equal to the Price Differential from NSCC's account at DTC and credit such amount to the relevant DTC account of the Transferee and (y) instruct DTC to debit an amount equal to the Price Differential from the relevant DTC account of the Transferor and credit such amount to NSCC's account at DTC. If the Price Differential is negative, NSCC shall (x) instruct DTC to debit an amount equal to the absolute value of the Price Differential from NSCC's account at DTC and credit such amount to the relevant DTC account of the Transferor and (y) instruct DTC to debit an amount equal to the absolute value of the Price Differential from the relevant DTC account of the Transferee and credit such amount to NSCC's account at DTC.

Proposed Rule 56, Section 9 (Non-Returned Securities Financing Transactions and Recalls)

Section 9 of proposed Rule 56 would govern the processing of a novated SFT for which the Final Settlement obligations have not been discharged either through Final Settlement in accordance with Section 7 of proposed Rule 56 (as described above) or a pair off in accordance with Section 8 of proposed Rule 56 (as described above), and the recall and buy-in process for such an SFT.

Specifically, Section 9(a) of proposed Rule 56 would provide that if (x) the Transferee does not satisfy its Final Settlement obligations in respect of an SFT that has been novated to NSCC on the Final Settlement Date, (y) such Final Settlement obligations have not been discharged in accordance with the provisions of Section 8 of proposed Rule 56, as described above, and (z) a Buy-In has not occurred in respect of such SFT or a portion thereof (such SFT, a ''Non-Returned SFT''), the Final Settlement Date of the Non-Returned SFT shall be rescheduled for the following Business Day, and NSCC shall instruct DTC to debit and credit the relevant DTC accounts of the SFT Member parties, as described in subsection (b) of Section 8 above. To the extent the Price Differential is not processed by DTC in accordance with the rules and procedures of DTC, NSCC shall debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties to the Non-Returned SFT as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service). Section 9(a) would further provide that if the Price Differential is positive, NSCC shall (x) credit an amount equal to the Price Differential to the Transferee's SFT Account and (y) debit an amount equal to the Price Differential from the Transferor's SFT Account; if the Price Differential is negative, NSCC shall (x) credit an amount equal to the absolute value of the Price Differential to the Transferor's SFT Account and (y) debit an amount equal to the absolute value of the Price Differential from the Transferee's SFT Account. This process would continue until Final Settlement, a pair off in accordance with Section 8 of proposed Rule 56 (as discussed above), or a Buy-In.

Section 9(b) of proposed Rule 56 would provide that if NSCC receives a Recall Notice in respect of an SFT that has been novated to NSCC and the Transferee does not satisfy its Final Settlement obligations by the Recall Date for the Recall Notice, the Transferor may, in a commercially reasonable manner,[77] purchase some or all of the SFT Securities that are the subject of the SFT [78] or elect to be deemed to have purchased the SFT Securities, in each case in accordance with such timeframes and deadlines as established by NSCC for such purpose (a ''Buy-In''). Following such purchase or deemed purchase, the Transferor shall (x) give written notice to NSCC of the Transferor's costs to purchase the relevant SFT Securities (including the price paid by the Transferor and any broker's fees and commissions and reasonable out-of-pocket transaction costs, fees or interest expenses incurred in connection with such purchase) (such costs, the ''Buy-In Costs'') or, if the Transferor elects to be deemed to have purchased the SFT Securities, the Deemed Buy-In Costs, and (y) indemnify NSCC, and its employees, officers, directors, shareholders, agents and Members (collectively the ''Buy-In Indemnified Parties''), for any and all losses, liability or expenses of a Buy-In Indemnified Party arising from any claim disputing the calculation of the Buy-In Costs, the Deemed Buy-In Costs or the method or manner of effecting the Buy-In. Section 9(b) would further provide that each SFT Member acknowledges and agrees that each SFT Security is of a type traded in a recognized market and that, in the absence of a generally recognized source for prices or bid or offer quotations for any SFT Security, the Transferor may, for purposes of a Buy-In, establish the source therefor in its commercially reasonable discretion. In addition, Section 9(b) would provide that each SFT Member further acknowledges and agrees that NSCC would not calculate

[77] The requirement that a party exercising buy-in rights do so in a ''commercially reasonable manner'' is market standard. *See, e.g.,* Section 13.1 of the Master Securities Loan Agreement published by Securities Industry and Financial Markets Association (''SIFMA''). NSCC has proposed to include this language in order to align the standards applicable to an exercise of remedies in relation to SFTs with those applicable in the bilateral uncleared space. NSCC believes that such alignment will increase certainty for SFT Members and allow them to follow standards with which they are familiar.

[78] The Transferor would purchase these securities from one or more third parties.

any Buy-In Costs or Deemed Buy-In Costs and shall have no liability for any such calculation. Section 9(b) would also provide that NSCC would assign to any Transferee whose SFT is subject to a Buy-In any rights it may have against the Transferor to dispute the Transferor's calculation of the Buy-In Costs or Deemed Buy-In Costs.

Section 9(c) of proposed Rule 56 would provide that on the Business Day following NSCC's receipt of written notice of the Transferor's Buy-In Costs, NSCC shall debit and credit the Buy-In Amount from and to the SFT Accounts of the SFT Member parties to the SFT as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service). Section 9(c) would provide that if the Buy-In Amount is positive, NSCC would (x) credit the value of the Buy-In Amount to the Transferor's SFT Account and (y) debit the value of the Buy-In Amount from the Transferee's SFT Account. Section 9(c) would further provide that if the Buy-In Amount is negative, NSCC would (x) credit the value of the Buy-In Amount to the Transferee's SFT Account and (y) debit the value of the Buy-In Amount from the Transferor's SFT Account.

Section 9(d) of proposed Rule 56 would provide that following the application of such Buy-In Amount, the Final Settlement obligations under the SFT shall be discharged; provided that if the Transferor effected a Buy-In in respect of some but not all of the SFT Securities that are the subject of an SFT, then only the following obligations shall be discharged: (i) The Transferee's and NSCC's Final Settlement obligations in respect of the SFT Securities for which the Transferor effected the Buy-In and (ii) the Transferor's and NSCC's Final Settlement obligations in respect of the Corresponding SFT Cash.

Section 9(e) of proposed Rule 56 would provide that a Recalled SFT shall be treated as a Non-Returned SFT by NSCC until the earlier of the time that the SFT settles or a Buy-In is processed by NSCC in accordance with Section 9 of proposed Rule 56, except that the additional SFT Deposit required for Non-Returned SFTs under Section 12(c) of proposed Rule 56, as described below, shall not apply. Section 9(e) would further provide that if the Transferor effects the Buy-In in respect of some, but not all, of the SFT Securities that are the subject of a Recalled SFT, the Final Settlement obligations of the Recalled SFT that are not discharged in accordance with Section 9(d) of proposed Rule 56 shall be treated as a Non-Returned SFT until the SFT settles or a Buy-In is processed by NSCC in accordance with Section 9 of proposed Rule 56, and the additional SFT Deposit required under Section 12(c) of proposed Rule 56, as described below, for Non-Returned SFTs shall apply.

Proposed Rule 56, Section 10 (Cancellation, Modification and Termination of Securities Financing Transactions)

Section 10 of proposed Rule 56 would govern the process for cancellations, modifications and terminations of SFTs in NSCC's systems.

Section 10(a) of proposed Rule 56 would provide that transaction data on an SFT that has not been novated to NSCC may be cancelled upon receipt by NSCC of appropriate instructions from the Approved SFT Submitter with respect to such SFT on behalf of both SFT Member parties thereto, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 10(a) would further provide that an SFT that is so cancelled by NSCC would be deemed to be void *ab initio.*

Section 10(b) of proposed Rule 56 would provide the Rate Payment on an SFT that has been novated to NSCC may be modified upon receipt by NSCC of appropriate instructions from the Approved SFT Submitter with respect to such SFT, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 10(b) would further provide that any instructions submitted by an Approved SFT Submitter to modify the Rate Payment of an SFT must be submitted on behalf of both SFT Member parties to the SFT.

Section 10(c) of proposed Rule 56 would provide an SFT that has been novated to NSCC in accordance with Section 5 of proposed Rule 56, as described above, may be terminated upon receipt by NSCC of appropriate instructions from the Approved SFT Submitter with respect to such SFT on behalf of both SFT Member parties thereto, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purposes. Section 10(c) would further provide that following any such termination, no amounts or further obligations shall be owing in respect of the SFT between NSCC and Transferor or NSCC and the Transferee.

Proposed Rule 56, Section 11 (Accelerated Final Settlement)

Section 11 of proposed Rule 56 would allow a Transferee (*i.e.,* the borrower) to do a same day return of borrowed securities, if necessary, to satisfy its regulatory purpose requirements by accelerating the Final Settlement of an SFT that has been novated to NSCC. Specifically, Section 11 would provide that the Transferee may accelerate the scheduled Final Settlement of an SFT that has been novated to NSCC upon receipt by NSCC of appropriate instruction from the Approved SFT Submitter with respect to such SFT, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 11 would further provide that such accelerated Final Settlement shall be effected by NSCC in accordance with the provisions of Section 7 of proposed Rule 56, as described above.

Proposed Rule 56, Section 12 (Clearing Fund Requirements)

Section 12 of proposed Rule 56 would set out the Clearing Fund requirements for SFT Members with respect to their SFT activity.

Section 12(a) of proposed Rule 56 would provide each SFT Member, other than an SFT Member that is a Sponsored Member, shall make and maintain on an ongoing basis a deposit to the Clearing Fund with respect to its SFT Positions (the ''SFT Deposit''). Section 12(a) would provide that, for the avoidance of doubt, the SFT Positions for an SFT Member that is a Sponsoring Member shall include all SFT Positions held in its Sponsored Member Sub-Account(s) in addition to its proprietary account(s).

Section 12(b) of proposed Rule 56 would provide that the SFT Deposit shall be held by NSCC or its designated agents as part of the Clearing Fund, to be applied as provided in Sections 1 through 12 of Rule 4 (Clearing Fund).

Section 12(c) of proposed Rule 56 would provide that NSCC shall calculate the amount of each such SFT Member's required deposit for SFT Positions, subject to a $250,000[79] minimum (excluding the minimum contribution to the Clearing Fund as required by Procedure XV (Clearing Fund Formula and Other Matters), Section II.(A)), by applying the Clearing Fund formula for CNS Transactions in Sections I.(A)(1)(a), (b), (d), (f) (g), (h) of Procedure XV as well as the additional Clearing Fund formula in Section I.(B)(5) (Intraday Mark-to-Market Charge) of Procedure XV in the same manner as such sections apply to CNS Transactions submitted to NSCC for regular way settlement, plus, with

[79] *Supra* note 32.

respect to any Non-Returned SFT, an additional charge that is calculated by (x) multiplying the Current Market Price of the SFT Securities that are the subject of such Non-Returned SFTs by the number of such SFT Securities that are the subject of the SFT and (y) multiplying such product by (i) 5% for SFT Members rated 1 through 4 on the Credit Risk Rating Matrix, (ii) 10% for SFT Members rated 5 or 6 on the Credit Risk Rating Matrix, or (iii) 20% for SFT Members rated 7 on the Credit Risk Rating Matrix shall be applied to each SFT Member that is a party thereto [80] (collectively and includes any and all Independent Amount SFT Cash Deposit Requirements, the ''Required SFT Deposit''); provided, however, notwithstanding anything to the contrary, (A) a minimum of 40% of an SFT Member's Required SFT Deposit shall be made in the form of cash and/or Eligible Clearing Fund Treasury Securities and (y) the lesser of $5,000,000 or 10% of an SFT Member's Required SFT Deposit, with a minimum of $250,000,[81] must be made and maintained in cash; provided, further, the additional Clearing Fund formula in Sections I.(B)(1) (Additional Deposits for Members on the Watch List); (2) (Excess Capital Premium); (3) (Backtesting Charge); (4) (Bank Holiday Charge); Minimum Clearing Fund and Additional Deposit Requirements in Sections II.(A)1(a)—(b), II.(B), and II.(C); as well as Section III (Collateral Value of Eligible Clearing Fund Securities) of Procedure XV shall apply to SFT Members in the same manner as such sections apply to Members. As noted in the proposed rule text, for the purpose of applying Section I.(A)(1)(h) of Procedure XV (Margin Liquidity Adjustment (''MLA'') charge), SFT Positions shall be netted with Net Unsettled Positions, as defined in Procedure XV.[82]

Section 12(d) of proposed Rule 56 would provide that NSCC shall have the discretion to require an SFT Member to post its Required SFT Deposit in proportion of cash higher than as required under subsection (c) of proposed Section 12, as determined by NSCC from time to time in view of market conditions and other financial and operational capabilities of the SFT Member. Section 12(d) would further provide that NSCC shall make any such determination based on such factors as NSCC determines to be appropriate from time to time.

Section 12(e) of proposed Rule 56 would provide that if an SFT has Incremental Additional Independent Amount SFT Cash, the Transferor shall make an additional deposit to the Clearing Fund that equals the amount of the Incremental Additional Independent Amount SFT Cash for such SFT (''Independent Amount SFT Cash Deposit, and such requirement the ''Independent Amount SFT Cash Deposit Requirement''). Section 12(e) would also provide that the Independent Amount SFT Cash Deposit Requirement must be satisfied in cash and may, at the discretion of NSCC, be satisfied using Independent Amount SFT Cash Deposits that have previously been made by the Transferor in respect of SFTs with the same Transferee that have since settled.[83] Section 12(e) would further provide that the Transferor shall satisfy any Independent Amount SFT Cash Deposit Requirement in respect of an SFT on the date that the SFT is novated to NSCC pursuant to the timeframes and deadlines established by NSCC for such purpose. In addition, Section 12(e) would provide that if, on a given day, the Transferor satisfies its Independent Amount SFT Cash Deposit Requirement for some, but not all, SFTs novated to NSCC on that day, NSCC will consider the Transferor to have satisfied its Independent Amount SFT Cash Deposit Requirement for none of the SFTs that were novated to NSCC on that day.

Section 12(f) of proposed Rule 56 would provide that references to Clearing Fund in the other Rules shall include and apply to SFT Deposit, and references to Required Fund Deposit shall include and apply to Required SFT Deposit, unless specifically noted otherwise in proposed Rule 56 or in such other Rules.

Proposed Rule 56, Section 13 (Ineligible SFT Securities and Supported Corporate Actions)

Section 13 of proposed Rule 56 would govern the processing of SFTs where the underlying securities become ineligible SFT Securities and the processing of SFTs in the context of supported corporate actions.

Specifically, Section 13(a) of proposed Rule 56 would provide that NSCC would remove an Ineligible SFT Security from the list maintained by NSCC as set forth in Rule 3 (Lists to be Maintained); provided that NSCC may not be able to identify that an SFT Security is an Ineligible SFT Security and remove such SFT Security from the list maintained by NSCC if the reason for the ineligibility is that the SFT Security is undergoing a corporate action or distribution not supported by NSCC and NSCC is not in receipt of reasonably advanced notice of such corporate action or distribution.

Section 13(b) of proposed Rule 56 would provide that notwithstanding Section 12 of proposed Rule 56, as described above, if an SFT Security becomes an Ineligible SFT Security because the Current Market Price of the SFT Security falls below the threshold established by NSCC from time to time, the Required SFT Deposit of each SFT Member party to an SFT which has such Ineligible SFT Security as its subject shall include an additional amount equal to the product of 100% of the Current Market Price of such Ineligible SFT Security and the number of such Ineligible SFT Securities that the SFT has as its subject.[84] The threshold that would be established by NSCC is currently $5.00, which could be modified by NSCC [85] at a later date after

[80] The Required SFT Deposit multipliers proposed for Non-Returned SFTs are identical to the Required Fund Deposit multipliers applied to CNS Fails Positions. *See* Procedure XV (Clearing Fund Formula and Other Matters), Section I.(A)(1)(e)), *supra* note 4. While the concept of a ''fail'' does not exist in the securities lending market in the same manner as it does in the cash market, to the extent that the Final Settlement of an SFT is scheduled on a particular date but does not occur, whether directly or through a pair off as described in Section 8 of proposed Rule 56 (as discussed above), that could potentially be a result of a ''squeeze'' or other market dislocation whereby NSCC may face increased market risk in the event of the default of either the Transferor or the Transferee. As a result, NSCC believes it is prudent to apply the same Required Fund Deposit multiplier to a Non-Returned SFT as it does to CNS Fails Positions.

The Credit Risk Rating Matrix is a financial model utilized by NSCC in its ongoing monitoring of Members based on various risk criteria. Each Member is rated by the Credit Risk Rating Matrix on a 7-point rating system, with ''1'' being the strongest credit rating and ''7'' being the weakest credit rating. As described above, to the extent that the Final Settlement of an SFT is scheduled on a particular date but does not occur, NSCC, as a central counterparty, is exposed to market risks. Such exposures generally increase when the SFT Member's risk of default increases, as reflected by the SFT Member's Credit Risk Rating Matrix credit rating. As such, the Required SFT Deposit multipliers proposed for Non-Returned SFTs vary based on the SFT Member's credit rating to reflect the potential increase in market risk from SFT Members with higher risk of default.

[81] *Supra* note 34.

[82] *Supra* note 33.

[83] This could occur in a situation in which an existing SFT settles and then the Transferor enters into a new SFT with the same Transferee (*e.g.,* in a pair off as described in Section 8 of proposed Rule 56, discussed above). In that situation, if the Transferee (or Sponsoring Member or Agent Clearing Member) has not yet called back the Independent Amount SFT Cash Deposit it posted in respect of the Settling SFT, then NSCC may apply the deposit to the Independent Amount SFT Cash Deposit obligation associated with the new SFT.

[84] If the Current Market Price of the SFT Security falls below the threshold established by NSCC from time to time, NSCC would assess the additional amount as part of the Required SFT Deposit.

[85] *Supra* note 23.

NSCC gains more experience with the nature of the SFT portfolios submitted for clearing, as discussed above.

Section 13(c) of proposed Rule 56 would provide that if NSCC declares that an SFT Security has or would become an Ineligible SFT Security because the security is or would become ineligible for processing or is or would be undergoing a corporate action or distribution that is not supported by NSCC, the Final Settlement of all SFTs that have been novated to NSCC and have such SFT Security as their subject must occur before the Ineligibility Date.[86] In addition, Section 13(c) would provide that if following such declaration the Transferee does not satisfy its Final Settlement obligations in respect of any such SFT as provided in Section 7 of proposed Rule 56, as described above, by the Ineligibility Date, NSCC shall, unless NSCC has previously debited and credited the Price Differential from and to the SFT Accounts of the SFT Member parties to the SFT in accordance with Section 8 of proposed Rule 56, as described above, on Ineligibility Date, debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties to the SFT as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service).[87] Section 13(c) would further provide that if the Price Differential is positive, NSCC shall (x) credit an amount equal to the Price Differential to the Transferee's SFT Account and (y) debit an amount equal to the Price Differential from the Transferor's SFT Account. Section 13(c) would also provide that if the Price Differential is negative, NSCC shall (x) credit an amount equal to the absolute value of the Price Differential to the Transferor's SFT Account and (y) debit an amount equal to the absolute value of the Price Differential from the Transferee's SFT Account. Furthermore, Section 13(c) would provide that following the application of Price Differential to an Ineligible SFT on or after the relevant Ineligibility Date, all rights and obligations as between NSCC and the SFT Member parties thereto with respect to such SFT shall be discharged.

Section 13(d) of proposed Rule 56 would provide that if a corporate action supported by NSCC in respect of the SFT Securities that are the subject of an SFT is scheduled to occur, NSCC may cease to permit the discharge of the SFT's Final Settlement obligations, whether pursuant to Section 8 of proposed Rule 56, as described above, or otherwise, and treat the SFT as a Non-Returned SFT for such period of time determined by NSCC as necessary to process the corporate action, except that the additional SFT Deposit required for Non-Returned SFTs under Section 12(c) of proposed Rule 56, as described above, shall not apply. Section 13(d) would further provide that notwithstanding the foregoing, NSCC shall not limit the ability of a Member to accelerate the Final Settlement of an SFT in accordance with Section 11 of proposed Rule 56, as described above, provided that any Price Differential for the SFT has settled in accordance with Section 9(a) of proposed Rule 56, as described above, and that such accelerated Final Settlement is permitted in accordance with the rules and procedures of DTC.

Proposed Rule 56, Section 14 (Cease To Act Procedures for SFT Members With Open Securities Financing Transactions)

Section 14 of proposed Rule 56 would establish NSCC's procedures for when it ceases to act for an SFT Member with open SFTs, including recalling a non-defaulting SFT Member that is a Transferee and liquidating the Defaulting SFT Member's SFT Positions by deeming NSCC to have bought in or sold out some or all the SFT Securities that are the subject of such SFTs at prevailing market price or by crossing (including on a delayed basis).

Section 14(a) of proposed Rule 56 would provide that the provisions of Rule 18 (Procedures for When the Corporation Declines or Ceases to Act) shall not apply to the SFTs except for Sections 1 and 8 of Rule 18.

Section 14(b) of proposed Rule 56 would provide that if NSCC has declined or ceased to act for an SFT Member and subject to Section 14 of proposed Rule 2C, as described above:

(i) Except as otherwise may be determined by the Board of Directors, any SFT entered into by the SFT Member that, at the time NSCC declined or ceased to act for such SFT Member, has not been novated to NSCC pursuant to proposed Rule 56, shall be excluded from all operations of NSCC applicable to such SFT.

(ii) NSCC may decline to act upon any instructions, transaction data or notices submitted by such SFT Member or an Approved SFT Submitter on behalf of such SFT Member.

(iii) NSCC shall close-out such SFT Member's proprietary SFT Positions as well as any SFT Positions established in the SFT Member's Agent Clearing Member Customer Omnibus Account by (x) buying in or selling out, as applicable, some or all of the SFT Securities that are the subject of each SFT of the SFT Member that has been novated to NSCC but for which the Final Settlement has not occurred, (y) deeming NSCC to have bought in or sold out some or all such SFT Securities at the bid or ask price therefor, respectively, from a generally recognized source or at such price or prices as NSCC is able to purchase or sell, respectively, some such SFT Securities, or (z) otherwise liquidating such SFT Member's SFT Positions; provided, however, if in the opinion of NSCC, the close-out of such SFT Member's SFT Position would create a disorderly market in the relevant SFT Security, then the timing of the completion of such close-out shall be in the discretion of NSCC.

(iv) Any Sponsored Member Transactions for which a Defaulting SFT Member is the Sponsoring Member and which have been novated to NSCC shall continue to be processed by NSCC. NSCC, in its sole discretion, would determine whether to close-out the SFT Positions established in a Defaulting SFT Member's Sponsored Member Sub-Accounts (if any), which close out shall be effected in accordance with the provisions of Section 14(b)(iii), as described above, or instead permit the relevant Sponsored Members to complete settlement of the relevant Sponsored Member Transactions.

(v) If, in the aggregate, the close-out of a Defaulting SFT Member's proprietary SFT Positions results in a profit to NSCC, such profit shall be applied to any loss to NSCC arising from the closing out of such Defaulting SFT Member (including losses arising from closing out the SFT Positions established in any of the Defaulting SFT Member's Agent Clearing Member

[86] The duration between the declaration and Ineligibility Date would vary. If the ineligibility is because the SFT Security will become ineligible for processing (*i.e.,* no longer CNS eligible), the duration would depend on the timing of the CNS ineligibility triggering event (*e.g.,* compliance with regulatory orders, risk concerns, trading suspension, etc.).

If the ineligibility is because the SFT Security will be undergoing an unsupported corporate action or distribution, then it would depend on when the issuer of the relevant SFT Security announces the particular corporate action or distribution event and the record date for such corporate action or distribution. Specifically, when announcements from the issuers are received by DTC, DTC would announce the corporate action or distribution event. NSCC would notify Members of such event when it is announced by DTC and would generally tie the Ineligibility Date to shortly before or on the record date for the corporate action or distribution.

[87] NSCC is proposing this simplified process for applying Price Differentials to Ineligible SFTs because NSCC anticipates such instances would occur on a much less frequent basis than those in connection with Linked SFTs pursuant to Section 8(a) of proposed Rule 56 and Non-Returned SFTs pursuant to Section 9(a) of proposed Rule 56.

Customer Omnibus Accounts or Sponsored Member Sub-Accounts or losses arising from closing out any Net Close Out Positions of the Defaulting SFT Member). If, in the aggregate, the close-out of a Defaulting SFT Member's proprietary SFT Positions results in a loss to NSCC, such loss shall be netted against, or otherwise applied to, any amounts owed by NSCC to such SFT Member in its proprietary capacity and thereafter debited from such Defaulting SFT Member's Clearing Fund deposit at NSCC.

(vi) If, in the aggregate, the close-out of the SFT Positions established in the Agent Clearing Member Customer Omnibus Accounts of a Defaulting SFT Member results in a profit to NSCC, such profit shall be credited to the Agent Clearing Member Customer Omnibus Accounts. If, in the aggregate, the close-out of the SFT Positions established in the Agent Clearing Member Customer Omnibus Accounts of a Defaulting SFT Member results in a loss to NSCC, such loss shall be netted against, or otherwise applied to, any amounts owed by the NSCC to such SFT Member in its proprietary capacity, and thereafter debited from the Defaulting SFT Member's Clearing Fund deposit at NSCC.

(vii) If, in the aggregate, the close-out of the SFT Positions established in a Defaulting SFT Member's Sponsored Member Sub-Accounts results in a profit to NSCC, such profit shall be credited to the Sponsored Member Sub-Accounts. If, in the aggregate, the closing out of the SFT Positions established in a Defaulting SFT Member's Sponsored Member Sub-Accounts results in a loss to NSCC, such loss shall be netted against, or otherwise applied to, any amounts owed by NSCC to such SFT Member in its proprietary capacity and thereafter debited from such Defaulting SFT Member's Clearing Fund deposit at NSCC.

(viii) The Final Settlement of each SFT that has been novated to NSCC and that, prior to novation, was with a Defaulting SFT Member (each, a ''Default-Related SFT'') shall occur in accordance with the normal settlement cycle for the purchase or sale of securities, as applicable; provided that NSCC may in its discretion accelerate Final Settlement of a Default-Related SFT to a Business Day no earlier than the scheduled Final Settlement Date of the Default-Related SFT; and provided further that, if NSCC delays the close-out of any or all of a Defaulting SFT Member's SFT Positions on the basis that such a close-out would create a disorderly market in the relevant SFT Securities, then NSCC may elect to correspondingly delay Final Settlement of any Default-Related SFTs that have the same SFT Securities as their subject.

As proposed, if doing an immediate buy-in or sell-out (as applicable) of a defaulter's novated SFT Positions would create a disorderly market, then NSCC may delay in executing such buy-in or sell-out. This is because, as a systemically important financial market utility, NSCC has regulatory obligations not to create disorderly markets or fire sale risk in the course of its liquidation of a defaulted Member. If NSCC were to delay in executing any buy-in or sell-out, NSCC may correspondingly delay physical settlement of the SFTs with the Defaulting Member's pre-novation counterparties.

(ix) Until Final Settlement, each Default-Related SFT shall be treated as a Non-Returned SFT, and NSCC would pay and collect the Price Differential amounts described in Section 9(a) of proposed Rule 56, as described above. NSCC shall have all of the rights of a Transferor in relation to any Default-Related SFT in respect of which the Defaulting SFT Member was the Transferor, including the ability to deliver a Recall Notice in relation to such Default-Related SFT and to effect a Buy-In. However, no additional SFT Deposit required for Non-Returned SFTs under Section 12(c) of proposed Rule 56, as described above, shall apply to any Default-Related SFT, and no Rate Payments shall accrue on Default-Related SFTs after the date on which NSCC ceases to act for the Defaulting SFT Member.

Accordingly, as proposed, during the pendency of any delay in executing any buy-in or sell-out, NSCC would continue to satisfy any Price Differential (*i.e.,* the mark-to-market of the SFT Securities) owing to the non-defaulting party.

Proposed Rule 56, Section 15 (Sponsored Member SFT Clearing)

Section 15 of proposed Rule 56 would govern the requirements for Sponsored Member participation in the proposed SFT Clearing Service.

Section 15(a) of proposed Rule 56 would provide that a Sponsoring Member shall be permitted to submit, either directly as an Approved SFT Submitter or via another Approved SFT Submitter, to NSCC Sponsored Member Transactions between itself and its Sponsored Member in accordance with the provisions of proposed Rule 56 and proposed Rule 2C.

Section 15(b) of proposed Rule 56 would provide that NSCC shall maintain for the Sponsoring Member one or more Sponsored Member Sub-Accounts. Section 15(b) would further provide that the SFT Deposits for each Sponsored Member Sub-Account shall be calculated separately based on the SFT Positions in such Sponsored Member Sub-Account, and the Sponsoring Member, as principal, shall be required to satisfy the SFT Deposits for each of the Sponsoring Member's Sponsored Member Sub-Accounts.

Section 15(c) of proposed Rule 56 would provide that settlement of the Final Settlement, Rate Payment, Price Differential, Distribution Payment and other obligations of a Sponsored Member Transaction that have been novated to NSCC shall be effected by the Sponsoring Member, as settlement agent for the relevant Sponsored Member, crediting and debiting the account the Sponsoring Member maintains for the Sponsored Member on the Sponsoring Member's books and records.

Proposed Rule 56, Section 16 (Customer SFT Clearing)

Section 16 of proposed Rule 56 would govern the requirements for participation by Agent Clearing Members and their Customers in the proposed SFT Clearing Service.

Section 16(a) of proposed Rule 56 would provide that an Agent Clearing Member shall be permitted to submit, either directly as an Approved SFT Submitter or via another Approved SFT Submitter, to NSCC for novation SFTs that are Agent Clearing Member Transactions. Section 16(a) would further provide that any such submission shall be in accordance with proposed Rule 56 and proposed Rule 2D.

Section 16(b) of proposed Rule 56 would provide that with respect to an Agent Clearing Member that submits SFTs to NSCC for novation on behalf of its Customers, NSCC shall maintain one or more Agent Clearing Member Customer Omnibus Accounts in the name of the Agent Clearing Member for the benefit of its Customers in which all SFT Positions and SFT Cash carried by the Agent Clearing Member on behalf of its Customers are reflected; provided, that each Agent Clearing Member Customer Omnibus Account may only contain activity where the Agent Clearing Member is acting as Transferor on behalf of its Customers, or as Transferee on behalf of its Customers, but not both.

Section 16(c) of proposed Rule 56 would provide that with respect to SFTs entered into on behalf of its Customers and maintained in the Agent Clearing Member Customer Omnibus Account, the Agent Clearing Member shall act solely as agent of its Customers in

connection with the clearing of such SFTs; provided, that the Agent Clearing Member shall remain fully liable for the performance of all obligations to NSCC arising in connection with such SFTs; and provided further, that the liabilities and obligations of NSCC with respect to such SFTs entered into by the Agent Clearing Member on behalf of its Customers shall extend only to the Agent Clearing Member. Without limiting the generality of the foregoing, NSCC shall not have any liability or obligation arising out of or with respect to any SFT to any Customer of an Agent Clearing Member.

Section 16(d) of proposed Rule 56 would provide the SFT Deposits for each Agent Clearing Member Customer Omnibus Account shall be calculated separately based on the SFT Positions in such Agent Clearing Member Customer Omnibus Account, and the Agent Clearing Member shall, as principal, be required to satisfy the SFT Deposit for each of Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts.

Proposed Rule 56, Section 17 (Corporation Default)

Section 17 of proposed Rule 56 would govern the close-out netting process that would apply with respect to SFTs that have been novated to NSCC in the event of a default of NSCC.

Section 17(a) of proposed Rule 56 would provide that if a ''Corporation Default'' occurs pursuant to Section 2 of Rule 41 (Corporation Default), all SFTs that have been novated to NSCC but not yet settled, and all obligations and rights arising thereunder which have been assumed by NSCC pursuant to proposed Rule 56, shall be immediately terminated, and the Board of Directors shall determine the Aggregate Net SFT Close-out Value owed by or to each SFT Member with respect to each of its SFT Positions.

Section 17(b) of proposed Rule 56 would provide that for purposes of Section 17 of proposed Rule 56, a Member shall be considered a different SFT Member in respect of each of (i) its proprietary SFT Positions; (ii) the SFT Positions established in its Agent Clearing Member Customer Omnibus Accounts (if any); and (iii) the SFT Positions established in its Sponsored Member Sub-Accounts (if any).

Section 17(c) of proposed Rule 56 would provide that each SFT Member's Aggregate Net SFT Close-out Value shall be netted and offset as described in Section 14(b)(iv) through Section 14(b)(vi) of proposed Rule 56, as though NSCC had ceased to act for each SFT Member.

Section 17(d) of proposed Rule 56 would provide that the Board of Directors shall notify each SFT Member of the Aggregate SFT Close-out Value, taking into account the netting and offsetting provided for above. SFT Members that have been notified that they owe an amount to NSCC shall pay that amount on or prior to the date specified by the Board of Directors, subject to any applicable setoff rights. SFT Members who have a net claim against NSCC shall be entitled to payment thereof along with other Members' and any other creditors' claims pursuant to the underlying contracts with respect thereto, the Rules and applicable law. Section 17(d) would further provide that nothing therein shall limit the rights of NSCC upon an SFT Member default (including following a Corporation Default), including any rights under any Clearing Agency Cross-Guaranty Agreement or otherwise.

Proposed Rule 56, Section 18 (Other Applicable Rules, Procedures, and Addendums)

Section 18 of proposed Rule 56 would establish certain other Rules as being applicable to SFTs and SFT Members, unless expressly stated otherwise.

Specifically, Section 18 of proposed Rule 56 would provide that Rule 1 (Definitions and Descriptions), Rule 2 (Members, Limited Members and Sponsored Members), Rule 5 (General Provisions), Rule 12 (Settlement), Rule 13 (Exception Processing), Rule 17 (Fine Payments), Rule 19 (Miscellaneous Rights of the Corporation), Rule 21 (Honest Broker), Rule 22 (Suspension of Rules), Rule 23 (Action by the Corporation), Rule 24 (Charges for Services Rendered), Rule 26 (Bills Rendered), Rule 27 (Admission to Premises of the Corporation—Powers of Attorney, Etc.), Rule 28 (Forms), Rule 29 (Qualified Securities Depositories), Rule 32 (Signatures), Rule 33 (Procedures), Rule 34 (Insurance), Rule 35 (Financial Reports), Rule 36 (Rule Changes), Rule 37 (Hearing Procedures), Rule 38 (Governing Law and Captions), Rule 39 (Reliance on Instructions), Rule 40 (Wind-Down of a Member, Fund Member or Insurance Carrier/Retirement Services Member), Rule 41 (Corporation Default), Rule 42 (Wind-down of the Corporation), Rule 45 (Notice), Rule 47 (Interpretation of Rules), Rule 48 (Disciplinary Proceedings), Rule 49 (Release of Clearing Data and Clearing Fund Data), Rule 55 (Settling Banks and AIP Settling Banks), Rule 58 (Limitations on Liability), Rule 60 (Market Disruption and Force Majeure), Rule 60A (Systems Disconnect: Threat of Significant Impact to the Corporation's Systems), Rule 63 (SRO Regulatory Reporting), Procedure I (Introduction), Procedure VIII (Money Settlement Service), Procedure XII (Time Schedule), Procedure XIII (Definitions), Procedure XIV (Forms, Media and Technical Specifications), Procedure XV (Clearing Fund Formula and Other Matters), Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History), Addendum H (Interpretation of the Board of Directors Release of Clearing Data), Addendum L (Statement of Policy Pertaining to Information Sharing), and Addendum P (Fine Schedule) shall apply to SFTs and SFT Members, unless the context otherwise requires.

(D) Other Rule Changes

In connection with proposed Rules 2C, 2D and 56, NSCC is also proposing to make conforming and technical changes to the following Rules to accommodate the proposed introduction of the new membership categories and the proposed SFT Clearing Service.

Rule 1 (Definitions and Descriptions)

In connection with proposed Rules 2C, 2D and 56, NSCC is proposing to add the following defined terms to Rule 1, in alphabetical order: Agent Clearing Member, Agent Clearing Member Agreement, Agent Clearing Member Customer Omnibus Account, Agent Clearing Member Required Fund Deposit, Agent Clearing Member Termination Date, Agent Clearing Member Transaction, Agent Clearing Member Voluntary Termination Notice, Aggregate Net SFT Close-out Value, Approved SFT Submitter, Bilaterally Initiated SFT, Buy-In, Buy-In Amount, Buy-In Costs, Buy-In Indemnified Parties, Contract Price, Corresponding SFT Cash, Customer, Customer Clearing Service, Deemed Buy-In Costs, Defaulting SFT Member, Default-Related SFT, Distribution, Distribution Amount, Distribution Payment, Existing Master Agreement, Final Net Settlement Position, Final Settlement, Final Settlement Date, Former Sponsored Member, Incremental Additional Independent Amount SFT Cash, Independent Amount Percentage, Independent Amount SFT Cash, Independent Amount SFT Cash Deposit, Independent Amount SFT Cash Deposit Requirement, Ineligibility Date, Ineligible SFT, Ineligible SFT Security, Initial Settlement, Linked SFT, Market Value SFT Cash, Net Capital, Net Member Capital, Net Worth, Non-Returned SFT, Price Differential, Rate Payment, Recall Date, Recall Notice,

Recalled SFT, Required SFT Deposit, Securities Financing Transaction or SFT, Securities Financing Transaction Clearing Service or SFT Clearing Service, Settling SFT, SFT Account, SFT Cash, SFT Close-out Value, SFT Deposit, SFT Long Position, SFT Member, SFT Position, SFT Security, SFT Short Position, Sponsored Member, Sponsored Member Agreement, Sponsored Member Liquidation Amount, Sponsored Member Sub-Account, Sponsored Member Termination Date, Sponsored Member Transaction, Sponsored Member Voluntary Termination Notice, Sponsoring Member, Sponsoring Member Agreement, Sponsoring Member Guaranty, Sponsoring Member Liquidation Amount, Sponsoring Member Required Fund Deposit, Sponsoring Member Settling Bank Omnibus Account, Sponsoring Member Termination Date, Sponsoring Member Voluntary Termination Notice, Sponsoring/Sponsored Membership Program Indemnified Parties or SMP Indemnified Parties, Transferee, Transferor and Volatility Charge.

In addition, NSCC is proposing to add three defined terms: ''CNS Market Value'', which is already defined in Rule 41 (Corporation Default), ''CNS Transaction'', which is already defined in Rule 11 (CNS System), and ''Corporation Default'', which is already defined in Rule 41 (Corporation Default).

NSCC is also proposing to add the defined term ''FICC'' to mean Fixed Income Clearing Corporation. The term ''FICC'' is already used in Addendum P (Fine Schedule) but has not been defined.

Furthermore, NSCC is proposing to reorder the defined term Index Receipt Agent so it would be in alphabetical order.

In connection with proposed Rules 2C, 2D and 56, NSCC is also proposing to modify the definitions for the following defined terms in Rule 1, in alphabetical order: Clearing Fund, FFI Member, Qualified Securities Depository, and Required Fund Deposit. Specifically, NSCC is proposing to expand the definition of Clearing Fund to include SFT Deposit, unless noted otherwise in the Rules. NSCC is also proposing to revise the definition of FFI Member and the proposed definition of Tax Certification [88] to add references to Sponsored Members. Furthermore, NSCC is proposing to revise the definition of Qualified Securities Depository to include a reference to transfer of securities in respect of the proposed SFT Clearing Service. Lastly, NSCC is proposing to expand the definition of Required Fund Deposit to include Sponsoring Member Required Fund Deposit, the Agent Clearing Member Required Fund Deposit, and the Required SFT Deposit, unless noted otherwise in the Rules.

Rule 2 (Members and Limited Members)

NSCC is proposing to revise the title of Rule 2 to include a reference to Sponsored Members. As proposed, Rule 2 would be retitled as ''Members, Limited Members and Sponsored Members''.

NSCC is also proposing to revise Section 2 of Rule 2. Specifically, NSCC is proposing to clarify in Section 2(i) that a Member shall include a Member in its capacity as a Sponsoring Member to the extent specified in proposed Rule 2C and an Agent Clearing Member to the extent specified in proposed Rule 2D. In addition, NSCC is proposing to add a new subsection (iii) to Section 2 that would describe Sponsored Members as any Person that has been approved by NSCC to become a Sponsored Member and only participates in NSCC's SFT Clearing Service as provided for in proposed Rule 56. In addition, NSCC is proposing to add references to Sponsored Members in the last paragraph of Section 2, Sections 4(i) and 4(ii), and proposed Section 5 [89] of Rule 2.

Rule 3 (Lists To Be Maintained)

NSCC is proposing to add subsection (g) to Section 1 of Rule 3 to provide that NSCC shall maintain a list of the securities that may be the subject of a novated SFT and may from time to time add securities to such list or remove securities therefrom.

NSCC is also proposing to modify Sections 3(b) and 4 of Rule 3 to include references to Sponsored Members.

Rule 4 (Clearing Fund)

NSCC is proposing to modify Section 1 of Rule 4 in order to make it clear that the minimum Required Fund Deposit amount provided therein shall not include Required SFT Deposit, which is subject to a separate minimum $250,000 deposit requirement pursuant to Section 12(c) of proposed Rule 56, as described above.

Rule 5 (General Provisions)

NSCC is proposing to modify Section 1 of Rule 5 in order to provide that delivery of SFT Securities and SFT Cash to NSCC shall be made through the facilities of a Qualified Securities Depository. In addition, NSCC is also proposing changes in Section 1 of Rule 5 to provide that delivery and payment with respect to SFT Securities and SFT Cash shall be effected as prescribed in the Rules and regulations as NSCC may from time to time adopt.

Rule 24 (Charges for Services Rendered)

NSCC is proposing to modify Section 1 of Rule 24 to include a reference to Sponsored Members. In addition, NSCC is proposing to add an additional paragraph in Section 1 to clarify that Members shall be responsible for all fees pertaining to their respective Sponsoring Member activity or Agent Clearing Member activity, if applicable, as set forth in NSCC's Fee Structure.[90]

Rule 26 (Bills Rendered)

NSCC is proposing to modify the first paragraph of Rule 26 to include a reference to Sponsored Members. In addition, NSCC is proposing to add a sentence in that paragraph to clarify that Members shall receive bills for their respective aggregate Sponsoring Member activity and Agent Clearing Member activity, if applicable, as set forth in NSCC's Fee Structure.[91]

Rule 39 (Reliance on Instructions)

NSCC is proposing to modify Rule 39 to include references to Sponsored Member and Approved SFT Submitter, where applicable. Specifically, NSCC is proposing to modify the first paragraph of Rule 39 to provide that NSCC may accept or rely upon instructions given to NSCC by a Sponsored Member or Approved SFT Submitter, in addition to the various participant types currently provided in Rule 39. Similarly, NSCC is proposing to add references to Approved SFT Submitter in the second and last paragraphs of Rule 39 so that those paragraphs would also apply to instructions submitted by an Approved SFT Submitter.

Rule 42 (Wind-Down of the Corporation)

NSCC is proposing to modify Rule 42 to include references to Sponsored Members. Specifically, for purposes of

[88] NSCC has proposed to add Tax Certification as a defined term in Rule 1 (Definitions and Descriptions) under a separate proposal. *See* SR–NSCC–2021–009, which was filed with the Commission but has not yet been published in the **Federal Register**. A copy of this proposed rule change is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx*.

[89] NSCC has proposed to add Section 5 to Rule 2 in a separate proposal that has been filed with the Commission. *See* Securities Exchange Act Release No. 92334 (July 7, 2021), 86 FR 36815 (July 13, 2021) (SR–NSCC–2021–007).

[90] *See* Addendum A (Fee Structure), *supra* note 4.

[91] *Id.*

Rule 42, NSCC is proposing to revise the defined term ''Limited Member'' to include Sponsored Members.

Rule 49 (Release of Clearing Data and Clearing Fund Data)

NSCC is proposing to modify Rule 49 to clarify that NSCC would release Clearing Data of a Sponsored Member to its Sponsoring Member upon the Sponsoring Member's written request. Specifically, as proposed, Section (a) of Rule 49 would provide that if the participant is a Sponsored Member, NSCC would also release Clearing Data relating to transactions of such participant to such participant's Sponsoring Member upon the Sponsoring Member's written request.

Rule 58 (Limitations on Liability)

NSCC is proposing to modify Rule 58 to clarify that NSCC would not be responsible for the completeness or accuracy of the transaction data received from the Approved SFT Submitters, nor shall NSCC, absent gross negligence on NSCC's part, be responsible for any errors, omissions or delays that may occur in the transmission of transaction data from an Approved SFT Submitter.

Rule 64 (DTCC Shareholders Agreement)

The proposed changes to Section 4 of Rule 64 and footnote 4 thereto would provide that Rule 64 would not be applicable to a Sponsored Member. However, if the Sponsored Member is also a member or participant of another clearing agency subsidiary of DTCC, the Sponsored Member may be a Mandatory Purchaser Participant or a Voluntary Purchaser Participant pursuant to the terms of the Shareholders Agreement and the rules and procedures of such other subsidiary.

Procedure XV (Clearing Fund Formula and Other Matters)

NSCC is proposing to modify subsection A of Section II (Minimum Clearing Fund and Additional Deposit Requirements) in Procedure XV in order to make it clear that the minimum contribution amount provided therein shall not include Required SFT Deposit, which is subject to a separate minimum $250,000 deposit requirement pursuant to Section 12(c) of proposed Rule 56, as described above. In addition, NSCC is proposing to modify Section II.A of Procedure XV to make it clear that calculation of a Member's Required Fund Deposit amount that must be in cash shall exclude the Required SFT Deposit, which is subject to a separate $250,000 minimum cash requirement pursuant to Section 12(c) of proposed Rule 56, as described above.

Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History)

NSCC is proposing an additional section for the Sponsored Members. Specifically, NSCC is proposing to add Section 13 to Addendum B that would describe the qualification and operational capability that NSCC would require from Sponsored Members.

In addition, NSCC is proposing a conforming change to replace ''net worth'' in Section 3.B.4. with ''Net Worth'' to reflect the proposed defined term in Rule 1 (Definitions).

Furthermore, NSCC is proposing a technical change to correct a footnote numbering in Section 12.B.

Addendum P (Fine Schedule)

NSCC is proposing to modify paragraph (2) of Addendum P to reflect the proposed notification obligations of Sponsoring Members, Sponsored Members and Agent Clearing Members as proposed under Sections 2(i) and 3(d) of proposed Rule 2C and Section 2(i) of proposed Rule 2D.

(vii) Impact of the Proposed SFT Clearing Service on Various Persons

The proposed SFT Clearing Service would be voluntary. Institutional firm clients that wish to become Sponsored Members, and Members that wish to participate in the proposed SFT Clearing Service would have an opportunity to review the proposed rule change and determine if they would like to participate. Choosing to participate would make these entities subject to all of the rule changes that would be applicable to the proposed SFT Clearing Service and membership type, as described below.

The proposed SFT Clearing Service would affect institutional firm clients that choose to become Sponsored Members because it would impose various requirements on them. These requirements include, but are not limited to, proposed Rule 56 and the following sections of proposed Rule 2C: (1) Eligibility, approval process and on-going membership requirements as specified in Sections 3 and 4, (2) requirements related to restriction on access to NSCC services in Section 11, (3) requirements related to insolvency of a Sponsored Member in Section 13, and (4) requirements related to liquidation of positions resulting from Sponsored Member Transactions in Section 14. Specific details on the requirements and the manner in which the proposed SFT Clearing Service would affect institutional firm clients that choose to become Sponsored Members can be found above in Item II(A)1(vi)(A)—Proposed Rule Changes—Proposed Rule 2C—Sponsoring Members and Sponsored Members.

The proposed SFT Clearing Service would affect Members that choose to participate in the service because it would impose various requirements on them, depending on whether they are participating in the service as a Sponsoring Member, an Agent Clearing Member and/or as a Member. These requirements include, but are not limited to, the requirements specified in proposed Rule 2C for Members participating in the service as a Sponsoring Member; the requirements specified in proposed Rule 2D for Members participating in the service as an Agent Clearing Member; and for all Members participating in the service, the requirements specified in proposed Rule 56. Specific details on these requirements and the manner in which the proposed SFT Clearing Service would affect Members that choose to participate in the proposed SFT Clearing Service are described above in Items II(A)1(vi)(A)—Proposed Rule Changes—Proposed Rule 2C—Sponsoring Members and Sponsored Members, (vi)(B)—Proposed Rule Changes—Proposed Rule 2D—Agent Clearing Members, and (vi)(C)—Proposed Rule Changes—Proposed Rule 56—Securities Financing Transaction Clearing Service.

The proposed SFT Clearing Service would not materially affect existing Members that do not choose to participate in it. First, the proposed SFT Clearing Service would not materially affect the operation of CNS or any other services offered by NSCC. In addition, SFT Members would be subject to the same or higher credit standards and market risk management requirements as those applicable to Members that choose not to participate in the proposed SFT Clearing Service, as described above. Moreover, although Members who choose not to participate in the proposed SFT Clearing Service would be subject to potential loss allocation in the event of an SFT Member default (just as SFT Members would be subject to potential loss allocation in the event of the default of a Member that chooses not to participate in the proposed SFT Clearing Service), the underlying securities that would be subject of any such default-related liquidation of an SFT Member are a subset of the same CNS-eligible securities with respect to which NSCC today guarantees settlement in the cash

equity market, thus not materially affecting the nature of the loss allocation risk applicable to Members.

2. Statutory Basis

NSCC believes this proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency for the reasons described below.

Establishing New Membership Categories and Requirements for Sponsoring Members and Sponsored Members

NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members are consistent with Section 17A(b)(3)(F) [92] of the Act and Rule 17Ad–22(e)(18),[93] as promulgated under the Act.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to (i) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, (ii) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, and (iii) promote the prompt and accurate clearance and settlement of securities transactions.[94] NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members are consistent with these requirements for the reasons described below.

Safeguarding of Securities and Funds

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[95] NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would allow NSCC to help assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible. Specifically, as proposed, all Sponsoring Member applicants would be subject to an approval process that is separate from their original Member applications, ongoing credit surveillance in their capacity as Sponsoring Members, as well as the calculation of the Sponsoring Member Required Fund Deposits on a gross basis with no offsets for netting of positions as between different Sponsored Members.

In addition, as proposed, all Sponsoring Member applicants would be subject to the same or higher financial requirements as those that apply to them with respect to their respective Member category. Furthermore, NSCC would reserve the right to impose greater financial requirements based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transactions such applicant proposes to process through NSCC, and the overall financial condition of such applicant. An activity limit would also be imposed on a Sponsoring Member's Sponsored Member activity so that the Sponsoring Member would only be permitted to submit new Sponsored Member activity to NSCC to the extent its aggregate Volatility Charges do not exceed its Net Member Capital, unless otherwise determined by NSCC in order to promote orderly settlement.

Moreover, as proposed, NSCC would reserve the right to require each Sponsoring Member, or any Member applicant to become such, to furnish to NSCC such adequate assurances of its financial responsibility and operational capability within the meaning of Rule 15 as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC, its participants, creditors or investors, to safeguard securities and funds in the custody or control of NSCC and for which NSCC is responsible, or to promote the prompt and accurate clearance, settlement and processing of securities transactions.

By structuring the proposal in a way that addresses potential market and credit risks, NSCC believes that the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[96]

Remove Impediments to and Perfect the Mechanism of a National System; Protect Investors and Public Interest

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[97] NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would allow NSCC to help remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

Specifically, NSCC believes the proposal would help alleviate capital constraints and decrease settlement and operational risk that market participants would otherwise face. This is because the proposal would expand access to central clearing for institutional firms and thus enable a greater number of securities transactions to be cleared and settled by a central counterparty. As described above, NSCC believes that having securities transactions cleared through a central counterparty may create capital benefits for market participants and thereby help alleviate capital constraints otherwise applicable to bilateral securities transactions. In addition, by having a greater number of securities transactions cleared through a central counterparty, the proposal would decrease the settlement and operational risks that market participants would otherwise face to the extent they were required to clear and settle their securities transactions bilaterally because those securities transactions would be subject to novation and independent risk management by the central counterparty. By alleviating capital constraints and decreasing settlement and operational risk that market participants would otherwise face, NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[98]

The proposal would also protect investors and the public interest by lowering the risk of liquidity drain and protecting against fire sale risks as it would expand access to central clearing for institutional firms and thus enable a

[92] 15 U.S.C. 78q–1(b)(3)(F).

[93] 17 CFR 240.17Ad–22(e)(18).

[94] 15 U.S.C. 78q–1(b)(3)(F).

[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] *Id.*

greater number of securities transactions to be cleared and settled by a central counterparty. Specifically, NSCC believes that having securities transactions cleared and settled by a central counterparty would lower the risk of liquidity drain in the U.S. financial market by lessening counterparties' likely inclination to unwind transactions in a stressed market scenario. The central counterparty would use its risk management resources to provide confidence to market participants that they will receive back their cash or securities, as applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario. In addition, NSCC believes that having securities transactions cleared and settled by a central counterparty would protect against fire sale risk through the central counterparty's ability to centralize and control the hedging and liquidation of a defaulting counterparty's portfolio. By lowering the risk of liquidity drain in the U.S. financial market and protecting against fire sale risk, NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would protect investors and the public interest, consistent with the Section 17(A)(b)(3)(F) of the Act.[99]

Promote Prompt and Accurate Clearance and Settlement

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[100] NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would allow NSCC to help promote the prompt and accurate clearance and settlement of securities transactions. Specifically, by expanding the access of central clearing for institutional firms and thus enable a greater number of securities transactions to be cleared and settled by a central counterparty, NSCC believes the proposal would help decrease settlement and operational risk that market participants would otherwise face to the extent they were required to clear and settle their securities transactions bilaterally because those securities transactions would be subject to novation and independent risk management by the central counterparty. By decreasing settlement and operational risk, NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[101]

By structuring the proposal in a way that would allow NSCC to help (i) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, (ii) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, and (iii) promote the prompt and accurate clearance and settlement of securities transactions, NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members are consistent with Section 17A(b)(3)(F) of the Act.[102]

Rule 17Ad–22(e)(18) under the Act requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation.[103] NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would establish objective, risk-based, and publicly disclosed criteria for participation in NSCC as Sponsoring Members and Sponsored Members. Specifically, as proposed, in order for an applicant to become a Sponsoring Member, the applicant would be required to satisfy a number of objective and risk-based eligibility criteria. First, the applicant must be a Member. In addition, if the applicant is a Registered-Broker-Dealer, then it would be required to have (i) Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the applicant's designated examining authority) of at least $10 million. Likewise, in order for an applicant to become a Sponsored Member, the applicant would be required to meet certain objective, risk-based eligibility criteria. Specifically, an applicant would be eligible to apply to become a Sponsored Member if it is either a ''qualified institutional buyer'' as defined by Rule 144A [104] under the Securities Act,[105] or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i)(H) of Rule 144A under the Securities Act, satisfies the financial requirements necessary to be a ''qualified institutional buyer'' as specified in that paragraph. If approved, the requirements for proposed new Sponsoring Member and Sponsored Member membership categories would become part of the Rules, which are publicly available on DTCC's website (*www.dtcc.com*), and market participants would be able to review them in connection with their evaluation of potential participation in NSCC as Sponsoring Members and Sponsored Members. Therefore, NSCC believes that the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members are consistent with Rule 17Ad–22(e)(18) under the Act.[106]

Establishing a New Membership Category and Requirements for Agent Clearing Members

NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members are consistent with Section 17A(b)(3)(F) [107] of the Act and Rule 17Ad–22(e)(18),[108] as promulgated under the Act.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to (i) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, (ii) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, and (iii) promote the prompt and accurate clearance and settlement of securities transactions.[109] NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members are consistent with these requirements for the reasons described below.

[99] *Id.*

[100] *Id.*

[101] *Id.*

[102] *Id.*

[103] 17 CFR 240.17Ad–22(e)(18).

[104] 17 CFR 230.144A.

[105] 15 U.S.C. 77a *et seq.*

[106] 17 CFR 240.17Ad–22(e)(18).

[107] 15 U.S.C. 78q–1(b)(3)(F).

[108] 17 CFR 240.17Ad–22(e)(18).

[109] 15 U.S.C. 78q–1(b)(3)(F).

Safeguarding of Securities and Funds

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[110] NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members would allow NSCC to help assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible. Specifically, as proposed, all Agent Clearing Member applicants would be subject to an approval process that is separate from their original Member applications, ongoing credit surveillance in their capacity as Agent Clearing Members, as well as the calculation of the Agent Clearing Member Required Fund Deposits on a gross basis with no offsets for netting of positions as between different Customers.

In addition, as proposed, all Agent Clearing Member applicants would be subject to the same or higher financial requirements as those that apply to them with respect to their respective Member category. Furthermore, NSCC would reserve the right to impose greater financial requirements based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transactions such applicant proposes to process through NSCC, and the overall financial condition of such applicant. An activity limit would also be imposed on an Agent Clearing Member's Customer activity so that the Agent Clearing Member would only be permitted to submit new Customer activity to NSCC to the extent its aggregate Volatility Charges do not exceed its Net Member Capital, unless otherwise determined by NSCC in order to promote orderly settlement.

Moreover, as proposed, NSCC would reserve the right to require each Agent Clearing Member, or any Member applicant to become such, to furnish to NSCC such adequate assurances of its financial responsibility and operational capability within the meaning of Rule 15 as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC, its participants, creditors or investors, to safeguard securities and funds in the custody or control of NSCC and for which NSCC is responsible, or to promote the prompt and accurate clearance, settlement and processing of securities transactions.

By structuring the proposal in a way that addresses potential market and credit risks, NSCC believes that the proposed changes to establish a new membership category and requirements for Agent Clearing Members would assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[111]

Remove Impediments to and Perfect the Mechanism of a National System; Protect Investors and Public Interest

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[112] NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members would allow NSCC to help remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

Specifically, NSCC believes the proposal would help alleviate capital constraints and decrease settlement and operational risk that market participants would otherwise face. This is because the proposal would expand access to central clearing for institutional firms and thus enable a greater number of securities transactions to be cleared and settled by a central counterparty. As described above, NSCC believes that having securities transactions cleared through a central counterparty may create capital benefits for market participants and thereby help alleviate capital constraints otherwise applicable to bilateral securities transactions. In addition, by having a greater number of securities transactions cleared through a central counterparty, the proposal would decrease the settlement and operational risks that market participants would otherwise face to the extent they were required to clear and settle their securities transactions bilaterally because those securities transactions would be subject to novation and independent risk management by the central counterparty. By alleviating capital constraints and decreasing settlement and operational risk that market participants would otherwise face, NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[113]

The proposal would also protect investors and the public interest by lowering the risk of liquidity drain and protecting against fire sale risks as it would expand access to central clearing for institutional firms and thus enable a greater number of securities transactions to be cleared and settled by a central counterparty. Specifically, NSCC believes that having securities transactions cleared and settled by a central counterparty would lower the risk of liquidity drain in the U.S. financial market by lessening counterparties' likely inclination to unwind transactions in a stressed market scenario. The central counterparty would use its risk management resources to provide confidence to market participants that they will receive back their cash or securities, as applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario. In addition, NSCC believes that having securities transactions cleared and settled by a central counterparty would protect against fire sale risk through the central counterparty's ability to centralize and control the hedging and liquidation of a defaulting counterparty's portfolio. By lowering the risk of liquidity drain in the U.S. financial market and protecting against fire sale risk, NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members would protect investors and the public interest, consistent with the Section 17(A)(b)(3)(F) of the Act.[114]

Promote Prompt and Accurate Clearance and Settlement

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[115] NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members would allow NSCC to help

[110] *Id.*

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] *Id.*

promote the prompt and accurate clearance and settlement of securities transactions. Specifically, by expanding the access of central clearing for institutional firms and thus enable a greater number of securities transactions to be cleared and settled by a central counterparty, NSCC believes the proposal would help decrease settlement and operational risk that market participants would otherwise face to the extent they were required to clear and settle their securities transactions bilaterally because those securities transactions would be subject to novation and independent risk management by the central counterparty. By decreasing settlement and operational risk, NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[116]

By structuring the proposal in a way that would allow NSCC to help (i) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, (ii) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, and (iii) promote the prompt and accurate clearance and settlement of securities transactions, NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members are consistent with Section 17A(b)(3)(F) of Act.[117]

Rule 17Ad–22(e)(18) under the Act requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation.[118] NSCC believes the proposed changes to establish new a membership category and requirements for Agent Clearing Members would establish objective, risk-based, and publicly disclosed criteria for participation in NSCC as Agent Clearing Members. Specifically, as proposed, in order for an applicant to become an Agent Clearing Member, the applicant would be required to satisfy a number of objective and risk-based eligibility criteria. First, the applicant must be a Member. In addition, if the applicant is a Registered-Broker-Dealer, then it would be required to have (i) Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the applicant's designated examining authority) of at least $10 million. If approved, the requirements for proposed new Agent Clearing Member membership category would become part of the Rules, which are publicly available on DTCC's website (*www.dtcc.com*), and market participants would be able to review them in connection with their evaluation of potential participation in NSCC as Agent Clearing Members. Therefore, NSCC believes that the proposed changes to establish a new membership category and requirements for Agent Clearing Members are consistent with Rule 17Ad–22(e)(18) under the Act.[119]

Establishing the SFT Clearing Service

NSCC believes the proposed changes to establish the SFT Clearing Service are consistent with Section 17A(b)(3)(F)[120] of the Act and Rules 17Ad–22(e)(7) and (e)(8),[121] as promulgated under the Act.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to (i) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, (ii) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, and (iii) promote the prompt and accurate clearance and settlement of securities transactions.[122] NSCC believes the proposed changes to establish the SFT Clearing Service are consistent with these requirements for the reasons described below.

Safeguarding of Securities and Funds

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.[123] NSCC believes that the proposed changes to establish the SFT Clearing Service would allow NSCC to help assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.

The proposal is structured in a manner that allows NSCC to protect itself from associated market risk. Specifically, as described above, SFT activity would be risk managed by NSCC in a manner consistent with NSCC Member's CNS positions. Moreover, all SFT Positions would be margined independently of the Member's other positions, *i.e.,* Required SFT Deposit. The Required SFT Deposit would generally be calculated using the same procedure applicable to CNS positions, but with a separate $250,000 minimum.[124]

Moreover, consistent with the manner in which clearing fund requirements are satisfied by members of FICC for their cleared securities financing transactions, NSCC would require that (i) a minimum of 40% of an SFT Member's Required SFT Deposit consist of a combination of cash and Eligible Clearing Fund Treasury Securities and (ii) the lesser of $5,000,000 or 10% of an SFT Member's Required SFT Deposit (but not less than $250,000) consist of cash.[125] NSCC would also have the discretion to require a Member to post its Required SFT Deposit in proportion of cash higher than would otherwise be required.[126] NSCC's determination to impose any such requirement would be made in view of market conditions and other financial and operational capabilities of the relevant SFT Member.

Furthermore, NSCC would require additional Clearing Fund deposits to address two situations that may present unique risk. First, if the share price of underlying securities of an SFT that has already been novated to NSCC falls below the threshold established by NSCC from time to time, NSCC would require both pre-novation counterparties to the SFT to post Clearing Fund equal to 100% of the market value of such underlying securities until such time as the per share price of the underlying securities equals or exceeds such threshold.[127] Second, in the event an SFT is subject to a collateral haircut (*i.e.,* the SFT Cash exceeds the market value of the securities), NSCC would require the Transferor (or in the case of an Agent Clearing Member Transaction, the Agent Clearing Member) to post Clearing Fund equal to such excess.[128]

NSCC is also proposing to limit the SFTs eligible for clearing to overnight transactions on securities that are CNS-

[116] *Id.*

[117] *Id.*

[118] 17 CFR 240.17Ad–22(e)(18).

[119] *Id.*

[120] 15 U.S.C. 78q–1(b)(3)(F).

[121] 17 CFR 240.17Ad–22(e)(7) and (e)(8).

[122] 15 U.S.C. 78q–1(b)(3)(F).

[123] *Id.*

[124] *See* Section 12(c) of proposed Rule 56.

[125] *Id.*

[126] *See* Section 12(d) of proposed Rule 56.

[127] *See* Section 13(b) of proposed Rule 56.

[128] *See* Section 12(e) of proposed Rule 56.

eligible equity securities with a share price that equals or exceeds the threshold established by NSCC from time to time and that are fully collateralized by cash. NSCC believes these limitations, in addition to the Clearing Fund requirements, would limit the potential market risk associated with SFTs.

The proposal is also structured in a manner that allows NSCC to protect itself from associated liquidity risk. Specifically, the proposal would mitigate NSCC's liquidity risk associated with an SFT Member default by providing that the Final Settlement obligations owing to non-defaulting SFT Members under SFTs to which the Defaulting SFT Member was a party will be settled in accordance with the normal settlement cycle for the purchase or sale of securities, as applicable.[129] NSCC would accordingly be able to satisfy such Final Settlement obligations through market action (if necessary) rather than through its own liquidity resources. More specifically, NSCC would be able to sell the securities lent by a Defaulting SFT Member and/or purchase the securities borrowed by a Defaulting SFT Member and use the proceeds of such sales and/or the securities purchased to satisfy the Defaulting SFT Member's Final Settlement obligations to non-defaulting SFT Members. In the absence of this provision, NSCC would need to rely exclusively on its liquidity resources to satisfy Final Settlement obligations owing to non-defaulting SFT Members, since it would not receive the proceeds of any market action to liquidate the Defaulting SFT Member's SFT Positions until after Final Settlement obligations were due.

The proposal would also provide that NSCC could further delay its satisfaction of Final Settlement obligations to non-defaulting SFT Members beyond the normal settlement cycle for the purchase or sale of securities to the extent NSCC determines that taking market action to close-out some or all of the Defaulting SFT Member's novated SFT Positions would create a disorderly market in the relevant SFT Securities.[130]

However, in any case, until NSCC has satisfied the Final Settlement obligations owing to non-defaulting SFT Members, NSCC would continue paying to and receiving from non-defaulting SFT Members the applicable Price Differential (*i.e.,* the change in market value of the relevant securities) with respect to their novated SFTs.[131] NSCC would take into account such Price Differential payment obligations when calculating the amount of liquidity resources that NSCC may require in the event of the default of the participant family that would generate the largest aggregate payment obligation for NSCC in extreme but plausible market conditions.[132] [133] By continuing to process these Payment Differential payments until Final Settlement occurs, NSCC would ensure that non-defaulting SFT Members are kept in the same position as if the Defaulting SFT Member had not defaulted and the pre-novation counterparties had instead agreed to roll the SFTs. To the extent NSCC is required to pay a Price Differential to a non-defaulting SFT Member, NSCC would rely on the NSCC Clearing Fund, including the Required SFT Deposit, in order to cover the liquidity need associated with any such Price Differential obligation.

The proposal is also structured in a manner that allows NSCC to protect itself from associated credit risk. In addition to the Clearing Fund requirements discussed above, any Member that elects to participate in the proposed SFT Clearing Service would be subject to the same initial membership requirements and ongoing membership requirements and monitoring as any other Member.

The proposal is also structured in a manner that allows NSCC to protect itself from associated operational risk. NSCC proposes to utilize to a significant extent the same processes and infrastructure as it has used for many years to clear and settle cash market transactions for purposes of clearing and settling SFTs. NSCC staff is well versed in such processes and infrastructure and has been actively involved in the development of the proposed SFT Clearing Service, thereby allowing for ready integration of support for the proposed SFT Clearing Service into NSCC staff's current workflows.

By structuring the proposal in a way that addresses potential market, liquidity, credit and operational risks, NSCC believes that the proposed changes to establish the SFT Clearing Service would help assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[134]

Remove Impediments to and Perfect the Mechanism of a National System; Protect Investors and Public Interest

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[135] NSCC believes the proposed changes to establish the SFT Clearing Service would allow NSCC to help remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

Specifically, NSCC believes the proposal would help alleviate capital constraints and decrease settlement and operational risk that market participants would otherwise face. As described above, NSCC believes, by expanding the availability of NSCC's infrastructure to SFTs via the proposed SFT Clearing Service, the proposal may create capital benefits for market participants and thereby help alleviate capital constraints otherwise applicable to bilateral SFTs. In addition, the proposal would decrease settlement and operational risk that market participants would otherwise face by making a greater number of securities transactions eligible to be cleared, settled and risk managed through NSCC via the proposed SFT Clearing Service. By alleviating capital constraints and decreasing settlement and operational risk that market participants would otherwise face, NSCC believes the proposed changes to establish the SFT Clearing Service would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[136]

The proposal would also protect investors and the public interest by lowering the risk of liquidity drain and protecting against fire sale risks. Specifically, the proposal would lower the risk of liquidity drain in the U.S. equity securities financing market by lessening counterparties' likely inclination to unwind transactions in a stressed market scenario. NSCC would use its risk management resources to provide confidence to market participants that they will receive back

[129] *See* proposed Rule 56, Section 14(b)(viii).

[130] *Id.*

[131] *See* proposed Rule 56, Section 14(b)(ix).

[132] *Id.*

[133] 17 CFR 240.17Ad–22(e)(7).

[134] 15 U.S.C. 78q–1(b)(3)(F).

[135] *Id.*

[136] *Id.*

their cash or securities, as applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario. In addition, the proposal would protect against fire sale risk. As described above, in the event of a default, NSCC would conduct a centralized, orderly liquidation of the defaulter's SFT Positions. Such an organized liquidation should result in substantially less price depreciation and market disruption than multiple independent non-defaulting parties racing against one another to liquidate the positions. In addition, NSCC would only need to liquidate the defaulter's net positions. Limiting the positions that need to be liquidated to the defaulter's net positions should reduce the volume of required sales activity, which in turn should limit the price and market impact of the close-out of the defaulter's positions. NSCC would also use its risk management resources to provide confidence to market participants that they will receive back their cash or securities, as applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario. By lowering the risk of liquidity drain in the U.S. equity securities financing market and protecting against fire sale risk, NSCC believes the proposed changes to establish the SFT Clearing Service would protect investors and the public interest, consistent with the Section 17(A)(b)(3)(F) of the Act.[137]

Promote Prompt and Accurate Clearance and Settlement

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[138] NSCC believes the proposed changes to establish the SFT Clearing Service would allow NSCC to help promote the prompt and accurate clearance and settlement of securities transactions. Specifically, by expanding the availability of NSCC's infrastructure to SFTs via the proposed SFT Clearing Service, NSCC believes the proposal would help decrease settlement and operational risk that market participants would otherwise face by making a greater number of securities transactions eligible to be cleared, settled and risk managed through NSCC. By decreasing settlement and operational risk, NSCC believes the proposed changes to establish the SFT Clearing Service would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[139]

By structuring the proposal in a way that would allow NSCC to help (i) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, (ii) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, and (iii) promote the prompt and accurate clearance and settlement of securities transactions, NSCC believes the proposed changes to establish the SFT Clearing Service are consistent with Section 17A(b)(3)(F) of the Act.[140]

Rule 17Ad–22(e)(7) under the Act requires NSCC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency.[141] NSCC believes that the proposed changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(7) because, as described above, the proposal is structured in a manner that allows NSCC to protect itself from associated liquidity risk. Specifically, the proposal would mitigate NSCC's liquidity risk associated with an SFT Member default by providing that the Final Settlement obligations owing to non-defaulting SFT Members under SFTs to which the Defaulting SFT Member was a party will be settled in accordance with the normal settlement cycle for the purchase or sale of securities, as applicable.[142] NSCC would accordingly be able to satisfy such Final Settlement obligations through market action (if necessary) rather than through its own liquidity resources. More specifically, NSCC would be able to sell the securities lent by a Defaulting SFT Member and/or purchase the securities borrowed by a Defaulting SFT Member and use the proceeds of such sales and/or the securities purchased to satisfy the Defaulting SFT Member's Final Settlement obligations to non-defaulting SFT Members. In the absence of this provision, NSCC would need to rely exclusively on its liquidity resources to satisfy Final Settlement obligations owing to non-defaulting SFT Members, since it would not receive the proceeds of any market action to liquidate the Defaulting SFT Member's SFT Positions until after Final Settlement obligations were due.

The proposal would also provide that NSCC could further delay its satisfaction of Final Settlement obligations to non-defaulting SFT Members beyond the normal settlement cycle for the purchase or sale of securities to the extent NSCC determines that taking market action to close-out some or all of the Defaulting SFT Member's novated SFT Positions would create a disorderly market in the relevant SFT Securities.[143] However, in any case, until NSCC has satisfied the Final Settlement obligations owing to non-defaulting SFT Members, NSCC would continue paying to and receiving from non-defaulting SFT Members the applicable Price Differential (*i.e.,* the change in market value of the relevant securities) with respect to their novated SFTs.[144] NSCC would take into account such Price Differential payment obligations when calculating the amount of liquidity resources that NSCC may require in the event of the default of the participant family that would generate the largest aggregate payment obligation for NSCC in extreme but plausible market conditions.[145] [146] By continuing to process these Price Differential payments until Final Settlement occurs, NSCC would ensure that non-defaulting SFT Members are kept in the same position as if the Defaulting SFT Member had not defaulted and the pre-novation counterparties had instead agreed to roll the SFTs. To the extent NSCC is required to pay a Price Differential to a non-defaulting SFT Member, NSCC would rely on the NSCC Clearing Fund, including the Required SFT Deposit, in order to cover the liquidity need associated with any such Price Differential obligation. Therefore, NSCC believes that the proposed changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(7) under the Act.[147]

Rule 17Ad–22(e)(8) under the Act [148] requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to define the point at which settlement is final to be no later than the end of the day on which the payment or obligation is due. NSCC believes that the proposed

[137] *Id.*

[138] *Id.*

[139] *Id.*

[140] *Id.*

[141] 17 CFR 240.17Ad–22(e)(7).

[142] *See* proposed Rule 56, Section 14(b)(viii).

[143] *Id.*

[144] *See* proposed Rule 56, Section 14(b)(ix).

[145] *Id.*

[146] 17 CFR 240.17Ad–22(e)(7).

[147] *Id.*

[148] 17 CFR 240.17Ad–22(e)(8).

changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(8) because, as described above, the proposal would make it clear to SFT Members the point at which settlement is final with respect to SFTs cleared through NSCC. Specifically, Section 7 in the proposed Rule 56 (Securities Financing Transaction Clearing Service) provides that an SFT, or a portion thereof, shall be deemed complete and final upon Final Settlement of the SFT, or such portion.[149] Having clear provisions in this regard would enable SFT Members to better identify the point at which settlement is final with respect to their SFTs. As such, NSCC believes the proposed changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(8) under the Act.[150]

Making Other Amendments and Clarifications

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[151] NSCC believes that the proposed changes to make other amendments and clarifications to the Rules would allow NSCC to help promote prompt and accurate clearance and settlement of securities transactions. This is because the proposed amendments and clarifications to the Rules are conforming and technical changes that would ensure consistency in the Rules and that the Rules remain clear and accurate. Having clear and accurate Rules would help Members to better understand their rights and obligations regarding NSCC's clearance and settlement services. NSCC believes that when Members better understand their rights and obligations regarding NSCC's clearance and settlement services, they can act in accordance with the Rules. NSCC believes that better enabling Members to comply with the Rules would promote the prompt and accurate clearance and settlement of securities transactions by NSCC. As such, NSCC believes the proposed changes to make other amendments and clarifications are consistent with Section 17A(b)(3)(F) of the Act.[152]

(B) Clearing Agency's Statement on Burden on Competition

NSCC believes that the proposed rule change to establish the SFT Clearing Service and the additional membership categories in connection therewith would promote competition by increasing the types of entities that may participate in NSCC and therefore permit more market participants to utilize NSCC's services.

At the same time, the proposed rule change may impose a burden on competition by limiting participation in the proposed SFT Clearing Service to institutions that are eligible to participate in the service. The proposed rule change may also impose a burden on competition by (i) calculating Required Fund Deposits for Sponsoring Members and Agent Clearing Members on a gross basis with no offsets for netting of positions between different Sponsored Members or different Customers, as applicable, and (ii) imposing an additional charge with respect to any Non-Returned SFT that is calculated based on the relevant SFT Member's Credit Risk Rating Matrix rating. However, NSCC believes any burden on competition that may result from the proposed rule change would not be significant and would be necessary and appropriate in furtherance of the purposes of the Act,[153] for the reasons described below.

Although the proposal would limit full participation in the proposed SFT Clearing Service to Members, and such limitation may impact institutional firm clients that are unable to satisfy such eligibility requirements by excluding them from being able to directly submit their equity securities financing activity in SFT eligible securities to NSCC for novation (and avail themselves of the commensurate benefits described above in Item II(A)1(i)—Background), NSCC believes that any related burden on competition would be necessary and appropriate in furtherance of the purposes of the Act. This is because such eligibility requirements are designed to allow NSCC to prudently manage the risks associated with SFT Members' participation in the proposed SFT Clearing Service by ensuring that SFT Members are able to satisfy their obligations to NSCC. In addition, although the proposal would limit the scope of entities eligible to be Sponsored Members to those institutions that are able to satisfy the eligibility criteria discussed above, NSCC does not believe such limit would materially impact market participants that are unable to satisfy such eligibility requirements because such market participants would be able to have their equity securities financing activity in SFT eligible securities submitted to NSCC for novation through an Agent Clearing Member. Moreover, any burden on competition would be necessary and appropriate in furtherance of the purposes of the Act because the eligibility requirements applicable to Sponsored Members are designed to ensure the financial sophistication of Sponsored Members and to prudently manage the risk associated with Sponsored Members' participation in NSCC. Additionally, although the proposal would limit the scope of entities able to submit equity securities financing activity in SFT eligible securities to NSCC on behalf of others to entities that are able to satisfy the eligibility criteria for Sponsoring Members and Agent Clearing Members, as specified in proposed Rules 2C and 2D (*i.e.,* be an existing Member and, if the Member applicant is a Registered Broker-Dealer, having to satisfy certain minimum financial threshold amounts), and such limitation may impact institutions that are unable to satisfy such eligibility requirements by excluding them from being able to submit transactions on behalf of others (and avail themselves of the commensurate benefits described above in Item II(A)1(i)—Background), NSCC believes that any related burden on competition would be necessary and appropriate in furtherance of the purposes of the Act. This is because such eligibility requirements are designed to allow NSCC to prudently manage the risks associated with Sponsoring Members' and Agent Clearing Members' participation in the proposed SFT Clearing Service by ensuring that such institutions have the operational capability and sufficient financial ability to meet all of their anticipated obligations to NSCC. Furthermore, NSCC believes any related burden on competition would not be significant because, as described above

[149] The proposed changes to establish the SFT Clearing Service would provide that NSCC may delay the close-out of a Defaulting SFT Member's SFT Positions if such a close-out would create a disorderly market. In such a situation, the proposed changes would allow NSCC to correspondingly delay Final Settlement of any Default-Related SFTs on the same SFT Securities. NSCC does not believe this provision would affect settlement finality because if NSCC delays Final Settlement following an SFT Member Default, the Non-Defaulting Member's related payment or delivery obligation is correspondingly delayed. As a result, the provision would not allow a settlement to be final after the due date of the relevant payment obligations. Rather, consistent with the approach of many clearing agency and derivatives clearing organization rules, it simply allows NSCC to postpone those due dates in order to minimize market destabilization. *See, e.g.,* The Options Clearing Corporation (''OCC'') Rule 903 (Obligation to Deliver) (*https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf*) and ICE Clear Credit LLC Rule 20–605(e) (*https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Rules.pdf*).

[150] 17 CFR 240.17Ad–22(e)(8).

[151] 15 U.S.C. 78q–1(b)(3)(F).

[152] *Id.*

[153] 15 U.S.C. 78q–1(b)(3)(I).

in Item II(A)1(vii)—Impact of the Proposed SFT Clearing Service on Various Persons, participation in the proposed SFT Clearing Service would be entirely voluntary and would not restrict the ability of firms to enter into bilateral securities financing transactions outside of NSCC.

Although the proposal would require the Sponsoring Member Required Fund Deposits and Agent Clearing Member Required Fund Deposits to be calculated on a gross basis with no offsets for netting of positions across different Sponsored Members or different Customers, as applicable, and such requirement may limit the ability of certain Members to participate as a Sponsoring Member and/or an Agent Clearing Member in the proposed SFT Clearing Service, NSCC believes that any related burden on competition would be necessary and appropriate in furtherance of the purposes of the Act. This is because such requirement is designed to allow NSCC to prudently manage the risks associated with these Members' participation in the proposed SFT Clearing Service by ensuring that NSCC's volatility-based Clearing Fund deposit requirements represent the sum of each individual institutional firm's activity. Furthermore, NSCC believes any related burden on competition would not be significant because, as described above in Item II(A)1(vii)—Impact of the Proposed SFT Clearing Service on Various Persons, participation in the proposed SFT Clearing Service would be entirely voluntary and would not restrict the ability of firms to enter into bilateral securities financing transactions outside of NSCC.

Although the proposal would impose an additional charge with respect to any Non-Returned SFT that is calculated based on the relevant SFT Member's Credit Risk Rating Matrix rating and such requirement may limit the ability of certain Members to participate in the proposed SFT Clearing Service, NSCC believes that any related burden on competition would be necessary and appropriate in furtherance of the purposes of the Act. This is because such requirement is designed to allow NSCC to prudently manage increased risks associated with Non-Returned SFTs. As described above, to the extent that the Final Settlement of an SFT is scheduled on a particular date but does not occur, whether directly or through a pair off in accordance with Section 8 of proposed Rule 56 (as discussed above), that could potentially be a result of a ''squeeze'' or other market dislocation whereby NSCC may face increased market risk in the event of the default of either the Transferor or the Transferee. The proposed requirement would help to ensure that NSCC's Clearing Fund deposit requirements take into account increased market risk that NSCC may face in connection with Non-Returned SFTs. Furthermore, NSCC believes any related burden on competition would not be significant because, as described above in Item II(A)1(vii)—Impact of the Proposed SFT Clearing Service on Various Persons, participation in the proposed SFT Clearing Service would be entirely voluntary and would not restrict the ability of firms to enter into bilateral securities financing transactions outside of NSCC.

NSCC does not believe the proposal to make technical and conforming changes would impact competition. These changes are being proposed to ensure consistency in the Rules. They would not change NSCC's current practices or affect Members' rights and obligations. As such, NSCC believes the proposal to make technical and conforming changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC reviewed the proposed rule change with various Members and market participants (*e.g.,* agent lenders, brokers, matching service providers, and books and records service providers) in order to benefit from their expertise and industry knowledge. Written comments relating to this proposed rule change have not been received from Members or any other person. 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 *https://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.

NSCC 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(*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2021–010 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–NSCC–2021–010. 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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2021–010 and should be submitted on or before September 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[154]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–17076 Filed 8–11–21; 8:45 am]

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[154] 17 CFR 200.30–3(a)(12).

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Part III

Securities and Exchange Commission

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Advance Notice To Establish the Securities Financing Transaction Clearing Service and Make Other Changes; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92568; File No. SR–NSCC–2021–803]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Advance Notice to Establish the Securities Financing Transaction Clearing Service and Make Other Changes

August 5, 2021.

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 July 22, 2021, National Securities Clearing Corporation (''NSCC'') 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 advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice consists of proposed modifications to the NSCC Rules & Procedures (''Rules'') [4] that would (i) establish new membership categories and requirements for sponsoring members and sponsored members whereby existing Members would be permitted to sponsor certain institutional firms into membership, (ii) establish a new membership category and requirements for agent clearing members whereby existing Members would be permitted to submit, on behalf of their customers, transactions to NSCC for novation, (iii) establish the securities financing transaction clearing service (''Securities Financing Transaction Clearing Service'' or ''SFT Clearing Service'') to make central clearing available at NSCC for equity securities financing transactions, which are, broadly speaking, transactions where the parties exchange equity securities against cash and simultaneously agree to exchange the same securities and cash, plus or minus a rate payment, on a future date (collectively, ''Securities Financing Transactions'' or ''SFTs''), and (iv) make other amendments and clarifications to the Rules, as described in greater detail below.

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

NSCC reviewed the proposal with various Members and market participants (*e.g.,* agent lenders, brokers, matching service providers, and books and records service providers) in order to benefit from their expertise and industry knowledge. Written comments relating to this proposal have not been received from Members or any other person. 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 *https://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.

NSCC reserves the right not to respond to any comments received.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

Nature of the Proposed Change

The purpose of this proposed rule change is to (i) establish new membership categories and requirements for sponsoring members and sponsored members whereby existing Members would be permitted to sponsor certain institutional firms into membership, (ii) establish a new membership category and requirements for agent clearing members whereby existing Members would be permitted to submit, on behalf of their customers, transactions to NSCC for novation, (iii) establish the SFT Clearing Service to make central clearing available at NSCC for SFTs, and (iv) make other amendments and clarifications to the Rules, as described in greater detail below.

(i) Background

NSCC is proposing to introduce central clearing for SFTs, which are, broadly speaking, securities lending transactions where parties exchange equity securities against cash and simultaneously agree to exchange the same securities and cash, plus or minus a rate payment, on a future date. In particular, the proposed SFT Clearing Service would expand central clearing at NSCC to include SFTs with a one Business Day term (*i.e.,* overnight SFTs) in eligible equity securities that are entered into by Members, institutional firms that are sponsored into NSCC by a Sponsoring Member (as defined below and in the proposed rule change), or Agent Clearing Members (as defined below and in the proposed rule change) on behalf of Customers (as defined below and in the proposed rule change), as applicable.

SFTs involve the owner of securities (typically a registered investment company, pension plan, sovereign wealth fund or other institutional firm) transferring those securities temporarily to a borrower (typically a hedge fund). SFTs are often facilitated and intermediated by broker-dealers and agent lenders (*i.e.,* custodial banks or other institutions that lend out securities as agent on behalf of institutional firms). In return for the lent securities, the borrower transfers collateral, and a net rate payment is typically transferred to either the lender or the borrower that reflects the liquidity of the lent securities, as well as interest on any cash collateral.[5] NSCC

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[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] NSCC filed this advance notice as a proposed rule change (SR–NSCC–2021–010) 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 http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[4] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[5] This rate payment is typically calculated in a manner similar to interest on the principal balance

understands that SFTs provide liquidity to markets and facilitates the ability of market participants to make delivery on short-sales, and thereby avoid failures to deliver, ''naked'' shorts, and similar situations. On a typical Business Day, The Depository Trust Company (''DTC''), an NSCC affiliate, processes deliver orders related to securities lending transactions on securities having a value of approximately $150 billion.

Capital Efficiency Opportunities

The Basel III[6] capital and leverage requirements, as implemented by the U.S. banking regulators, constrain the ability of agent lenders and brokers to intermediate and facilitate SFTs.[7] NSCC believes central clearing of SFTs would be able to address these constraints, which may otherwise impair market participants' ability to engage in SFTs.

For example, NSCC believes it is uniquely positioned to create balance sheet netting opportunities for market participants (*i.e.,* the ability to offset cash payables and receivables versus NSCC) by becoming the legal counterparty to both pre-novation counterparties to an SFT through novation. Specifically, market participants that borrow securities through NSCC and then onward lend those securities, or other securities, to another NSCC Member through the proposed SFT Clearing Service may have the ability to net down the cash collateral return obligations and entitlements related to such SFTs. By contrast, for bilateral SFTs, market participants may be required to record those payables and receivables on their balance sheets on a gross (rather than netted) basis. A netted balance sheet can create significant capital benefits for market participants because it can reduce the amount of regulatory capital they must hold against SFTs under the U.S. ''supplementary leverage ratio'' and other capital requirements that favor a netted balance sheet.[8]

In addition, under Basel III, bank holding companies that have broker-dealer subsidiary borrowers are required to reserve capital against their exposures to institutional firm lenders of securities in relation to the cash collateral posted by such borrowers. Those capital requirements can vary depending on the credit profile of the institutional firm lender, and generally are well in excess of those applied to exposures to qualifying central counterparties, such as NSCC.[9] The counterparty risk weight of a qualifying central counterparty, like NSCC, is 2%,[10] which may result in considerable capital savings to these bank holding companies, to the extent they participate in central clearing.

Moreover, agent lending banks and bank holding company parents of broker-dealer borrowers that participate in central clearing could receive beneficial treatment under the single counterparty credit limits, which exempt exposures to qualifying central counterparties.[11]

In light of the potential for central clearing to alleviate the aforementioned capital constraints otherwise applicable to bilateral SFTs, NSCC believes that central clearing of SFTs may increase the capacity of market participants to engage in SFTs.[12]

Fire Sale Risk Mitigation

In addition to creating capital efficiency opportunities for market participants, NSCC believes that broadening the scope of central clearing at NSCC to SFTs would also reduce the potential for market disruption from fire sales.

In the case of securities lending transactions, the primary risk of fire sales[13] relates to the reinvestment of cash collateral by institutional firms that are the lenders in securities lending transactions. Those institutional firms will typically reinvest the cash collateral they receive from the borrower into other securities. If the borrower of the securities thereafter defaults, the institutional firm lenders generally need to quickly liquidate the securities representing the reinvestment in order to raise cash to purchase the originally lent security. A substantial number of disconnected and competing liquidations by multiple lenders can create fire sale conditions for the securities being liquidated, which can harm not only the institutional firm lenders by potentially lowering the amount of cash they can raise in the sale of such securities, but also create market losses for all holders of such securities.[14]

Moreover, if an institutional firm lender should default and fail to return the cash collateral back to its borrowers, the borrowers would typically be looking to liquidate the borrowed securities in order to make themselves whole for the cash collateral they delivered to the institutional firm lender. Competing and disconnected sales of such securities could similarly create fire sale conditions and not only harm the borrowers to the extent the value of the securities decline, but also create market losses for all holders of the borrowed securities.

NSCC believes that broadening the scope of central clearing at NSCC to SFTs would reduce the potential for market disruption from fire sales for a number of reasons. First, in the event of a default, NSCC would conduct a centralized, orderly liquidation of the defaulter's SFT Positions (as defined below and in the proposed rule change). Such an organized liquidation should result in substantially less price depreciation and market disruption than multiple independent non-defaulting parties racing against one another to liquidate the positions. Second, NSCC would only need to liquidate the defaulter's net positions. By contrast, in the context of a default by a broker-dealer intermediary that runs a matched book in the bilateral securities market, both the ultimate lender and the ultimate borrower need to liquidate the defaulter's gross positions. Limiting the positions that need to be liquidated to the defaulter's net positions should reduce the volume of required sales activity, which in turn should limit the price and market impact of the close-out of the defaulter's positions. Lastly, NSCC would use its risk management resources to provide confidence to market participants that they will receive back their cash or securities, as

of a loan and accrues on a daily basis. As a result, the rate payment is typically calculated as the product of a specified balance (typically the amount of cash collateral unless the collateral consists of securities) and a specified rate (reflecting both the liquidity of the securities and the ability of the lender to re-use the cash collateral), divided by 360 or a similar day count fraction.

[6] Basel III is an internationally agreed set of measures developed by the Basel Committee on Banking Supervision in response to the financial crisis of 2007–2009.

[7] *See, e.g.,* 12 CFR part 3 (Office of the Comptroller of the Currency—Capital Adequacy Standards); 12 CFR part 217 (Federal Reserve—Capital Adequacy of Bank Holding Companies, Savings and Loan Holding Companies, and State Member Banks); 12 CFR part 252, subpart Q (Single Counterparty Credit Limits); 12 CFR part 324 (Federal Deposit Insurance Corporation—Capital Adequacy of FDIC-Supervised Institutions).

[8] *See* 12 CFR 217.10(c)(4)(ii)(E)–(F).

[9] *See* 12 CFR 217.32 and 217.37 generally.

[10] *See* 12 CFR 217.35(c)(3).

[11] *See* 12 CFR 252.77(a)(3).

[12] Members should discuss this matter with their accounting and regulatory capital experts.

[13] Fire sale risk is the risk of rapid sales of assets in large amounts that temporarily depress market prices of such assets and create financial instability.

[14] *See* Financial Stability Board, Strengthening Oversight and Regulation of Shadow Banking: Policy Framework for Addressing Shadow Banking Risks in Securities Lending and Repos, at 5 (August 29, 2013) *available at https://www.fsb.org/wp-content/uploads/r_130829b.pdf?page_moved=1.* *See* also United States Securities and Exchange Commission: Securities Lending and Short Sale Roundtable Transcript (September 29, 2009), Former Chairman Schapiro's Remarks, at 2–3, *available at https://www.sec.gov/news/openmeetings/2009/roundtable-transcript-092909.pdf.*

applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario.

Liquidity Drain Risk Mitigation

Liquidity risk may also arise if, in the context of a stressed market scenario, borrowers or lenders concerned about their counterparties' creditworthiness seek to unwind their securities lending transactions and obtain the return of their cash collateral or securities. This occurred to a certain extent in 2008, when borrowers began demanding to return borrowed securities in exchange for the cash collateral the borrowers had posted to institutional firm lenders.[15] These ''runs'' may require institutional firm lenders to quickly sell off securities that are the subject of their cash reinvestments to raise cash to return to the borrowers, thereby also creating potential fire sale conditions with respect to the reinvestment securities, as described above. Similarly, borrowers may need to purchase or re-borrow securities in stressed market conditions, leading to potentially significant losses.

NSCC believes that having SFTs be centrally cleared by NSCC would lower the risk of a liquidity drain in a stress scenario. Specifically, NSCC believes that having it clear SFT activity would provide confidence to borrowers and lenders that they will receive back their cash or securities and thereby lessen parties' inclination to rush to unwind their transactions in a stressed market scenario.

Addition of New Membership Categories for Institutional Firm SFT Activity

When evaluating the opportunity to expand its cleared offerings to SFTs, NSCC engaged in extensive discussions with numerous market participants, including agent lenders, brokers, institutional firms, and critical third parties, such as matching service providers and books and records service providers. NSCC also organized several industry working groups to discuss the possibility of clearing SFTs. Each constituency has a unique perspective on the proposed SFT Clearing Service. By capturing their differing viewpoints in the design, NSCC has sought to ensure that the proposed SFT Clearing Service would reflect their needs and facilitate industry adoption of the proposed SFT Clearing Service.

There was a considerable amount of discussion between NSCC and market participants regarding the appropriate model(s) through which institutional firms should access central clearing. Some market participants expressed interest in allowing Members to sponsor institutional firms into NSCC membership in a manner similar to that provided for under the sponsoring member/sponsored member program at the Government Securities Division (''GSD'') of Fixed Income Clearing Corporation (''FICC''), an NSCC affiliate (''FICC's Sponsoring Member/Sponsored Member Program'').[16] Under FICC's Sponsoring Member/Sponsored Member Program, sponsoring members may submit to FICC transactions entered into on a principal-to-principal basis between the sponsoring member and the sponsored member.[17] On the other hand, certain other market participants, including in particular certain agent lending banks, requested that the central clearing service accommodate agent-style trading (*i.e.,* where the agent lender enters into the transaction on behalf of the institutional firm, rather than as principal counterparty). As NSCC understands it, agent-style trading is the way such agent lenders are typically approved to transact in securities lending transactions on behalf of their institutional firm clients today.[18]

NSCC considered all of this input, as well as the recent experiences of FICC in expanding the suite of both transactions and participants eligible for FICC's Sponsoring Member/Sponsored Member Program,[19] and ultimately decided to incorporate both the sponsoring/sponsored membership type (to facilitate principal style trading for institutional firms and their sponsoring members) as well as the Agent Clearing Member membership type (to facilitate agent-style trading by agent lenders on behalf of institutional firm clients) into the proposed SFT Clearing Service.[20] NSCC expects these proposed new membership types would help expand access to central clearing for institutional firms and facilitate industry adoption of the proposed SFT Clearing Service.

The proposed SFT Clearing Service would also allow for the submission of broker-to-broker activity as well as client-to-client activity (credit intermediated by Sponsoring Members and/or Agent Clearing Members) into the NSCC system.

(ii) Key Parameters of the Proposed SFT Clearing Service

Overnight SFTs

NSCC is proposing central clearing for SFTs with a one Business Day term (*i.e.,* overnight SFTs) in eligible equity securities that are entered into by Members, institutional firms that are sponsored into NSCC by Sponsoring Members, or Agent Clearing Members on behalf of customers. NSCC has determined that overnight term SFTs with a daily pair off option are more appropriate for the proposed SFT Clearing Service than open transactions with mark-to-market collections. This is because, as NSCC understands it, open transactions are not eligible for balance sheet netting given they do not have a scheduled off-leg/settlement date. As described above, the proposed SFT Clearing Service is designed to offer both balance sheet netting and capital efficiency opportunities to market participants. NSCC therefore finds it appropriate to make overnight term SFTs with a scheduled date for Final Settlement (as defined below and in the proposed rule change) of the next Business Day, rather than open transactions, eligible for central clearing through the proposed SFT Clearing Service.

For example, assume that a Transferor (as defined below and in the proposed rule change) and Transferee (as defined below and in the proposed rule change)

[15] *See, e.g., id.*

[16] *See* Rule 3A (Sponsoring Members and Sponsored Members) of the FICC GSD Rulebook (''GSD Rules''), *available at http://dtcc.com/~media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.*

[17] FICC's Sponsoring Member/Sponsored Member Program also allows sponsoring members to submit to FICC transactions entered into between a sponsored member and a third-party netting member. However, based on feedback from market participants, NSCC has decided to address this type of trading via the proposed agent clearing model for SFT.

[18] In addition, certain other agent lenders who are not themselves banks or broker-dealers (and so are not eligible to become Members of NSCC) preferred a model where the institutional firm client becomes the direct member of NSCC with no obligations running between the agent lender and the clearing agency.

[19] *See* Securities Exchange Act Release Nos. 80563 (May 1, 2017), 82 FR 21284 (May 5, 2017) (SR–FICC–2017–003) (Expand the types of entities that are eligible to participate in FICC as Sponsored Members), 85470 (March 29, 2019), 84 FR 13328 (April 4, 2019) (SR–FICC–2018–013) (Expand Sponsoring Member Eligibility in the GSD Rulebook), and 88262 (February 21, 2020), 85 FR 11401 (February 27, 2020) (SR–FICC–2019–007) (Close-Out and Funds-Only Settlement Processes Associated with the Sponsoring Member/Sponsored Member Service).

[20] NSCC decided at this time not to incorporate a direct model for institutional firm clearing into the proposed SFT Clearing Service because in its experience with a similar model in FICC (the CCIT Service), the requirements that a clearing agency, such as NSCC, would be required to apply to an institutional firm that participated as a direct member (*e.g.,* Clearing Fund and loss allocation) would, as a general matter, not likely be compatible with the regulatory requirements and investment guidelines applicable to many of the regulated institutional firms that NSCC anticipates would be interested in participating in the proposed SFT Clearing Service.

enter into an SFT pursuant to which: (i) In the Initial Settlement (as defined below and in the proposed rule change) on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. In the Final Settlement on Tuesday, the Transferee will return 100 shares of security X to the Transferor for $100 per share. The Rate Payment (as defined below and in the proposed rule change) would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process.

SFT Counterparties

The proposed SFT Clearing Service would only be available for SFTs entered into between (i) a Member and another Member, (ii) a Sponsoring Member and its Sponsored Member (as defined below and in the proposed rule change), and (iii) an Agent Clearing Member acting on behalf of a Customer and either (x) a Member or (y) the same or another Agent Clearing Member acting on behalf of a Customer. As used in the Rules, ''Member'' includes full-service NSCC clearing members, but not Sponsored Members.[21] In addition, as proposed, the only SFTs entered into by Sponsored Members that would be eligible for novation to NSCC would be SFTs between the Sponsored Member and its Sponsoring Member.[22]

Approved SFT Submitters

Consistent with the manner in which NSCC accepts cash market transactions, SFTs would be required to be submitted to NSCC on a locked-in/matched basis by an Approved SFT Submitter (as defined below and in the proposed rule change) in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Approved SFT Submitters would be selected by the SFT Members (as defined below and in the proposed rule change), subject to NSCC's approval. An Approved SFT Submitter could either be a Member or a third-party vendor. SFTs submitted to NSCC by an Approved SFT Submitter would be valid and binding obligations of each SFT Member designated by the Approved SFT Submitter as a party thereto.

Eligible Equity Securities and Per Share Price Minimum

NSCC will maintain eligibility criteria for the securities that may underlie an SFT that NSCC will accept for novation. Consistent with NSCC's general approach to eligibility for securities, the eligibility criteria would not be a rule, but a separate document maintained by NSCC and available to Members. It is currently contemplated that eligible securities for SFTs in the proposed SFT Clearing Service will be limited to CNS-eligible securities.

In light of the fact that central clearing of SFTs would be a new service for NSCC, and market participants would be able to elect which of their eligible SFTs to novate to NSCC (*i.e.,* central clearing of SFTs would not be mandatory for Members), NSCC is not able to anticipate at this time the size and composition of the SFT portfolios that would be novated to NSCC. Due to this lack of history, NSCC would, as an initial matter, provide proposed SFT Clearing Service for only those SFTs where the underlying securities are CNS-eligible equity securities that have a per share price of $5 or more. NSCC selected $5 as the per share price minimum for underlying equity securities that could be the subject of a novated SFT because $5 is a common share price minimum adopted in brokerage margin eligibility schedules.

This proposed share price limitation would be implemented systemically by NSCC as one of the eligibility criteria for determining whether an equity security is eligible to be the subject of a novated SFT (rather than as a rule), and such per share price limitation could be modified by NSCC[23] at a later date after NSCC gains more experience with the nature of the SFT portfolios submitted for clearing. In addition, if the share price of underlying securities of an SFT that has already been novated to NSCC falls below $5, such SFT would continue to be novated to NSCC, but the Required SFT Deposit (as defined below and in the proposed rule change) for the affected Members would include an amount equal to 100% of the market value of such underlying securities until such time as the per share price of the underlying securities equals or exceeds $5.

Cash Collateral

Consistent with the cash market transactions NSCC clears today where cash is used to satisfy Members' purchase obligations in eligible securities, cash would likewise be the only eligible form of collateral for novated SFTs under the proposed SFT Clearing Service.[24] More specifically, NSCC would limit the SFTs that it is willing to novate to SFTs that have SFT Cash (as defined below and in the proposed rule change) equal to or greater than 100% market value of the lent securities, and would not novate any obligations to return collateral consisting of securities.[25]

NSCC would novate the Final Settlement obligations of an SFT as of the time the Initial Settlement of such SFT is completed, unless the SFT is a Bilaterally Initiated SFT (as defined below and in the proposed rule change) or a Sponsored Member Transaction (as defined below and in the proposed rule change), in which case novation of the Final Settlement obligations would occur upon NSCC reporting to the Approved SFT Submitter that the SFT has been validated and novated to NSCC.

As described above, each SFT would be collateralized by cash equal to no less than 100% of the market value of the lent securities. In addition, in order to address regulatory and investment guideline requirements applicable to certain institutional firms,[26] a Member would be permitted (but not required) to transfer an additional cash haircut above 100% (*e.g.,* 102%) to such institutional firms, *i.e.,* Independent Amount SFT Cash (as defined below and in the proposed rule change), as part of the Initial Settlement of the SFT. The Sponsoring Member or Agent Clearing Member, as applicable, that receives the Independent Amount SFT Cash in the Initial Settlement would also receive a commensurate Clearing Fund call, *i.e.,* an Independent Amount SFT Cash Deposit Requirement (as

[21] As defined in Rule 1 (Definitions and Descriptions), the term ''Member'' means any Person specified in Section 2.(i) of Rule 2 who has qualified pursuant to the provisions of Rule 2A. As such, the term ''Member'' does not include a Sponsored Member. *Supra* note 4.

[22] *See* Section 5 of proposed Rule 56, which provides that a Sponsoring Member shall be permitted to submit to NSCC SFTs between itself and its Sponsored Members.

[23] The per share price limitation could be modified by NSCC without any regulatory filings; however, any change in the per share price limitation would be announced by NSCC via an Important Notice posted to its website.

[24] This is referred to as ''SFT Cash'' in the proposed rule text.

[25] *See* Section 5(a) of proposed Rule 56 and the definition of ''Securities Financing Transaction''.

[26] As an example, a registered investment company that lends securities through an agent may be required under Section 17(f) of the Investment Company Act of 1940 and Rule 17f–2 thereunder to collect cash collateral equal to no less than 102% of the market value of the lent securities. *See, e.g.,* The Adams Express Company, SEC No-Action Letter (Oct. 8, 1984). Other institutional firms may be subject to similar requirements under their established investment guidelines or applicable rules, regulations or guidance.

defined below and in the proposed rule change), from NSCC to reflect the value received by such Member above the market price of the equity security lent. NSCC's novation of Final Settlement obligations related to Independent Amount SFT Cash would be tied to the time the Sponsoring Member or Agent Clearing Member, as applicable, satisfies the related Independent Amount SFT Cash Deposit Requirement in cash.

RVP/DVP Settlement at DTC

The Final Settlement obligations of each SFT, other than a Sponsored Member Transaction, that is novated to NSCC would settle receive-versus-payment/delivery-versus-payment (''RVP/DVP'') at DTC.[27] SFT deliver orders would be processed in accordance with DTC's rules and procedures, including provisions relating to risk controls. DTC would accept delivery instructions for an SFT from NSCC, as agent for DTC participants that are SFT Members.[28]

Pre-novation counterparties to an SFT that is due to settle may elect to pair off (*i.e.,* offset) the Final Settlement obligations of such SFT against the Initial Settlement obligations of a new SFT between the same parties on the same securities. NSCC believes that such offsets would minimize the operational burden of settling overnight obligations. NSCC would calculate and process the difference in cash collateral between the paired off SFTs, *i.e.,* Price Differential (as defined below and in the proposed rule change). Price Differential would also be processed in accordance with DTC rules and procedures, including provisions relating to risk controls. DTC would accept Price Differential payment orders for an SFT from NSCC, as agent for DTC participants that are SFT Members.

Settlement of the Rate Payment obligations and payment obligations arising from certain mandatory corporate actions and cash dividends would be processed as part of NSCC's end-of-day final money settlement process.

As an example of an SFT with a full pair off (*i.e.,* offset), assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to pair off the parties' Final Settlement obligations on the Settling SFT (as defined below and in the proposed rule change) with a Linked SFT (as defined below and in the proposed rule change) pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 100 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 100 shares of security X to the Transferor against $99 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in connection with the pair off. In addition, the Rate Payment for the Settling SFT would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process. In the Final Settlement on Wednesday, the Transferee will return 100 shares of security X to the Transferor for $99 per share. The Rate Payment for the Linked SFT would be passed by NSCC as between the Transferor and Transferee on Wednesday as part of NSCC's end-of-day final money settlement process.

As an example of an SFT with a partial pair off (*i.e.,* offset), assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) in the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to partially pair off the parties' Final Settlement obligations on the Settling SFT with a Linked SFT pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 25 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 25 shares of security X to the Transferor against $99 per share. In the Final Settlement on Tuesday for the remaining Settling SFT, the Transferee will return 75 shares of security X to the Transferor for $100 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in relation to the shares subject to pair off (*i.e.,* 25 shares of security X). In addition, the Rate Payment for the Settling SFT (*i.e.,* 100 shares of security X) would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process. In the Final Settlement on Wednesday for the Linked SFT, the Transferee will return 25 shares of security X to the Transferor for $99 per share. The Rate Payment on the Linked SFT (*i.e.,* 25 shares of security X) would be passed by NSCC as between the Transferor and Transferee on Wednesday as part of NSCC's end-of-day final money settlement process.

Buy-In, Recall and Accelerated Settlement

It is occasionally the case in the securities lending market that a borrower is solvent and able to satisfy its general obligations as they become due but unable to deliver the lent securities to the lender within the timeline requested by the lender. The contractual remedy that has developed in the bilateral securities lending market for these situations is a ''buy-in.'' Under this remedy, the lender may purchase securities equivalent to the borrowed securities in the market and charge the borrower for the cost of this purchase. This serves to benefit the lender because it allows the lender to recover the securities within its required timeline, and it benefits the borrower by avoiding a situation in which the borrower's failure to perform under a single transaction results in an event of default and close-out of all of its securities lending transactions (and potentially other positions through a cross-default). Similarly, in the bilateral space, securities borrowers may have the need to accelerate settlement of securities lending transactions if they lose a ''permitted purpose'' for such loans under Regulation T. The proposed SFT Clearing Service would seek to retain the buy-in and acceleration

[27] As described below, the Final Settlement and other obligations of each Sponsored Member Transaction would, at the direction of NSCC, settle on the books and records of the relevant Sponsoring Member.

[28] On July 22, 2021, DTC submitted a proposed rule change to provide DTC participants that are also NSCC Members with settlement services in connection with NSCC's proposed SFT Clearing Service. *See* SR–DTC–2021–014, which was filed with the Commission but has not yet been published in the Federal Register. A copy of this proposed rule change is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

mechanisms, as they ensure the smooth functioning of securities markets without causing unnecessary and disorderly defaults or regulatory violations.[29]

Consistent with their rights under industry-standard documentation for bilateral SFTs, as proposed, Transferors would have the right to submit a Recall Notice (as defined below and in the proposed rule change) to NSCC in respect of a novated SFT for which Final Settlement obligations have not yet been satisfied. If the Transferee does not return the lent securities by the Recall Date (as defined below and in the proposed rule change) specified in such notice, and the Transferor would be eligible to Buy-In (as defined below and in the proposed rule change), in accordance with such timeframes and deadlines as established by NSCC for such purpose, such securities.

For example, assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to pair off (*i.e.,* offset) the parties' Final Settlement obligations on the Settling SFT with a Linked SFT pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 100 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 100 shares of security X to the Transferor against $99 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in connection with the pair off. In addition, the Rate Payment for the Settling SFT would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process.

Later in the day on Tuesday, the Transferor determines it now needs 100 shares of security X back in its inventory, and so the Approved SFT Submitter submits a Recall Notice to NSCC, prior to the deadline established by NSCC, on behalf of the Transferor for 100 shares of security X with a Recall Date of Thursday. At the end of day on Tuesday, the share price of security X is $98 per share. Upon receipt of the Recall Notice, the SFT would be treated as a Non-Returned SFT (as defined below and in the proposed rule change) by NSCC pursuant to Section 9(e) of proposed Rule 56 (Securities Financing Transaction Clearing Service). Accordingly, pursuant to Section 9(a) of proposed Rule 56, the Final Settlement Date (as defined below and in the proposed rule change) of the SFT would be rescheduled to Thursday, and NSCC would, on Wednesday collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee on the Non-Returned SFT. The Rate Payment for the Non-Returned SFT would also be passed by NSCC as between the Transferor and Transferee on Wednesday as part of NSCC's end-of-day final money settlement process.

Assume further that the Transferee does not transfer the 100 shares of security X on Wednesday and that the end of day price of security X on Wednesday is $97 per share. On Thursday, NSCC would again collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee on the Non-Returned SFT. The Rate Payment for the Non-Returned SFT would also be passed by NSCC as between the Transferor and Transferee on Thursday as part of NSCC's end-of-day final money settlement process. In addition, since the Recall Notice specified Thursday as the Recall Date, the Transferor would be entitled to purchase (or deem itself to have purchased) 100 shares of security X in accordance with the provisions of Section 9(b) of proposed Rule 56. Assuming that the Transferor paid a price of $95 per share for security X and submitted a written notice to NSCC of its Buy-In Costs (as defined below and in the proposed rule change) on Thursday, the Transferor would owe NSCC a Buy-In Amount (as defined below and in the proposed rule change) of $2 per share ($100 per share of SFT Cash received by the Transferor at the Initial Settlement of the SFT, less the $95 per share Buy-In Costs of the Transferor, minus $3 per share Price Differential paid by the Transferor to NSCC), and such Buy-In Amount would be debited by NSCC from the Transferor and credited to the Transferee as part of NSCC's end-of-day final money settlement process on Friday.

Similarly, consistent with their rights under industry-standard documentation for bilateral SFTs, Transferees would have the right to accelerate the scheduled Final Settlement of a novated SFT through notice from the Approved SFT Submitter to NSCC of such accelerated settlement.

For example, assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to net the parties' Final Settlement obligations on the Settling SFT with a Linked SFT pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 100 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 100 shares of security X to the Transferor against $99 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in connection with the pair off. Later in the day on Tuesday, the Transferee loses permitted purpose under Regulation T for the borrowing of 100 shares of security X. Therefore, pursuant to Section 11 of proposed Rule 56 (Securities Financing Transaction Clearing Service), the Approved SFT Submitter submits a notice to NSCC on behalf of the Transferee to accelerate the Final Settlement of the Linked SFT to Tuesday. The Transferee then on Tuesday returns 100 shares of security X to NSCC for $99 per share, and NSCC returns 100 shares of security X to the Transferor for $99 per share. The Rate Payment would be passed by NSCC for the Settling SFT as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process.

[29] NSCC does not believe retaining the buy-in and acceleration mechanisms would undermine novation because NSCC would remain the obligor and obligee in respect of the Final Settlement, Rate Payment, and Distribution Payment (as defined below and in the proposed rule change) entitlements and obligations. These mechanisms simply affect the timing and manner in which those obligations are discharged.

Risk Management of SFT Positions

Under the proposal, NSCC is requiring a deposit to the Clearing Fund [30] for SFT Positions, *i.e.,* Required SFT Deposit. From a market risk standpoint, SFT activity would be risk managed by NSCC in a manner consistent with Members' CNS positions but would be margined independently of the Member's other positions,[31] and a Required SFT Deposit would be collected by NSCC for all SFT activity of an SFT Member, subject to a $250,000 minimum deposit.[32] Specifically, NSCC is proposing to calculate an SFT Member's Required SFT Deposit by applying the sections of Procedure XV (Clearing Fund Formula and Other Matters) specified in Section 12 of proposed Rule 56 (*i.e.,* Sections I.(A)(1)(a), (b), (d), (f), (g), (h) of Procedure XV as well as the additional Clearing Fund formula in Section I.(B)(5) (Intraday Mark-to-Market Charge) of Procedure XV as such sections apply to CNS Transactions, and the additional Clearing Fund formula in Sections I.(B)(1) (Additional Deposits for Members on the Watch List); (2) (Excess Capital Premium), (3) (Backtesting Charge), (4) (Bank Holiday Charge); Minimum Clearing Fund and Additional Deposit Requirements in Sections II.(A)1(a)–(b), II.(B), II.(C); as well as Section III (Collateral Value of Eligible Clearing Fund Securities) of Procedure XV, as such sections apply to Members). Furthermore, NSCC would require an additional Required SFT Deposit for Non-Returned SFTs that is intended to mirror the premium charged for CNS Fails Positions. NSCC would also apply the Independent Amount SFT Cash Deposit Requirement for SFTs that have Incremental Additional Independent Amount SFT Cash. NSCC is also proposing that, for the purpose of applying Section I.(A)(1)(h) of Procedure XV (Margin Liquidity Adjustment (''MLA'') charge), SFT Positions shall be netted with Net Unsettled Positions.[33]

Consistent with the manner in which clearing fund requirements are satisfied by members of FICC for their cleared securities financing transactions, NSCC would require that (i) a minimum of 40% of an SFT Member's Required SFT Deposit consist of a combination of cash and Eligible Clearing Fund Treasury Securities and (ii) the lesser of $5,000,000 or 10% of an SFT Member's Required SFT Deposit (but not less than $250,000) [34] consist of cash.[35] NSCC would also have the discretion to require an SFT Member to post its Required SFT Deposit in proportion of cash higher than would otherwise be required as described above. NSCC's determination to impose any such requirement would be made in view of market conditions and other financial and operational capabilities of the relevant SFT Member. For example, as proposed in Section 12 of Rule 56, if NSCC had specific concerns about a particular SFT Member's financial or operational capabilities, but NSCC had not yet come to the determination that ceasing to act for the SFT Member would be appropriate (but could potentially become appropriate within the near term), NSCC may request that a greater portion of the SFT Member's Required SFT Deposit to the Clearing Fund be in the form of cash in order to simplify any potential close-out liquidation required in the event of that SFT Member's default. Separately, pursuant to Section II.(A)1(a) of Procedure XV, if an SFT Member's deposit of Eligible Clearing Fund Agency Securities or Eligible Clearing Fund Mortgage-Backed Securities is in excess of 25% of the SFT Member's Required Fund Deposit, NSCC would subject the deposit to an additional haircut.

The Sponsoring Member Required Fund Deposits (as defined below and in the proposed rule change) and Agent Clearing Member Required Fund Deposits (as defined below and in the proposed rule change) would each be calculated on a gross basis, and no offsets for netting of positions as between different Sponsored Members or different Customers,[36] as applicable, would be permitted. This is to ensure that NSCC's volatility-based Clearing Fund deposit requirements represent the sum of each individual institutional firm's activity.

As proposed, the SFT Clearing Service would mitigate NSCC's liquidity risk associated with satisfaction of Final Settlement obligations owing to non-defaulting SFT Members on novated SFTs in the event of an SFT Member default by providing for satisfaction of such Final Settlement obligations to occur in accordance with the normal settlement cycle for the purchase or sale of securities, as applicable.[37] NSCC would accordingly be able to satisfy such Final Settlement obligations through market action (if necessary) rather than through its own liquidity resources. More specifically, NSCC would be able to sell the securities lent by a Defaulting SFT Member (as defined below and in the proposed rule change) and/or purchase the securities borrowed by a Defaulting SFT Member and use the proceeds of such sales and/or the securities purchased to satisfy the Defaulting SFT Member's Final Settlement obligations to non-defaulting SFT Members. In the absence of this provision, NSCC would need to rely exclusively on its liquidity resources to satisfy Final Settlement obligations owing to non-defaulting SFT Members, since it would not receive the proceeds of any market action to liquidate the Defaulting SFT Member's SFT Positions until after Final Settlement obligations were due.

The proposal would also provide that NSCC could further delay its

[30] As currently defined in Rule 1 (Definitions and Descriptions), the term ''Clearing Fund'' means the fund created pursuant to Rule 4. *Supra* note 4.

[31] NSCC is not proposing at this time to portfolio margin a Member's SFT Positions with any CNS positions of the Member. NSCC may reconsider this position after it obtains a reasonable amount of experience observing the nature and volume of SFT activity submitted by Members to NSCC for novation through the proposed SFT Clearing Service.

[32] This $250,000 minimum deposit is a requirement that is separate from NSCC's proposed change to a Member's minimum (non-SFT) Clearing Fund deposit requirement, although it is designed to be consistent with such proposed change. *See* Securities Exchange Act Release No. 91809 (May 10, 2021), 86 FR 26588 (May 14, 2021) (SR–NSCC–2021–005).

[33] ''Net Unsettled Positions'' include a Member's net of unsettled Regular Way, When-Issued and When-Distributed pending positions (*i.e.,* net positions that have not yet passed Settlement Date) and fail positions (*i.e.,* net positions that did not settle on Settlement Date). *See* Procedure XV, *supra* note 4.

[34] This $250,000 minimum cash deposit requirement is designed to be consistent with NSCC's proposed change to the minimum amount of cash that must be used to satisfy a Member's (non-SFT) Clearing Fund deposit requirement. *See* Securities Exchange Act Release No. 91809 (May 10, 2021), 86 FR 26588 (May 14, 2021) (SR–NSCC–2021–005). NSCC believes a $250,000 minimum cash deposit would serve to strengthen NSCC's liquidity resources. Cash may also be easier to access upon a Member's default, further reducing the risk of losses and using non-defaulting Member's securities or funds, or NSCC funds.

[35] These requirements are designed to be consistent with FICC GSD's clearing fund requirements of its members given that NSCC anticipates that there would be considerable overlap between the membership of FICC GSD that participate in FICC for purposes of clearing their securities financing transaction activity (including in particular sponsored repo activity) and the Members that would elect to participate in the proposed SFT Clearing Service. Specifically, FICC GSD Rule 4, Section 3 requires (i) a minimum of 40 percent of a member's required fund deposit to be in the form of cash and/or eligible clearing fund treasury securities and (ii) the lesser of $5,000,000 or 10 percent of the required fund deposit, with a minimum of $100,000, be made and maintained in cash. *See* Rule 4 (Clearing Fund and Loss Allocation) of the FICC GSD Rulebook, *supra* note 16

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[36] *See* Section 7(c) of proposed Rule 2C and Section 6(c) of proposed 2D.

[37] *See* proposed Rule 56, Section 14(b)(viii).

satisfaction of Final Settlement obligations to non-defaulting SFT Members beyond the normal settlement cycle for the purchase or sale of securities to the extent NSCC determines that taking market action to close-out some or all of the defaulted SFT Member's novated SFT Positions would create a disorderly market in the relevant SFT Securities.[38] For example, to the extent that market action is required by NSCC to close-out the positions of a Defaulting SFT Member, and selling out or buying in (as applicable) the entire quantity of securities would move the market and create disorder, NSCC would adhere to pre-determined market volume limits as set forth in NSCC's internal procedures and execute its hedging strategy in order to meet its default management objectives. In such a situation, non-defaulting SFT Members would not be able to effect a recall or an associated buy-in, since such market activity would exacerbate the disorderly conditions that NSCC's delay is designed to prevent, nor would non-defaulting SFT Members otherwise be able to or accelerate the delayed Final Settlement obligations, as any such acceleration would frustrate the purpose of the delay, *i.e.,* to avoid creating a disorderly market in the relevant SFT Securities.

However, in any case, until NSCC has satisfied the Final Settlement obligations owing to non-defaulting SFT Members, NSCC would continue paying to and receiving from non-defaulting SFT Members the applicable Price Differential (*i.e.,* the change in market value of the relevant securities) with respect to their novated SFTs.[39] By continuing to process these Price Differential payments until Final Settlement occurs, NSCC would ensure that non-defaulting SFT Members are kept in the same position as if the Defaulting SFT Member had not defaulted and the pre-novation counterparties had instead agreed to roll the SFTs. To the extent NSCC is required to pay a Price Differential to a non-defaulting SFT Member, NSCC would rely on the NSCC Clearing Fund, including the Required SFT Deposit, in order to cover the liquidity need associated with any such Price Differential obligation.[40] In addition, NSCC would anticipate being in regular communication with the non-defaulting SFT Members as to the timing of the satisfaction of any Final Settlement obligations related to a defaulting SFT Member.

(iii) Sponsoring Members and Sponsored Members

NSCC is proposing a sponsored membership program to allow Members to play the role of pre-novation counterparty and credit intermediary for their institutional firm clients in clearing.

NSCC has modeled a number of the aspects of the proposed sponsored member program, including the eligibility criteria and many of the risk management requirements, on FICC's Sponsoring Member/Sponsored Member Program. FICC's Sponsoring Member/Sponsored Member Program allows an FICC Netting Member to sponsor an entity that satisfies certain requirements and submit to FICC for novation certain securities transactions between the Netting Member and the sponsored entity. These securities transactions generally include the off-leg of repurchase transactions on U.S. government or agency securities or straight purchase and sales of such securities. Such transactions present similar risk management, legal, accounting, and operation considerations to SFTs, as both involve an obligation of a sponsored member and a sponsoring member to exchange cash against securities. Since 2005, FICC has worked with its members to improve its Sponsoring Member/Sponsored Member Program to address these considerations. Based on feedback from Members and its own internal assessments, NSCC believes that leveraging the provisions of FICC's Sponsoring Member/Sponsored Member program and the learning over the past decade and a half would allow NSCC to provide a sponsored member program that has a solid risk management, accounting, legal and operational foundation.

Sponsoring Members

Under the proposal, all Members would be eligible to apply to become Sponsoring Members in NSCC, subject to credit criteria that are designed to be substantially similar to those applicable to category 2 sponsoring members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members.''[41] A Member whose

[38] *Id.*

[39] *See* proposed Rule 56, Section 14(b)(ix).

[40] For example, assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. Assume further that at midnight on Monday, NSCC ceases to act for the Transferor.

On Tuesday, NSCC executes a sale of 100 shares of security X for $99 per share. In accordance with the regular way settlement cycle for purchases and sales of equity securities, this sale will settle on Thursday.

Pursuant to Section 14(b)(viii) of proposed Rule 56 (Securities Financing Transaction Clearing Service), NSCC would likewise settle the Final Settlement obligations of the defaulting Transferor's SFT with the non-defaulting Transferee on Thursday.

Assume further that the end-of-day price of security X on Tuesday is $99 per share. On Wednesday, NSCC would pay $1 per share in Price Differential to the non-defaulting Transferee pursuant to Section 14(b)(ix) of proposed Rule 56. Assume further that the end-of-day price of security X on Wednesday is $98 per share.

On Thursday, NSCC would pay an additional $1 per share in Price Differential to the non-defaulting Transferee pursuant to Section 14(b)(ix) of proposed Rule 56. The Transferee would then return 100 shares of security X to NSCC and receive $98 per share (*i.e.,* the current market price for security X) from NSCC. As such, the non-defaulting Transferee would be made whole by NSCC for the $100 per share it transferred in the Initial Settlement of the Defaulted-Related SFT (as defined below and in the proposed rule change) since NSCC would have transferred to it $98 per share in Final Settlement plus an additional $2 per share in Price Differential.

NSCC would incur a net loss of $1 per share in this example since it would have sold security X for $99 per share and paid the non-defaulting Transferee a total of $100 per share (*i.e.,* $98 per share in Final Settlement proceeds plus $2 per share in Price Differential). NSCC would be entitled to deduct this amount from the defaulted Transferor's Clearing Fund deposits (including its SFT Deposit).

[41] If a Member is a Registered Broker-Dealer, then such Member would only be eligible to apply to become a Sponsoring Member if it satisfies the credit criteria in proposed Rule 2C (Sponsoring Members and Sponsored Members) (*i.e.,* if it has (i) Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million). Such credit criteria are comparable to the credit criteria applicable to category 2 sponsoring members that are registered broker-dealers in FICC's Sponsoring Member/Sponsored Member Program. A Sponsoring Member applicant would be viewed and surveilled as the credit counterparty to NSCC in respect to its Sponsored Member Sub-Account(s) (as defined below and in the proposed rule change) in light of its responsibility to NSCC as the processing agent and unconditional guarantor of its Sponsored Members' performance to NSCC.

In addition, NSCC may require that a Person be a Member for a time period deemed necessary by NSCC before that Person may be considered to become a Sponsoring Member. This requirement may be imposed by NSCC on a new Member that has yet to demonstrate a track record of financial responsibility and operational capability.

Furthermore, as proposed, the application of a Member to be a Sponsoring Member at NSCC that is an Agent Clearing Member or an existing FICC sponsoring member would not be required to be approved by the NSCC Board of Directors. NSCC believes this approach to Board of Director's approval for Sponsoring Members is appropriate in light of the fact that the critical components of the FICC sponsoring member application as well as the NSCC Sponsoring Member and Agent Clearing Member applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are

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application to become a Sponsoring Member has been approved by the Board of Directors or NSCC, as applicable, pursuant to proposed Rule 2C (''Sponsoring Member'') would be permitted to sponsor their institutional firm clients into membership as Sponsored Members. Such Sponsoring Members would then be able to facilitate their institutional firm clients' cleared activity via two back-to-back principal SFTs, *i.e.,* client-to-Sponsoring Member and Sponsoring Member-to-broker (or to another institutional firm client that the Sponsoring Member has sponsored into membership), and each of such transactions would be eligible for novation to NSCC.

Consistent with the requirements applicable to sponsoring members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,'' a Sponsoring Member would be responsible for (i) submitting data on its Sponsored Members' SFTs to NSCC or appointing a third-party Approved SFT Submitter to do so, (ii) posting to NSCC all of the Clearing Fund associated with the SFT activity of its Sponsored Members, which would be calculated on a gross basis (*i.e.,* SFT activity would not be netted across Sponsored Members for Clearing Fund purposes), (iii) providing an unconditional guaranty to NSCC for its Sponsored Members' Final Settlement and other obligations to NSCC, and (iv) covering any default loss allocable to its Sponsored Members (in addition to its own default loss allocation as a Member).

Specifically, as proposed, a Sponsoring Member would be permitted to submit to NSCC for novation Sponsored Member Transactions, subject to an activity limit designed to be substantially similar to that applicable to category 2 sponsoring members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members.'' Under the proposal, if the sum of the Volatility Charges (as defined below and in the proposed rule change) applicable to a Sponsoring Member's Sponsored Member Sub-Accounts (as defined below and in the proposed rule change) and its other accounts at NSCC exceeds its Net Member Capital (as defined below and in the proposed rule change), the Sponsoring Member would not be permitted to submit activity into its Sponsored Member Sub-Accounts, unless otherwise determined by NSCC in order to promote orderly settlement. As defined in Section 5 of proposed Rule 2C, Sponsored Member Transactions are SFTs between a Sponsoring Member and its Sponsored Members.

The Sponsoring Member would establish one or more accounts at NSCC for its Sponsored Members' positions arising from such Sponsored Member Transactions, *i.e.,* Sponsored Member Sub-Accounts, which would be separate from the Sponsoring Member's proprietary accounts. For operational and administrative purposes, NSCC would interact solely with the Sponsoring Member as agent of its Sponsored Members.

Sponsoring Members would be responsible for providing NSCC with a Sponsoring Member Guaranty (as defined below and in the proposed rule change) whereby the Sponsoring Member guarantees to NSCC the payment and performance by its Sponsored Members of their obligations under the Sponsored Member Transactions submitted by the Sponsoring Member for novation. Although Sponsored Members are principally liable to NSCC for their own settlement obligations under such transactions in accordance with the Rules, the Sponsoring Member Guaranty requires the Sponsoring Member to satisfy those settlement obligations on behalf of a Sponsored Member if the Sponsored Member defaults and fails perform its settlement obligations.

In addition, a Sponsoring Member would be responsible for posting to NSCC all of the Clearing Fund associated with the Sponsored Member Transactions (which would not be netted across Sponsored Members for Clearing Fund purposes) and covering any default loss allocable to its Sponsored Members, as well as its own default loss allocation as a Member.[42]

As proposed, consistent with FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,'' NSCC would also provide a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Transactions between the Sponsoring Member and such Sponsored Member that have been novated to NSCC.[43]

Sponsored Members

Consistent with the requirements applicable to sponsored members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,'' any Person that has been approved by NSCC to be sponsored into membership by a Sponsoring Member pursuant to proposed Rule 2C (''Sponsored Member'') would be required to be either a ''qualified institutional buyer'' as defined by Rule 144A[44] under the Securities Act of 1933, as amended (''Securities Act''),[45] or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i)(H) of Rule 144A under the Securities Act, satisfies the financial requirements necessary to be a ''qualified institutional buyer'' as specified in that paragraph.

(iv) Agent Clearing Members and Customers

NSCC is proposing an agent clearing membership designed to allow Members to play the role of agent and credit intermediary for their institutional firm clients in clearing. This membership type is being proposed in response to the request of certain market participants, including in particular certain agent lending banks, that the proposed SFT Clearing Service accommodate agent-style trading (*i.e.,* where the agent lender enters into the transactions on behalf of its institutional firm clients with a third-party market participant, rather than acting as its institutional firm clients' principal pre-novation counterparty). Agent-style trading is the manner in which such agent lenders are typically approved to transact in securities lending transactions on behalf of their institutional firm clients. Under the

substantially similar. Nonetheless, NSCC would apply the same rigorous counterparty credit review process to any Member applying to be a Sponsoring Member at NSCC, whether or not the Member is an existing FICC sponsoring member.

[42] The following example illustrates how loss allocation would occur with respect to Sponsoring Members and Sponsored Members: Assume NSCC incurs a $100 million aggregate loss from a Defaulting Member Event. In addition, assume that the Corporate Contribution amount that NSCC would first apply to any loss from a Defaulting Member Event is $25 million. This means NSCC would allocate the remaining $75 million losses (*i.e.,* $100 million minus $25 million) to Members pursuant to Section 4 of Rule 4 (Clearing Fund), including Sponsored Member Sub-Accounts as if each were a Member. If the allocated losses to a Sponsoring Member's Sponsored Member Sub-Accounts is $1 million and the allocated losses to its Sponsoring Member in its capacity as a Member is $2 million, the Sponsoring Member would be responsible for a total of $3 million loss allocation ($1 million for its Sponsored Member Sub-Account loss allocation amount and $2 million for its own default loss allocation as a Member).

[43] *See* Section 14 of proposed Rule 2C (Sponsoring Members and Sponsored Members).

[44] 17 CFR 230.144A.

[45] 15 U.S.C. 77a *et seq.*

proposal, a Member that enters into transactions on behalf of its institutional firm clients in accordance with the provisions of proposed Rule 2D (''Agent Clearing Member'') would be permitted to submit SFTs executed by it (as agent on behalf of its institutional firm clients, with each such client referred to as a ''Customer'') with a Member participating in the proposed SFT Clearing Service (which could include a Member acting in a proprietary capacity within the proposed SFT Clearing Service as well as an Agent Clearing Member).

All Members would be eligible to apply to become Agent Clearing Members in NSCC, subject to credit criteria that are substantially similar to those applicable to Sponsoring Members as well as category 2 sponsoring members in FICC's Sponsoring Member/Sponsored Member Program.[46]

Under the proposal, the requirements to be imposed on Agent Clearing Members would largely mirror those imposed on Sponsoring Members. However, NSCC is not proposing to impose the same types of requirements on an Agent Clearing Member's Customers as it does on Sponsored Members because a Customer would not be a direct member of NSCC.

Specifically, as proposed, an Agent Clearing Member would be permitted to submit to NSCC for novation Agent Clearing Member Transactions (as defined below and in the proposed rule change), on behalf of one or more of its Customers, subject to an activity limit. Specifically, under the proposal, if the sum of the Volatility Charges applicable to an Agent Clearing Member's Agent Clearing Member Customer Omnibus Account(s) (as defined below and in the proposed rule change) and its other accounts at NSCC exceeds its Net Member Capital, the Agent Clearing Member would not be permitted to submit activity into its Agent Clearing Member Customer Omnibus Account(s), unless otherwise determined by NSCC in order to promote orderly settlement. As defined in Section 4 of proposed Rule 2D, Agent Clearing Member Transactions are SFTs that an Agent Clearing Member submits to NSCC on behalf of one or more Customers.

The Agent Clearing Member would establish one or more accounts at NSCC for its Customers' positions, *i.e.,* an Agent Clearing Member Customer Omnibus Account, that would be in the name of the Agent Clearing Member for the benefit of its Customers; however, each Agent Clearing Member Customer Omnibus Account may only contain activity where the Agent Clearing Member is acting as Transferor on behalf of its Customers, or as Transferee on behalf of its Customers, but not both (*i.e.,* activity would not be netted across Customers for Clearing Fund purposes). Under the proposal, the Agent Clearing Member would act solely as agent of its Customers in connection with the clearing of Agent Clearing Member Transactions; however, the Agent Clearing Member would remain fully liable for the performance of all obligations to NSCC arising in connection with Agent Clearing Member Transactions.

In addition, as proposed under the sponsoring/sponsored membership model, the Agent Clearing Member would be responsible for posting to NSCC all of the Clearing Fund associated with the activity of its Customers and covering any default loss allocable to its Customers, as well as its own default loss allocation as a Member;[47] however, unlike a Sponsoring Member, an Agent Clearing Member would not be required to provide an unconditional guaranty to NSCC for its Customer's obligations. This is because, as described above, the Agent Clearing Member would be fully liable for all obligations of its Customers under the Agent Clearing Member Transactions that it submitted to NSCC as the Member.

As proposed, NSCC would also provide a mechanism by which an Agent Clearing Member may, upon a default of a Customer and consent of NSCC, transfer Agent Clearing Member Transactions of the Customer established in one or more of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts from such Agent Clearing Member Customer Omnibus Accounts to the Agent Clearing Member's proprietary account at NSCC as a Member.[48]

(v) Sponsoring Member/Sponsored Member vs. Agent Clearing Member/Customers

The direct costs of central clearing (*i.e.,* Clearing Fund, loss allocation, fees and performance on behalf of an institutional firm clients) would be largely equivalent as between what NSCC proposes to apply to a Sponsoring Member and what NSCC proposes to apply to an Agent Clearing Member. Likewise, the capital costs to Sponsoring Members and Agent Clearing Members of intermediating institutional firm activity as between the two buy-side clearing models would be largely equivalent. That being said, because Sponsoring Members would be required to ensure that (i) each of their clients separately onboards with NSCC as a Sponsored Member (which NSCC understands is generally required from an accounting perspective in order for the Sponsoring Member to net on its balance sheet its SFTs with Sponsored Members against the Sponsoring Member's other NSCC-cleared SFTs),[49] (ii) each of their client's SFTs is individually submitted to NSCC for

[46] If a Member is a Registered Broker-Dealer, then such Member would only be eligible to apply to become an Agent Clearing Member if it satisfies the credit criteria in proposed Rule 2D (*i.e.,* if it has (i) Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million). Such credit criteria are comparable to the credit criteria applicable to sponsoring members that are registered broker-dealers in FICC's Sponsoring Member/Sponsored Member Program. Similar to the review of a Sponsoring Member applicant, an Agent Clearing Member applicant would also be viewed and surveilled as the credit counterparty to NSCC in light of its role as the Member with respect to its Agent Clearing Member Customer Omnibus Account(s).

In addition, NSCC may require a Person be a Member for a time period deemed necessary by NSCC before that Person may be considered to become an Agent Clearing Member. This requirement may be imposed by NSCC on a new Member that has yet to demonstrate a track record of financial responsibility and operational capability.

Furthermore, as proposed, the application of a Member to be an Agent Clearing Member at NSCC that is a Sponsoring Member or an existing FICC sponsoring member would not be required to be approved by the NSCC Board of Directors. NSCC believes this approach to the Board of Director's approval for Agent Clearing Members is appropriate in light of the fact that the critical components of the FICC sponsoring member application as well as the NSCC Sponsoring Member and Agent Clearing Member applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are substantially similar. Nonetheless, NSCC would apply the same rigorous counterparty credit review process to any Member applying to be an Agent Clearing Member at NSCC, whether or not the Member is an existing FICC sponsoring member.

[47] The following example illustrates how loss allocation would occur with respect to Agent Clearing Members: Assume NSCC incurs a $100 million aggregate loss from a Defaulting Member Event. In addition, assume that the Corporate Contribution amount that NSCC would first apply to any loss from a Defaulting Member Event is $25 million. This means NSCC would allocate the remaining $75 million losses (*i.e.,* $100 million minus $25 million) to Members pursuant to Section 4 of Rule 4 (Clearing Fund), including Agent Clearing Member Customer Omnibus Accounts as if each were a Member. If the allocated losses to an Agent Clearing Member's Agent Clearing Member Customer Omnibus Account is $1 million and the allocated losses to the Agent Clearing Member in its capacity as a Member is $2 million, the Agent Clearing Member would be responsible for a total of $3 million loss allocation ($1 million for its Agent Clearing Member Customer Omnibus Account loss allocation amount and $2 million for its own default loss allocation as a Member).

[48] *See* Section 11 of proposed Rule 2D (Agent Clearing Members).

[49] *Supra* note 11.

clearing, and (iii) each Sponsored Member continues to remain in compliance with the financial standards applicable to Sponsored Members throughout the course of its membership, Sponsoring Members may incur more legal, onboarding, operational and ongoing administrative costs than Agent Clearing Members with respect to their institutional firm clearing activity.

However, the sponsoring/sponsored membership model allows for principal-style trading between a Sponsoring Member and its Sponsored Member where the Sponsoring Member and Sponsored Member are pre-novation counterparties, which would generally create the opportunity for a Sponsoring Member to make an economic spread between its trade with its Sponsored Member and its offsetting trades with other NSCC Members or Sponsored Members. The opportunity for such economic spread and the ability of a Sponsoring Member to achieve balance sheet netting and capital efficiency on such trading activity through the novation of SFTs to NSCC could, for some market participants, offset the indirect additional costs associated with acting as a Sponsoring Member, rather than acting as an Agent Clearing Member.

On the other hand, as NSCC understands it, for some market participants, particularly agent lenders, their business models are not typically predicated on principal-style trading. Rather, these agency businesses typically charge fees for their services (rather than taking economic spreads) and their business models and their agreed upon investment guidelines with their institutional firm customers may only permit agented (rather than principal-style) trading for securities lending transactions. So, for such market participants, participating in clearing at NSCC as an Agent Clearing Member may be a better fit for their overall business model.

From the perspective of an institutional firm client, the costs of clearing that may be passed through to it by its intermediary (depending on their commercial arrangements) would be largely equivalent. That said, some institutional firms that engage in securities lending may be prohibited from acting as Sponsored Members and engaging in principal-style trading with their intermediary in clearing for regulatory and/or investment guideline reasons. For those institutional firms, being able to transact SFTs as a Customer within an Agent Clearing Member Customer Omnibus Account would offer them a means to access central clearing that would otherwise not be available to them if the sponsoring/sponsored membership model were the only model available for buy-side clearing.

(vi) Proposed Rule Changes

(A) Proposed Rule 2C—Sponsoring Members and Sponsored Members

NSCC is proposing to add Rule 2C, entitled ''Sponsoring Members and Sponsored Members.'' This new rule would govern the proposed sponsored membership and would be comprised of 14 sections, each of which is described below.

Proposed Rule 2C, Section 1 (General)

Section 1 of proposed Rule 2C would be a general provision regarding the Rules applicable to Sponsoring Members and Sponsored Members.

Section 1 of proposed Rule 2C would provide that NSCC will permit the establishment of a sponsored membership relationship between a Member that is approved as a Sponsoring Member and one or more Persons that are accepted by NSCC as Sponsored Members of that particular Sponsoring Member. Section 1 of proposed Rule 2C would further provide that the rights, liabilities and obligations of Sponsoring Members and Sponsored Members shall be governed by proposed Rule 2C, and that references to the term ''Member'' in other Rules would not apply to Sponsoring Members and to Sponsored Members, in their respective capacities as such, unless specifically noted as such in proposed Rule 2C or in such other Rules.

Section 1 of proposed Rule 2C would also provide that a Sponsoring Member shall continue to have all of the rights, liabilities and obligations as set forth in the Rules and in any agreement between it and NSCC pertaining to its status as a Member, and such rights, liabilities and obligations shall be separate from its rights, liabilities and obligations as a Sponsoring Member except as contemplated under Sections 7, 8 and 9 of proposed Rule 2C and under the Sponsoring Member Guaranty.

Proposed Rule 2C, Section 2 (Qualifications of Sponsoring Members, the Application Process and Continuance Standards)

Section 2 of proposed Rule 2C would establish the eligibility requirements for Members that wish to become Sponsoring Members, the membership application process that would be required of each Member to become a Sponsoring Member, the on-going membership requirements that would apply to Sponsoring Members, as well as the requirements regarding a Sponsoring Member's election to voluntarily terminate its membership.

Under Section 2(a) of proposed Rule 2C, any Member would be eligible to apply to become a Sponsoring Member; however, if a Member is a Registered Broker-Dealer, such Member would only be permitted to apply to become a Sponsoring Member if it has (1) Net Worth (as defined below and in the proposed rule change) of at least $25 million and (2) excess net capital over the minimum net capital requirement imposed by the Commission (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million.[50] In connection therewith, NSCC is proposing ''Net Worth'' to mean, as of a particular date, the amount equal to the excess of the assets of a Person over the liabilities of such Person, computed in accordance with generally accepted accounting principles, and for Registered Broker-Dealers, Net Worth shall include liabilities that are subordinated to the claims of creditors pursuant to a satisfactory subordination agreement, as defined in Appendix D to Rule 15c3–1 of the Act.[51] As proposed, NSCC may require that a Person be a Member for a certain time period before that Person may be considered to become a Sponsoring Member.

Section 2(b) of proposed Rule 2C would provide that each Member applicant to become a Sponsoring Member would be required to provide an application and other information requested by NSCC. Sponsoring Member applications shall first be reviewed by NSCC and would require the Board of Directors' approval, unless the Member applicant is already an Agent Clearing Member under proposed Rule 2D or a

[50] NSCC is proposing these financial minimums for Registered Broker-Dealer Sponsoring Member applicants to reflect the additional responsibility that the applicant would undertake as a Sponsoring Member. These financial minimums are determined based on NSCC's assessment of the minimum capital that would be necessary for a broker-dealer to conduct meaningful level of NSCC-cleared activity while serving as a credit counterparty in respect of others' trades. In its assessment, NSCC considered various factors, such as the amount of a Registered Broker-Dealer Member's capital and its impact on such Member's financial responsibility and operational capability, comparability with the financial requirements of other clearing agencies, and the desire to strike a balance between credit risk mitigation and member accessibility. For the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,'' these financial minimums are also designed to be consistent with the requirements applicable to registered broker/dealers that are sponsoring members in FICC's Sponsoring Member/Sponsored Member Program.

[51] 17 CFR 240.15c3–1d.

sponsoring member of FICC.[52] NSCC believes this approach to the Board of Director's approval for Sponsoring Members is appropriate in light of the fact that the critical components of the FICC sponsoring member application as well as the NSCC Sponsoring Member and Agent Clearing Member applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are substantially similar.

Under Section 2(c) of proposed Rule 2C, if the Sponsoring Member application is denied, such denial would be handled in accordance with Section 1 of Rule 2A (Initial Membership Requirements).

As proposed in Section 2(d) of proposed Rule 2C, NSCC may impose additional financial requirements on a Sponsoring Member applicant based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transaction such applicant proposes to process through NSCC as a Sponsoring Member and the overall financial condition of such applicant. Under the proposal, with respect to an application of a Member to become a Sponsoring Member that requires the Board of Directors' approval, the Board of Directors shall also approve any increased financial requirements imposed by NSCC in connection with the approval of the application, and NSCC would thereafter regularly review such Sponsoring Member regarding its compliance with the increased financial requirements.[53]

In addition, under Section 2(e) of proposed Rule 2C, NSCC may require each Sponsoring Member or any Sponsoring Member applicant to furnish adequate assurances of such Sponsoring Member or Sponsoring Member applicant's financial responsibility and operational capability within the meaning of Rule 15 (Assurances of Financial Responsibility and Operational Capability), as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC, its participants, creditors or investors, to safeguard securities and funds in the custody or control of NSCC and for which NSCC is responsible, or to promote the prompt and accurate clearance, settlement and processing of securities transactions.[54]

Section 2(f) of proposed Rule 2C would provide that each Member whose Sponsoring Member application is approved would sign and deliver to NSCC (i) an agreement between NSCC and the Member and specifies the terms and conditions deemed by NSCC to be necessary in order to protect itself and its participants (''Sponsoring Member Agreement''), (ii) a guaranty, in the form and substance acceptable to NSCC, whereby the Member, in its capacity as a Sponsoring Member, guarantees to NSCC the payment and performance by its Sponsored Members of their obligations under the Rules in respect of the Sponsoring Member's Sponsored Member Sub-Accounts, including, without limitation all of the settlement obligations of its Sponsored Members in respect of such Sponsored Member Sub-Accounts (''Sponsoring Member Guaranty''), and a related legal opinion in a form satisfactory to NSCC. In addition, Section 2(f) of proposed Rule 2C would provide that nothing in the Rules shall prohibit a Sponsoring Member from seeking reimbursement from a Sponsored Member for payments made by the Sponsoring Member (whether pursuant to the Sponsoring Member Guaranty, out of Clearing Fund deposits or otherwise) with respect to obligations as to which the Sponsored Member is a principal obligor under the Rules, or as otherwise may be agreed by the Sponsored Member and Sponsoring Member.

Section 2(g) of proposed Rule 2C would provide that each Sponsoring Member shall submit to NSCC, within the timeframes and in the formats required by NSCC, the reports and information that all Members are required to submit regardless of type of Member and the reports and information required to be submitted for its respective type of Member, all pursuant to Section 2 of Rule 2B (Ongoing Membership Requirements and Monitoring) and, if applicable, Addendum O (Admission of Non-US Entities as Direct NSCC Members).

Section 2(h) of proposed Rule 2C would provide that a Sponsoring Member's books and records, insofar as they relate to the Sponsored Member Transactions submitted to NSCC, shall be open to the inspection of the duly authorized representatives of NSCC to the same extent provided in Rule 2A (Initial Membership Requirements) for other Members.

Section 2(i) of proposed Rule 2C would provide that a Sponsoring Member shall promptly inform NSCC, both orally and in writing, if it is no longer in compliance with the relevant standards and qualifications for applying to become a Sponsoring Member set forth in the proposed Rule 2C. Notification must take place immediately and in no event later than 2 Business Days from the date on which the Sponsoring Member first learns of its non-compliance. As proposed, NSCC would assess a fine in accordance with the Fine Schedule in Addendum P against any Sponsoring Member that fails to so notify NSCC.[55] If the Sponsoring Member fails to remain in compliance with the relevant standards and qualifications, NSCC would, if necessary, undertake appropriate action to determine the status of the Sponsoring Member and its continued eligibility as such. In addition, NSCC may review the financial responsibility and operational capability of the Sponsoring Member, and otherwise require from the Sponsoring Member additional reports of its financial or operational condition at such intervals and in such detail as NSCC shall determine. In addition, if NSCC has reason to believe that a Sponsoring Member may fail to comply with any of the Rules applicable to Sponsoring Members, it may require the Sponsoring Member to provide it, within such timeframe, and in such detail, and pursuant to such manner as NSCC shall determine, with assurances in writing of a credible nature that the Sponsoring Member shall not, in fact, violate any of the Rules.

Section 2(j) of proposed Rule 2C would provide that in the event that a Sponsoring Member fails to remain in compliance with the relevant requirements of the Rules, the Sponsoring Member Agreement or the

[52] It is NSCC's understanding that FICC is evaluating a change to the GSD Rules to provide that the application of an FICC sponsoring member applicant that is already an NSCC Sponsoring Member or Agent Clearing Member would not require approval of FICC's board of directors.

[53] If the increased financial requirements are imposed in connection with a Sponsoring Member application that does not require the Board of Directors' approval, the increased financial requirements would not be subject to the Board of Directors' approval. Nonetheless, once a Sponsoring Member application is approved with increased financial requirements, NSCC would thereafter regularly review such Sponsoring Member regarding its continued adherence to such increased financial requirements as well as determine whether such increased financial requirements are still appropriate. If the Sponsoring Member is unable to adhere to the increased financial requirements, the Board of Directors may, pursuant to Section 10 of proposed Rule 2C, suspend, prohibit or limit the Sponsoring Member's access to NSCC's services.

[54] As an example, NSCC may require a Sponsoring Member or a Sponsoring Member applicant to furnish adequate assurances of such Sponsoring Member or Sponsoring Member applicant's financial responsibility and operational capability if NSCC has concerns about such Sponsoring Member or Sponsoring Member applicant's overall financial health or credit rating.

[55] *See* Addendum P (Fine Schedule), *supra* note 4.

Sponsoring Member Guaranty, NSCC shall have the right to cease to act for the Sponsoring Member in its capacity as a Sponsoring Member pursuant to Section 10 of proposed Rule 2C, unless the Sponsoring Member requests that such action not be taken and NSCC determines that, depending upon the specific circumstances and the record of the Sponsoring Member, it is appropriate instead to establish for such Sponsoring Member a time period, which shall be determined by NSCC and which shall be no longer than 30 calendar days unless otherwise determined by NSCC, during which the Sponsoring Member must resume compliance with such requirements. As proposed, in the event that the Sponsoring Member is unable to satisfy such requirements within the time period specified by NSCC, NSCC shall, pursuant to the Rules, cease to act for the Sponsoring Member in its capacity as a Sponsoring Member pursuant to Section 10 of the proposed Rule 2C.

Section 2(k) of proposed Rule 2C would provide that if the sum of the Volatility Charges applicable to a Sponsoring Member's Sponsored Member Sub-Accounts and its other accounts at NSCC exceeds its Net Member Capital (as defined below and in the proposed rule change), the Sponsoring Member shall not be permitted to submit activity into its Sponsored Member Sub-Accounts, unless otherwise determined by NSCC in order to promote orderly settlement.[56] As proposed, ''Volatility Charge'' would mean, in respect to a Member, the amount of its Required Fund Deposit calculated by NSCC by applying Sections I.(A)(1)(a)(i)–(iv) of Procedure XV (Clearing Fund Formula and Other Matters); ''Net Member Capital'' would mean Net Capital (as defined below and in the proposed rule change), net assets or equity capital, as applicable to a Member, based on the type of regulation, and in particular the capital requirements, to which the Member is subject; and ''Net Capital'' would mean, as of a particular date, the amount equal to the net capital of a Registered Broker-Dealer as defined in Rule 15c3–1(c)(2) of the Act,[57] or any successor rule or regulation thereto.

[56] NSCC selected the Volatility Charges and Net Member Capital as the criteria for purposes of establishing the activity limit for Sponsoring Members. This is because a Sponsoring Member's total Volatility Charges being in excess of its Net Member Capital is an important indicator that the Sponsoring Member's financial resources, as measured by its Net Capital, net assets or equity capital, may be insufficient to meet the largest component of its Required Fund Deposit (*i.e.,* Volatility Charges).

[57] 17 CFR 240.15c3–1(c)(2).

Section 2(l) of proposed Rule 2C would provide that a Sponsoring Member may voluntarily elect to terminate its status as a Sponsoring Member, with respect to all Sponsored Members or with respect to one or more Sponsored Members from time to time, by providing NSCC with a written notice from a Sponsoring Member to NSCC that the Sponsoring Member is voluntarily electing to terminate its status as a Sponsoring Member with respect to all of its Sponsored Members or with respect to one or more of its Sponsored Members (''Sponsoring Member Voluntary Termination Notice''). The Sponsoring Member shall specify in the Sponsoring Member Voluntary Termination Notice the Sponsored Member(s) in respect of which the Sponsoring Member is terminating its status (the ''Former Sponsored Members'') and a desired date for such termination, which date shall not be prior to the scheduled Final Settlement Date of any remaining obligation owed by the Sponsoring Member to NSCC with respect to the Former Sponsored Members as of the time such Sponsoring Member Voluntary Termination Notice is submitted to NSCC, unless otherwise approved by NSCC.

Section 2(l) of proposed Rule 2C would also provide that such termination would not be effective until accepted by NSCC, which shall be no later than 10 Business Days after the receipt of the Sponsoring Member Voluntary Termination Notice from such Sponsoring Member. NSCC's acceptance shall be evidenced by a notice to NSCC's participants announcing the termination of the Sponsoring Member's status as such with respect to the Former Sponsored Members and the date on which the termination of the Sponsoring Member's status as a Sponsoring Member becomes effective (''Sponsoring Member Termination Date''). As proposed, after the close of business on the Sponsoring Member Termination Date, the Sponsoring Member shall no longer be eligible to submit Sponsored Member Transactions on behalf of the Former Sponsored Members, and each Former Sponsored Member shall cease to be a Sponsored Member unless it is the Sponsored Member of another Sponsoring Member. If any Sponsored Member Transactions is submitted to NSCC by the Sponsoring Member on behalf of a Former Sponsored Member that is scheduled to settle after the Sponsoring Member Termination Date, such Sponsoring Member's Sponsoring Member Voluntary Termination Notice would be deemed void, and the Sponsoring Member would remain subject to the proposed Rule 2C as if it had not given such Sponsoring Member Voluntary Termination Notice.

Section 2(m) of proposed Rule 2C would provide that a Sponsoring Member's voluntary termination of its status as such, in whole or in part, shall not affect its obligations to NSCC, or the rights of NSCC, including under the Sponsoring Member Guaranty, with respect to Sponsored Member Transactions submitted to NSCC before the applicable Sponsoring Member Termination Date. Any such Sponsored Member Transactions that have been novated to NSCC shall continue to be processed by NSCC. The return of the Sponsoring Member's Clearing Fund deposit shall be governed by Section 7 of Rule 4 (Clearing Fund). If an Event Period were to occur after a Sponsoring Member has submitted the Sponsoring Member Voluntary Termination Notice but on or prior to the Sponsoring Member Termination Date, in order for the Sponsoring Member to benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4, the Sponsoring Member would need to comply with the provisions of Section 6 of Rule 4 and submit a Loss Allocation Withdrawal Notice, which notice, upon submission, shall supersede and void any pending Sponsoring Member Voluntary Termination Notice previously submitted by the Sponsoring Member.

Section 2(n) of proposed Rule 2C would provide that any non-public information furnished to NSCC pursuant to proposed Rule 2C shall be held in confidence as may be required under the laws, rules and regulations applicable to NSCC that relate to the confidentiality of records. Section 2(n) would also provide that each Sponsoring Member shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such Sponsoring Member's obligations under the Rules or as otherwise required by applicable law. Section 2(n) would further provide that each Sponsoring Member acknowledges that a breach of its confidentiality obligations under the Rules may result in serious and irreparable harm to NSCC and/or DTCC for which there is no adequate remedy at law. In addition, Section 2(n) would provide that in the event of such a breach by the Sponsoring Member,

NSCC and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages thereunder.[58]

Proposed Rule 2C, Section 3 (Qualifications of Sponsored Members, Approval Process and Continuance Standards)

Section 3 of proposed Rule 2C would establish the eligibility requirements for Sponsored Members, the membership application process that would be required of each Sponsored Member, the on-going membership requirements that would apply to Sponsored Members, as well as the requirements regarding a Sponsored Member's election to voluntarily terminate its membership.

Section 3(a) of proposed Rule 2C would provide that a Person shall be eligible to apply to become a Sponsored Member if: (x) It is sponsored into membership by a Sponsoring Member, and (y) it (1) is a ''qualified institutional buyer'' as defined by Rule 144A [59] under the Securities Act,[60] or (2) is a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i)(H) of Rule 144A under the Securities Act, satisfies the financial requirements necessary to be a ''qualified institutional buyer'' as specified in that paragraph. NSCC would have the right to rely on the representation provided by the Sponsoring Member regarding satisfaction of (y).

Section 3(b) of proposed Rule 2C would provide that each time that a Sponsoring Member wishes to sponsor a Person into membership, it shall provide NSCC with the representation referred to in Section 3(a) of proposed Rule 2C, as well as any additional information in such form as may be prescribed by NSCC. NSCC shall approve or disapprove Persons as Sponsored Members. If NSCC denies the request of a Sponsoring Member to add a Person as a Sponsored Member, such denial shall be handled in the same manner as set forth in Section 1 of Rule 2A (Initial Membership Requirements) with respect to membership applications except that the written statement referred to therein shall be provided to both the Sponsoring Member and the Person seeking to become a Sponsored Member.

Section 3(c) of proposed Rule 2C would provide that each Person to become a Sponsored Member shall sign and deliver to NSCC an agreement whereby the Person shall agree to any terms and conditions deemed by NSCC to be necessary in order to protect itself and its participants (the ''Sponsored Member Agreement''). Each Person to become a Sponsored Member that shall be an FFI Member must be FATCA Compliant.

Section 3(d) of proposed Rule 2C would provide that a Sponsored Member shall immediately inform its Sponsoring Member, both orally and in writing, if the Sponsored Member is no longer in compliance with the requirements of Section 3(a) of proposed Rule 2C. A Sponsoring Member shall promptly inform NSCC, both orally and in writing, if a Sponsored Member is no longer in compliance with the requirements of Section 3(a) of proposed Rule 2C. Notification to NSCC by the Sponsoring Member must take place within one (1) Business Day from the date on which the Sponsoring Member first learns of the Sponsored Member's non-compliance. NSCC would assess a fine in accordance with the Fine Schedule in Addendum P against any Sponsoring Member that fails to so notify NSCC.[61]

Section 3(e) of proposed Rule 2C would provide that a Sponsored Member may voluntarily elect to terminate its membership by providing NSCC with a written notice from the Sponsored Member to NSCC that the Sponsored Member is voluntarily electing to terminate its membership (''Sponsored Member Voluntary Termination Notice''). The Sponsored Member shall specify in the Sponsored Member Voluntary Termination Notice a desired date for the termination, which date shall not be prior to the scheduled Final Settlement Date of any remaining obligation owed by the Sponsored Member to NSCC as of the time such Sponsored Member Voluntary Termination Notice is submitted to NSCC, unless otherwise approved by NSCC.

In addition, Section 3(e) of proposed Rule 2C would provide that such termination would not be effective until accepted by NSCC, which shall be no later than 10 Business Days after the receipt of the Sponsored Member Voluntary Termination Notice from such Sponsored Member. NSCC's acceptance shall be evidenced by a notice to NSCC's participants announcing the termination of the Sponsored Member and the date on which the termination of the Sponsored Member becomes effective (''Sponsored Member Termination Date''). After the close of business on the Sponsored Member Termination Date, the relevant Sponsoring Member shall no longer be eligible to submit Sponsored Member Transactions on behalf of the Sponsored Member. If any Sponsored Member Transaction is submitted to NSCC by the relevant Sponsoring Member on behalf of the Sponsored Member that is scheduled to settle after the Sponsored Member Termination Date, such Sponsored Member's Sponsored Member Voluntary Termination Notice would be deemed void, and the Sponsored Member would remain subject to the proposed Rule 2C as if it had not given such Sponsored Member Voluntary Termination Notice.

Section 3(f) of proposed Rule 2C would provide that a Sponsored Member's voluntary termination shall not affect its obligations to NSCC, or the rights of NSCC, including under the Sponsoring Member Guaranty, with respect to Sponsored Member Transactions submitted to NSCC before the Sponsored Member Termination Date, and the Sponsoring Member Guaranty shall remain in effect to cover all outstanding obligations of the Sponsored Member to NSCC that are within the scope of such Sponsoring Member Guaranty.

Proposed Rule 2C, Section 4 (Compliance With Laws)

Section 4 of proposed Rule 2C would provide that each Sponsoring Member and Sponsored Member shall comply in all material respects with all applicable laws, including applicable laws relating to securities, taxation and money laundering, as well as global sanctions laws, in connection with the use of NSCC's services.

Proposed Rule 2C, Section 5 (Sponsored Member Transactions)

Section 5 of proposed Rule 2C would provide that a Sponsoring Member shall be permitted to submit to NSCC SFTs between itself and its Sponsored Members (''Sponsored Member Transactions'') in accordance with proposed Rule 56, as described below. Section 5 of proposed Rule 2C would further provide that NSCC directs each Sponsored Member and Sponsoring Member to settle all Final Settlement, Rate Payment, Price Differential, and other securities delivery and payment obligations arising under a Sponsored Member Transaction that has been

[58] Section 2(n) of proposed Rule 2C is designed to be consistent with NSCC's proposed change to revise certain provisions in the Rules relating to the confidentiality of information furnished by participants. *See* Securities Exchange Act Release No. 92334 (July 7, 2021), 86 FR 36815 (July 13, 2021) (SR–NSCC–2021–007).

[59] 17 CFR 230.144A.

[60] 15 U.S.C. 77a *et seq.*

[61] *See* Addendum P (Fine Schedule), *supra* note 4.

novated to NSCC by causing the relevant cash and securities to be transferred to the Transferor or Transferee, as applicable, on the books and records of the Sponsoring Member, and each Sponsored Member and Sponsoring Member agrees that any such transfer shall satisfy NSCC's corresponding obligation with respect to such Sponsored Member Transaction.

Proposed Rule 2C, Section 6 (Sponsoring Member Agent Obligations)

Section 6 of proposed Rule 2C would provide that a Sponsored Member shall appoint its Sponsoring Member to act as agent with respect to the Sponsored Member's satisfaction of its settlement obligations arising under Sponsored Member Transactions between the Sponsored Member and the Sponsoring Member and for performing all functions and receiving reports and information set forth in the Rules. NSCC's provision of such reports and information to the Sponsoring Member shall constitute satisfaction of any obligation of NSCC to provide such reports and information to the affected Sponsored Members. As proposed, notwithstanding the foregoing and any other activities the Sponsoring Member may perform in its capacity as agent for Sponsored Members, each Sponsored Member shall be obligated as principal to NSCC with respect to all settlement obligations under the Rules, and the Sponsoring Member shall not be a principal under the Rules with respect to settlement obligations of its Sponsored Members.

Proposed Rule 2C, Section 7 (Clearing Fund Obligations)

Section 7 of proposed Rule 2C would set forth the Clearing Fund obligations.

Section 7(a) of proposed Rule 2C would provide that NSCC shall maintain a ledger maintained on the books and records of NSCC for a Sponsoring Member that reflects the outstanding SFTs that a Sponsoring Member enters into in respect of a Sponsored Member and that have been novated to NSCC, the SFT Positions or SFT Cash associated with those transactions and any debits or credits of cash associated with such transactions effected pursuant to Rule 12 (Settlement) (each a ''Sponsored Member Sub-Account''). Each Sponsoring Member shall make and maintain so long as such Member is a Sponsoring Member a deposit to the Clearing Fund as a Required Fund Deposit to support the activity in its Sponsored Member Sub-Accounts (the ''Sponsoring Member Required Fund Deposit''). Deposits to the Clearing Fund would be held by NSCC or its designated agents, to be applied as provided in the Rules.

Section 7(b) of proposed Rule 2C would provide that, in the ordinary course, for purposes of satisfying the Sponsoring Member's Clearing Fund requirements under the Rules for its Member activity, its Sponsoring Member activity, and, to the extent applicable, its Agent Clearing Member activity, the Sponsoring Member's proprietary accounts, its Sponsored Member Sub-Accounts, and its Agent Clearing Member Customer Omnibus Account(s), if any, shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time and without prior notice to the Sponsoring Member (but being obligated to give notice to the Sponsoring Member as soon as possible thereafter) and whether or not the Sponsoring Member or any of its Sponsored Members is in default of its obligations to NSCC, treat the Sponsoring Member's accounts as a single account for the purpose of applying Clearing Fund deposits; apply Clearing Fund deposits made by the Sponsoring Member with respect to any account as necessary to ensure that the Sponsoring Member meets all of its obligations to NSCC under any other account(s); and otherwise exercise all rights to offset and net against the Clearing Fund deposits any net obligations among any or all of the accounts, whether or not any other Person is deemed to have any interest in such account.[62]

Section 7(c) of proposed Rule 2C would provide that the Sponsoring Member Required Fund Deposit for each Sponsored Member Sub-Account shall be calculated separately based on the Sponsored Member Transactions in such Sponsored Member Sub-Account, and the Sponsoring Member shall, as principal, be required to satisfy the Sponsoring Member Required Fund Deposit for each of the Sponsoring Member's Sponsored Member Sub-Accounts.

Section 7(d) of proposed Rule 2C would provide that Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Rule 4 (Clearing Fund) shall apply to the Sponsoring Member Required Fund Deposit with respect to obligations of a Sponsoring Member under the Rules, including its obligations arising under the Sponsored Member Sub-Accounts, and the obligations of a Sponsoring Member under its Sponsoring Member Guaranty to the same extent as such sections apply to any Required Fund Deposit and any other obligations of a Member. For purposes of Section 1 of Rule 4, obligations and liabilities of a Member to NSCC that shall be secured shall include, without limitation, a Member's obligations as a Sponsoring Member under the Rules, including, without limitation, any obligation of any such Sponsoring Member to provide the Sponsoring Member Required Fund Deposit, such Sponsoring Member's obligations arising under the Sponsored Member Sub-Accounts of such Sponsoring Member and such Sponsoring Member's obligations under its Sponsoring Member Guaranty.

Section 7(e) of proposed Rule 2C would provide that a Sponsoring Member shall be subject to such fines as may be imposed in accordance with the Rules for any late satisfaction of a Clearing Fund deficiency call.

[62] NSCC believes it unlikely that it would exercise this authority, as the Clearing Fund deposits associated with each Sponsored Member Sub-Account, Agent Clearing Member Customer Omnibus Account and proprietary account of a Sponsoring Member are designed to be sufficient to cover the obligations of such account or sub-account. However, if a Sponsoring Member defaults or fails to perform and the Clearing Fund deposits associated with a given account or sub-account of such Sponsoring Member are not sufficient to discharge the Sponsoring Member's obligations in relation to such account or sub-account, NSCC would look to the Clearing Fund deposits related to the Sponsoring Member's other accounts or sub-accounts. For example, if NSCC ceased to act for a Sponsoring Member and the close-out of the SFT Positions established in the Sponsoring Member's Sponsored Member Sub-Accounts resulted in a loss to NSCC in excess of the Clearing Fund previously posted by the Sponsoring Member in relation to such SFT Positions, NSCC may apply to the excess any other Clearing Fund deposits posted by the Sponsoring Member to NSCC, such as Clearing Fund posted in connection with the proprietary positions of the Sponsoring Member. Similarly, if a Sponsoring Member failed to perform under the Sponsoring Member Guaranty outside the context of a cease-to-act situation and the Clearing Fund previously posted by the Sponsoring Member in relation to the SFT Positions established in the Sponsoring Member's Sponsored Member Sub-Accounts was not sufficient to satisfy the obligations under the Sponsoring Member Guaranty, NSCC may apply to the remainder any other Clearing Fund deposits posted by the Sponsoring Member to NSCC.

NSCC believes this is appropriate because the Clearing Fund deposits of a Sponsoring Member are the proprietary assets of the Sponsoring Member, and NSCC generally has the right to apply the Clearing Fund deposits of a Member to any of the Member's obligations to NSCC, regardless of whether those were the obligations that generated the Clearing Fund deposit requirement. NSCC therefore believes that, consistent with the FICC Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,'' a Sponsoring Member's Clearing Fund deposits should be available to satisfy any of the Sponsoring Member's guaranty or other obligations to NSCC.

Proposed Rule 2C, Section 8 (Right of Offset)

Section 8 of proposed Rule 2C would provide that in the ordinary course, with respect to satisfaction of any Sponsored Member's obligations under the Rules, the Sponsoring Member's Sponsored Member Sub-Accounts, the Sponsoring Member's proprietary accounts, and the Sponsoring Member's Agent Clearing Member Customer Omnibus Accounts, if any, at NSCC shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time any obligation of the Sponsoring Member arises under the Sponsoring Member Guaranty to pay or perform thereunder with respect to any Sponsored Member, exercise a right of offset and net any such obligation of the Sponsoring Member under its Sponsoring Member Guaranty against any obligations of NSCC to the Sponsoring Member in respect of such Sponsoring Member's proprietary accounts at NSCC.[63] NSCC would generally anticipate exercising this right if, upon a Sponsoring Member default, the Sponsoring Member owed an amount under the Sponsoring Member Guaranty and was owed an amount by NSCC in relation to the Sponsoring Member's proprietary or other obligations.

Proposed Rule 2C, Section 9 (Loss Allocation Obligations)

Section 9 of proposed Rule 2C would establish loss allocation obligations under the sponsored membership model.

Section 9(a) of proposed Rule 2C would provide that Sponsored Members shall not be obligated for allocations, pursuant to Rule 4 (Clearing Fund), of loss or liability incurred by NSCC. To the extent that a loss or liability is determined by NSCC to arise in connection with Sponsored Member Transactions (*i.e.,* in connection with the insolvency or default of a Sponsoring Member), the Sponsored Members shall not be responsible for or considered in the loss allocation calculation, but rather such loss shall be allocated to other Members in accordance with the principles set forth in Section 4 of Rule 4.

Section 9(b) of proposed Rule 2C would provide that, to the extent NSCC incurs a loss or liability from a Defaulting Member Event or a Declared Non-Default Loss Event and a loss allocation obligation arises, that would be the responsibility of a Sponsored Member Sub-Account as if the Sponsored Member Sub-Account were a Member, NSCC shall calculate such loss allocation obligation as if the affected Sponsored Member were subject to such allocations pursuant to Section 4 of Rule 4, but the Sponsoring Member shall be responsible for satisfying such obligations.

Section 9(c) of proposed Rule 2C would provide that the entire amount of the Required Fund Deposit associated with the Sponsoring Member's proprietary accounts at NSCC and the entire amount of the Sponsoring Member Required Fund Deposit may be used to satisfy any amount allocated against a Sponsoring Member, whether in its capacity as a Member, a Sponsoring Member, or otherwise. With respect to an obligation to make payment due to any loss allocation amounts assessed on a Sponsoring Member pursuant to Section 9(b) of proposed Rule 2C, the Sponsoring Member may instead elect to terminate its membership in NSCC pursuant to Section 6 of Rule 4 and thereby benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4; however, for the purpose of determining the Loss Allocation Cap for such Sponsoring Member, its Required Fund Deposit shall be the sum of its Required Fund Deposits associated with its proprietary accounts at NSCC (including its proprietary SFT Account (as defined below and in the proposed rule change) pursuant to proposed Rule 56), its Sponsoring Member Required Fund Deposit, and its Agent Clearing Member Required Fund Deposits, if any, for each of its Agent Clearing Member Customer Omnibus Accounts.

Proposed Rule 2C, Section 10 (Restrictions on Access to Services by a Sponsoring Member)

Section 10 of proposed Rule 2C would establish the rights of NSCC to restrict a Sponsoring Member's access to NSCC's services.

Section 10(a) of proposed Rule 2C would provide that the Board of Directors may at any time, upon NSCC providing notice to a Sponsoring Member pursuant to Section 5 of Rule 45 (Notices), suspend a Sponsoring Member in its capacity as a Sponsoring Member from any service provided by NSCC either with respect to a particular transaction or transactions or with respect to transactions generally or prohibit or limit such Sponsoring Member's access to services offered by NSCC in the event that one or more of the factors set forth in Section 1 of Rule 46 (Restrictions on Access to Services) is present with respect to the Sponsoring Member.

Section 10(b) of proposed Rule 2C would provide that Rule 46 shall apply with respect to a Sponsoring Member in the same way as it applies to Members, including the Board of Directors' right to summarily suspend the Sponsoring Member and to cease to act for such Sponsoring Member. As under Rule 46, the Board of Directors would need to make the determination of whether to suspend, prohibit or limit a Sponsoring Member's access to services offered by NSCC on the basis of the factors set forth in that rule.

Section 10(c) of proposed Rule 2C would provide that if NSCC ceases to act for a Sponsoring Member in its capacity as a Sponsoring Member, Section 14 of proposed Rule 56 shall apply and NSCC shall decline to accept or process data from the Sponsoring Member on Sponsored Member Transactions and NSCC shall cease to act for all of the Sponsored Members of the affected Sponsoring Member (unless such Sponsored Members are also Sponsored Members of other Sponsoring Members). Section 10(c) would also provide that if NSCC suspends, prohibits or limits a Sponsoring Member in its capacity as a Sponsoring Member with respect to such Sponsoring Member's access to services offered by NSCC, NSCC shall decline to accept or process data from the Sponsoring Member on Sponsored Member Transactions and shall suspend the Sponsored Members of the affected Sponsoring Member (unless they are also Sponsored Members of other Sponsoring Members) for so long as NSCC is suspending, prohibiting or limiting the Sponsoring Member. Any Sponsored Member Transactions which have been novated to NSCC shall continue to be processed by NSCC. In addition, Section 10(c) would provide that NSCC, in in sole discretion, shall determine whether to close-out the affected Sponsored Member Transactions or permit the Sponsored Members to complete their settlement.

This is different from how NSCC would treat Agent Clearing Member Transactions of an Agent Clearing Member under Section 9 of proposed Rule 2D if NSCC ceased to act for the Agent Clearing Member. Specifically,

[63] NSCC believes the most likely circumstance in which it would exercise this authority would be in the context of a Sponsoring Member default. If, in such circumstance, NSCC realizes a profit in closing out the positions associated with a proprietary account of the Sponsoring Member, but incurs a loss in closing out the positions associated with the Sponsored Member Sub-Accounts of the Sponsoring Member, it would offset its obligation to turn over to the Sponsoring Member the gains in relation to the Sponsoring Member's proprietary account against the obligations of the Sponsoring Member under the Sponsoring Member Guaranty.

for Agent Clearing Member Transactions, as proposed, NSCC would close-out any Agent Clearing Member Transactions which have been novated to NSCC; however, with respect to Sponsored Member Transactions, consistent with FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,'' NSCC would have the option to either terminate or settle a Sponsored Member's novated positions after ceasing to act for the Sponsoring Member. NSCC would have the practical and legal capability to make such an election because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customers' novated positions.

Proposed Rule 2C, Section 11 (Restrictions on Access to Services by a Sponsored Member)

Section 11 of proposed Rule 2C would establish the rights of NSCC to restrict a Sponsored Member's access to NSCC's services.

Section 11(a) of proposed Rule 2C would provide that the Board of Directors may at any time upon NSCC providing notice to a Sponsored Member and its Sponsoring Member pursuant to Section 5 of Rule 45 (Notices), suspend a Sponsored Member from any service provided by NSCC either with respect to a particular transaction or transactions or with respect to transactions generally, or prohibit or limit such Sponsored Member with respect to access to services offered by NSCC in the event that one or more of the factors set forth in Section 1 of Rule 46 (Restrictions on Access to Services) is present with respect to the Sponsored Member.

Section 11(b) of proposed Rule 2C would provide that Rule 46 shall apply with respect to a Sponsored Member in the same way as it applies to Members, including the Board of Directors' right to summarily suspend a Sponsored Member and to cease to act for such Sponsored Member. As under Rule 46, the Board of Directors would need to make the determination of whether to suspend, prohibit or limit a Sponsored Member's access to services offered by NSCC on the basis of the factors set forth in that rule.

Section 11(c) of proposed Rule 2C would provide that if NSCC ceases to act for a Sponsored Member, Section 14 of proposed Rule 56 shall apply.

Section 11(d) of proposed Rule 2C would provide that NSCC shall cease to act for a Sponsored Member that is no longer in compliance with the requirements of Section 3(a) of proposed Rule 2C.

Proposed Rule 2C, Section 12 (Insolvency of a Sponsoring Member)

Section 12(a) of proposed Rule 2C would provide that a Sponsoring Member shall be obligated to immediately notify NSCC that (a) it fails, or is unable, to perform its contracts or obligations or (b) it is insolvent, as required by Section 1 of Rule 20 (Insolvency) for other Members. A Sponsoring Member shall be treated by NSCC in all respects as insolvent under the same circumstances set forth in Section 2 of Rule 20 for other Members. Section 3 of Rule 20 shall apply, in the same manner in which such section applies to other Members, in the case where NSCC treats a Sponsoring Member as insolvent.

Section 12(b) of proposed Rule 2C would provide that in the event that NSCC determines to treat a Sponsoring Member as insolvent pursuant to Rule 20 (Insolvency), NSCC shall have the right to cease to act for the insolvent Sponsoring Member pursuant to Section 10 of the proposed Rule 2C. If NSCC ceases to act for the insolvent Sponsoring Member, NSCC shall decline to accept or process data from the Sponsoring Member, including Sponsored Member Transactions, and NSCC shall terminate the membership of all of the insolvent Sponsoring Member's Sponsored Members unless they are the Sponsored Members of another Sponsoring Member. Any Sponsored Member Transactions which have been novated to NSCC shall continue to be processed by NSCC. NSCC, in its sole discretion, shall determine whether to close-out the affected Sponsored Member Transactions and/or permit the Sponsored Members to complete their settlement. This is different from how NSCC would treat Agent Clearing Member Transactions. As described above, NSCC would close-out any Agent Clearing Member Transactions which have been novated to NSCC. However, with respect to Sponsored Member Transactions, consistent with FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,'' NSCC would have the option to either terminate or settle a Sponsored Member's novated positions after ceasing to act for the Sponsoring Member. This is because NSCC would have the practical and legal capability to make such an election because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customers' novated positions.

Proposed Rule 2C, Section 13 (Insolvency of a Sponsored Member)

Section 13 of proposed Rule 2C would establish NSCC's rights in the event of an insolvency of a Sponsored Member.

Section 13(a) of proposed Rule 2C would provide that a Sponsored Member and its Sponsoring Member (to the extent it has knowledge thereof) shall be obligated to immediately notify NSCC that the Sponsored Member is insolvent or that the Sponsored Member would be unable to perform any of its material contracts, obligations or agreements in the same manner as required by Section 1 of Rule 20 (Insolvency) for other Members. For purposes of Section 13 of proposed Rule 2C, a Sponsoring Member shall be deemed to have knowledge that a Sponsored Member is insolvent or would be unable to perform on any of its material contracts, obligations or agreements if one or more duly authorized representatives of the Sponsoring Member, in its capacity as such, has knowledge of such matters. A Sponsored Member shall be treated by NSCC in all respects as insolvent under the same circumstances set forth in Section 2 of Rule 20 for other Members. Section 3 of Rule 20 shall apply, in the same manner in which such section

applies to other Members, in the case where NSCC treats a Sponsored Member as insolvent.

Section 13(b) of proposed Rule 2C would provide that in the event that NSCC determines to treat a Sponsored Member as insolvent pursuant to Rule 20 (Insolvency), NSCC shall have the right to cease to act for the insolvent Sponsored Member pursuant to Section 11 of the proposed Rule 2C. If NSCC ceases to act for the insolvent Sponsored Member, Section 14 of proposed Rule 56 shall apply with respect to the close-out of the insolvent Sponsored Member's Sponsored Member Transactions.

Proposed Rule 2C, Section 14 (Liquidation of Sponsored Member and Related Sponsoring Member Positions)

Section 14 of proposed Rule 2C would provide a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Transactions between the Sponsoring Member and its Sponsored Member that have been novated to NSCC. Specifically, in the event (i) the Sponsoring Member triggers the termination of a Sponsored Member's positions or (ii) NSCC ceases to act for the Sponsored Member and the Sponsoring Member does not continue to perform the obligations of the Sponsored Member, both the Sponsored Member's positions and the Sponsoring Member's corresponding positions arising from the Sponsored Member Transactions between the Sponsoring Member and the Sponsored Member would be terminated. Thereupon, the Sponsoring Member would calculate a net liquidation value of such terminated positions, which liquidation value would be paid either to or by the Sponsored Member by or to the Sponsoring Member. NSCC would not, as a practical matter, be involved in such settlement and would not need to take any market action because the termination of the Sponsored Member's positions and the corresponding Sponsoring Member's positions would leave NSCC flat. Additionally, the Sponsoring Member would indemnify NSCC for any claim by a Sponsored Member arising out of the Sponsoring Member's calculation of the net liquidation value.

Section 14(a) of proposed Rule 2C would specify the scope of positions to which Section 14 of proposed Rule 2C applies. It would state that Section 14 only applies with respect to the liquidation of positions resulting from Sponsored Member Transactions that have been novated to NSCC.

Section 14(a) of proposed Rule 2C would further state that such section would only apply if (i) a Sponsoring Member is a Defaulting Member and NSCC has not ceased to act for the Sponsoring Member and (ii) a Corporation Default has not occurred. This is because, as described above in Section 12(b) of proposed Rule 2C, NSCC would have discretion in the event it ceases to act for a Sponsoring Member to close-out the positions of Sponsored Members for which the defaulting Sponsoring Member was responsible or to allow them to settle. If NSCC does close-out such positions, it would do so in accordance with Section 14 of proposed Rule 56. If a Corporation Default has occurred with respect to NSCC, each Sponsored Member's positions would be closed out in accordance with Section 17 of proposed Rule 56.

Section 14(b) of proposed Rule 2C would set out the process by which a Sponsoring Member or NSCC may cause the termination of a Sponsored Member's positions. It would provide that on any Business Day, the Sponsoring Member or NSCC may cause such termination by delivering a notice to NSCC or the Sponsoring Member, respectively. NSCC anticipates that each Sponsored Member and Sponsoring Member would agree in the bilateral documentation between them as to what circumstances or events give rise to the ability of the Sponsoring Member to deliver a notice to NSCC terminating the Sponsored Member's positions.[64]

The notice submitted by a Sponsoring Member to NSCC (or vice versa) would cause the termination of all of the SFT Positions of the Sponsored Member established in the Sponsored Member Sub-Account. The notice would also cause the immediate termination of the corresponding SFT Positions of the Sponsoring Member established in the Sponsoring Member's proprietary SFT Account. The effect of such terminations would be to leave NSCC flat.

Section 14(b) of proposed Rule 2C would also provide that the termination of the Sponsored Member's positions (and the Sponsoring Member's corresponding positions) would be effected by the Sponsoring Member's establishment of a final net settlement position for each eligible security with a distinct CUSIP number (''Final Net Settlement Position'').

Section 14(c) of proposed Rule 2C would specify how the Final Net Settlement Positions established pursuant to Section 14(b) of proposed Rule 2C would be liquidated (*i.e.,* how such positions would be converted into an amount payable). It would also provide how the amount payable arising from the liquidation of the Final Net Settlement Positions would be discharged.

Specifically, Section 14(c) of proposed Rule 2C would first provide that the Sponsoring Member would liquidate the Final Net Settlement Positions established pursuant to Section 14(b) of proposed Rule 2C by establishing (i) a single liquidation amount in respect of the Sponsored Member's Final Net Settlement Positions (a ''Sponsored Member Liquidation Amount'') and (ii) a single liquidation amount in respect of the Sponsoring Member's Final Net Settlement Positions (a ''Sponsoring Member Liquidation Amount''). The Sponsored Member Liquidation Amount would be owed either by NSCC to the Sponsored Member or by the Sponsored Member to NSCC because it would relate to the Sponsored Member's Final Net Settlement Positions with NSCC, while the Sponsoring Member Liquidation Amount would be owed either by NSCC to the Sponsoring Member or by the Sponsoring Member to NSCC because it would relate to the Sponsoring Member's Final Net Settlement Positions with NSCC.

Because the Final Net Settlement Positions of the Sponsoring Member would be identical to, but in the opposite direction of, the Final Net Settlement Positions of the Sponsored Member, the Sponsored Member Liquidation Amount would equal the Sponsoring Member Liquidation Amount. Therefore, if NSCC were to owe the Sponsored Member Liquidation Amount to the Sponsored Member, the Sponsoring Member would owe the Sponsoring Member Liquidation Amount to NSCC. By the same token, if the Sponsored Member were to owe the Sponsored Member Liquidation Amount to NSCC, NSCC would owe the Sponsoring Member the Sponsoring

[64] It bears noting in this regard that termination of the Sponsored Member's positions would not be the exclusive mechanism by which a Sponsoring Member may limit its credit risk. As described above, under Section 2(m) of proposed Rule 2C, a Sponsoring Member may voluntarily elect to terminate its status as a Sponsoring Member in respect of one or more Sponsored Members. Such a termination would not affect the settlement of the Sponsored Member's existing positions but would restrict the ability of the Sponsored Member to have its future trades accepted for novation by NSCC through such Sponsoring Member. The proposed rule change in Section 14(b) of proposed Rule 2C would not affect the functioning of the proposed rule change in Section 2(m) of proposed Rule 2C or the general ability of a Sponsoring Member and the Sponsored Member to agree on the circumstances of when the Sponsoring Member may terminate its status as Sponsoring Member for the Sponsored Member.

Member Liquidation Amount. In all instances, NSCC would owe and be owed the same amount of money.

Section 14(c) of proposed Rule 2C would also provide how the Sponsoring Member may calculate the Sponsoring Member Liquidation Amount. It would state that the Sponsoring Member may calculate the Sponsoring Member Liquidation Amount based on prevailing market prices of the relevant securities and/or the gains realized and losses incurred by the Sponsoring Member in hedging its risk associated with the liquidation of the Sponsoring Member's Final Net Settlement Positions. Section 14(c) of proposed Rule 2C would further clarify that such Sponsoring Member Liquidation Amount may also take into account any losses and expenses incurred by the Sponsoring Member in connection with the liquidation of the positions.

Section 14(c) of proposed Rule 2C would further provide that, if a Sponsored Member Liquidation Amount is due to NSCC, the Sponsoring Member would be obligated to pay such Sponsored Member Liquidation Amount to NSCC under the Sponsoring Member Guaranty and that this obligation would, automatically and without further action, be set off against the obligation of NSCC to pay the corresponding Sponsoring Member Liquidation Amount to the Sponsoring Member. By virtue of such setoff, the Sponsored Member's obligation to NSCC would be discharged, as would NSCC's obligation to the Sponsoring Member. The Sponsoring Member would, however, have a reimbursement claim against the Sponsored Member in an amount equal to the Sponsored Member Liquidation Amount. This reimbursement claim would arise as a matter of law by virtue of the Sponsoring Member's performance under Sponsoring Member Guaranty, though Sponsoring Members and Sponsored Members may specify terms related to the reimbursement claim in their bilateral submission. NSCC would have no rights or obligations in respect of any such reimbursement claim.

If a Sponsored Member Liquidation Amount were owed by NSCC to the Sponsored Member, Section 14(c) of proposed Rule 2C would provide for the Sponsoring Member to satisfy that obligation by transferring the Sponsored Member Liquidation Amount to the Sponsoring Member's account at its Settling Bank (''Sponsoring Member Settling Bank Omnibus Account''). Section 14(c) of proposed Rule 2C would state that, to the extent the Sponsoring Member makes such a transfer, it would discharge NSCC's obligation to transfer the Sponsored Member Liquidation Amount to the Sponsored Member and the Sponsoring Member's corresponding obligation to transfer the Sponsoring Member Liquidation Amount to NSCC.

Section 14(d) of proposed Rule 2C would provide for the Sponsoring Member to indemnify NSCC and its employees, officers, directors, shareholders, agents, and Members (collectively, the ''Sponsoring/Sponsored Membership Program Indemnified Parties'' or ''SMP Indemnified Parties'') for any and all losses, liability, or expenses arising from any claim by an affected Sponsored Member disputing the Sponsoring Member's calculation of any Sponsored Member Liquidation Amount or Sponsoring Member Liquidation Amount.

Section 14(e) of proposed Rule 2C would provide that NSCC acknowledges that a Sponsoring Member may take a security interest in NSCC's obligations to a Sponsored Member in respect of its transactions that have been novated to NSCC by such Sponsoring Member and established in the Sponsoring Member's Sponsored Member Sub-Account for the Sponsored Member. Such security interest would not impose new obligations on NSCC but could allow the Sponsoring Member to direct NSCC to submit payments due to the Sponsored Member to the Sponsoring Member, so that the Sponsoring Member can apply such amounts to the Sponsored Member's unsatisfied obligations to the Sponsoring Member.

(B) Proposed Rule 2D—Agent Clearing Members

NSCC is proposing to add Rule 2D, entitled ''Agent Clearing Members.'' This new rule would govern the proposed agent clearing membership and would be comprised of 12 sections, each of which is described below.

Proposed Rule 2D, Section 1 (General)

Section 1 of proposed Rule 2D would be a general provision regarding the Rules applicable to Agent Clearing Members.

Section 1 of proposed Rule 2D would provide that NSCC will permit a Member that is approved to be an Agent Clearing Member to submit transactions to NSCC for novation on behalf of one or more of the Agent Clearing Member's Customers. Section 1 of proposed Rule 2D would further provide that the rights, liabilities and obligations of Agent Clearing Members shall be governed by proposed Rule 2D, and that references to the term ''Member'' in other Rules would not apply to Agent Clearing Members, in their respective capacities as such, unless specifically noted as such in proposed Rule 2D or in such other Rules.

Section 1 of proposed Rule 2D would also provide that an Agent Clearing Member shall continue to have all of the rights, liabilities and obligations as set forth in the Rules and in any agreement between it and NSCC pertaining to its status as a Member, and such rights, liabilities and obligations shall be separate from its rights, liabilities and obligations as an Agent Clearing Member except as contemplated under Sections 6, 7 and 8 of proposed Rule 2D.

Proposed Rule 2D, Section 2 (Qualifications of Agent Clearing Members, the Application Process and Continuance Standards)

Section 2 of proposed Rule 2D would establish the eligibility requirements for Members that wish to become Agent Clearing Members, the membership application process that would be required of each Member to become an Agent Clearing Member, the on-going membership requirements that would apply to Agent Clearing Members, as well as the requirements regarding an Agent Clearing Member's election to voluntarily terminate its membership.

Under Section 2(a) of proposed Rule 2D, any Member would be eligible to apply to become an Agent Clearing Member; however, if a Member is a Registered Broker-Dealer, such Member would only be permitted to apply to become an Agent Clearing Member if it has (1) Net Worth of at least $25 million and (2) excess net capital over the minimum net capital requirement imposed by the Commission (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million.[65] As proposed, NSCC may

[65] NSCC is proposing these financial minimums for Registered Broker-Dealer Agent Clearing Member applicants to reflect the additional responsibility that the applicant would undertake as an Agent Clearing Member. These financial minimums are determined based on NSCC's assessment of the minimum capital that would be necessary for a broker-dealer to conduct meaningful level of NSCC-cleared activity while serving as a credit counterparty in respect of others' trades. In addition, NSCC is proposing these financial minimums for Registered Broker-Dealer Agent Clearing Member applicants to be consistent with proposed requirements applicable to Registered Broker-Dealer Sponsoring Member applicants. NSCC believes this approach to financial minimums is appropriate because both Sponsoring Members and Agent Clearing Members would be viewed and surveilled as the credit counterparties to NSCC in respect of the transactions that they submit for clearing in respect of Sponsoring Member Sub-Accounts and Agent Clearing Member Customer Omnibus Accounts, respectively. Although the model of clearing would differ as

require that a Person be a Member for a certain time period before that Person may be considered to become an Agent Clearing Member.

Section 2(b) of proposed Rule 2D would provide that each Member applicant to become an Agent Clearing Member would be required to provide an application and other information requested by NSCC. Agent Clearing Member applications shall first be reviewed by NSCC and would require the Board of Directors' approval, unless the Member applicant is already a Sponsoring Member under proposed Rule 2C or a sponsoring member of FICC. NSCC believes this approach to the Board of Directors' approval for Agent Clearing Members is appropriate in light of the fact that the critical components of the FICC sponsoring member applications as well as the NSCC Agent Clearing Member and Sponsoring Member applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are substantially similar.

Under Section 2(c) of proposed Rule 2D, if the Agent Clearing Member application is denied, such denial would be handled in accordance with Section 1 of Rule 2A (Initial Membership Requirements).

As proposed in Section 2(d) of proposed Rule 2D, NSCC may impose additional financial requirements on an Agent Clearing Member applicant based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transaction such applicant proposes to process through NSCC as an Agent Clearing Member and the overall financial condition of such applicant. Under the proposal, with respect to an application of a Member to become an Agent Clearing Member that requires the Board of Directors' approval, the Board of Directors shall also approve any increased financial requirements imposed by NSCC in connection with the approval of the application, and NSCC would thereafter regularly review such Agent Clearing Member regarding its compliance with the increased financial requirements.[66]

In addition, under Section 2(e) of proposed Rule 2D, NSCC may require each Agent Clearing Member or any Agent Clearing Member applicant to furnish adequate assurances of such Agent Clearing Member or Agent Clearing Member applicant's financial responsibility and operational capability within the meaning of Rule 15 (Assurances of Financial Responsibility and Operational Capability), as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC, its participants, creditors or investors, to safeguard securities and funds in the custody or control of NSCC and for which NSCC is responsible, or to promote the prompt and accurate clearance, settlement and processing of securities transactions.[67]

Section 2(f) of proposed Rule 2D would provide that each Member whose Agent Clearing Member application is approved would sign and deliver to NSCC an agreement between NSCC and the Member and specifies the terms and conditions deemed by NSCC to be necessary in order to protect itself and its participants (''Agent Clearing Member Agreement'') and a related legal opinion in a form satisfactory to NSCC.

Section 2(g) of proposed Rule 2D would provide that each Agent Clearing Member shall submit to NSCC, within the timeframes and in the formats required by NSCC, the reports and information that all Members are required to submit regardless of type of Member and the reports and information required to be submitted for its respective type of Member, all pursuant to Section 2 of Rule 2B (Ongoing Membership Requirements and Monitoring) and, if applicable, Addendum O (Admission of Non-US Entities as Direct NSCC Members).

Section 2(h) of proposed Rule 2D would provide that an Agent Clearing Member's books and records, insofar as they relate to the Agent Clearing Member Transactions submitted to NSCC, shall be open to the inspection of the duly authorized representatives of NSCC to the same extent provided in Rule 2A (Initial Membership Requirements) for other Members.

Section 2(i) of proposed Rule 2D would provide that an Agent Clearing Member shall promptly inform NSCC, both orally and in writing, if it is no longer in compliance with the relevant standards and qualifications for applying to become an Agent Clearing Member set forth in the proposed Rule 2D. Notification must take place immediately and in no event later than 2 Business Days from the date on which the Agent Clearing Member first learns of its non-compliance. As proposed, NSCC would assess a fine in accordance with the Fine Schedule in Addendum P against any Agent Clearing Member that fails to so notify NSCC.[68] If the Agent Clearing Member fails to remain in compliance with the relevant standards and qualifications, NSCC would, if necessary, undertake appropriate action to determine the status of the Agent Clearing Member and its continued eligibility as such. In addition, NSCC may review the financial responsibility and operational capability of the Agent Clearing Member, and otherwise require from the Agent Clearing Member additional reports of its financial or operational condition at such intervals and in such detail as NSCC shall determine. In addition, if NSCC has reason to believe that an Agent Clearing Member may fail to comply with any of the Rules applicable to Agent Clearing Members, it may require the Agent Clearing Member to provide it, within such timeframe, and in such detail, and pursuant to such manner as NSCC shall determine, with assurances in writing of a credible nature that the Agent Clearing Member shall not, in fact, violate any of the Rules.

Section 2(j) of proposed Rule 2D would provide that in the event that an Agent Clearing Member fails to remain in compliance with the relevant requirements of the Rules or the Agent Clearing Member Agreement, NSCC shall have the right to cease to act for the Agent Clearing Member in its capacity as an Agent Clearing Member in accordance with Section 9 of proposed Rule 2D or as a Member more generally, unless the Agent Clearing Member requests that such action not be taken and NSCC determines that, depending upon the specific circumstances and the record of the Agent Clearing Member, it is appropriate instead to establish for such Agent Clearing Member a time period,

between Sponsoring Members and Agent Clearing Members, both would be types of Members that would be standing behind the credit of their clients. Accordingly, NSCC believes it is appropriate to use consistent financial minimums.

[66] If the increased financial requirements are imposed in connection with an Agent Clearing Member application that does not require the Board of Directors' approval, the increased financial requirements would not be subject to the Board of Directors' approval. Nonetheless, once an Agent Clearing Member application is approved with increased financial requirements, NSCC would thereafter regularly review such Agent Clearing Member regarding its continued adherence to such increased financial requirements as well as determine whether such increased financial requirements are still appropriate. If the Agent Clearing Member is unable to adhere to the increased financial requirements, the Board of Directors may, pursuant to Section 9 of proposed Rule 2D, suspend, prohibit or limit the Agent Clearing Member's access to NSCC's services.

[67] As an example, NSCC may require an Agent Clearing Member or an Agent Clearing Member applicant to furnish adequate assurances of such Agent Clearing Member or Agent Clearing Member applicant's financial responsibility and operational capability if NSCC has concerns about such Agent Clearing Member or Agent Clearing Member applicant's overall financial health or credit rating.

[68] *See* Addendum P (Fine Schedule), *supra* note 4.

which shall be determined by NSCC and which shall be no longer than 30 calendar days unless otherwise determined by NSCC, during which the Agent Clearing Member must resume compliance with such requirements. As proposed, in the event that the Agent Clearing Member is unable to satisfy such requirements within the time period specified by NSCC, NSCC shall, pursuant to the Rules, cease to act for the Agent Clearing Member in its capacity as an Agent Clearing Member pursuant to Section 9 of the proposed Rule 2D or as a Member more generally.

Section 2(k) of proposed Rule 2D would provide that if the sum of the Volatility Charges applicable to an Agent Clearing Member's Agent Clearing Member Customer Omnibus Account(s) and its other accounts at NSCC exceeds its Net Member Capital, the Agent Clearing Member shall not be permitted to submit activity into its Agent Clearing Member Customer Omnibus Account(s), unless otherwise determined by NSCC in order to promote orderly settlement.[69] As proposed, an ''Agent Clearing Member Customer Omnibus Account'' would mean a ledger maintained on the books and records of NSCC that reflects the outstanding Agent Clearing Member Transactions that an Agent Clearing Member enters into on behalf of Customers and that have been novated to NSCC, the SFT Positions or SFT Cash associated with those transactions, and any debits or credits of cash associated with such transactions effected pursuant to Rule 12 (Settlement).

Section 2(l) of proposed Rule 2D would provide that an Agent Clearing Member may voluntarily elect to terminate its status as an Agent Clearing Member by providing NSCC with a written notice from an Agent Clearing Member to NSCC that the Agent Clearing Member is voluntarily electing to terminate its status as an Agent Clearing Member (''Agent Clearing Member Voluntary Termination Notice''). The Agent Clearing Member shall specify in the Agent Clearing Member Voluntary Termination Notice a desired date for such termination, which date shall not be prior to the scheduled Final Settlement Date of any remaining obligation owed by the Agent Clearing Member to NSCC as of the time such Agent Clearing Member Voluntary Termination Notice is submitted to NSCC, unless otherwise approved by NSCC.

Section 2(l) of proposed Rule 2D would also provide that such termination would not be effective until accepted by NSCC, which shall be no later than 10 Business Days after the receipt of the Agent Clearing Member Voluntary Termination Notice from such Agent Clearing Member. NSCC's acceptance shall be evidenced by a notice to NSCC's participants announcing the termination of the Agent Clearing Member's status as such and the date on which the termination of the Agent Clearing Member's status as an Agent Clearing Member becomes effective (''Agent Clearing Member Termination Date''). As proposed, after the close of business on the Agent Clearing Member Termination Date, the Agent Clearing Member shall no longer be eligible to submit Agent Clearing Member Transactions. If any Agent Clearing Member Transaction is submitted to NSCC by the Agent Clearing Member that is scheduled to settle after the Agent Clearing Member Termination Date, such Agent Clearing Member's Agent Clearing Member Voluntary Termination Notice would be deemed void, and the Agent Clearing Member would remain subject to the proposed Rule 2D as if it had not given such Agent Clearing Member Voluntary Termination Notice.

Section 2(m) of proposed Rule 2D would provide that an Agent Clearing Member's voluntary termination of its status as such shall not affect its obligations to NSCC, or the rights of NSCC, with respect to Agent Clearing Member Transactions submitted to NSCC before the applicable Agent Clearing Member Termination Date. Any such Agent Clearing Member Transactions that have been novated to NSCC shall continue to be processed by NSCC. The return of the Agent Clearing Member's Clearing Fund deposit shall be governed by Section 7 of Rule 4 (Clearing Fund). If an Event Period were to occur after an Agent Clearing Member has submitted the Agent Clearing Member Voluntary Termination Notice but on or prior to the Agent Clearing Member Termination Date, in order for the Agent Clearing Member to benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4, the Agent Clearing Member would need to comply with the provisions of Section 6 of Rule 4 and submit a Loss Allocation Withdrawal Notice, which notice, upon submission, shall supersede and void any pending Agent Clearing Member Voluntary Termination Notice previously submitted by the Agent Clearing Member.

Section 2(n) of proposed Rule 2D would provide that any non-public information furnished to NSCC pursuant to proposed Rule 2D shall be held in confidence as may be required under the laws, rules and regulations applicable to NSCC that relate to the confidentiality of records. Section 2(n) would also provide that each Agent Clearing Member shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such Agent Clearing Member's obligations under the Rules or as otherwise required by applicable law. Section 2(n) would further provide that each Agent Clearing Member acknowledges that a breach of its confidentiality obligations under the Rules may result in serious and irreparable harm to NSCC and/or DTCC for which there is no adequate remedy at law. In addition, Section 2(n) would provide that in the event of such a breach by the Agent Clearing Member, NSCC and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages thereunder.[70]

Proposed Rule 2D, Section 3 (Compliance With Laws)

Section 3 of proposed Rule 2D would provide that each Agent Clearing Member shall comply in all material respects with all applicable laws, including applicable laws relating to securities, taxation and money laundering, as well as global sanctions laws, in connection with the use of NSCC's services.

Proposed Rule 2D, Section 4 (Agent Clearing Member Transactions)

Section 4 of proposed Rule 2D would provide that an Agent Clearing Member shall be permitted to submit to NSCC on behalf of one or more Customers' Securities Financing Transactions (''Agent Clearing Member

[69] NSCC selected the Volatility Charges and Net Member Capital as the criteria for purposes of establishing the activity limit for Agent Clearing Members. This is because an Agent Clearing Member's total Volatility Charges being in excess of its Net Member Capital is an important indicator that the Agent Clearing Member's financial resources, as measured by its Net Capital, net assets or equity capital, may be insufficient to meet the largest component of its Required Fund Deposit (*i.e.,* Volatility Charges).

[70] Section 2(n) of proposed Rule 2D is designed to be consistent with NSCC's proposed change to revise certain provisions in the Rules relating to the confidentiality of information furnished by participants. *See* Securities Exchange Act Release No. 92334 (July 7, 2021), 86 FR 36815 (July 13, 2021) (SR–NSCC–2021–007).

Transactions'') in accordance with proposed Rule 56, as described below.

Proposed Rule 2D, Section 5 (Agent Clearing Member Agent Obligations)

Section 5 of proposed Rule 2D would establish rules-based obligations for Agent Clearing Members and the establishment of Agent Clearing Member Customer Omnibus Accounts.

Section 5(a) of proposed Rule 2D would provide that an Agent Clearing Member shall be permitted to submit to NSCC for novation Agent Clearing Member Transactions entered into by the Agent Clearing Member as agent on behalf of one or more Customers. Any such submission shall be in accordance with proposed Rule 2D. As proposed, subject to the provisions of the Rules, an Agent Clearing Member's clearing of Agent Clearing Member Transactions for Customers (''Customer Clearing Service'') may be provided by an Agent Clearing Member to its Customers on any terms and conditions mutually agreed to by the Agent Clearing Member and its Customers; provided, that each Agent Clearing Member shall, before providing Customer Clearing Service to any Customer, enter into an agreement with that Customer that binds the Customer to the provisions of the Rules applicable to Agent Clearing Member Transactions and Customers.

Section 5(b) of proposed Rule 2D would provide that, with respect to an Agent Clearing Member that submits Agent Clearing Member Transactions to NSCC for novation on behalf of its Customers, NSCC shall maintain one or more Agent Clearing Member Customer Omnibus Accounts in the name of the Agent Clearing Member for the benefit of its Customers. Each Agent Clearing Member Customer Omnibus Account would be permitted to contain only (i) SFTs entered into by the Agent Clearing Member, on behalf of a Customer, as Transferor or (ii) SFTs entered into by the Agent Clearing Member, on behalf of a Customer, as a Transferee. An Agent Clearing Member would not be permitted to combine SFTs entered into as Transferee and Transferor in the same Agent Clearing Member Customer Omnibus Account. This is designed to ensure that NSCC's volatility-based Clearing Fund deposit requirements represent the sum of each individual Customer's activity (*i.e.,* that the positions are margined on a gross basis).[71]

Section 5(c) of proposed Rule 2D would provide that an Agent Clearing Member shall act solely as agent of its Customers in connection with the clearing of Agent Clearing Member Transactions; provided that the Agent Clearing Member shall remain fully liable for the performance of all obligations to NSCC arising in connection with Agent Clearing Member Transactions; and provided further, that the liabilities and obligations of NSCC with respect to Agent Clearing Member Transactions entered into by the Agent Clearing Member shall extend only to the Agent Clearing Member. Section 5(c) of proposed Rule 2D would further provide that, without limiting the generality of the foregoing, NSCC shall not have any liability or obligation arising out of or with respect to any Agent Clearing Member Transaction to any Customer on behalf of whom an Agent Clearing Member entered into the Agent Clearing Member Transaction.

Section 5(d) of proposed Rule 2D would provide that nothing in the Rules shall prohibit an Agent Clearing Member from seeking reimbursement from a Customer for payments made by the Agent Clearing Member (whether out of Clearing Fund deposits or otherwise) under the Rules, or as otherwise may be agreed between the Agent Clearing Member and the Customer.

Proposed Rule 2D, Section 6 (Clearing Fund Obligations)

Section 6 of proposed Rule 2D would set forth the Clearing Fund obligations.

Section 6(a) of proposed Rule 2D would provide that NSCC shall maintain one or more Agent Clearing Member Customer Omnibus Accounts for an Agent Clearing Member. Each Agent Clearing Member shall make and maintain so long as such Member is an Agent Clearing Member a deposit to the Clearing Fund as a Required Fund Deposit to support the activity in its Agent Clearing Member Customer Omnibus Account(s) (the ''Agent Clearing Member Required Fund Deposit''). Deposits to the Clearing Fund would be held by NSCC or its designated agents, to be applied as provided in the Rules.

Section 6(b) of proposed Rule 2D would provide that, in the ordinary course, for purposes of satisfying the Agent Clearing Member's Clearing Fund requirements under the Rules for its Member activity, its Agent Clearing Member activity, and, to the extent applicable, its Sponsoring Member activity, the Agent Clearing Member's proprietary accounts, its Agent Clearing Member Customer Omnibus Account(s), and its Sponsored Member Sub-Accounts, if any, shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time and without prior notice to the Agent Clearing Member (but being obligated to give notice to the Agent Clearing Member as soon as possible thereafter) and whether or not the Agent Clearing Member is in default of its obligations to NSCC, treat the Agent Clearing Member's accounts as a single account for the purpose of applying Clearing Fund deposits; apply Clearing Fund deposits made by the Agent Clearing Member with respect to any account as necessary to ensure that the Agent Clearing Member meets all of its obligations to NSCC under any other account(s); and otherwise exercise all rights to offset and net against the Clearing Fund deposits any net obligations among any or all of the accounts, whether or not any other Person is deemed to have any interest in such account.[72]

Section 6(c) of proposed Rule 2D would provide that the Agent Clearing Member Required Fund Deposit for each Agent Clearing Member Customer Omnibus Account shall be calculated separately based on the Agent Clearing Member Transactions in such Agent Clearing Member Customer Omnibus Account, and the Agent Clearing Member shall, as principal, be required to satisfy the Agent Clearing Member Required Fund Deposit for each of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts.

Section 6(d) of proposed Rule 2D would provide that Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Rule 4 (Clearing Fund) shall apply to the Agent Clearing Member Required Fund Deposit with respect to obligations of an Agent Clearing Member under the Rules, including its obligations arising under the Agent Clearing Member

[71] If an Agent Clearing Member were permitted to maintain SFTs entered into as both Transferee and Transferor in the same Agent Clearing Member Customer Omnibus Account, the Required Fund Deposit obligations of the Agent Clearing Member could potentially be reduced by offsetting SFT Positions of different Customers in the same SFT Security.

[72] NSCC believes this is appropriate because the Clearing Fund deposits of an Agent Clearing Member are the proprietary assets of the Agent Clearing Member and NSCC generally has the right to apply the Clearing Fund deposits of a Member to any of the Member's obligations to NSCC, regardless of whether those were the obligations that generated the Clearing Fund deposit requirement. NSCC therefore believes that, consistent with the FICC Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,'' an Agent Clearing Member's Clearing Fund deposits should be available to satisfy any of the Agent Clearing Member's obligations to NSCC.

Customer Omnibus Account(s), to the same extent as such sections apply to any Required Fund Deposit and any other obligations of a Member. For purposes of Section 1 of Rule 4, obligations and liabilities of a Member to NSCC that shall be secured shall include, without limitation, a Member's obligations as an Agent Clearing Member under the Rules, including, without limitation, any obligation of any such Agent Clearing Member to provide the Agent Clearing Member Required Fund Deposit and such Agent Clearing Member's obligations arising under SFTs established in the Agent Clearing Member Customer Omnibus Accounts of such Agent Clearing Member.

Section 6(e) of proposed Rule 2D would provide that an Agent Clearing Member shall be subject to such fines as may be imposed in accordance with the Rules for any late satisfaction of a Clearing Fund deficiency call.

Proposed Rule 2D, Section 7 (Right of Offset)

Section 7 of proposed Rule 2D would provide that in the ordinary course, with respect to satisfaction of any Agent Clearing Member's obligations under the Rules, the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts, the Agent Clearing Member's proprietary accounts, and the Agent Clearing Member's Sponsored Member Sub-Accounts, if any, at NSCC shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time any obligation of the Agent Clearing Member arises in respect of any Agent Clearing Member Customer Omnibus Account, exercise a right of offset and net any such obligation against any obligations of NSCC to the Agent Clearing Member in respect of such Agent Clearing Member's proprietary accounts at NSCC.

Proposed Rule 2D, Section 8 (Loss Allocation Obligations)

Section 8 of proposed Rule 2D would establish loss allocation obligations for Agent Clearing Members.

Section 8(a) of proposed Rule 2D would provide that, to the extent NSCC incurs a loss or liability from a Defaulting Member Event or a Declared Non-Default Loss Event and a loss allocation obligation arises, that would be the responsibility of the Agent Clearing Member Customer Omnibus Account as if the Agent Clearing Member Customer Omnibus Account were a Member, NSCC shall calculate such loss allocation obligation and the Agent Clearing Member shall be, as principal, responsible for satisfying such obligations.

Section 8(b) of proposed Rule 2D would provide that the entire amount of the Required Fund Deposit associated with the Agent Clearing Member's proprietary accounts at NSCC and the entire amount of the Agent Clearing Member Required Fund Deposit may be used to satisfy any amount allocated against an Agent Clearing Member, whether in its capacity as a Member, an Agent Clearing Member, or otherwise. With respect to an obligation to make payment due to any loss allocation amounts assessed on an Agent Clearing Member pursuant to Section 8(a) of proposed Rule 2D, the Agent Clearing Member may instead elect to terminate its membership in NSCC pursuant to Section 6 of Rule 4 and thereby benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4; however, for the purpose of determining the Loss Allocation Cap for such Agent Clearing Member, its Required Fund Deposit shall be the sum of its Required Fund Deposits associated with its proprietary accounts at NSCC (including its proprietary SFT Account pursuant to proposed Rule 56), its Agent Clearing Member Required Fund Deposit for each of its Agent Clearing Member Customer Omnibus Accounts, and its Sponsoring Member Required Fund Deposit, if any.

Proposed Rule 2D, Section 9 (Restrictions on Access to Services by an Agent Clearing Member)

Section 9 of proposed Rule 2D would establish the rights of NSCC to restrict an Agent Clearing Member's access to NSCC's services.

Section 9(a) of proposed Rule 2D would provide that the Board of Directors may at any time upon NSCC providing notice to an Agent Clearing Member pursuant to Section 5 of Rule 45 (Notices), suspend an Agent Clearing Member in its capacity as an Agent Clearing Member from any service provided by NSCC either with respect to a particular transaction or transactions or with respect to transactions generally, or prohibit or limit such Agent Clearing Member's access to services offered by NSCC in the event that one or more of the factors set forth in Section 1 of Rule 46 (Restrictions on Access to Services) is present with respect to the Agent Clearing Member.

Section 9(b) of proposed Rule 2D would provide that Rule 46 shall apply with respect to an Agent Clearing Member in the same way as it applies to Members, including the Board of Directors' right to summarily suspend the Agent Clearing Member and to cease to act for such Agent Clearing Member. As under Rule 46, the Board of Directors would need to make the determination of whether to suspend, prohibit or limit an Agent Clearing Member's access to services offered by NSCC on the basis of the factors set forth in that rule.

Section 9(c) of proposed Rule 2D would provide that if NSCC ceases to act for an Agent Clearing Member in its capacity as an Agent Clearing Member, Section 14 of proposed Rule 56 shall apply and NSCC shall decline to accept or process data from the Agent Clearing Member on Agent Clearing Member Transactions and close-out any Agent Clearing Member Transactions that have been novated to NSCC. Section 9(c) would also provide that if NSCC suspends, prohibits or limits an Agent Clearing Member in its capacity as an Agent Clearing Member with respect to such Agent Clearing Member's access to services offered by NSCC, NSCC shall decline to accept or process data from the Agent Clearing Member on Agent Clearing Member Transactions for so long as NSCC is suspending, prohibiting or limiting the Agent Clearing Member. Furthermore, Section 9(c) would state that, in addition, NSCC would close-out any Agent Clearing Member Transactions which have been novated to NSCC.

This is different from how NSCC would treat Sponsored Member Transactions of a Sponsoring Member under Section 10 of proposed Rule 2C if NSCC ceases to act for the Sponsoring Member. With respect to such transactions, NSCC would have the option to either terminate or settle a Sponsored Member's positions after ceasing to act for the Sponsoring Member. The reason for this difference is that NSCC would have the practical and legal capability to make such an election because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customer's novated positions.

Proposed Rule 2D, Section 10 (Insolvency of an Agent Clearing Member)

Section 10(a) of proposed Rule 2D would provide that an Agent Clearing Member shall be obligated to immediately notify NSCC that (a) it fails, or is unable, to perform its contracts or obligations or (b) it is insolvent as required by Section 1 of Rule 20 (Insolvency) for other Members. An Agent Clearing Member shall be treated by NSCC in all respects as insolvent under the same circumstances set forth in Section 2 of Rule 20 for other Members. Section 3 of Rule 20 shall apply, in the same manner in which such section applies to other Members, in the case where NSCC treats an Agent Clearing Member as insolvent.

Section 10(b) of proposed Rule 2D would provide that in the event that NSCC determines to treat an Agent Clearing Member as insolvent pursuant to Rule 20 (Insolvency), NSCC shall have the right to cease to act for the insolvent Agent Clearing Member pursuant to Section 9 of proposed Rule 2D. If NSCC ceases to act for the insolvent Agent Clearing Member, NSCC shall decline to accept or process data from the Agent Clearing Member, including Agent Clearing Member Transactions. As proposed, NSCC would close-out any Agent Clearing Member Transactions which have been novated to NSCC.

This is different from how NSCC would treat Sponsored Member Transactions. As described above, NSCC would have the option to either terminate or settle a Sponsored Member's novated positions after ceasing to act for the Sponsoring Member. However, with respect to Agent Clearing Member Transactions, NSCC would close-out any such transactions which have been novated to NSCC. This is because NSCC would have the practical and legal capability to make such an election with respect to Sponsored Member Transactions because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customers' novated positions.

Proposed Rule 2D, Section 11 (Transfer of Agent Clearing Member Transactions in Agent Clearing Member Customer Omnibus Accounts)

Section 11 of proposed Rule 2D would (i) permit an Agent Clearing Member, upon a default of a Customer and consent of NSCC, to transfer Agent Clearing Member Transactions of the Customer established in one or more of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts from such Agent Clearing Member Customer Omnibus Accounts to the Agent Clearing Member's proprietary account at NSCC as a Member and (ii) govern how the transfer would be effectuated.

Section 11(a) of proposed Rule 2D would clarify the scope to which Section 11 of proposed Rule 2D applies. It would state that Section 11 would not apply if either (i) the relevant Agent Clearing Member is a Defaulting Member or (ii) a Corporation Default has occurred. This is because, as described above with respect to Section 10(b) of proposed Rule 2D, NSCC would close-out all Agent Clearing Member Transactions for which the defaulting Agent Clearing Member was responsible. If a Corporation Default has occurred with respect to NSCC, each Agent Clearing Member's positions would be closed out in accordance with Section 17 of proposed Rule 56.

Section 11(b) of proposed Rule 2D would set out the process by which an Agent Clearing Member may transfer the Agent Clearing Member Transactions of a defaulting Customer in one or more of Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts. It would provide that, to the extent permitted under applicable laws and regulations, an Agent Clearing Member may, upon a default of a Customer and the consent of NSCC, transfer the Agent Clearing Member Transactions of the Customer established in one or more of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts from such Agent Clearing Member Customer Omnibus Accounts to the Agent Clearing Member's proprietary account at NSCC as a Member. As proposed, any such transfer shall occur by novation, such that the obligations between NSCC and the relevant Customer in respect of the Agent Clearing Member Transactions shall be terminated and replaced with identical obligations between NSCC and the Agent Clearing Member, acting as principal. Section 11(b) would also provide the Agent Clearing Member shall indemnify NSCC, and its employees, officers, directors, shareholders, agents, and Members, for any and all losses, liability, or expenses incurred by them arising from, or in relation to, any such transfer.

Proposed Rule 2D, Section 12 (Customer Acknowledgments)

Section 12 of proposed Rule 2D would provide that each Agent Clearing Member on behalf of each of its Customers agrees that such Customer, by participating in and entering into Agent Clearing Member Transactions through the Agent Clearing Member, understands, acknowledges, and agrees that: (a) The service provided by NSCC with regard to the Customer Clearing Service would be subject to and governed by the Rules; (b) the Rules shall govern the novation of Agent Clearing Member Transactions and all transactions between the Customer and its Agent Clearing Member resulting in the novation of such transactions, and at the time of novation of an Agent Clearing Member Transaction, the Customer on whose behalf it was submitted would be bound by the Agent Clearing Member Transaction automatically and without any further action by the Customer or by its Agent Clearing Member, and the Customer agrees to be bound by the applicable provisions of the Rules in all respects; (c) NSCC shall be under no obligation to deal directly with the Customer, and NSCC may deal exclusively with the Customer's Agent Clearing Member; (d) NSCC shall have no obligations to the Customer with respect to any Agent Clearing Member Transactions submitted by an Agent Clearing Member on behalf of the Customer, including with respect to any payment or delivery obligations; and (e) the Customer shall have no right to receive from NSCC, or any right to assert a claim against NSCC with respect to, nor shall NSCC be liable to the Customer for, any payment or delivery obligation in connection with any Agent Clearing Member Transactions submitted by an Agent Clearing Member on behalf of the Customer, and NSCC shall make any such payments or redeliveries solely to the relevant Agent Clearing Member.

(C) Proposed Rule 56—Securities Financing Transaction Clearing Service

NSCC is proposing to add Rule 56, entitled ''Securities Financing Transaction Clearing Service.'' This new rule would govern the proposed SFT

Clearing Service and would be comprised of 18 sections, each of which is described below.

In connection with the proposed SFT Clearing Service, NSCC is proposing to add the following terms and definitions, as described below.

The term ''Aggregate Net SFT Close-out Value'' would mean, with respect to an SFT Member, the sum of the SFT Close-out Value (as defined below and in the proposed rule change) for each SFT Position to which the SFT Member is a party.

The term ''Approved SFT Submitter'' would mean a provider of transaction data on an SFT that the parties to the SFT have selected and NSCC has approved, subject to such terms and conditions as to which the Approved SFT Submitter and NSCC may agree.

The term ''Bilaterally Initiated SFT'' would mean an SFT, the Initial Settlement of which occurred prior to the submission of such SFT to NSCC.

The term ''Buy-In Amount'' would mean a net amount equal to (x) the Buy-In Costs or Deemed Buy-In Costs (as defined below and in the proposed rule change) of the SFT Securities in respect of which a Transferor has effected a Buy-In, less (y) the amount of the SFT Cash for the relevant SFT (unless the Transferor effected a Buy-In in respect of some, but not all, of the SFT Securities that are the subject of the SFT, in which case (y) shall be the amount of the Corresponding SFT Cash (as defined below and in the proposed rule change)).

The term ''Contract Price'' would mean, with respect to SFT Securities subject to an SFT, the price of such securities at the time the SFT is submitted to NSCC for novation, which price shall be determined by the SFT Member parties to the relevant SFT and provided by an Approved SFT Submitter to NSCC in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose; provided that if no such price is provided by the time required by NSCC, the ''Contract Price'' shall be the Current Market Price of the SFT Securities.

The term ''Corresponding SFT Cash'' would mean (a) in respect of a Recalled SFT (as defined below and in the proposed rule change) for which a Transferor has effected a Buy-In in respect of some, but not all, of the SFT Securities that are the subject of the SFT, the portion of the SFT Cash for such SFT equal to the product of (i) the percentage of the SFT Securities in respect of which the Transferor effected a Buy-In and (ii) the SFT Cash of the SFT; and (b) in respect of a Settling SFT which has a greater quantity of SFT Securities as its subject than the corresponding Linked SFT, the portion of the SFT Cash of the Settling SFT equal to the product of (i) the percentage of the SFT Securities of the Settling SFT that the Linked SFT has as its subject and (ii) the SFT Cash of the Settling SFT.

The term ''Deemed Buy-In Costs'' would mean the product of the number of SFT Securities subject to the relevant Buy-In and the per-share price therefor on the date of the Buy-In obtained from a generally recognized source or the last bid quotation from such a source at the most recent close of trading for the SFT Security.

The term ''Defaulting SFT Member'' would mean an SFT Member for which NSCC has declined or ceased to act in accordance with Section 14 of proposed Rule 56, as described below.

The term ''Distribution'' would mean, with respect to any SFT Security at any time, any cash payment of amounts equivalent to dividends and other distributions on the SFT Security.

The term ''Distribution Amount'' would mean, in respect of an SFT, an amount of cash equal to the product of: (a) The amount per security in respect of (x) a cash dividend on the SFT Securities that are the subject of the SFT or (y) an exchange of the SFT Securities that are the subject of the SFT for cash; and (b) the number of the relevant SFT Securities subject to the SFT.

The term ''Distribution Payment'' would mean an amount payable by one party to an SFT to the other party to the SFT during the term of the SFT in respect of a Distribution on the SFT Securities subject to the SFT.

The term ''Existing Master Agreement'' would mean, in respect of an SFT, a written agreement that (i) exists at the time transaction data for the SFT is submitted to NSCC by an Approved SFT Submitter, (ii) provides for, among other things, terms governing the payment and delivery obligations of the parties and (iii) the parties have established (by written agreement, oral agreement, course of conduct or otherwise) would govern such SFT.

The term ''Final Settlement'' would mean the exchange of SFT Securities for SFT Cash described in clause (b) of the proposed definition of Securities Financing Transaction.

The term ''Final Settlement Date'' would mean the Business Day on which the final settlement of a transaction is scheduled to occur. If the transaction is an SFT, the Final Settlement Date means the Business Day on which the Final Settlement of the SFT is scheduled to occur in accordance with proposed Rule 56 or, if the SFT is accelerated in accordance with proposed Rule 56, the date to which the Final Settlement obligations have been accelerated.

The term ''Incremental Additional Independent Amount SFT Cash'' would mean, (a) in respect of a Linked SFT, the excess, if any, of the Independent Amount SFT Cash of the Linked SFT over the Independent Amount SFT Cash of the Settling SFT; (b) in respect of a Non-Returned SFT, the portion of the Price Differential payable by the Transferee, if any, that is attributable to the Independent Amount SFT Cash of the SFT (which shall be calculated by multiplying such Priced Differential by the excess, if any, of the Independent Amount Percentage (as defined below and in the proposed rule change) over 100%); and (c) in respect of any other SFT, the Independent Amount SFT Cash of such SFT.

The term ''Independent Amount Percentage'' would mean, in respect of an SFT, a percentage obtained by dividing the SFT Cash of such SFT by the Market Value SFT Cash (as defined below and in the proposed rule change) of such SFT.

The term ''Independent Amount SFT Cash'' would mean the portion, if any, of the SFT Cash for an SFT equal to the amount by which the SFT Cash for such SFT at the time of the Initial Settlement exceeds the Contract Price of the SFT Securities that are the subject of such SFT.

The term ''Ineligibility Date'' would mean, with respect to an SFT, the date on which the SFT Security that is the subject of the SFT becomes an Ineligible SFT Security (as defined below and in the proposed rule change).

The term ''Ineligible SFT'' would mean an SFT that has, as its subject, SFT Securities that have become Ineligible SFT Securities.

The term ''Ineligible SFT Security'' would mean an SFT Security that is not eligible to be the subject of a novated SFT.

The term ''Initial Settlement'' would mean the exchange of SFT Securities for SFT Cash described in clause (a) of the proposed definition of Securities Financing Transaction.

The term ''Linked SFT'' would mean an SFT entered into by the pre-novation SFT Member parties to a Settling SFT that has the same Transferor, Transferee and subject SFT Securities (including CUSIP) as the Settling SFT. As proposed, a Linked SFT would include an SFT that has as its subject fewer SFT Securities than the corresponding Settling SFT but would not include an SFT that has as its subject more SFT

Securities than the corresponding Settling SFT.

The term ''Market Value SFT Cash'' would mean the portion of the SFT Cash for an SFT equal to the amount of the SFT Cash for such SFT minus the Independent Amount SFT Cash of such SFT.

The term ''Price Differential'' would mean (a) for purposes of the discharge of offsetting Final Settlement and Initial Settlement obligations, (i) the SFT Cash for the Settling SFT (or if the Settling SFT has a greater quantity of SFT Securities as its subject than the corresponding Linked SFT, the Corresponding SFT Cash) minus (ii) the SFT Cash for the Linked SFT; and (b) for all other purposes, (i) the SFT Cash for the SFT minus (ii) the product of the Independent Amount Percentage, if any, and the Current Market Price of the SFT Securities.

The term ''Rate Payment'' would mean an amount payable from one party to an SFT to the other party to the SFT at the Final Settlement expressed as a percentage of the amount of SFT Cash for the SFT. As an example, if the Rate Payment is specified as 0.02%, the amount payable would be the product 0.02% and the SFT Cash for the SFT.

The term ''Recall Date'' would mean, in respect of a Recall Notice, the second Business Day following NSCC's receipt of such Recall Notice.

The term ''Recall Notice'' would mean a notice that triggers the provisions of Section 9(b) of proposed Rule 56, relating to a Buy-In in respect of an SFT and that is submitted by an Approved SFT Submitter on behalf of a Transferor in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose.

The term ''Recalled SFT'' would mean an SFT that has been novated to NSCC in respect of which a Recall Notice has been submitted.

The term ''Securities Financing Transaction'' or ''SFT'' would mean a transaction between two SFT Members pursuant to which (a) one SFT Member agrees to transfer specified SFT Securities to another SFT Member versus the SFT Cash; and (b) the Transferee agrees to retransfer such specified SFT Securities or equivalent SFT Securities (including quantity and CUSIP) to the Transferor versus the SFT Cash on the following Business Day.

The term ''Settling SFT'' would mean, as of any Business Day, an SFT that has been novated to NSCC, the Final Settlement of which is scheduled to occur on that Business Day.

The term ''SFT Account'' would mean a ledger maintained on the books and records of NSCC that reflects the outstanding SFTs that an SFT Member enters into and that have been novated to NSCC, the SFT Positions or SFT Cash associated with those transactions and any debits or credits of cash associated with such transactions effected pursuant to Rule 12 (Settlement). As proposed, the term ''SFT Account'' would include any Agent Clearing Member Customer Omnibus Account and any Sponsored Member Sub-Account.

The term ''SFT Cash'' would mean the specified amount of U.S. dollars that the Transferee agrees to transfer to the Transferor at the Initial Settlement of an SFT, (i) plus any Price Differential paid by NSCC to the SFT Member as Transferor or by the SFT Member as Transferee to NSCC during the term of the SFT and (ii) less any Price Differential paid by NSCC to the SFT Member as Transferee or by the SFT Member as Transferor to NSCC during the term of the SFT.

The term ''SFT Close-out Value'' would mean, with respect to an SFT Position of an SFT Member, an amount equal to: (i) If the SFT Member is the Transferor of the SFT Securities that are the subject of such SFT, (a) the CNS Market Value of the SFT Securities that are the subject of such SFT minus (b) the SFT Cash for such SFT; and (ii) if the SFT Member is a Transferee of the SFT Securities that are the subject of such SFT, (a) the SFT Cash for such SFT minus (b) the CNS Market Value of the SFT Securities that are the subject of such SFT.

The term ''SFT Long Position'' would mean the number of units of an SFT Security which an SFT Member is entitled to receive from NSCC at Final Settlement of an SFT against payment of the SFT Cash.

The term ''SFT Member'' would mean any Member, Sponsored Member acting in its principal capacity, Sponsoring Member acting in its principal capacity or Agent Clearing Member acting on behalf of a Customer, in each case that is a party to an SFT, permitted to participate in NSCC's SFT Clearing Service.

The term ''SFT Position'' would mean an SFT Member's SFT Long Position or SFT Short Position (as defined below and in the proposed rule change) in an SFT Security that is the subject of an SFT that has been novated to NSCC.

The term ''SFT Security'' would mean a security that is eligible to be the subject of an SFT novated to NSCC and is included in the list for which provision is made in proposed Section 1(g) of Rule 3 (Lists to be Maintained), as described below. As proposed, if any new or different security is exchanged for any SFT Security in connection with a recapitalization, merger, consolidation or other corporate action, such new or different security shall, effective upon such exchange, become an SFT Security in substitution for the former SFT Security for which such exchange is made.

The term ''SFT Short Position'' would mean the number of units of an SFT Security that an SFT Member is obligated to deliver to NSCC at Final Settlement of an SFT against payment of the SFT Cash.

The term ''Transferee'' would mean the SFT Member party to an SFT that agrees to receive SFT Securities from the other SFT Member party to the SFT in exchange for SFT Cash in connection with the Initial Settlement of the SFT.

The term ''Transferor'' would mean the SFT Member party to an SFT that agrees to transfer SFT Securities to the other SFT Member party to the SFT in exchange for SFT Cash in connection with the Initial Settlement of the SFT.

Proposed Rule 56, Section 1 (General)

Section 1 of proposed Rule 56 would be a general provision regarding the SFT Clearing Service applicable to Members, Sponsoring Members and Agent Clearing Members that participate in the proposed SFT Clearing Service.

Section 1(a) of proposed Rule 56 would establish that NSCC may accept for novation SFTs entered into between (i) a Member and another Member, (ii) a Sponsoring Member and its Sponsored Member, or (iii) an Agent Clearing Member acting on behalf of a Customer and either (x) a Member or (y) the same or another Agent Clearing Member acting on behalf of a Customer.

Section 1(b) of proposed Rule 56 would provide that any SFT that is submitted to NSCC for novation, and any Member and Sponsored Member that enters into an SFT (and any Customer on behalf of whom an Agent Clearing Member enters into an SFT) shall be subject to the provisions of proposed Rule 56; provided that Sections 15 and 16 of proposed Rule 56 shall only apply to Sponsoring Members, Agent Clearing Members, Sponsored Members and Customers, as applicable.

Section 1(c) of proposed Rule 56 would further provide that any amount of cash described in proposed Rule 56 may be rounded up to the nearest one cent, five cents, 10 cents, 25 cents or dollar according to the rounding convention requested by the SFT Member parties to the relevant SFT as conveyed to NSCC in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose.

Proposed Rule 56, Section 2 (Eligibility for SFT Clearing Service: SFT Member)

Section 2 of proposed Rule 56 would establish the eligibility requirements for using the proposed SFT Clearing Service.

Under Section 2 of proposed Rule 56, NSCC may permit any Member acting in its principal capacity, Sponsored Member acting in its principal capacity, or Agent Clearing Member acting on behalf of a Customer to be an SFT Member and participate in the proposed SFT Clearing Service.

Section 2 of proposed Rule 56 would provide that the rights, liabilities and obligations of SFT Members in their capacity as such shall be governed by the proposed Rule 56. References to a Member would not apply to an SFT Member in its capacity as such, unless specifically noted in the proposed Rule 56 or in such other Rules as applicable to an SFT Member.

Section 2 of proposed Rule 56 would also provide that an SFT Member that participates in NSCC in another capacity pursuant to another Rule, or which has entered into an agreement with NSCC independent from proposed Rule 56, shall continue to have all the rights, liabilities and obligations set forth in such other Rule or pursuant to such agreement, and such rights, liabilities and obligations shall be separate from its rights, liabilities and obligations as an SFT Member, except as contemplated under Sections 15 and 16 of proposed Rule 56, as described below.

Proposed Rule 56, Section 3 (Membership Documents)

Section 3 of proposed Rule 56 would govern the documents that SFT Member applicants would be required to complete and deliver to NSCC. Specifically, Section 3 of proposed Rule 56 would provide that to become an SFT Member, each applicant shall complete and deliver to NSCC documents in such forms as may be prescribed by NSCC from time to time and any other information requested by NSCC.

Proposed Rule 56, Section 4 (Securities Financing Transaction Data Submission)

Section 4 of proposed Rule 56 would govern the submission of transaction data for SFTs into NSCC for novation by Approved SFT Submitters on behalf of Transferors (*e.g.,* lenders) and Transferees (*e.g.,* borrowers).

Section 4(a) of proposed Rule 56 would provide that in order for an SFT to be submitted to NSCC, the transaction data for the SFT must be submitted to NSCC by an Approved SFT Submitter in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Any such transaction data shall be submitted to NSCC on a locked-in basis. In determining whether to accept transaction data from an Approved SFT Submitter, NSCC may require the Approved SFT Submitter to provide a Cybersecurity Confirmation. This is consistent with the existing requirement in Section 6 of Rule 7 (Comparison and Trade Recording Operation (Including Special Representative/Index Receipt Agent)) for organizations reporting trade data to NSCC.[73]

Section 4(b) of proposed Rule 56 would provide that NSCC would not act upon any instruction received from an Approved SFT Submitter in respect of an SFT unless each SFT Member (other than an SFT Member that is a Sponsored Member) designated by the Approved SFT Submitter as a party to such SFT has consented, in a writing delivered to NSCC, to the Approved SFT Submitter acting on behalf of the SFT Member in respect of SFTs.

Section 4(c) of proposed Rule 56 would provide that the obligations reflected in the transaction data on an SFT shall be deemed to have been confirmed and acknowledged by each SFT Member designated by the Approved SFT Submitter as a party thereto and to have been adopted by such SFT Member and, for the purposes of determining the rights and obligations between NSCC and such SFT Member under the proposed Rule 56 and such other Rules applicable to SFTs, shall be valid and binding upon such SFT Member. In addition, Section 4(c) would provide that an SFT Member which has been so designated by an Approved SFT Submitter shall resolve any differences or claims regarding the rights and obligations reflected in the transaction data submitted by the Approved SFT Submitter with the Approved SFT Submitter, and NSCC shall have no responsibility in respect thereof or to adjust its records or the accounts of the SFT Member in any way, other than pursuant to the instructions of the Approved SFT Submitter. Section 4(c) would also provide that any such adjustment shall be in the sole discretion of NSCC.

Section 4(d) of proposed Rule 56 would provide that NSCC makes no representation, whether expressed or implied, as to the complete and timely performance of an Approved SFT Submitter's duties and obligations. Section 4(d) would also provide that NSCC assumes no liability to any SFT Member for any act or failure to act by an Approved SFT Submitter in connection with any information received by NSCC or given to the SFT Member by NSCC via the Approved SFT Submitter, as the case may be.

Section 4(e) of proposed Rule 56 would provide that the submission of each SFT to NSCC and the performance of any obligation under such SFT shall constitute a representation to NSCC and covenant by the Transferor and the Transferee, any Sponsoring Member that is acting on behalf of the Transferor or Transferee and any Agent Clearing Member that is acting on behalf of a Customer in connection with such SFT that its participation in such SFT is in compliance, and would continue to comply, with all applicable laws and regulations, including without limitation Rule 15c3–3 and all other applicable rules and regulations of the Commission, any applicable provisions of Regulation T, Regulation U and Regulation X of the Board of Governors of the Federal Reserve System, and the rules of FINRA and any other regulatory or self-regulatory organization to which the Transferor, the Transferee, any Sponsoring Member that is acting on behalf of the Transferor or Transferee or any Agent Clearing Member that is acting on behalf of a Customer is subject.

Section 4(f) of proposed Rule 56 would provide that the submission of each SFT to NSCC shall constitute an authorization to NSCC by the Transferor, the Transferee and any Agent Clearing Member that is acting on behalf of a Customer for NSCC to give instructions regarding the SFT to DTC in respect of the relevant accounts of the Transferor, Transferee and Agent Clearing Member at DTC.

Proposed Rule 56, Section 5 (Novation of Securities Financing Transactions)

Section 5 of proposed Rule 56 would govern the nature and timing of the novation to NSCC of obligations related to an SFT.

Section 5(a) of proposed Rule 56 would provide that NSCC to only novate an SFT if, at the time of novation, the Final Settlement of such transaction is scheduled to occur one Business Day following the Initial Settlement and the SFT Cash is no less than 100% of the Contract Price of the SFT.

Section 5(b) of proposed Rule 56 would provide that each SFT that is a

[73] Section 6 of Rule 7 (Comparison and Trade Recording Operation (Including Special Representative/Index Receipt Agent)) provides that NSCC may require organizations that deliver trade data to NSCC as described in that Rule to provide a Cybersecurity Confirmation before agreeing to accept such trade data. *Supra* note 4.

Bilaterally Initiated SFT, including any Sponsored Member Transaction, and validated pursuant to the Rules shall be novated to NSCC as of the time NSCC provides the Approved SFT Submitter for such SFT a report confirming such novation in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 5(b) would also provide that each SFT that is neither a Bilaterally Initiated SFT nor a Sponsored Member Transaction and that is validated pursuant to the Rules shall be novated to NSCC as of the time (x) the Initial Settlement of such SFT has completed by (i) the Transferor instructing DTC to deliver from the relevant DTC account of the Transferor to NSCC's account at DTC the subject SFT Securities versus payment of the amount of the SFT Cash, (ii) NSCC instructing DTC to deliver from NSCC's account at DTC to the relevant DTC account of the Transferee the subject SFT Securities versus payment of the amount of SFT Cash and (iii) DTC processes the deliveries in accordance with the rules and procedures of DTC, or (y) the Initial Settlement obligations of such SFT have been discharged in accordance with Section 8 of proposed Rule 56, as described below. In addition, Section 5(b) would provide that if the Initial Settlement obligations of an SFT that is neither a Bilaterally Initiated SFT nor a Sponsored Member Transaction are not discharged in accordance with clause (x) or (y), then such SFT shall be deemed void *ab initio*.

Section 5(c) of proposed Rule 56 would provide that, subject to Sections 5(d) and 5(e) of proposed Rule 56 as described below, the novation of SFTs shall consist of the termination of the Final Settlement, Rate Payment and Distribution Payment obligations and entitlements between the parties to the SFT with respect to such SFT and their replacement with obligations and entitlements to and from NSCC to perform, in accordance with the Rules, the Final Settlement, Rate Payment, and Distribution Payment obligations and entitlements under the SFT.

Section 5(d) of proposed Rule 56 would govern the novation of SFTs having Incremental Additional Independent Amount SFT Cash and provides when the obligation to return Independent Amount SFT Cash for which an associated Clearing Fund deposit has not been made will be novated away from a Transferor to NSCC. Specifically, Section 5(d)(i) of proposed Rule 56 would provide that if an SFT has Incremental Additional Independent Amount SFT Cash, then, unless the SFT is a Sponsored Member Transaction and the Sponsoring Member is the Transferee,[74] the obligation of the Transferor to return the Incremental Additional Independent Amount SFT Cash to the Transferee shall not be terminated and novated to NSCC (nor shall NSCC otherwise be required to return such Incremental Additional Independent Amount SFT Cash), except to the extent that the Transferor, Sponsoring Member or Agent Clearing Member, as applicable, has satisfied the associated Independent Amount SFT Cash Deposit Requirement. As proposed, to the extent the associated Clearing Fund deposit has not been made in respect of Independent Amount SFT Cash at the time of the Initial Settlement, the obligation to return the Independent Amount SFT Cash would not be novated to NSCC.

Section 5(d)(ii) of proposed Rule 56 would provide that to the extent the Transferor, Sponsoring Member or Agent Clearing Member has not satisfied the associated Independent Amount SFT Cash Deposit Requirement, the Transferor's (or in the case of a Non-Returned SFT, NSCC's) obligation to return the Incremental Additional Independent Amount SFT Cash shall: (1) If the SFT is an Agent Clearing Member Transaction for which the Agent Clearing Member, acting on behalf of the Customer, is the Transferor, be terminated and replaced with an obligation of the Agent Clearing Member, in its capacity as principal, to return the Incremental Additional Independent Amount SFT Cash to the Transferee; or (2) otherwise, remain (or in the context of a Non-Returned SFT, be terminated and replaced with) a bilateral obligation of the Transferor to the Transferee. As proposed, if the associated Clearing Fund deposit has not been made in respect of Independent Amount SFT Cash, the Independent Amount SFT Cash would be owed by the Transferor to the Transferee as a bilateral principal-to-principal obligation, unless the Transferor is a Customer of an Agent Clearing Member, in which case the obligation to return the Independent Amount SFT Cash in respect of which the Clearing Fund has not been made would be novated from the Customer to the Agent Clearing Member, and the Agent Clearing Member would owe the Independent Amount SFT Cash back to the Transferee as principal.[75]

Section 5(d)(iii) of proposed Rule 56 would provide that each SFT Member agrees that any obligation to return Incremental Additional Independent Amount SFT Cash that is novated to an Agent Clearing Member or that remains (or becomes) a bilateral obligation of the Transferor to the Transferee in accordance with Section 5(d)(ii) of proposed Rule 56, is a binding and enforceable obligation of the Agent Clearing Member or Transferor, as applicable, regardless of whether the Transferee has entered into an Existing Master Agreement with the Agent Clearing Member or Transferor. In addition, Section 5(d)(iii) would provide that each SFT Member further agrees that any such obligation shall only be due and payable to the Transferee upon the final discharge of NSCC's Final Settlement obligations to the Transferor under the portion of the SFT that has been novated to NSCC in accordance with Section 5(b) of proposed Rule 56, as described above.

Section 5(d)(iv) of proposed Rule 56 would provide that, until the Transferor, Sponsoring Member or Agent Clearing Member has satisfied in full its Independent Amount SFT Cash Deposit Requirement, the SFT Cash of the SFT shall, for purposes of determining the obligations owing to and from NSCC under such SFT, equal the SFT Cash of the SFT less the Incremental Additional Independent Amount SFT Cash.

Section 5(d)(v) of proposed Rule 56 would provide that once the Transferor, Sponsoring Member or Agent Clearing Member, as applicable, has satisfied in full its Independent Amount SFT Cash Deposit Requirement, the obligation of the Transferor to return the Incremental Additional Independent Amount SFT Cash to the Transferee (or, in the case of an SFT that is an Agent Clearing Member Transaction, any obligation of the Agent Clearing Member to return the Incremental Additional Independent Amount SFT Cash to the Transferee) shall be novated to NSCC, and the SFT Cash of the SFT shall, for purposes of determining the obligations owing to and from NSCC under the SFT, include the full amount of the SFT Cash of such SFT.

Section 5(e) of proposed Rule 56 would govern novation in respect of certain corporate actions and provide

[74] Where the Transferor is a Sponsored Member receiving Independent Amount SFT Cash, NSCC would not be requiring Independent Amount SFT Cash Deposit Requirement. This is because in the case of the Sponsored Member's default, the party giving the Independent Amount SFT Cash, *i.e.,* Sponsoring Member, is the guarantor of the settlement obligation of the Sponsored Member Independent Amount SFT Cash back to NSCC.

[75] This interim novation is designed to avoid any credit concerns that would manifest if the Customer and the Transferee had to have a principal bilateral obligation to each other for the Independent Amount SFT Cash.

that NSCC would (i) have an obligation to pay the cash distribution to the Transferor and the Transferee would have an obligation to pay the cash distribution to NSCC, and (ii) not novate any obligations related to unsupported corporate actions and distributions. Specifically, Section 5(e)(i) of proposed Rule 56 would provide that regardless of anything to the contrary in any Existing Master Agreement (including a provision addressing when an issuer pays different amounts to different security holders due to withholding tax or other reasons), the Distribution Payment obligations and entitlements between NSCC and each party to an SFT that has been novated to NSCC shall be the obligation of NSCC to pay to the Transferor and the obligation of the Transferee to pay to NSCC the Distribution Amount in respect of each Distribution and the corresponding entitlements of the Transferor and NSCC, in each case, in accordance with the Rules.

Section 5(e)(ii) of proposed Rule 56 would provide that NSCC shall maintain a list of corporate actions and distributions that NSCC does not support with respect to SFTs. Section 5(e)(ii) would further provide that no Final Settlement, Rate Payment, Distribution Payment or other obligation resulting from a corporate action or distribution that is not supported by NSCC shall be novated to NSCC. In addition, Section 5(e)(ii) would provide that none of such unsupported corporate action shall modify the Final Settlement, Rate Payment, Distribution Payment or other obligations of NSCC, Transferor and Transferee under an SFT that has been novated to NSCC. Section 5(e)(ii) would also provide that each SFT Member agrees that any obligation under an SFT resulting from a corporate action or distribution not supported by NSCC shall remain a binding and enforceable bilateral obligation between the Transferor and the Transferee, regardless of whether the Transferor and Transferee have entered into an Existing Master Agreement.

Section 5(f) of proposed Rule 56 would provide that the novation of SFTs shall not affect the fundamental substance of the SFT as a transfer of securities by one party in exchange for a transfer of cash by the other party and an agreement by each party to return the property it received and shall not affect the economic obligations or entitlements of the parties under the SFT except that following novation, the Final Settlement, Rate Payment and Distribution Payment obligations and entitlements shall be owed to and by NSCC rather than the original counterparty under the SFT.

Section 5(g) of proposed Rule 56 would provide that the representations and warranties made by each of the parties to an SFT that has been novated to NSCC under the parties' Existing Master Agreement, if any, shall (x) to the extent that they are inconsistent with the Rules, be eliminated and replaced with the Rules and (y) to the extent that they are not inconsistent with the Rules, remain in effect as between the parties to the original SFT, but shall not impose any additional obligations on NSCC.

Proposed Rule 56, Section 6 (Rate and Distributions)

Section 6 of proposed Rule 56 would govern the settlement of Rate Payments and supported Distributions by NSCC for novated SFTs. Section 6(a) of proposed Rule 56 would provide that NSCC shall debit and credit the Rate Payment from and to the SFT Accounts of the SFT Member parties to an SFT that has been novated to NSCC as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service) on the scheduled Final Settlement Date for the SFT, irrespective of whether Final Settlement of such SFT occurs on such date.

Section 6(b) of proposed Rule 56 would provide that if (x) a cash dividend is made on or in respect of an SFT Security that is the subject of an SFT that has been novated to NSCC or (y) cash is exchanged, in whole or in part, for such an SFT Security in a merger, consolidation or similar transaction, and the Transferor under the SFT would have been entitled to a cash payment related to the event described in clause (x) or (y) had it not transferred the SFT Securities that are the subject of the SFT to the Transferee in the Initial Settlement, then NSCC shall, within the time period determined by NSCC from time to time, credit the Distribution Amount to the Transferor's SFT Account and debit the Distribution Amount from the Transferee's SFT Account as part of its end of day final money settlement process in accordance with Rule 12 and Procedure VIII. Section 6(b) would further provide that if cash is exchanged in whole for such an SFT Security, then the completion of the actions described in the preceding sentence shall discharge NSCC's Final Settlement obligations to the relevant Transferor and the Transferee's Final Settlement obligations to NSCC.

Proposed Rule 56, Section 7 (Final Settlement of Securities Financing Transactions)

Section 7 of proposed Rule 56 would govern the mechanics of Final Settlement of SFTs by providing that, subject to Section 11 of proposed Rule 56, as described below, the Final Settlement of an SFT that has been novated to NSCC shall be scheduled to occur on the Business Day immediately following the date the SFT was novated to NSCC. Section 7 would further provide that unless the Final Settlement obligations under such an SFT are discharged in accordance with Section 8 of proposed Rule 56, as described below, Final Settlement of the SFT shall occur by (x) NSCC instructing DTC to (i) deliver from the relevant DTC account of the Transferee to NSCC's account at DTC the subject SFT Securities versus payment of the amount of SFT Cash and (ii) deliver from NSCC's account at DTC to the relevant DTC account of the Transferor the subject SFT Securities versus payment of the amount of SFT Cash, and (y) the processing of such deliveries by DTC in accordance to the rules and procedures of DTC; provided that if such transfers do not occur and a Buy-In does not occur in respect of the SFT, then the Final Settlement Date shall be rescheduled for the following Business Day as described in Section 9 of proposed Rule 56, as described below. The obligation of a Transferor (or a Sponsoring Member that guarantees to NSCC the obligation of a Transferor or an Agent Clearing Member that is responsible for the performance of the obligation under an SFT that is an Agent Clearing Member Transaction to return SFT Cash to NSCC) in respect of the Final Settlement of an SFT that has been novated to NSCC shall be to pay the SFT Cash and, if applicable, the Rate Payment to NSCC against the transfer of the relevant SFT Securities by NSCC. The obligation of a Transferee (or a Sponsoring Member that guarantees to NSCC the obligation of a Transferee or an Agent Clearing Member that is responsible for the performance of the obligation under an SFT that is an Agent Clearing Member Transaction to return SFT Securities to NSCC) in respect of the Final Settlement of an SFT that has been novated to NSCC shall be to transfer the SFT Securities and, if applicable, the Rate Payment to NSCC against the transfer of SFT Cash by NSCC.

Section 7 of proposed Rule 56 would also provide that an SFT, or a portion thereof, shall be deemed complete and final upon Final Settlement of the SFT, or such portion, whether pursuant to

Sections 7, 8, 9(d) or 13(c) of proposed Rule 56. Section 7 would also provide that from and after the Final Settlement of an SFT, or a portion thereof, pursuant to any Sections 7, 8, 9(d) or 13(c) of proposed Rule 56, NSCC shall be discharged from its obligations to the Transferor and the Transferee, and NSCC shall have no further obligation in respect of the SFT or such portion. This is to make it clear to SFT Members the point at which settlement of an SFT is deemed to be complete and final.[76]

Proposed Rule 56, Section 8 (Discharge of Offsetting Final Settlement and Initial Settlement Obligations)

Section 8 of proposed Rule 56 would govern the ''roll'' (*i.e.,* pair off or offset) process whereby the Final Settlement obligations on one SFT (*i.e.,* the Settling SFT) between two parties can be offset with the Initial Settlement obligations on another SFT between the same parties (*i.e.,* the Linked SFT) through the debiting and crediting of the difference in cash collateral between the two offsetting SFTs (*i.e.,* the Price Differential).

Section 8(a) of proposed Rule 56 would provide that, subject to the provisions of Section 13(c) of proposed Rule 56, as described below, if, on any Business Day, the pre-novation SFT Member parties to a Settling SFT enter into a Linked SFT and the Approved SFT Submitter provides an appropriate instruction to NSCC in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose, the Final Settlement obligations of the parties to the Settling SFT and the Initial Settlement obligations of the parties to the Linked SFT shall be discharged once NSCC has instructed DTC to debit and credit the relevant DTC accounts, of the SFT Member parties, as described below in Section 8(b) of proposed Rule 56, and DTC processes such debits and credits in accordance with the rules and procedures of DTC. To the extent the Price Differential is not processed by DTC in accordance with the rules and procedures of DTC, NSCC shall debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service). If the Price Differential is positive, NSCC shall (x) credit an amount equal to the Price Differential to the Transferee's SFT Account and (y) debit an amount equal to the Price Differential from the Transferor's SFT Account. If the Price Differential is negative, NSCC shall (x) credit an amount equal to the absolute value of the Price Differential to the Transferor's SFT Account and (y) debit an amount equal to the absolute value of the Price Differential from the Transferee's SFT Account. However, if the Linked SFT has as its subject fewer SFT Securities than the Settling SFT, then only the following Final Settlement obligations under the Settling SFT shall be discharged in accordance with Section 8 of proposed Rule 56: (i) The Transferee's and NSCC's Final Settlement obligations in respect of a quantity of SFT Securities equal to the quantity of SFT Securities that are the subject of the Linked SFT and (ii) the Transferor's and NSCC's Final Settlement obligations in respect of the Corresponding SFT Cash.

Section 8(b) of proposed Rule 56 would provide that if the Price Differential is positive, NSCC shall (x) instruct DTC to debit an amount equal to the Price Differential from NSCC's account at DTC and credit such amount to the relevant DTC account of the Transferee and (y) instruct DTC to debit an amount equal to the Price Differential from the relevant DTC account of the Transferor and credit such amount to NSCC's account at DTC. If the Price Differential is negative, NSCC shall (x) instruct DTC to debit an amount equal to the absolute value of the Price Differential from NSCC's account at DTC and credit such amount to the relevant DTC account of the Transferor and (y) instruct DTC to debit an amount equal to the absolute value of the Price Differential from the relevant DTC account of the Transferee and credit such amount to NSCC's account at DTC.

Proposed Rule 56, Section 9 (Non-Returned Securities Financing Transactions and Recalls)

Section 9 of proposed Rule 56 would govern the processing of a novated SFT for which the Final Settlement obligations have not been discharged either through Final Settlement in accordance with Section 7 of proposed Rule 56 (as described above) or a pair off in accordance with Section 8 of proposed Rule 56 (as described above), and the recall and buy-in process for such an SFT.

Specifically, Section 9(a) of proposed Rule 56 would provide that if (x) the Transferee does not satisfy its Final Settlement obligations in respect of an SFT that has been novated to NSCC on the Final Settlement Date, (y) such Final Settlement obligations have not been discharged in accordance with the provisions of Section 8 of proposed Rule 56, as described above, and (z) a Buy-In has not occurred in respect of such SFT or a portion thereof (such SFT, a ''Non-Returned SFT''), the Final Settlement Date of the Non-Returned SFT shall be rescheduled for the following Business Day, and NSCC shall instruct DTC to debit and credit the relevant DTC accounts of the SFT Member parties, as described in subsection (b) of Section 8 above. To the extent the Price Differential is not processed by DTC in accordance with the rules and procedures of DTC, NSCC shall debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties to the Non-Returned SFT as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service). Section 9(a) would further provide that if the Price Differential is positive, NSCC shall (x) credit an amount equal to the Price Differential to the Transferee's SFT Account and (y) debit an amount equal to the Price Differential from the Transferor's SFT Account; if the Price Differential is negative, NSCC shall (x) credit an amount equal to the absolute value of the Price Differential to the Transferor's SFT Account and (y) debit an amount equal to the absolute value of the Price Differential from the Transferee's SFT Account. This process would continue until Final Settlement, a pair off in accordance with Section 8 of proposed Rule 56 (as discussed above), or a Buy-In.

Section 9(b) of proposed Rule 56 would provide that if NSCC receives a Recall Notice in respect of an SFT that has been novated to NSCC and the Transferee does not satisfy its Final Settlement obligations by the Recall Date for the Recall Notice, the Transferor may, in a commercially reasonable manner,[77] purchase some or all of the SFT Securities that are the

[76] With respect to an SFT between a Sponsoring Member and its Sponsored Member, the SFT would settle on the books of the Sponsoring Member because the Sponsored Member are not participants at DTC and thus would not have accounts at DTC. Accordingly, the finality of the settlement of such SFT would occur when the Sponsoring Member credits the securities and cash on its or the relevant custodian's books and records.

[77] The requirement that a party exercising buy-in rights do so in a ''commercially reasonable manner'' is market standard. *See, e.g.,* Section 13.1 of the Master Securities Loan Agreement published by Securities Industry and Financial Markets Association (''SIFMA''). NSCC has proposed to include this language in order to align the standards applicable to an exercise of remedies in relation to SFTs with those applicable in the bilateral uncleared space. NSCC believes that such alignment will increase certainty for SFT Members and allow them to follow standards with which they are familiar.

subject of the SFT [78] or elect to be deemed to have purchased the SFT Securities, in each case in accordance with such timeframes and deadlines as established by NSCC for such purpose (a ''Buy-In''). Following such purchase or deemed purchase, the Transferor shall (x) give written notice to NSCC of the Transferor's costs to purchase the relevant SFT Securities (including the price paid by the Transferor and any broker's fees and commissions and reasonable out-of-pocket transaction costs, fees or interest expenses incurred in connection with such purchase) (such costs, the ''Buy-In Costs'') or, if the Transferor elects to be deemed to have purchased the SFT Securities, the Deemed Buy-In Costs, and (y) indemnify NSCC, and its employees, officers, directors, shareholders, agents and Members (collectively the ''Buy-In Indemnified Parties''), for any and all losses, liability or expenses of a Buy-In Indemnified Party arising from any claim disputing the calculation of the Buy-In Costs, the Deemed Buy-In Costs or the method or manner of effecting the Buy-In. Section 9(b) would further provide that each SFT Member acknowledges and agrees that each SFT Security is of a type traded in a recognized market and that, in the absence of a generally recognized source for prices or bid or offer quotations for any SFT Security, the Transferor may, for purposes of a Buy-In, establish the source therefor in its commercially reasonable discretion. In addition, Section 9(b) would provide that each SFT Member further acknowledges and agrees that NSCC would not calculate any Buy-In Costs or Deemed Buy-In Costs and shall have no liability for any such calculation. Section 9(b) would also provide that NSCC would assign to any Transferee whose SFT is subject to a Buy-In any rights it may have against the Transferor to dispute the Transferor's calculation of the Buy-In Costs or Deemed Buy-In Costs.

Section 9(c) of proposed Rule 56 would provide that on the Business Day following NSCC's receipt of written notice of the Transferor's Buy-In Costs, NSCC shall debit and credit the Buy-In Amount from and to the SFT Accounts of the SFT Member parties to the SFT as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service). Section 9(c) would provide that if the Buy-In Amount is positive, NSCC would (x) credit the value of the Buy-In Amount to the Transferor's SFT Account and (y) debit the value of the Buy-In Amount from the Transferee's SFT Account. Section 9(c) would further provide that if the Buy-In Amount is negative, NSCC would (x) credit the value of the Buy-In Amount to the Transferee's SFT Account and (y) debit the value of the Buy-In Amount from the Transferor's SFT Account.

Section 9(d) of proposed Rule 56 would provide that following the application of such Buy-In Amount, the Final Settlement obligations under the SFT shall be discharged; provided that if the Transferor effected a Buy-In in respect of some but not all of the SFT Securities that are the subject of an SFT, then only the following obligations shall be discharged: (i) The Transferee's and NSCC's Final Settlement obligations in respect of the SFT Securities for which the Transferor effected the Buy-In and (ii) the Transferor's and NSCC's Final Settlement obligations in respect of the Corresponding SFT Cash.

Section 9(e) of proposed Rule 56 would provide that a Recalled SFT shall be treated as a Non-Returned SFT by NSCC until the earlier of the time that the SFT settles or a Buy-In is processed by NSCC in accordance with Section 9 of proposed Rule 56, except that the additional SFT Deposit required for Non-Returned SFTs under Section 12(c) of proposed Rule 56, as described below, shall not apply. Section 9(e) would further provide that if the Transferor effects the Buy-In in respect of some, but not all, of the SFT Securities that are the subject of a Recalled SFT, the Final Settlement obligations of the Recalled SFT that are not discharged in accordance with Section 9(d) of proposed Rule 56 shall be treated as a Non-Returned SFT until the SFT settles or a Buy-In is processed by NSCC in accordance with Section 9 of proposed Rule 56, and the additional SFT Deposit required under Section 12(c) of proposed Rule 56, as described below, for Non-Returned SFTs shall apply.

Proposed Rule 56, Section 10 (Cancellation, Modification and Termination of Securities Financing Transactions)

Section 10 of proposed Rule 56 would govern the process for cancellations, modifications and terminations of SFTs in NSCC's systems.

Section 10(a) of proposed Rule 56 would provide that transaction data on an SFT that has not been novated to NSCC may be cancelled upon receipt by NSCC of appropriate instructions from the Approved SFT Submitter with respect to such SFT on behalf of both SFT Member parties thereto, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 10(a) would further provide that an SFT that is so cancelled by NSCC would be deemed to be void *ab initio.*

Section 10(b) of proposed Rule 56 would provide the Rate Payment on an SFT that has been novated to NSCC may be modified upon receipt by NSCC of appropriate instructions from the Approved SFT Submitter with respect to such SFT, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 10(b) would further provide that any instructions submitted by an Approved SFT Submitter to modify the Rate Payment of an SFT must be submitted on behalf of both SFT Member parties to the SFT.

Section 10(c) of proposed Rule 56 would provide an SFT that has been novated to NSCC in accordance with Section 5 of proposed Rule 56, as described above, may be terminated upon receipt by NSCC of appropriate instructions from the Approved SFT Submitter with respect to such SFT on behalf of both SFT Member parties thereto, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purposes. Section 10(c) would further provide that following any such termination, no amounts or further obligations shall be owing in respect of the SFT between NSCC and Transferor or NSCC and the Transferee.

Proposed Rule 56, Section 11 (Accelerated Final Settlement)

Section 11 of proposed Rule 56 would allow a Transferee (*i.e.,* the borrower) to do a same day return of borrowed securities, if necessary, to satisfy its regulatory purpose requirements by accelerating the Final Settlement of an SFT that has been novated to NSCC. Specifically, Section 11 would provide that the Transferee may accelerate the scheduled Final Settlement of an SFT that has been novated to NSCC upon receipt by NSCC of appropriate instruction from the Approved SFT Submitter with respect to such SFT, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 11 would further provide that such accelerated Final Settlement shall be effected by NSCC in accordance with the provisions of Section 7 of proposed Rule 56, as described above.

[78] The Transferor would purchase these securities from one or more third parties.

Proposed Rule 56, Section 12 (Clearing Fund Requirements)

Section 12 of proposed Rule 56 would set out the Clearing Fund requirements for SFT Members with respect to their SFT activity.

Section 12(a) of proposed Rule 56 would provide each SFT Member, other than an SFT Member that is a Sponsored Member, shall make and maintain on an ongoing basis a deposit to the Clearing Fund with respect to its SFT Positions (the ''SFT Deposit''). Section 12(a) would provide that, for the avoidance of doubt, the SFT Positions for an SFT Member that is a Sponsoring Member shall include all SFT Positions held in its Sponsored Member Sub-Account(s) in addition to its proprietary account(s).

Section 12(b) of proposed Rule 56 would provide that the SFT Deposit shall be held by NSCC or its designated agents as part of the Clearing Fund, to be applied as provided in Sections 1 through 12 of Rule 4 (Clearing Fund).

Section 12(c) of proposed Rule 56 would provide that NSCC shall calculate the amount of each such SFT Member's required deposit for SFT Positions, subject to a $250,000 [79] minimum (excluding the minimum contribution to the Clearing Fund as required by Procedure XV (Clearing Fund Formula and Other Matters), Section II.(A)), by applying the Clearing Fund formula for CNS Transactions in Sections I.(A)(1)(a), (b), (d), (f) (g), (h) of Procedure XV as well as the additional Clearing Fund formula in Section I.(B)(5) (Intraday Mark-to-Market Charge) of Procedure XV in the same manner as such sections apply to CNS Transactions submitted to NSCC for regular way settlement, plus, with respect to any Non-Returned SFT, an additional charge that is calculated by (x) multiplying the Current Market Price of the SFT Securities that are the subject of such Non-Returned SFTs by the number of such SFT Securities that are the subject of the SFT and (y) multiplying such product by (i) 5% for SFT Members rated 1 through 4 on the Credit Risk Rating Matrix, (ii) 10% for SFT Members rated 5 or 6 on the Credit Risk Rating Matrix, or (iii) 20% for SFT Members rated 7 on the Credit Risk Rating Matrix shall be applied to each SFT Member that is a party thereto [80] (collectively and includes any and all Independent Amount SFT Cash Deposit Requirements, the ''Required SFT Deposit''); provided, however, notwithstanding anything to the contrary, (A) a minimum of 40% of an SFT Member's Required SFT Deposit shall be made in the form of cash and/or Eligible Clearing Fund Treasury Securities and (y) the lesser of $5,000,000 or 10% of an SFT Member's Required SFT Deposit, with a minimum of $250,000,[81] must be made and maintained in cash; provided, further, the additional Clearing Fund formula in Sections I.(B)(1) (Additional Deposits for Members on the Watch List); (2) (Excess Capital Premium); (3) (Backtesting Charge); (4) (Bank Holiday Charge); Minimum Clearing Fund and Additional Deposit Requirements in Sections II.(A)1(a)–(b), II.(B), and II.(C); as well as Section III (Collateral Value of Eligible Clearing Fund Securities) of Procedure XV shall apply to SFT Members in the same manner as such sections apply to Members. As noted in the proposed rule text, for the purpose of applying Section I.(A)(1)(h) of Procedure XV (Margin Liquidity Adjustment (''MLA'') charge), SFT Positions shall be netted with Net Unsettled Positions, as defined in Procedure XV.[82]

Section 12(d) of proposed Rule 56 would provide that NSCC shall have the discretion to require an SFT Member to post its Required SFT Deposit in proportion of cash higher than as required under subsection (c) of proposed Section 12, as determined by NSCC from time to time in view of market conditions and other financial and operational capabilities of the SFT Member. Section 12(d) would further provide that NSCC shall make any such determination based on such factors as NSCC determines to be appropriate from time to time.

Section 12(e) of proposed Rule 56 would provide that if an SFT has Incremental Additional Independent Amount SFT Cash, the Transferor shall make an additional deposit to the Clearing Fund that equals the amount of the Incremental Additional Independent Amount SFT Cash for such SFT (''Independent Amount SFT Cash Deposit, and such requirement the ''Independent Amount SFT Cash Deposit Requirement''). Section 12(e) would also provide that the Independent Amount SFT Cash Deposit Requirement must be satisfied in cash and may, at the discretion of NSCC, be satisfied using Independent Amount SFT Cash Deposits that have previously been made by the Transferor in respect of SFTs with the same Transferee that have since settled.[83] Section 12(e) would further provide that the Transferor shall satisfy any Independent Amount SFT Cash Deposit Requirement in respect of an SFT on the date that the SFT is novated to NSCC pursuant to the timeframes and deadlines established by NSCC for such purpose. In addition, Section 12(e) would provide that if, on a given day, the Transferor satisfies its Independent Amount SFT Cash Deposit Requirement for some, but not all, SFTs novated to NSCC on that day, NSCC will consider the Transferor to have satisfied its Independent Amount SFT Cash Deposit Requirement for none of the SFTs that were novated to NSCC on that day.

Section 12(f) of proposed Rule 56 would provide that references to Clearing Fund in the other Rules shall include and apply to SFT Deposit, and references to Required Fund Deposit shall include and apply to Required SFT Deposit, unless specifically noted otherwise in proposed Rule 56 or in such other Rules.

[79] *Supra* note 32.

[80] The Required SFT Deposit multipliers proposed for Non-Returned SFTs are identical to the Required Fund Deposit multipliers applied to CNS Fails Positions. *See* Procedure XV (Clearing Fund Formula and Other Matters), Section I.(A)(1)(e)), *supra* note 4. While the concept of a ''fail'' does not exist in the securities lending market in the same manner as it does in the cash market, to the extent that the Final Settlement of an SFT is scheduled on a particular date but does not occur, whether directly or through a pair off as described in Section 8 of proposed Rule 56 (as discussed above), that could potentially be a result of a ''squeeze'' or other market dislocation whereby NSCC may face increased market risk in the event of the default of either the Transferor or the Transferee. As a result, NSCC believes it is prudent to apply the same Required Fund Deposit multiplier to a Non-Returned SFT as it does to CNS Fails Positions.

The Credit Risk Rating Matrix is a financial model utilized by NSCC in its ongoing monitoring of Members based on various risk criteria. Each Member is rated by the Credit Risk Rating Matrix on a 7-point rating system, with ''1'' being the strongest credit rating and ''7'' being the weakest credit rating. As described above, to the extent that the Final Settlement of an SFT is scheduled on a particular date but does not occur, NSCC, as a central counterparty, is exposed to market risks. Such exposures generally increase when the SFT Member's risk of default increases, as reflected by the SFT Member's Credit Risk Rating Matrix credit rating. As such, the Required SFT Deposit multipliers proposed for Non-Returned SFTs vary based on the SFT Member's credit rating to reflect the potential increase in market risk from SFT Members with higher risk of default.

[81] *Supra* note 34.

[82] *Supra* note 33.

[83] This could occur in a situation in which an existing SFT settles and then the Transferor enters into a new SFT with the same Transferee (*e.g.,* in a pair off as described in Section 8 of proposed Rule 56, discussed above). In that situation, if the Transferee (or Sponsoring Member or Agent Clearing Member) has not yet called back the Independent Amount SFT Cash Deposit it posted in respect of the Settling SFT, then NSCC may apply the deposit to the Independent Amount SFT Cash Deposit obligation associated with the new SFT.

Proposed Rule 56, Section 13 (Ineligible SFT Securities and Supported Corporate Actions)

Section 13 of proposed Rule 56 would govern the processing of SFTs where the underlying securities become ineligible SFT Securities and the processing of SFTs in the context of supported corporate actions.

Specifically, Section 13(a) of proposed Rule 56 would provide that NSCC would remove an Ineligible SFT Security from the list maintained by NSCC as set forth in Rule 3 (Lists to be Maintained); provided that NSCC may not be able to identify that an SFT Security is an Ineligible SFT Security and remove such SFT Security from the list maintained by NSCC if the reason for the ineligibility is that the SFT Security is undergoing a corporate action or distribution not supported by NSCC and NSCC is not in receipt of reasonably advanced notice of such corporate action or distribution.

Section 13(b) of proposed Rule 56 would provide that notwithstanding Section 12 of proposed Rule 56, as described above, if an SFT Security becomes an Ineligible SFT Security because the Current Market Price of the SFT Security falls below the threshold established by NSCC from time to time, the Required SFT Deposit of each SFT Member party to an SFT which has such Ineligible SFT Security as its subject shall include an additional amount equal to the product of 100% of the Current Market Price of such Ineligible SFT Security and the number of such Ineligible SFT Securities that the SFT has as its subject.[84] The threshold that would be established by NSCC is currently $5.00, which could be modified by NSCC[85] at a later date after NSCC gains more experience with the nature of the SFT portfolios submitted for clearing, as discussed above.

Section 13(c) of proposed Rule 56 would provide that if NSCC declares that an SFT Security has or would become an Ineligible SFT Security because the security is or would become ineligible for processing or is or would be undergoing a corporate action or distribution that is not supported by NSCC, the Final Settlement of all SFTs that have been novated to NSCC and have such SFT Security as their subject must occur before the Ineligibility Date.[86] In addition, Section 13(c) would provide that if following such declaration the Transferee does not satisfy its Final Settlement obligations in respect of any such SFT as provided in Section 7 of proposed Rule 56, as described above, by the Ineligibility Date, NSCC shall, unless NSCC has previously debited and credited the Price Differential from and to the SFT Accounts of the SFT Member parties to the SFT in accordance with Section 8 of proposed Rule 56, as described above, on Ineligibility Date, debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties to the SFT as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service).[87] Section 13(c) would further provide that if the Price Differential is positive, NSCC shall (x) credit an amount equal to the Price Differential to the Transferee's SFT Account and (y) debit an amount equal to the Price Differential from the Transferor's SFT Account. Section 13(c) would also provide that if the Price Differential is negative, NSCC shall (x) credit an amount equal to the absolute value of the Price Differential to the Transferor's SFT Account and (y) debit an amount equal to the absolute value of the Price Differential from the Transferee's SFT Account. Furthermore, Section 13(c) would provide that following the application of Price Differential to an Ineligible SFT on or after the relevant Ineligibility Date, all rights and obligations as between NSCC and the SFT Member parties thereto with respect to such SFT shall be discharged.

Section 13(d) of proposed Rule 56 would provide that if a corporate action supported by NSCC in respect of the SFT Securities that are the subject of an SFT is scheduled to occur, NSCC may cease to permit the discharge of the SFT's Final Settlement obligations, whether pursuant to Section 8 of proposed Rule 56, as described above, or otherwise, and treat the SFT as a Non-Returned SFT for such period of time determined by NSCC as necessary to process the corporate action, except that the additional SFT Deposit required for Non-Returned SFTs under Section 12(c) of proposed Rule 56, as described above, shall not apply. Section 13(d) would further provide that notwithstanding the foregoing, NSCC shall not limit the ability of a Member to accelerate the Final Settlement of an SFT in accordance with Section 11 of proposed Rule 56, as described above, provided that any Price Differential for the SFT has settled in accordance with Section 9(a) of proposed Rule 56, as described above, and that such accelerated Final Settlement is permitted in accordance with the rules and procedures of DTC.

Proposed Rule 56, Section 14 (Cease To Act Procedures for SFT Members With Open Securities Financing Transactions)

Section 14 of proposed Rule 56 would establish NSCC's procedures for when it ceases to act for an SFT Member with open SFTs, including recalling a non-defaulting SFT Member that is a Transferee and liquidating the Defaulting SFT Member's SFT Positions by deeming NSCC to have bought in or sold out some or all the SFT Securities that are the subject of such SFTs at prevailing market price or by crossing (including on a delayed basis).

Section 14(a) of proposed Rule 56 would provide that the provisions of Rule 18 (Procedures for When the Corporation Declines or Ceases to Act) shall not apply to the SFTs except for Sections 1 and 8 of Rule 18.

Section 14(b) of proposed Rule 56 would provide that if NSCC has declined or ceased to act for an SFT Member and subject to Section 14 of proposed Rule 2C, as described above:

(i) Except as otherwise may be determined by the Board of Directors, any SFT entered into by the SFT Member that, at the time NSCC declined or ceased to act for such SFT Member, has not been novated to NSCC pursuant to proposed Rule 56, shall be excluded from all operations of NSCC applicable to such SFT.

(ii) NSCC may decline to act upon any instructions, transaction data or notices submitted by such SFT Member or an Approved SFT Submitter on behalf of such SFT Member.

(iii) NSCC shall close-out such SFT Member's proprietary SFT Positions as

[84] If the Current Market Price of the SFT Security falls below the threshold established by NSCC from time to time, NSCC would assess the additional amount as part of the Required SFT Deposit.

[85] *Supra* note 23.

[86] The duration between the declaration and Ineligibility Date would vary. If the ineligibility is because the SFT Security will become ineligible for processing (*i.e.,* no longer CNS eligible), the duration would depend on the timing of the CNS ineligibility triggering event (*e.g.,* compliance with regulatory orders, risk concerns, trading suspension, etc.).

If the ineligibility is because the SFT Security will be undergoing an unsupported corporate action or distribution, then it would depend on when the issuer of the relevant SFT Security announces the particular corporate action or distribution event and the record date for such corporate action or distribution. Specifically, when announcements from the issuers are received by DTC, DTC would announce the corporate action or distribution event. NSCC would notify Members of such event when it is announced by DTC and would generally tie the Ineligibility Date to shortly before or on the record date for the corporate action or distribution.

[87] NSCC is proposing this simplified process for applying Price Differentials to Ineligible SFTs because NSCC anticipates such instances would occur on a much less frequent basis than those in connection with Linked SFTs pursuant to Section 8(a) of proposed Rule 56 and Non-Returned SFTs pursuant to Section 9(a) of proposed Rule 56.

well as any SFT Positions established in the SFT Member's Agent Clearing Member Customer Omnibus Account by (x) buying in or selling out, as applicable, some or all of the SFT Securities that are the subject of each SFT of the SFT Member that has been novated to NSCC but for which the Final Settlement has not occurred, (y) deeming NSCC to have bought in or sold out some or all such SFT Securities at the bid or ask price therefor, respectively, from a generally recognized source or at such price or prices as NSCC is able to purchase or sell, respectively, some such SFT Securities, or (z) otherwise liquidating such SFT Member's SFT Positions; provided, however, if in the opinion of NSCC, the close-out of such SFT Member's SFT Position would create a disorderly market in the relevant SFT Security, then the timing of the completion of such close-out shall be in the discretion of NSCC.

(iv) Any Sponsored Member Transactions for which a Defaulting SFT Member is the Sponsoring Member and which have been novated to NSCC shall continue to be processed by NSCC. NSCC, in its sole discretion, would determine whether to close-out the SFT Positions established in a Defaulting SFT Member's Sponsored Member Sub-Accounts (if any), which close out shall be effected in accordance with the provisions of Section 14(b)(iii), as described above, or instead permit the relevant Sponsored Members to complete settlement of the relevant Sponsored Member Transactions.

(v) If, in the aggregate, the close-out of a Defaulting SFT Member's proprietary SFT Positions results in a profit to NSCC, such profit shall be applied to any loss to NSCC arising from the closing out of such Defaulting SFT Member (including losses arising from closing out the SFT Positions established in any of the Defaulting SFT Member's Agent Clearing Member Customer Omnibus Accounts or Sponsored Member Sub-Accounts or losses arising from closing out any Net Close Out Positions of the Defaulting SFT Member). If, in the aggregate, the close-out of a Defaulting SFT Member's proprietary SFT Positions results in a loss to NSCC, such loss shall be netted against, or otherwise applied to, any amounts owed by NSCC to such SFT Member in its proprietary capacity and thereafter debited from such Defaulting SFT Member's Clearing Fund deposit at NSCC.

(vi) If, in the aggregate, the close-out of the SFT Positions established in the Agent Clearing Member Customer Omnibus Accounts of a Defaulting SFT Member results in a profit to NSCC, such profit shall be credited to the Agent Clearing Member Customer Omnibus Accounts. If, in the aggregate, the close-out of the SFT Positions established in the Agent Clearing Member Customer Omnibus Accounts of a Defaulting SFT Member results in a loss to NSCC, such loss shall be netted against, or otherwise applied to, any amounts owed by the NSCC to such SFT Member in its proprietary capacity, and thereafter debited from the Defaulting SFT Member's Clearing Fund deposit at NSCC.

(vii) If, in the aggregate, the close-out of the SFT Positions established in a Defaulting SFT Member's Sponsored Member Sub-Accounts results in a profit to NSCC, such profit shall be credited to the Sponsored Member Sub-Accounts. If, in the aggregate, the closing out of the SFT Positions established in a Defaulting SFT Member's Sponsored Member Sub-Accounts results in a loss to NSCC, such loss shall be netted against, or otherwise applied to, any amounts owed by NSCC to such SFT Member in its proprietary capacity and thereafter debited from such Defaulting SFT Member's Clearing Fund deposit at NSCC.

(viii) The Final Settlement of each SFT that has been novated to NSCC and that, prior to novation, was with a Defaulting SFT Member (each, a ''Default-Related SFT'') shall occur in accordance with the normal settlement cycle for the purchase or sale of securities, as applicable; provided that NSCC may in its discretion accelerate Final Settlement of a Default-Related SFT to a Business Day no earlier than the scheduled Final Settlement Date of the Default-Related SFT; and provided further that, if NSCC delays the close-out of any or all of a Defaulting SFT Member's SFT Positions on the basis that such a close-out would create a disorderly market in the relevant SFT Securities, then NSCC may elect to correspondingly delay Final Settlement of any Default-Related SFTs that have the same SFT Securities as their subject.

As proposed, if doing an immediate buy-in or sell-out (as applicable) of a defaulter's novated SFT Positions would create a disorderly market, then NSCC may delay in executing such buy-in or sell-out. This is because, as a systemically important financial market utility, NSCC has regulatory obligations not to create disorderly markets or fire sale risk in the course of its liquidation of a defaulted Member. If NSCC were to delay in executing any buy-in or sell-out, NSCC may correspondingly delay physical settlement of the SFTs with the Defaulting Member's pre-novation counterparties.

(ix) Until Final Settlement, each Default-Related SFT shall be treated as a Non-Returned SFT, and NSCC would pay and collect the Price Differential amounts described in Section 9(a) of proposed Rule 56, as described above. NSCC shall have all of the rights of a Transferor in relation to any Default-Related SFT in respect of which the Defaulting SFT Member was the Transferor, including the ability to deliver a Recall Notice in relation to such Default-Related SFT and to effect a Buy-In. However, no additional SFT Deposit required for Non-Returned SFTs under Section 12(c) of proposed Rule 56, as described above, shall apply to any Default-Related SFT, and no Rate Payments shall accrue on Default-Related SFTs after the date on which NSCC ceases to act for the Defaulting SFT Member.

Accordingly, as proposed, during the pendency of any delay in executing any buy-in or sell-out, NSCC would continue to satisfy any Price Differential (*i.e.,* the mark-to-market of the SFT Securities) owing to the non-defaulting party.

Proposed Rule 56, Section 15 (Sponsored Member SFT Clearing)

Section 15 of proposed Rule 56 would govern the requirements for Sponsored Member participation in the proposed SFT Clearing Service.

Section 15(a) of proposed Rule 56 would provide that a Sponsoring Member shall be permitted to submit, either directly as an Approved SFT Submitter or via another Approved SFT Submitter, to NSCC Sponsored Member Transactions between itself and its Sponsored Member in accordance with the provisions of proposed Rule 56 and proposed Rule 2C.

Section 15(b) of proposed Rule 56 would provide that NSCC shall maintain for the Sponsoring Member one or more Sponsored Member Sub-Accounts. Section 15(b) would further provide that the SFT Deposits for each Sponsored Member Sub-Account shall be calculated separately based on the SFT Positions in such Sponsored Member Sub-Account, and the Sponsoring Member, as principal, shall be required to satisfy the SFT Deposits for each of the Sponsoring Member's Sponsored Member Sub-Accounts.

Section 15(c) of proposed Rule 56 would provide that settlement of the Final Settlement, Rate Payment, Price Differential, Distribution Payment and other obligations of a Sponsored Member Transaction that have been novated to NSCC shall be effected by the

Sponsoring Member, as settlement agent for the relevant Sponsored Member, crediting and debiting the account the Sponsoring Member maintains for the Sponsored Member on the Sponsoring Member's books and records.

Proposed Rule 56, Section 16 (Customer SFT Clearing)

Section 16 of proposed Rule 56 would govern the requirements for participation by Agent Clearing Members and their Customers in the proposed SFT Clearing Service.

Section 16(a) of proposed Rule 56 would provide that an Agent Clearing Member shall be permitted to submit, either directly as an Approved SFT Submitter or via another Approved SFT Submitter, to NSCC for novation SFTs that are Agent Clearing Member Transactions. Section 16(a) would further provide that any such submission shall be in accordance with proposed Rule 56 and proposed Rule 2D.

Section 16(b) of proposed Rule 56 would provide that with respect to an Agent Clearing Member that submits SFTs to NSCC for novation on behalf of its Customers, NSCC shall maintain one or more Agent Clearing Member Customer Omnibus Accounts in the name of the Agent Clearing Member for the benefit of its Customers in which all SFT Positions and SFT Cash carried by the Agent Clearing Member on behalf of its Customers are reflected; provided, that each Agent Clearing Member Customer Omnibus Account may only contain activity where the Agent Clearing Member is acting as Transferor on behalf of its Customers, or as Transferee on behalf of its Customers, but not both.

Section 16(c) of proposed Rule 56 would provide that with respect to SFTs entered into on behalf of its Customers and maintained in the Agent Clearing Member Customer Omnibus Account, the Agent Clearing Member shall act solely as agent of its Customers in connection with the clearing of such SFTs; provided, that the Agent Clearing Member shall remain fully liable for the performance of all obligations to NSCC arising in connection with such SFTs; and provided further, that the liabilities and obligations of NSCC with respect to such SFTs entered into by the Agent Clearing Member on behalf of its Customers shall extend only to the Agent Clearing Member. Without limiting the generality of the foregoing, NSCC shall not have any liability or obligation arising out of or with respect to any SFT to any Customer of an Agent Clearing Member.

Section 16(d) of proposed Rule 56 would provide the SFT Deposits for each Agent Clearing Member Customer Omnibus Account shall be calculated separately based on the SFT Positions in such Agent Clearing Member Customer Omnibus Account, and the Agent Clearing Member shall, as principal, be required to satisfy the SFT Deposit for each of Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts.

Proposed Rule 56, Section 17 (Corporation Default)

Section 17 of proposed Rule 56 would govern the close-out netting process that would apply with respect to SFTs that have been novated to NSCC in the event of a default of NSCC.

Section 17(a) of proposed Rule 56 would provide that if a ''Corporation Default'' occurs pursuant to Section 2 of Rule 41 (Corporation Default), all SFTs that have been novated to NSCC but not yet settled, and all obligations and rights arising thereunder which have been assumed by NSCC pursuant to proposed Rule 56, shall be immediately terminated, and the Board of Directors shall determine the Aggregate Net SFT Close-out Value owed by or to each SFT Member with respect to each of its SFT Positions.

Section 17(b) of proposed Rule 56 would provide that for purposes of Section 17 of proposed Rule 56, a Member shall be considered a different SFT Member in respect of each of (i) its proprietary SFT Positions; (ii) the SFT Positions established in its Agent Clearing Member Customer Omnibus Accounts (if any); and (iii) the SFT Positions established in its Sponsored Member Sub-Accounts (if any).

Section 17(c) of proposed Rule 56 would provide that each SFT Member's Aggregate Net SFT Close-out Value shall be netted and offset as described in Section 14(b)(iv) through Section 14(b)(vi) of proposed Rule 56, as though NSCC had ceased to act for each SFT Member.

Section 17(d) of proposed Rule 56 would provide that the Board of Directors shall notify each SFT Member of the Aggregate SFT Close-out Value, taking into account the netting and offsetting provided for above. SFT Members that have been notified that they owe an amount to NSCC shall pay that amount on or prior to the date specified by the Board of Directors, subject to any applicable setoff rights. SFT Members who have a net claim against NSCC shall be entitled to payment thereof along with other Members' and any other creditors' claims pursuant to the underlying contracts with respect thereto, the Rules and applicable law. Section 17(d) would further provide that nothing therein shall limit the rights of NSCC upon an SFT Member default (including following a Corporation Default), including any rights under any Clearing Agency Cross-Guaranty Agreement or otherwise.

Proposed Rule 56, Section 18 (Other Applicable Rules, Procedures, and Addendums)

Section 18 of proposed Rule 56 would establish certain other Rules as being applicable to SFTs and SFT Members, unless expressly stated otherwise.

Specifically, Section 18 of proposed Rule 56 would provide that Rule 1 (Definitions and Descriptions), Rule 2 (Members, Limited Members and Sponsored Members), Rule 5 (General Provisions), Rule 12 (Settlement), Rule 13 (Exception Processing), Rule 17 (Fine Payments), Rule 19 (Miscellaneous Rights of the Corporation), Rule 21 (Honest Broker), Rule 22 (Suspension of Rules), Rule 23 (Action by the Corporation), Rule 24 (Charges for Services Rendered), Rule 26 (Bills Rendered), Rule 27 (Admission to Premises of the Corporation—Powers of Attorney, Etc.), Rule 28 (Forms), Rule 29 (Qualified Securities Depositories), Rule 32 (Signatures), Rule 33 (Procedures), Rule 34 (Insurance), Rule 35 (Financial Reports), Rule 36 (Rule Changes), Rule 37 (Hearing Procedures), Rule 38 (Governing Law and Captions), Rule 39 (Reliance on Instructions), Rule 40 (Wind-Down of a Member, Fund Member or Insurance Carrier/Retirement Services Member), Rule 41 (Corporation Default), Rule 42 (Wind-down of the Corporation), Rule 45 (Notice), Rule 47 (Interpretation of Rules), Rule 48 (Disciplinary Proceedings), Rule 49 (Release of Clearing Data and Clearing Fund Data), Rule 55 (Settling Banks and AIP Settling Banks), Rule 58 (Limitations on Liability), Rule 60 (Market Disruption and Force Majeure), Rule 60A (Systems Disconnect: Threat of Significant Impact to the Corporation's Systems), Rule 63 (SRO Regulatory Reporting), Procedure I (Introduction), Procedure VIII (Money Settlement Service), Procedure XII (Time Schedule), Procedure XIII (Definitions), Procedure XIV (Forms, Media and Technical Specifications), Procedure XV (Clearing Fund Formula and Other Matters), Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History), Addendum H (Interpretation of the Board of Directors Release of Clearing Data), Addendum L (Statement of Policy

Pertaining to Information Sharing), and Addendum P (Fine Schedule) shall apply to SFTs and SFT Members, unless the context otherwise requires.

(D) Other Rule Changes

In connection with proposed Rules 2C, 2D and 56, NSCC is also proposing to make conforming and technical changes to the following Rules to accommodate the proposed introduction of the new membership categories and the proposed SFT Clearing Service.

Rule 1 (Definitions and Descriptions)

In connection with proposed Rules 2C, 2D and 56, NSCC is proposing to add the following defined terms to Rule 1, in alphabetical order: Agent Clearing Member, Agent Clearing Member Agreement, Agent Clearing Member Customer Omnibus Account, Agent Clearing Member Required Fund Deposit, Agent Clearing Member Termination Date, Agent Clearing Member Transaction, Agent Clearing Member Voluntary Termination Notice, Aggregate Net SFT Close-out Value, Approved SFT Submitter, Bilaterally Initiated SFT, Buy-In, Buy-In Amount, Buy-In Costs, Buy-In Indemnified Parties, Contract Price, Corresponding SFT Cash, Customer, Customer Clearing Service, Deemed Buy-In Costs, Defaulting SFT Member, Default-Related SFT, Distribution, Distribution Amount, Distribution Payment, Existing Master Agreement, Final Net Settlement Position, Final Settlement, Final Settlement Date, Former Sponsored Member, Incremental Additional Independent Amount SFT Cash, Independent Amount Percentage, Independent Amount SFT Cash, Independent Amount SFT Cash Deposit, Independent Amount SFT Cash Deposit Requirement, Ineligibility Date, Ineligible SFT, Ineligible SFT Security, Initial Settlement, Linked SFT, Market Value SFT Cash, Net Capital, Net Member Capital, Net Worth, Non-Returned SFT, Price Differential, Rate Payment, Recall Date, Recall Notice, Recalled SFT, Required SFT Deposit, Securities Financing Transaction or SFT, Securities Financing Transaction Clearing Service or SFT Clearing Service, Settling SFT, SFT Account, SFT Cash, SFT Close-out Value, SFT Deposit, SFT Long Position, SFT Member, SFT Position, SFT Security, SFT Short Position, Sponsored Member, Sponsored Member Agreement, Sponsored Member Liquidation Amount, Sponsored Member Sub-Account, Sponsored Member Termination Date, Sponsored Member Transaction, Sponsored Member Voluntary Termination Notice, Sponsoring Member, Sponsoring Member Agreement, Sponsoring Member Guaranty, Sponsoring Member Liquidation Amount, Sponsoring Member Required Fund Deposit, Sponsoring Member Settling Bank Omnibus Account, Sponsoring Member Termination Date, Sponsoring Member Voluntary Termination Notice, Sponsoring/Sponsored Membership Program Indemnified Parties or SMP Indemnified Parties, Transferee, Transferor and Volatility Charge.

In addition, NSCC is proposing to add three defined terms: ''CNS Market Value'', which is already defined in Rule 41 (Corporation Default), ''CNS Transaction'', which is already defined in Rule 11 (CNS System), and ''Corporation Default'', which is already defined in Rule 41 (Corporation Default).

NSCC is also proposing to add the defined term ''FICC'' to mean Fixed Income Clearing Corporation. The term ''FICC'' is already used in Addendum P (Fine Schedule) but has not been defined.

Furthermore, NSCC is proposing to reorder the defined term Index Receipt Agent so it would be in alphabetical order.

In connection with proposed Rules 2C, 2D and 56, NSCC is also proposing to modify the definitions for the following defined terms in Rule 1, in alphabetical order: Clearing Fund, FFI Member, Qualified Securities Depository, and Required Fund Deposit. Specifically, NSCC is proposing to expand the definition of Clearing Fund to include SFT Deposit, unless noted otherwise in the Rules. NSCC is also proposing to revise the definition of FFI Member and the proposed definition of Tax Certification [88] to add references to Sponsored Members. Furthermore, NSCC is proposing to revise the definition of Qualified Securities Depository to include a reference to transfer of securities in respect of the proposed SFT Clearing Service. Lastly, NSCC is proposing to expand the definition of Required Fund Deposit to include Sponsoring Member Required Fund Deposit, the Agent Clearing Member Required Fund Deposit, and the Required SFT Deposit, unless noted otherwise in the Rules.

[88] NSCC has proposed to add Tax Certification as a defined term in Rule 1 (Definitions and Descriptions) under a separate proposal. *See* SR–NSCC–2021–009, which was filed with the Commission but has not yet been published in the **Federal Register.** A copy of this proposed rule change is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

Rule 2 (Members and Limited Members)

NSCC is proposing to revise the title of Rule 2 to include a reference to Sponsored Members. As proposed, Rule 2 would be retitled as ''Members, Limited Members and Sponsored Members''.

NSCC is also proposing to revise Section 2 of Rule 2. Specifically, NSCC is proposing to clarify in Section 2(i) that a Member shall include a Member in its capacity as a Sponsoring Member to the extent specified in proposed Rule 2C and an Agent Clearing Member to the extent specified in proposed Rule 2D. In addition, NSCC is proposing to add a new subsection (iii) to Section 2 that would describe Sponsored Members as any Person that has been approved by NSCC to become a Sponsored Member and only participates in NSCC's SFT Clearing Service as provided for in proposed Rule 56. In addition, NSCC is proposing to add references to Sponsored Members in the last paragraph of Section 2, Sections 4(i) and 4(ii), and proposed Section 5 [89] of Rule 2.

Rule 3 (Lists to be Maintained)

NSCC is proposing to add subsection (g) to Section 1 of Rule 3 to provide that NSCC shall maintain a list of the securities that may be the subject of a novated SFT and may from time to time add securities to such list or remove securities therefrom.

NSCC is also proposing to modify Sections 3(b) and 4 of Rule 3 to include references to Sponsored Members.

Rule 4 (Clearing Fund)

NSCC is proposing to modify Section 1 of Rule 4 in order to make it clear that the minimum Required Fund Deposit amount provided therein shall not include Required SFT Deposit, which is subject to a separate minimum $250,000 deposit requirement pursuant to Section 12(c) of proposed Rule 56, as described above.

Rule 5 (General Provisions)

NSCC is proposing to modify Section 1 of Rule 5 in order to provide that delivery of SFT Securities and SFT Cash to NSCC shall be made through the facilities of a Qualified Securities Depository. In addition, NSCC is also proposing changes in Section 1 of Rule 5 to provide that delivery and payment with respect to SFT Securities and SFT Cash shall be effected as prescribed in

[89] NSCC has proposed to add Section 5 to Rule 2 in a separate proposal that has been filed with the Commission. *See* Securities Exchange Act Release No. 92334 (July 7, 2021), 86 FR 36815 (July 13, 2021) (SR–NSCC–2021–007).

the Rules and regulations as NSCC may from time to time adopt.

Rule 24 (Charges for Services Rendered)

NSCC is proposing to modify Section 1 of Rule 24 to include a reference to Sponsored Members. In addition, NSCC is proposing to add an additional paragraph in Section 1 to clarify that Members shall be responsible for all fees pertaining to their respective Sponsoring Member activity or Agent Clearing Member activity, if applicable, as set forth in NSCC's Fee Structure.[90]

Rule 26 (Bills Rendered)

NSCC is proposing to modify the first paragraph of Rule 26 to include a reference to Sponsored Members. In addition, NSCC is proposing to add a sentence in that paragraph to clarify that Members shall receive bills for their respective aggregate Sponsoring Member activity and Agent Clearing Member activity, if applicable, as set forth in NSCC's Fee Structure.[91]

Rule 39 (Reliance on Instructions)

NSCC is proposing to modify Rule 39 to include references to Sponsored Member and Approved SFT Submitter, where applicable. Specifically, NSCC is proposing to modify the first paragraph of Rule 39 to provide that NSCC may accept or rely upon instructions given to NSCC by a Sponsored Member or Approved SFT Submitter, in addition to the various participant types currently provided in Rule 39. Similarly, NSCC is proposing to add references to Approved SFT Submitter in the second and last paragraphs of Rule 39 so that those paragraphs would also apply to instructions submitted by an Approved SFT Submitter.

Rule 42 (Wind-Down of the Corporation)

NSCC is proposing to modify Rule 42 to include references to Sponsored Members. Specifically, for purposes of Rule 42, NSCC is proposing to revise the defined term ''Limited Member'' to include Sponsored Members.

Rule 49 (Release of Clearing Data and Clearing Fund Data)

NSCC is proposing to modify Rule 49 to clarify that NSCC would release Clearing Data of a Sponsored Member to its Sponsoring Member upon the Sponsoring Member's written request. Specifically, as proposed, Section (a) of Rule 49 would provide that if the participant is a Sponsored Member, NSCC would also release Clearing Data relating to transactions of such participant to such participant's Sponsoring Member upon the Sponsoring Member's written request.

Rule 58 (Limitations on Liability)

NSCC is proposing to modify Rule 58 to clarify that NSCC would not be responsible for the completeness or accuracy of the transaction data received from the Approved SFT Submitters, nor shall NSCC, absent gross negligence on NSCC's part, be responsible for any errors, omissions or delays that may occur in the transmission of transaction data from an Approved SFT Submitter.

Rule 64 (DTCC Shareholders Agreement)

The proposed changes to Section 4 of Rule 64 and footnote 1 thereto would provide that Rule 64 would not be applicable to a Sponsored Member. However, if the Sponsored Member is also a member or participant of another clearing agency subsidiary of DTCC, the Sponsored Member may be a Mandatory Purchaser Participant or a Voluntary Purchaser Participant pursuant to the terms of the Shareholders Agreement and the rules and procedures of such other subsidiary.

Procedure XV (Clearing Fund Formula and Other Matters)

NSCC is proposing to modify subsection A of Section II (Minimum Clearing Fund and Additional Deposit Requirements) in Procedure XV in order to make it clear that the minimum contribution amount provided therein shall not include Required SFT Deposit, which is subject to a separate minimum $250,000 deposit requirement pursuant to Section 12(c) of proposed Rule 56, as described above. In addition, NSCC is proposing to modify Section II.A of Procedure XV to make it clear that calculation of a Member's Required Fund Deposit amount that must be in cash shall exclude the Required SFT Deposit, which is subject to a separate $250,000 minimum cash requirement pursuant to Section 12(c) of proposed Rule 56, as described above.

Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History)

NSCC is proposing an additional section for the Sponsored Members. Specifically, NSCC is proposing to add Section 13 to Addendum B that would describe the qualification and operational capability that NSCC would require from Sponsored Members.

In addition, NSCC is proposing a conforming change to replace ''net worth'' in Section 3.B.4. with ''Net Worth'' to reflect the proposed defined term in Rule 1 (Definitions).

Furthermore, NSCC is proposing a technical change to correct a footnote numbering in Section 12.B.

Addendum P (Fine Schedule)

NSCC is proposing to modify paragraph (2) of Addendum P to reflect the proposed notification obligations of Sponsoring Members, Sponsored Members and Agent Clearing Members as proposed under Sections 2(i) and 3(d) of proposed Rule 2C and Section 2(i) of proposed Rule 2D.

(vii) Impact of the Proposed SFT Clearing Service on Various Persons

The proposed SFT Clearing Service would be voluntary. Institutional firm clients that wish to become Sponsored Members, and Members that wish to participate in the proposed SFT Clearing Service would have an opportunity to review the proposed rule change and determine if they would like to participate. Choosing to participate would make these entities subject to all of the rule changes that would be applicable to the proposed SFT Clearing Service and membership type, as described below.

The proposed SFT Clearing Service would affect institutional firm clients that choose to become Sponsored Members because it would impose various requirements on them. These requirements include, but are not limited to, proposed Rule 56 and the following sections of proposed Rule 2C: (1) Eligibility, approval process and on-going membership requirements as specified in Sections 3 and 4, (2) requirements related to restriction on access to NSCC services in Section 11, (3) requirements related to insolvency of a Sponsored Member in Section 13, and (4) requirements related to liquidation of positions resulting from Sponsored Member Transactions in Section 14. Specific details on the requirements and the manner in which the proposed SFT Clearing Service would affect institutional firm clients that choose to become Sponsored Members can be found above in Item II(B)(vi)(A)—Proposed Rule Changes—Proposed Rule 2C—Sponsoring Members and Sponsored Members.

The proposed SFT Clearing Service would affect Members that choose to participate in the service because it would impose various requirements on them, depending on whether they are participating in the service as a Sponsoring Member, an Agent Clearing

[90] *See* Addendum A (Fee Structure), *supra* note 4.

[91] *Id.*

Member and/or as a Member. These requirements include, but are not limited to, the requirements specified in proposed Rule 2C for Members participating in the service as a Sponsoring Member; the requirements specified in proposed Rule 2D for Members participating in the service as an Agent Clearing Member; and for all Members participating in the service, the requirements specified in proposed Rule 56. Specific details on these requirements and the manner in which the proposed SFT Clearing Service would affect Members that choose to participate in the proposed SFT Clearing Service are described above in Items II(B)(vi)(A)—Proposed Rule Changes—Proposed Rule 2C—Sponsoring Members and Sponsored Members, (vi)(B)—Proposed Rule Changes—Proposed Rule 2D—Agent Clearing Members, and (vi)(C)—Proposed Rule Changes—Proposed Rule 56—Securities Financing Transaction Clearing Service.

The proposed SFT Clearing Service would not materially affect existing Members that do not choose to participate in it. First, the proposed SFT Clearing Service would not materially affect the operation of CNS or any other services offered by NSCC. In addition, SFT Members would be subject to the same or higher credit standards and market risk management requirements as those applicable to Members that choose not to participate in the proposed SFT Clearing Service, as described above. Moreover, although Members who choose not to participate in the proposed SFT Clearing Service would be subject to potential loss allocation in the event of an SFT Member default (just as SFT Members would be subject to potential loss allocation in the event of the default of a Member that chooses not to participate in the proposed SFT Clearing Service), the underlying securities that would be subject of any such default-related liquidation of an SFT Member are a subset of the same CNS-eligible securities with respect to which NSCC today guarantees settlement in the cash equity market, thus not materially affecting the nature of the loss allocation risk applicable to Members.

Expected Effect on, and Management of, Risks to the Clearing Agency, Its Participants and the Market

NSCC expects certain market, liquidity, credit and operational risks may be presented by the establishment of the proposed SFT Clearing Service and the additional membership categories proposed in connection therewith. Accordingly, NSCC proposes to address and manage each of these risks as detailed below.

Market Risk

The proposal is structured in a manner that allows NSCC to protect itself from associated market risk. SFT activity would be risk managed by NSCC in a manner consistent with Members' CNS positions. Moreover, all SFT Positions would be margined independently of the Member's other positions, *i.e.,* Required SFT Deposit. The Required SFT Deposit would generally be calculated using the same procedure applicable to CNS positions, but with a separate $250,000 minimum.[92]

As described above, consistent with the manner in which clearing fund requirements are satisfied by members of FICC for their cleared securities financing transactions, NSCC would require that (i) a minimum of 40% of an SFT Member's Required SFT Deposit consist of a combination of cash and Eligible Clearing Fund Treasury Securities and (ii) the lesser of $5,000,000 or 10% of an SFT Member's Required SFT Deposit (but not less than $250,000) [93] consist of cash.[94] NSCC would also have the discretion to require a Member to post its Required SFT Deposit in proportion of cash higher than would otherwise be required. NSCC's determination to impose any such requirement would be made in view of market conditions and other financial and operational capabilities of the relevant SFT Member.

Furthermore, NSCC would require additional Clearing Fund deposits to address two situations that may present unique risk. First, if the share price of underlying securities of an SFT that has already been novated to NSCC falls below the threshold established by NSCC from time to time, NSCC would require both pre-novation counterparties to the SFT to post Clearing Fund equal to 100% of the market value of such underlying securities until such time as the per share price of the underlying securities equals or exceeds such threshold. Second, in the event an SFT is subject to a collateral haircut (*i.e.,* the SFT Cash exceeds the market value of the securities), NSCC would require the Transferor (or in the case of an Agent Clearing Member Transaction, the Agent Clearing Member) to post Clearing Fund equal to such excess.

Additionally, the Sponsoring Member Required Fund Deposits and Agent Clearing Member Required Fund Deposits would each be calculated on a gross basis, and no offsets for netting of positions as between different Sponsored Members or different Customers, as applicable, would be permitted. Moreover, any Member that opts to apply to become a Sponsoring Member or an Agent Clearing Member would be subject to an activity limit (as described above).

NSCC is also proposing to limit the SFTs eligible for clearing to overnight transactions on securities that are CNS-eligible equity securities with a share price that equals or exceeds the threshold established by NSCC from time to time and that are fully collateralized by cash. NSCC believes these limitations, in addition to the Clearing Fund requirements, would limit the potential market risk associated with SFTs.

Liquidity Risk

The proposal is also structured in a manner that allows NSCC to protect itself from associated liquidity risk. Specifically, the proposal would mitigate NSCC's liquidity risk associated with an SFT Member default by providing that the Final Settlement obligations owing to non-defaulting SFT Members under SFTs to which the Defaulting SFT Member was a party will be settled in accordance with the normal settlement cycle for the purchase or sale of securities, as applicable.[95] NSCC would accordingly be able to satisfy such Final Settlement obligations through market action (if necessary) rather than through its own liquidity resources. More specifically, NSCC would be able to sell the securities lent by a Defaulting SFT Member and/or purchase the securities borrowed by a Defaulting SFT Member and use the proceeds of such sales and/or the securities purchased to satisfy the Defaulting SFT Member's Final Settlement obligations to non-defaulting SFT Members. In the absence of this provision, NSCC would need to rely exclusively on its liquidity resources to satisfy Final Settlement obligations owing to non-defaulting SFT Members, since it would not receive the proceeds of any market action to liquidate the Defaulting SFT Member's SFT Positions until after Final Settlement obligations were due.

The proposal would also provide that NSCC could further delay its satisfaction of Final Settlement obligations to non-defaulting SFT Members beyond the normal settlement cycle for the purchase or sale of securities to the extent NSCC

[92] *Supra* note 32.

[93] *Supra* note 34.

[94] *Supra* note 35.

[95] *See* proposed Rule 56, Section 14(b)(viii).

determines that taking market action to close-out some or all of the Defaulting SFT Member's novated SFT Positions would create a disorderly market in the relevant SFT Securities.[96]

However, in any case, until NSCC has satisfied the Final Settlement obligations owing to non-defaulting SFT Members, NSCC would continue paying to and receiving from non-defaulting SFT Members the applicable Price Differential (*i.e.,* the change in market value of the relevant securities) with respect to their novated SFTs.[97] NSCC would take into account such Price Differential payment obligations when calculating the amount of liquidity resources that NSCC may require in the event of the default of the participant family that would generate the largest aggregate payment obligation for NSCC in extreme but plausible market conditions.[98] [99] By continuing to process these Price Differential payments until Final Settlement occurs, NSCC would ensure that non-defaulting SFT Members are kept in the same position as if the Defaulting SFT Member had not defaulted and the pre-novation counterparties had instead agreed to roll the SFTs. To the extent NSCC is required to pay a Price Differential to a non-defaulting SFT Member, NSCC would rely on the NSCC Clearing Fund, including the Required SFT Deposit, in order to cover the liquidity need associated with any such Price Differential obligation.

Credit Risk

The proposal is also structured in a manner that allows NSCC to protect itself from associated credit risk. In addition to the Clearing Fund requirements discussed above, any Member that elects to participate in the proposed SFT Clearing Service would be subject to the same initial membership requirements and ongoing membership requirements and monitoring as any other Member. Moreover, any Member that opts to apply to become a Sponsoring Member or an Agent Clearing Member would be subject to an activity limit (as described above) in addition to an approval process that is separate from its original Member applications, as well as ongoing credit surveillance in its capacity as a Sponsoring Member or Agent Clearing Member, as applicable.

Operational Risk

The proposal is also structured in a manner that allows NSCC to protect itself from associated operational risk. NSCC proposes to utilize to a significant extent the same processes and infrastructure as it has used for many years to clear and settle cash market transactions for purposes of clearing and settling SFTs. NSCC staff is well versed in such processes and infrastructure and has been actively involved in the development of the proposed SFT Clearing Service, thereby allowing for ready integration of support for the proposed SFT Clearing Service into NSCC staff's current workflows.

Accordingly, NSCC believes that, taken as a whole, the proposal would not have any risks to NSCC, its Members and the market overall that cannot be prudently managed or mitigated.

Consistency With the Clearing Supervision Act

The proposed rule change would be consistent with Section 805(b) of Title VIII of the Clearing Supervision Act.[100] The objectives and principles of Section 805(b) of the Clearing Supervision Act are to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.[101]

NSCC believes that the proposal would promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act.

Promoting Robust Risk Management and Promoting Safety and Soundness

NSCC believes that the proposal is consistent with promoting robust risk management and promoting safety and soundness, particularly management of market risks, liquidity risks, credit risks and operational risks presented to NSCC.

The proposal is structured in a manner that allows NSCC to protect itself from associated market risk. SFT activity would be risk managed by NSCC in a manner consistent with Members' CNS positions. Moreover, all SFT Positions would be margined independently of the Member's other positions, *i.e.,* Required SFT Deposit. The Required SFT Deposit would generally be calculated using the same procedure applicable to CNS positions, but with a separate $250,000 minimum.[102]

As described above, consistent with the manner in which clearing fund requirements are satisfied by members of FICC for their cleared securities financing transactions, NSCC would require that (i) a minimum of 40% of an SFT Member's Required SFT Deposit consist of a combination of cash and Eligible Clearing Fund Treasury Securities and (ii) the lesser of $5,000,000 or 10% of an SFT Member's Required SFT Deposit (but not less than $250,000) [103] consist of cash.[104] NSCC would also have the discretion to require a Member to post its Required SFT Deposit in proportion of cash higher than would otherwise be required. NSCC's determination to impose any such requirement would be made in view of market conditions and other financial and operational capabilities of the relevant SFT Member.

Furthermore, NSCC would require additional Clearing Fund deposits to address two situations that may present unique risk. First, if the share price of underlying securities of an SFT that has already been novated to NSCC falls below the threshold established by NSCC from time to time, NSCC would require both pre-novation counterparties to the SFT to post Clearing Fund equal to 100% of the market value of such underlying securities until such time as the per share price of the underlying securities equals or exceeds such threshold. Second, in the event an SFT is subject to a collateral haircut (*i.e.,* the SFT Cash exceeds the market value of the securities), NSCC would require the Transferor (or in the case of an Agent Clearing Member Transaction, the Agent Clearing Member) to post Clearing Fund equal to such excess.

Additionally, the Sponsoring Member Required Fund Deposits and Agent Clearing Member Required Fund Deposits would each be calculated on a gross basis, and no offsets for netting of positions as between different Sponsored Members or different Customers, as applicable, would be permitted. Moreover, any Member that opts to apply to become a Sponsoring Member or an Agent Clearing Member would be subject to an activity limit (as described above).

NSCC is also proposing to limit the SFTs eligible for clearing to overnight transactions on securities that are CNS-eligible equity securities with a share price that equals or exceeds the threshold established by NSCC from

[96] *Id.*

[97] *See* proposed Rule 56, Section 14(b)(ix).

[98] *Id.*

[99] 17 CFR 240.17Ad–22(e)(7).

[100] 12 U.S.C. 5464(b).

[101] *Id.*

[102] *Supra* note 32.

[103] *Supra* note 34.

[104] *Supra* note 35.

time to time and that are fully collateralized by cash. NSCC believes these limitations, in addition to the Clearing Fund requirements, would limit the potential market risk associated with SFTs.

The proposal is also structured in a manner that allows NSCC to protect itself from associated liquidity risk. Specifically, the proposed rule change would mitigate NSCC's liquidity risk associated with an SFT Member default by providing that the Final Settlement obligations owing to non-defaulting SFT Members under SFTs to which the Defaulting SFT Member was a party will be settled in accordance with the normal settlement cycle for the purchase or sale of securities, as applicable.[105] NSCC would accordingly be able to satisfy such Final Settlement obligations through market action (if necessary) rather than through its own liquidity resources. More specifically, NSCC would be able to sell the securities lent by a Defaulting SFT Member and/or purchase the securities borrowed by a Defaulting SFT Member and use the proceeds of such sales and/or the securities purchased to satisfy the Defaulting SFT Member's Final Settlement obligations to non-defaulting SFT Members. In the absence of this provision, NSCC would need to rely exclusively on its liquidity resources to satisfy Final Settlement obligations owing to non-defaulting SFT Members, since it would not receive the proceeds of any market action to liquidate the Defaulting SFT Member's SFT Positions until after Final Settlement obligations were due.

The proposal would also provide that NSCC could further delay its satisfaction of Final Settlement obligations to non-defaulting SFT Members beyond the normal settlement cycle for the purchase or sale of securities to the extent NSCC determines that taking market action to close-out some or all of the Defaulting SFT Member's novated SFT Positions would create a disorderly market in the relevant SFT Securities.[106]

However, in any case, until NSCC has satisfied the Final Settlement obligations owing to non-defaulting SFT Members, NSCC would continue paying to and receiving from non-defaulting SFT Members the applicable Price Differential (*i.e.,* the change in market value of the relevant securities) with respect to their novated SFTs.[107] NSCC would take into account such Price Differential payment obligations when calculating the amount of liquidity resources that NSCC may require in the event of the default of the participant family that would generate the largest aggregate payment obligation for NSCC in extreme but plausible market conditions.[108] [109] By continuing to process these Price Differential payments until Final Settlement occurs, NSCC would ensure that non-defaulting SFT Members are kept in the same position as if the Defaulting SFT Member had not defaulted and the pre-novation counterparties had instead agreed to roll the SFTs. To the extent NSCC is required to pay a Price Differential to a non-defaulting SFT Member, NSCC would rely on the NSCC Clearing Fund, including the Required SFT Deposit, in order to cover the liquidity need associated with any such Price Differential obligation. The proposal is also structured in a manner that allows NSCC to protect itself from associated credit risk. In addition to the Clearing Fund requirements discussed above, any Member that elects to participate in the proposed SFT Clearing Service would be subject to the same initial membership requirements and ongoing membership requirements and monitoring as any other Member. Moreover, any Member that opts to apply to become a Sponsoring Member or an Agent Clearing Member would be subject to an activity limit (as described above) in addition to an approval process that is separate from its original Member applications, as well as ongoing credit surveillance in its capacity as a Sponsoring Member or Agent Clearing Member, as applicable.

The proposal is also structured in a manner that allows NSCC to protect itself from associated operational risk. NSCC proposes to utilize to a significant extent the same processes and infrastructure as it has used for many years to clear and settle cash market transactions for purposes of clearing and settling SFTs. NSCC staff is well versed in such processes and infrastructure and has been actively involved in the development of the proposed SFT Clearing Service, thereby allowing for ready integration of support for the proposed SFT Clearing Service into NSCC staff's current workflows.

For these reasons NSCC believes the proposal would help promote robust risk management at NSCC, consistent with the objective and principles of Section 805(b) of the Clearing Supervision Act.

Reducing Systemic Risks and Supporting the Stability of the Broader Financial System

NSCC also believes that the proposal is consistent with reducing systemic risks and supporting the stability of the broader financial system. As described above, the proposal would lower the risk of liquidity drain in the U.S. equity securities financing market by lessening counterparties' likely inclination to unwind transactions in a stressed market scenario. NSCC would use its risk management resources to provide confidence to market participants that they will receive back their cash or securities, as applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario.

In addition, the proposal would protect against fire sale risk. As described above, in the event of a default, NSCC would conduct a centralized, orderly liquidation of the defaulter's SFT Positions. Such an organized liquidation should result in substantially less price depreciation and market disruption than multiple independent non-defaulting parties racing against one another to liquidate the positions. In addition, NSCC would only need to liquidate the defaulter's net positions. Limiting the positions that need to be liquidated to the defaulter's net positions should reduce the volume of required sales activity, which in turn should limit the price and market impact of the close-out of the defaulter's positions. NSCC would also use its risk management resources to provide confidence to market participants that they will receive back their cash or securities, as applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario. By lowering the risk of liquidity drain in the U.S. equity securities financing market and protecting against fire sale risk, NSCC believes the proposal would help reduce systemic risks, which in turn helps support the stability of the broader financial system, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act.

NSCC also believes that the proposed rule change is consistent with Rules 17Ad–22(e)(7), 17Ad–22(e)(8), and 17Ad–22(e)(18), promulgated under the Act,[110] for the reasons stated below.

Rule 17Ad–22(e)(7) under the Act requires NSCC to establish, implement, maintain, and enforce written policies

[105] *See* proposed Rule 56, Section 14(b)(viii).

[106] *Id.*

[107] *See* proposed Rule 56, Section 14(b)(ix).

[108] *Id.*

[109] 17 CFR 240.17Ad–22(e)(7).

[110] 17 CFR 240.17Ad–22(e)(7), (e)(8), and (e)(18).

and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency.[111] NSCC believes that the proposed changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(7) because, as described above, the proposal is structured in a manner that allows NSCC to protect itself from associated liquidity risk. Specifically, the proposal would mitigate NSCC's liquidity risk associated with an SFT Member default by providing that the Final Settlement obligations owing to non-defaulting SFT Members under SFTs to which the Defaulting SFT Member was a party will be settled in accordance with the normal settlement cycle for the purchase or sale of securities, as applicable.[112] NSCC would accordingly be able to satisfy such Final Settlement obligations through market action (if necessary) rather than through its own liquidity resources. More specifically, NSCC would be able to sell the securities lent by a Defaulting SFT Member and/or purchase the securities borrowed by a Defaulting SFT Member and use the proceeds of such sales and/or the securities purchased to satisfy the Defaulting SFT Member's Final Settlement obligations to non-defaulting SFT Members. In the absence of this provision, NSCC would need to rely exclusively on its liquidity resources to satisfy Final Settlement obligations owing to non-defaulting SFT Members, since it would not receive the proceeds of any market action to liquidate the Defaulting SFT Member's SFT Positions until after Final Settlement obligations were due.

The proposal would also provide that NSCC could further delay its satisfaction of Final Settlement obligations to non-defaulting SFT Members beyond the normal settlement cycle for the purchase or sale of securities to the extent NSCC determines that taking market action to close-out some or all of the Defaulting SFT Member's novated SFT Positions would create a disorderly market in the relevant SFT Securities.[113] However, in any case, until NSCC has satisfied the Final Settlement obligations owing to non-defaulting SFT Members, NSCC would continue paying to and receiving from non-defaulting SFT Members the applicable Price Differential (*i.e.,* the change in market value of the relevant securities) with respect to their novated SFTs.[114] NSCC would take into account such Price Differential payment obligations when calculating the amount of liquidity resources that NSCC may require in the event of the default of the participant family that would generate the largest aggregate payment obligation for NSCC in extreme but plausible market conditions.[115] [116] By continuing to process these Price Differential payments until Final Settlement occurs, NSCC would ensure that non-defaulting SFT Members are kept in the same position as if the Defaulting SFT Member had not defaulted and the pre-novation counterparties had instead agreed to roll the SFTs. To the extent NSCC is required to pay a Price Differential to a non-defaulting SFT Member, NSCC would rely on the NSCC Clearing Fund, including the Required SFT Deposit, in order to cover the liquidity need associated with any such Price Differential obligation. Therefore, NSCC believes that the proposed changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(7) under the Act.[117]

Rule 17Ad–22(e)(8) under the Act [118] requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to define the point at which settlement is final to be no later than the end of the day on which the payment or obligation is due. NSCC believes that the proposed changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(8) because, as described above, the proposal would make it clear to SFT Members the point at which settlement is final with respect to SFTs cleared through NSCC. Specifically, Section 7 in the proposed Rule 56 (Securities Financing Transaction Clearing Service) provides that an SFT, or a portion thereof, shall be deemed complete and final upon Final Settlement of the SFT, or such portion.[119] Having clear provisions in this regard would enable SFT Members to better identify the point at which settlement is final with respect to their SFTs. As such, NSCC believes the proposed changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(8) under the Act.[120]

Rule 17Ad–22(e)(18) under the Act requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation.[121] NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would establish objective, risk-based, and publicly disclosed criteria for participation in NSCC as Sponsoring Members and Sponsored Members. Specifically, as proposed, in order for an applicant to become a Sponsoring Member, the applicant would be required to satisfy a number of objective and risk-based eligibility criteria. First, the applicant must be a Member. In addition, if the applicant is a Registered-Broker-Dealer, then it would be required to have (i) Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the applicant's designated examining authority) of at least $10 million. Likewise, in order for an applicant to become a Sponsored Member, the applicant would be required to meet certain objective, risk-based eligibility criteria. Specifically, an applicant would be eligible to apply to become a Sponsored Member if it is either a ''qualified institutional buyer'' as defined by Rule 144A [122] under the Securities Act,[123] or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i)(H) of Rule 144A under the Securities Act, satisfies the financial requirements necessary to be a ''qualified institutional buyer'' as specified in that paragraph. If approved, the requirements for proposed new

[111] 17 CFR 240.17Ad–22(e)(7).

[112] *See* proposed Rule 56, Section 14(b)(viii).

[113] *Id.*

[114] *See* proposed Rule 56, Section 14(b)(ix).

[115] *Id.*

[116] 17 CFR 240.17Ad–22(e)(7).

[117] *Id.*

[118] 17 CFR 240.17Ad–22(e)(8).

[119] The proposed changes to establish the SFT Clearing Service would provide that NSCC may delay the close-out of a Defaulting SFT Member's SFT Positions if such a close-out would create a disorderly market. In such a situation, the proposed changes would allow NSCC to correspondingly delay Final Settlement of any Default-Related SFTs on the same SFT Securities. NSCC does not believe this provision would affect settlement finality because if NSCC delays Final Settlement following an SFT Member Default, the Non-Defaulting Member's related payment or delivery obligation is correspondingly delayed. As a result, the provision would not allow a settlement to be final after the due date of the relevant payment obligations. Rather, consistent with the approach of many clearing agency and derivatives clearing organization rules, it simply allows NSCC to postpone those due dates in order to minimize market destabilization. *See, e.g.,* The Options Clearing Corporation (''OCC'') Rule 903 (Obligation to Deliver) (*https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf*) and ICE Clear Credit LLC Rule 20–605(e) (*https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Rules.pdf*).

[120] 17 CFR 240.17Ad–22(e)(8).

[121] 17 CFR 240.17Ad–22(e)(18).

[122] 17 CFR 230.144A.

[123] 15 U.S.C. 77a *et seq.*

Sponsoring Member and Sponsored Member membership categories would become part of the Rules, which are publicly available on DTCC's website (*www.dtcc.com*), and market participants would be able to review them in connection with their evaluation of potential participation in NSCC as Sponsoring Members and Sponsored Members. Therefore, NSCC believes that the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members are consistent with Rule 17Ad–22(e)(18) under the Act.[124]

Similarly, NSCC believes the proposed changes to establish new a membership category and requirements for Agent Clearing Members would establish objective, risk-based, and publicly disclosed criteria for participation in NSCC as Agent Clearing Members. Specifically, as proposed, in order for an applicant to become an Agent Clearing Member, the applicant would be required to satisfy a number of objective and risk-based eligibility criteria. First, the applicant must be a Member. In addition, if the applicant is a Registered-Broker-Dealer, then it would be required to have (i) Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the applicant's designated examining authority) of at least $10 million. If approved, the requirements for proposed new Agent Clearing Member membership category would become part of the Rules, which are publicly available on DTCC's website (*www.dtcc.com*), and market participants would be able to review them in connection with their evaluation of potential participation in NSCC as Agent Clearing Members. Therefore, NSCC believes that the proposed changes to establish a new membership category and requirements for Agent Clearing Members are consistent with Rule 17Ad–22(e)(18) under the Act.[125]

[124] 17 CFR 240.17Ad–22(e)(18).

[125] *Id.*

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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2021–803 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–NSCC–2021–803. 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 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2021–803 and should be submitted on or before August 27, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[126]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–17075 Filed 8–11–21; 8:45 am]

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[126] 17 CFR 200.30–3(a)(91).

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