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Contents

Federal Register

Vol. 86, No. 206

Thursday, October 28, 2021

Agency for Healthcare Research and Quality
NOTICES
Supplemental Evidence and Data Request on Nutrition as Prevention for Improved Cancer Outcomes, 59718–59720

Agricultural Marketing Service
NOTICES
Meetings:
Plant Variety Protection Board, 59694

Agriculture Department
See Agricultural Marketing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59694–59695

Air Force Department
NOTICES
Decision for the Juniper Butte Range Land Withdrawal Extension, Mountain Home Air Force Base, ID, 59700

Centers for Disease Control and Prevention
NOTICES
Temporary Extension and Modification of Framework for Conditional Sailing Order for Cruise Ships Operating or Intending to Operate in U.S. Waters, 59720–59733

Coast Guard
PROPOSED RULES
Special Local Regulation:
Crown Bay, Charlotte Amalie, U.S. Virgin Islands, 59675–59678
NOTICES
Meetings:
National Merchant Marine Personnel Advisory Committee, 59743–59745

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59698–59700
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions, 59697–59698

Consumer Product Safety Commission
RULES
Safety Standard for Infant Swings, 59609–59612
NOTICES
Meetings; Sunshine Act, 59700

Copyright Office, Library of Congress
RULES
Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 59627–59641

Defense Department
See Air Force Department

Education Department
RULES
Federal-State Relationship Agreements, Federal Pell Grant Program, Academic Competitiveness Grant, and National Science and Mathematics Access to Retain Talent Grant, 59619–59627

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Energy Conservation Program:
Test Procedures for Residential and Commercial Clothes Washers, 59652–59653

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Nevada; Revisions to Clark County Ozone Maintenance Plan, 59643–59646
South Carolina; 2018 General Assembly New Source Review Update, 59646–59648
South Carolina; Revisions to Definitions, 59641–59643
Designation of Areas for Air Quality Planning Purposes:
California; Eastern Kern, Sacramento Metro, and Western Nevada 2015 Ozone Nonattainment Areas; Reclassification to Serious, 59648–59651
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
California; Base Year Emissions Inventories for the 2015 Ozone Standards; Extension of Comment Period, 59678
California; Ventura County Air Pollution Control District, 59682–59684
North Carolina; Removal of Transportation Facilities Rules for Mecklenburg County, 59678–59682
Regulation of Persistent, Bioaccumulative, and Toxic Chemicals under the Toxic Substances Control Act:
Phenol, Isopropylated Phosphate (3:1); Further Compliance Date Extension, 59684–59693
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Air Emissions Reporting Requirements (Renewal), 59711
Water Quality Standards Regulation (Renewal), 59712–59713
Strategy to Reduce Lead Exposures and Disparities in U.S. Communities, 59711–59712

Export-Import Bank
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59713–59716

Federal Aviation Administration
PROPOSED RULES
Airspace Designations and Reporting Points:
Southwest Oregon Regional Airport, OR, 59672–59674
Tok Junction, AK, 59670–59672
Airworthiness Directives:
Airbus Helicopters, 59653–59658
Airbus SAS Airplanes, 59662–59665
General Electric Company Turbofan Engines, 59667–59670
International Aero Engines AG Turbofan Engines, 59658–59662
The Boeing Company Airplanes, 59665–59667
NOTICES
Waiver of Aeronautical Land Use Assurance:
Astoria Regional Airport, Astoria, OR, 59836

Federal Emergency Management Agency
NOTICES
Meetings:
Request for Information on the National Flood Insurance Program Floodplain Management Standards for Land Management and Use, etc., 59745–59746

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59704–59706
Application:
Ampersand Ogdensburg Hydro, LLC, 59706–59707
Authorization for Continued Project Operation:
Aquenergy Systems, LLC, 59703
Combined Filings, 59700–59704
Environmental Impact Statements; Availability, etc.:
North Baja Pipeline, LLC; Proposed North Baja XPress Project, 59702–59703
Transcontinental Gas Pipe Line Co., LLC; Regional Energy Access Expansion Project, 59707–59710
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Smoky Mountain Transmission, LLC, 59707

Federal Reserve System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59716–59718

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59733–59734
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Targeted Mechanism of Action Presentations in Prescription Drug Promotion, 59735–59738
Authorization of Emergency Use of Certain Medical Devices During COVID–19; Availability, 59738–59741
Revocation of Authorization of Emergency Use of an In Vitro Diagnostic Device for Detection and/or Diagnosis of COVID–19; Availability, 59734–59735

Foreign Assets Control Office
RULES
Publication of Ukraine-Related Web General License 16 and Subsequent Iterations, 59615–59619

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Guidance:
Updated HRSA-supported Women's Preventive Services Guidelines: Contraception and Screening for HIV Infection, 59741–59742

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Interior Department
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Mineral Surveys, Mineral Patent Applications, Adverse Claims, Protests, and Contests, 59746–59747

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59836–59837
Meetings:
Advisory Council, 59837

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 59695–59696

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Tunable Lenses and Products Containing the Same, 59757–59758

Land Management Bureau
NOTICES
Environmental Assessments; Availability, etc.:
Intent to Amend the Moab, Price, and Vernal Resource Management Plans and Prepare Environmental Assessments to Comply with the 2019 Dingell Act, 59747–59750
Proposed Restrictions:
Public Lands in Jackson County, OR, 59751–59752

Library of Congress
See Copyright Office, Library of Congress

National Credit Union Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59758–59759

National Endowment for the Arts
NOTICES
Meetings:
Arts Advisory Panel, 59759

Tribal Consultation Policy, 59759

National Foundation on the Arts and the Humanities
See National Endowment for the Arts

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 59743
National Institute of Allergy and Infectious Diseases, 59742–59743

National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Partner Probabilistic Snowfall Messaging Survey, 59696–59697
Meetings:
Workshop on the Management Strategy Evaluation for Atlantic Bluefin Tuna, 59696

National Park Service
NOTICES
Inventory Completion:
Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA, 59752–59753
Michigan State University, East Lansing, MI, 59753–59755
Temple University Anthropology Laboratory and Museum, Philadelphia, PA, 59755–59756
University of California, Santa Barbara, Santa Barbara, CA, 59756–59757
Meetings:
Native American Graves Protection and Repatriation Review Committee, 59752

Nuclear Regulatory Commission
NOTICES
Exemption:
Armed Forces Radiobiology Research Institute, 59760–59762

Postal Service
NOTICES
Meetings; Sunshine Act, 59762–59763

Presidential Documents
PROCLAMATIONS
COVID–19 Pandemic; Efforts To Advance Safe Resumption of Global Travel (Proc. 10294), 59603–59608

Securities and Exchange Commission
NOTICES
Order:
Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Kingdom of Spain, 59776–59797
Orders:
Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany; Non-U.S. Security-Based Swap Entities Subject to Regulation in the French Republic or the United Kingdom; Extending the Time to Meet Certain Conditions Relating to Capital and Margin, 59797–59824
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe Exchange, Inc., 59824–59833
Miami International Securities Exchange, LLC, 59833–59835
Nasdaq BX, Inc., 59763–59766
Nasdaq PHLX, LLC, 59767–59771
New York Stock Exchange, LLC, 59774–59776
The Nasdaq Stock Market, LLC, 59771–59774

State Department
RULES
Schedule of Fees for Consular Services:
Passport Security Surcharge, 59613–59615
NOTICES
Meetings:
U.S. President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board; Correction, 59835

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Wyoming Regulatory Program, 59674–59675

Transportation Department
See Federal Aviation Administration

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Suspension of Monthly Check, 59838
VA Fiduciary's Account, Court Appointed Fiduciary's Account, Cert. of Bal. on Deposit and Auth. to Dis. Financial Record, 59837–59838

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

9984 (revoked by 10294) 59603
9992 (revoked by 10294) 59603
10143 (revoked by 10294) 59603
10199 (revoked by 10294) 59603
10294 59603

10 CFR

Proposed Rules:

429 59652
430 59652
431 59652

14 CFR

Proposed Rules:

39 (6 documents) 59653, 59655, 59658, 59662, 59665, 59667
71 (2 documents) 59670, 59672

16 CFR

1223 59609

22 CFR

22 59613

30 CFR

Proposed Rules:

950 59674

31 CFR

589 59615

33 CFR

Proposed Rules:

100 59675

34 CFR

604 59619
690 59619
691 59619

37 CFR

201 59627

40 CFR

52 (3 documents) 59641, 59643, 59646
81 59648

Proposed Rules:

52 (3 documents) 59678, 59682
751 59684

Federal Register
Vol. 86, No. 206
Thursday, October 28, 2021

Presidential Documents

Title 3—

The President

Proclamation 10294 of October 25, 2021

Advancing the Safe Resumption of Global Travel During the COVID–19 Pandemic

By the President of the United States of America

A Proclamation

The continued spread of the SARS–CoV–2 virus that causes coronavirus disease 2019 (COVID–19) is a global threat to our health and safety. COVID–19 has resulted in more than 733,000 deaths in the United States and more than 4,932,000 deaths worldwide. New variants of SARS–CoV–2 have also emerged globally, and variants that are more transmissible or cause more severe disease than the original virus strain are identified by the United States Government SARS–CoV–2 Interagency Group as variants of concern. Globally, as of October 20, 2021, 166 countries have reported cases of the B.1.617.2 (Delta) variant, a variant of concern that spreads more easily than previously discovered variants of SARS–CoV–2. The potential emergence of a variant of high consequence—one that significantly reduces the effectiveness of prevention measures or medical countermeasures—is also a primary public health concern.

It is the policy of my Administration to implement science-based public health measures, across all areas of the Federal Government, to prevent further introduction, transmission, and spread of COVID–19 into and throughout the United States, including from international air travelers. The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services has determined that the best way to slow the spread of COVID–19, including preventing infection by the Delta variant, is for individuals to get vaccinated. According to the CDC, vaccinated individuals are 5 times less likely to be infected and 10 times less likely to experience hospitalization or death due to COVID–19 than unvaccinated individuals. Other mitigation measures are also critical to slowing the spread of COVID–19. These measures include testing and mask-wearing, which are particularly important strategies to limit the spread of COVID–19 from asymptomatic and pre-symptomatic individuals, as well as self-quarantining and self-isolating. But vaccination is the most important measure for reducing the risk of COVID–19 transmission and for avoiding severe illness, hospitalization, and death.

Substantial efforts are being made to increase vaccination rates across the globe. The availability of COVID–19 vaccines is rising, and over 6 billion doses have been administered globally. As of October 24, 2021, 29 countries have a COVID–19 vaccination rate higher than 70 percent, many countries are making efforts to encourage COVID–19 vaccination for their populations, and some countries are considering or adding proof of vaccination requirements as conditions for entry. Many low-income countries continue to have limited vaccine availability, but the United States is leading a global effort to donate hundreds of millions of vaccine doses where they are needed the most.

In light of these facts and circumstances, I have determined that it is in the interests of the United States to move away from the country-by-country restrictions previously applied during the COVID–19 pandemic and to adopt an air travel policy that relies primarily on vaccination to advance the

safe resumption of international air travel to the United States. This proclamation governs the entry into the United States of noncitizen nonimmigrants—that is, noncitizens who are visiting the United States or otherwise being admitted temporarily—traveling to the United States by air. It suspends the entry of unvaccinated noncitizen nonimmigrants, except in limited circumstances, and it ensures that the entry of unvaccinated noncitizen nonimmigrants is consistent with applicable health and safety determinations made by the Director of the CDC, including a requirement that, where appropriate, such individuals agree and arrange to become fully vaccinated against COVID–19 upon their arrival. My Administration has also taken action, apart from this proclamation, to ensure that noncitizen immigrants are vaccinated prior to air travel to the United States.

Together, these policies aim to limit the risk that COVID–19, including variants of the virus that causes COVID–19, is introduced, transmitted, and spread into and throughout the United States, potentially overwhelming United States healthcare and public health resources, endangering the health and safety of the American people, and threatening the security of our civil aviation system. Given the resumption of air travel as worldwide restrictions due to the COVID–19 pandemic begin to ease, these policies will, consistent with the measures required by Executive Order 13998 of January 21, 2021 (Promoting COVID–19 Safety in Domestic and International Travel), advance the safety and security of the air traveling public, the government personnel responsible for ensuring the security of air travel, and the millions of individuals employed by the United States air travel industry, as well as their families and communities, while also allowing the domestic and global economy to continue its recovery from the effects of the COVID–19 pandemic.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 1182(f) and 1185(a) of title 8, United States Code, and section 301 of title 3, United States Code, hereby find that it is in the interests of the United States to advance the resumption of international travel to the United States, provided necessary health and safety protocols are in place to protect against the further introduction, transmission, and spread of COVID–19 into and throughout the United States. I further find that vaccination requirements are essential to advance the safe resumption of international travel to the United States and that the unrestricted entry of persons described in section 2 of this proclamation would, except as provided for in section 3(a) of this proclamation, be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. *Revocation of Country-Specific Suspensions and Limitations on Entry.* Proclamation 9984 of January 31, 2020 (Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus and Other Appropriate Measures To Address This Risk), Proclamation 9992 of February 29, 2020 (Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus), Proclamation 10143 of January 25, 2021 (Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease 2019), and Proclamation 10199 of April 30, 2021 (Suspension of Entry as Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease 2019), are revoked.

Sec. 2. *Global Suspension and Limitation on Entry of Certain Individuals Who Are Not Fully Vaccinated Against COVID–19.* (a) The entry into the United States by air travel of noncitizens who are nonimmigrants and who are not fully vaccinated against COVID–19 is suspended and limited, except as provided in section 3 of this proclamation. This suspension and limitation

on entry applies only to air travelers to the United States and does not affect visa issuance.

(b) Any noncitizen who is a nonimmigrant, who is not fully vaccinated against COVID–19, and who, notwithstanding section 2(a) of this proclamation, is permitted to enter the United States by air travel pursuant to section 3(b) of this proclamation must agree to comply with applicable public health precautions established by the Director of the CDC to protect against the public health risk posed by travelers entering into the United States. Such precautions may be related to vaccination, testing, mask-wearing, self-quarantine, and self-isolation, as determined by the Director of the CDC, and may include requirements that individuals:

(i) provide proof of pre-departure testing for COVID–19, as determined by the Director of the CDC;

(ii) take precautions during air travel to protect against the further introduction, transmission, and spread of COVID–19, including by wearing a face mask, as determined by the Director of the CDC;

(iii) provide proof of having arranged for post-arrival testing for COVID–19, as determined by the Director of the CDC; and

(iv) provide proof of having arranged to self-quarantine or self-isolate after arriving in the United States, as determined by the Director of the CDC.

(c) Any noncitizen who is a nonimmigrant, who is not fully vaccinated against COVID–19, and who, notwithstanding section 2(a) of this proclamation, is permitted to enter the United States by air travel pursuant to section 3(b) of this proclamation must agree to become fully vaccinated against COVID–19 within 60 days of arriving in the United States, within some other timeframe as determined by the Director of the CDC, or as soon as medically appropriate as determined by the Director of the CDC, and must provide proof of having arranged to become fully vaccinated against COVID–19 after arriving in the United States, unless:

(i) the noncitizen's intended stay is sufficiently brief, as determined by the Director of the CDC;

(ii) the noncitizen is one for whom, given their age, requiring vaccination would be inappropriate, as determined by the Director of the CDC;

(iii) the noncitizen has participated or is participating in certain clinical trials for COVID–19 vaccination, as determined by the Director of the CDC;

(iv) COVID–19 vaccination is medically contraindicated for the noncitizen, as determined by the Director of the CDC;

(v) the noncitizen is described in section 3(b)(i) or 3(b)(ii) of this proclamation and has previously received a COVID–19 vaccine that is authorized or approved by the noncitizen's country of nationality, as determined by the Director of the CDC, in consultation with the Secretary of State; or

(vi) the Director of the CDC otherwise determines that COVID–19 vaccination is not warranted for the noncitizen.

Sec. 3. *Scope of Suspension and Limitation on Entry.* (a) The suspension and limitations on entry in section 2 of this proclamation shall not apply to any noncitizen seeking entry as a crew member of an airline or other aircraft operator if such crew member or operator adheres to all industry standard protocols for the prevention of COVID–19, as set forth in relevant guidance for crew member health issued by the CDC or by the Federal Aviation Administration in coordination with the CDC.

(b) The suspension and limitations on entry in section 2(a) of this proclamation shall not apply to:

(i) any noncitizen seeking entry into or transiting the United States pursuant to one of the following nonimmigrant visa classifications: A–1, A–2, C–2, C–3 (as a foreign government official or immediate family member

of an official), E–1 (as an employee of TECRO or TECO or the employee's immediate family members), G–1, G–2, G–3, G–4, NATO–1 through NATO–4, or NATO–6 (or seeking to enter as a nonimmigrant in one of those NATO classifications);

(ii) any noncitizen whose travel falls within the scope of section 11 of the United Nations Headquarters Agreement or who is traveling pursuant to United States legal obligation (as evidenced by a letter of invitation from the United Nations or other documentation showing the purpose of such travel);

(iii) any noncitizen for whom, given their age, requiring vaccination would be inappropriate, as determined by the Director of the CDC, taking into account global vaccine availability for individuals in that age group;

(iv) any noncitizen who has participated or is participating in certain clinical trials for COVID–19 vaccination, as determined by the Director of the CDC;

(v) any noncitizen for whom accepted COVID–19 vaccination is medically contraindicated, as determined by the Director of the CDC;

(vi) any noncitizen who has been granted an exception by the Director of the CDC for humanitarian or emergency reasons, as determined by the Director of the CDC;

(vii) any noncitizen who is a citizen of a foreign country where the availability of COVID–19 vaccination is limited, as identified pursuant to section 4(a)(v) of this proclamation, and who seeks to enter the United States pursuant to a nonimmigrant visa, except for a B–1 or B–2 visa;

(viii) any noncitizen who is a member of the United States Armed Forces or who is a spouse or child of a member of the United States Armed Forces;

(ix) any noncitizen seeking entry as a sea crew member traveling pursuant to a C–1 and D nonimmigrant visa, if such crew member adheres to all industry standard protocols for the prevention of COVID–19, as set forth in relevant guidance for crew member health by the CDC; or

(x) any noncitizen or group of noncitizens whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Transportation, the Secretary of Homeland Security, or their designees.

Sec. 4. *Implementation and Enforcement.* (a) The Secretary of Health and Human Services, through the Director of the CDC, shall implement this proclamation as it applies to the public health through such procedures as may be established, and consistent with the CDC's independent public health judgment, including by:

(i) defining and specifying accepted COVID–19 vaccines or combinations of accepted COVID–19 vaccines, and medical contraindications to accepted COVID–19 vaccines or combinations of accepted COVID–19 vaccines, for purposes of this proclamation;

(ii) defining whether an individual is fully vaccinated against COVID–19, and specifying acceptable methods of proving that an individual is fully vaccinated against COVID–19, for purposes of this proclamation;

(iii) specifying acceptable methods of proving that an individual has arranged to comply with applicable public health requirements and protocols to protect against the further introduction, transmission, and spread of COVID–19 into and throughout the United States, including pre-departure testing, post-arrival testing, post-arrival self-quarantine or self-isolation, and post-arrival vaccination against COVID–19, for purposes of this proclamation;

(iv) determining whether certain persons qualify as participants in certain clinical trials for COVID–19 vaccination, for purposes of this proclamation;

(v) maintaining a list of countries where the availability of COVID–19 vaccination is limited, with such countries defined as those where less

than 10 percent of the country's total population has been fully vaccinated with any available COVID–19 vaccine or are otherwise determined by the Director of the CDC to qualify as countries where the availability of COVID–19 vaccination is limited; and

(vi) establishing other public health measures consistent with this proclamation to protect against the further introduction, transmission, and spread of COVID–19 into and throughout the United States by persons described in section 2 of this proclamation.

(b) The Secretary of Transportation and the Secretary of Homeland Security shall take steps to ensure that airlines do not permit noncitizens barred from entry pursuant to this proclamation to board an aircraft traveling to the United States, to the extent permitted by law.

(c) Executive departments and agencies shall implement this proclamation, as appropriate and consistent with applicable law, in accordance with such procedures as they may establish.

(d) The Secretary of State, the Secretary of Transportation, and the Secretary of Homeland Security shall review any regulations, orders, guidance documents, policies, and any other similar agency actions developed pursuant to Proclamations 9984, 9992, 10143, and 10199 and, as appropriate, shall consider revising or revoking these agency actions consistent with the policy set forth in this proclamation.

(e) Nothing in this proclamation shall be construed to affect any individual's eligibility for asylum, withholding of removal, or protection under the regulations issued pursuant to the legislation implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws and regulations of the United States.

(f) Nothing in this proclamation shall be construed to limit the CDC's authority to impose public health requirements and protocols, including on individuals who are fully vaccinated against COVID–19, individuals covered by this proclamation, or individuals not covered by this proclamation, such as United States citizens, lawful permanent residents, or noncitizens traveling on immigrant visas.

Sec. 5. *Termination.* This proclamation shall remain in effect until terminated by the President. The Secretary of Health and Human Services shall, as circumstances warrant and no more than 60 days after the date of this proclamation and by the final day of each calendar month thereafter, recommend whether the President should continue, modify, or terminate this proclamation.

Sec. 6. *Effective Date.* This proclamation is effective at 12:01 a.m. eastern standard time on November 8, 2021. This proclamation does not apply to persons aboard a flight scheduled to arrive in the United States that departed prior to 12:01 a.m. eastern standard time on November 8, 2021.

Sec. 7. *Severability.* It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the national security, public safety, and foreign policy interests of the United States. Accordingly, if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby.

Sec. 8. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

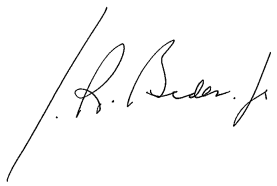
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of October, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-sixth.



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Rules and Regulations

Federal Register
Vol. 86, No. 206
Thursday, October 28, 2021

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

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

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1223

[Docket No. CPSC–2013–0025]

Safety Standard for Infant Swings

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In November 2012, the U.S. Consumer Product Safety Commission (CPSC) published a consumer product safety standard for infant swings under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standard incorporated by reference the ASTM voluntary standard for infant swings that was in effect at that time. The CPSIA sets forth a process for updating mandatory standards for durable infant or toddler products that are based on a voluntary standard when a voluntary standards organization revises the standard. Consistent with the CPSIA update process, in January 2021, the Commission issued a direct final rule to revise the incorporation by reference for the mandatory infant swings standard, to reflect ASTM's 2020 revised voluntary standard for infant swings. This direct final rule updates the mandatory standard for infant swings to incorporate by reference ASTM's 2021 version of the voluntary standard.

DATES: The rule is effective on January 29, 2022, unless CPSC receives a significant adverse comment by November 29, 2021. If CPSC receives such a comment, it will publish a document in the **Federal Register** withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of January 29, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2013–0025, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov*. Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *https://www.regulations.gov* and as described below. The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7479. Alternatively, as a temporary option during the COVID–19 pandemic, you can email such submissions to: *cpscos@cpsc.gov*.

Instructions: All submissions received must include the agency name and docket number for this direct final rule. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov*. Do not submit electronically confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information please submit it according to the instructions for written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2013–0025, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–6820; email: *kwalker@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory Authority

Section 104(b)(1)(B) of the CPSIA, also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires these standards to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

The CPSIA also sets forth a process for updating CPSC's durable infant or toddler standards when the voluntary standard upon which the CPSC standard was based is changed. Section 104(b)(4)(B) of the CPSIA provides that if an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. In addition, the revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the **Federal Register**) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

2. Safety Standard for Infant Swings

In November 2012, under section 104(b)(1) of the CPSIA, the Commission adopted a mandatory rule for infant swings, codified in 16 CFR part 1223. The rule incorporated by reference ASTM F2088–12a, *Standard Consumer Safety Specification for Infant Swings,* with modifications to the labeling and test method requirements.[1] 77 FR 66703 (Nov. 7, 2012). At the time the Commission published the final rule, ASTM F2088–12a was the current version of the voluntary standard. Since promulgation of the mandatory infant swings standard in 2012, ASTM has

[1] The modifications included changes to the required warning label content and a revised test method to address an omission in the voluntary standard for toy mobiles attached to swings.

revised the voluntary standard five times. ASTM F2088–20 is the current mandatory standard incorporated by reference in 16 CFR part 1223.

On August 2, 2021, ASTM notified CPSC that it had revised the voluntary standard for infant swings, approving ASTM F2088–21 on May 15, 2021.[2] As discussed in this preamble, based on CPSC staff's review of ASTM F2088–21, the Commission will allow the revised voluntary standard to become the mandatory standard because the revised requirements in the voluntary standard either improve the safety of infant swings or are safety neutral. Accordingly, by operation of law under section 104(b)(4)(B) of the CPSIA, ASTM F2088–21 will become the mandatory consumer product safety standard for infant swings on January 29, 2022. 15 U.S.C. 2056a(b)(4)(B). This direct final rule updates 16 CFR part 1223 to incorporate by reference the revised voluntary standard, ASTM F2088–21.

B. Revisions to ASTM F2088

The ASTM standard for infant swings includes performance requirements, test methods, and requirements for warning labels and instructional literature, to address hazards to infants associated with infant swings. ASTM has revised the voluntary standard for infant swings since ASTM F2088–20, which is the current mandatory standard. On May 15, 2021, ASTM approved a revised version of ASTM F2088 and published ASTM F2088–21 in June 2021. This section describes the changes in ASTM F2088–21. The 2021 revision contains a few editorial, non-substantive changes, along with several substantive changes to improve clarity, provide consistent terminology, and harmonize wording and warning label requirements consistent with other juvenile product standards. ASTM also made several revisions to ASTM F2088 to align the standard with wording changes initiated by ASTM for all of its juvenile products standards. Specific changes to the standard from ASTM F2088–20 to ASTM F2088–21 are described below.

1. Substantive Changes

(a) ASTM revised the age and developmental information for infant and cradle swings to maintain consistency between the scope, definitions, and warnings sections of the standard. Additionally, the revisions harmonize the age and developmental information with the ASTM F2194 *Bassinets and Cradles* standard.[3]

Specifically, ASTM:

- Replaced the statement ''*a child who cannot climb out of the product*'' with ''*an infant*'' in section 1.3 (part of section 1. *Scope*) when describing the products and the intended user covered under this consumer safety specification. The use of the generic term ''*infant*'' better defines the developmental characteristics of the two age groups already defined in the standard: (1) ''[infant] *begins to push up on hands and knees (approximately 5 months)*'' and (2) ''[infant] *attempts to climb out of the swing (approximately 9 months).*''
- Added ''*to swing or glide*'' to the definition of ''*cradle swing*'' in section 3.1.3 to describe the motions of this product type, and to maintain consistency with section 1 *Scope* and with the motion types already defined for ''*infant swings*'' in section 3.1.5.
- Replaced ''*can roll over or*'' with ''*begins to*'' in the definition of ''*cradle swings*'' in section 3.1.3, and in the warning statements in section 8.6.2 *Cradle Swing,* to maintain consistency throughout the standard and to harmonize the wording with ASTM F2194 *Bassinets and Cradles* standard.
- Added the parenthetical statement ''*(approximately 5 months)*'' to the warning statements in section 8.6.2 *Cradle Swing,* to maintain consistency with the definition of ''*cradle swing*'' in section 3.1.3.

The Commission concludes that the substantive changes discussed above are neutral to the safety of infant swings, because they clarify the language of the standard, to harmonize the provisions throughout this standard and with other ASTM juvenile product standards.

(b) After the publication of Revision F of ''*Recommended Language Approved by Ad Hoc Task Group,*''[4] the ASTM F15.21 subcommittee adopted the battery informational statements and/or warning language from the Ad Hoc document and incorporated it to the 2021 revision of F2088. Additionally, the revision consolidated the battery language spread throughout the standard into a single section titled 8.4 *Battery-operated Product Marking* under section 8 *Marking and Labeling.*

To effect these changes, ASTM made the following modifications:

- Created section 8.4 *Battery-operated Product Marking* to group all battery cautionary information into a single section;
- moved section 6.1.1 regarding the battery compartment marking and labeling to section 8.4.1 using the language from the Ad Hoc Wording recommendations;
- moved sections 8.6, 8.6.1, 8.6.2 and 8.6.3 regarding the battery cautions to sections 8.4.2, 8.4.2.1, 8.4.2.2 and 8.4.2.3 using the language from the Ad Hoc Wording recommendations.

The Commission concludes that adoption of the Ad Hoc Wording recommendations and consolidation into an area-specific section are improvements to safety because they provide clear, concise guidance to manufacturers to provide noticeable and consistent warning labels on infant swings.

(c) ASTM revised the requirement for *Instructional Literature* in section 9.4 and moved it to section 9.2, harmonizing it with the Ad Hoc Wording recommendations and to match the warning requirements with the *Marking and Labeling* section of the standard.

The Commission concludes that these changes improve the safety of infant swings, because they provide noticeable warning information and instructional literature that is consistent with the corresponding on-product warnings.

2. Non-Substantive Changes

ASTM made minor formatting changes to the standard, in accordance with ASTM form and style guidelines, such as changes to font size of the metric system expressions. Additionally, ASTM updated the sections' numbering hierarchy throughout the standard, to reflect added and updated sections. The Commission finds that all the non-substantive changes made in ASTM F2088–21 are neutral regarding safety for infant swings, because they are editorial in nature.

C. Incorporation by Reference

Section 1223.2 of the direct final rule incorporates by reference ASTM F2088–21. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

[2] ASTM published ASTM F2088–21 in June 2021.

[3] A cradle swing falls within the scope of ASTM F2194 *Bassinets and Cradles* standard when it is not in motion (*i.e.,* a cradle swing is a swing when in motion and a cradle when at rest.)

[4] Revision F of ''*Recommended Language Approved by Ad Hoc Task Group*'' was published on November 30, 2020.

In accordance with the OFR regulations, section B. Revisions to ASTM F2088, of this preamble summarizes the major provisions of ASTM F2088–21 that the Commission incorporates by reference into 16 CFR part 1223. The standard is reasonably available to interested parties and interested parties can purchase a copy of ASTM F2088–21 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; phone; 610–832–9585; *www.astm.org*. Additionally, until the direct final rule takes effect, a read-only copy of ASTM F2088–21 is available for viewing on ASTM's website at: *https://www.astm.org/CPSC.htm*. Once the rule takes effect, a read-only copy of the standard will be available for viewing on the ASTM website at: *https://www.astm.org/READINGLIBRARY/*. Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814, telephone: 301–504–7479; email: *cpsc-os@cpsc.gov*.

D. Certification

Section 14(a) of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051–2089) requires manufacturers of products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, to certify that the products comply with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or, for children's products, on tests of a sufficient number of samples by a third party conformity assessment body accredited by CPSC to test according to the applicable requirements. As noted, standards issued under section 104(b)(1)(B) of the CPSIA are ''consumer product safety standards.'' Thus, they are subject to the testing and certification requirements of section 14 of the CPSA. Because infant swings are children's products, a CPSC-accepted third party conformity assessment body must test samples of the products. Products subject to part 1223 also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,[5] the phthalates prohibitions in section 108 of the CPSIA [6] and 16 CFR part 1307, the tracking label requirements in section 14(a)(5) of the CPSA,[7] and the consumer registration form requirements in section 104(d) of the CPSIA.[8]

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing infant swings. 78 FR 15836 (Mar. 12, 2013). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing infant swings to 16 CFR part 1223. The NORs for all mandatory standards for durable infant or toddler products are listed in the Commission's rule, ''Requirements Pertaining to Third Party Conformity Assessment Bodies,'' codified in 16 CFR part 1112. *Id.*

The revisions to ASTM F2088–21 do not require any change in the way that third party conformity assessment bodies test infant swings. Therefore, testing laboratories that have demonstrated competence for testing in accordance with ASTM F2088–20 will have the competence to test in accordance with the revised standard ASTM F2088–21.

Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2088–20 to be capable of testing to ASTM F2088–21 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories' accreditations to reflect the revised standard in the normal course of renewing their accreditations.

F. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency, ''for good cause finds,'' that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' *Id.* 553(b)(B). The Commission concludes that when it updates a reference to an ASTM standard that the Commission incorporated by reference under section 104(b) of the CPSIA, notice and comment are not necessary.

Under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference under section 104(b)(1)(B) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM's revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC's mandatory standard by operation of law. The Commission is allowing ASTM F2088–21 to become CPSC's new mandatory standard. The purpose of this direct final rule is to update the reference in the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the update provision of section 104 of the CPSIA, ASTM F2088–21 takes effect as the new CPSC standard for infant swings, even if the Commission does not issue this rule. Thus, public comments would not alter substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment are unnecessary.

In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and that are not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the ''unnecessary'' prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this direct final rule, the rule will become effective on January 29, 2022. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be ''one where the commenter explains why the rule would be inappropriate,'' including an assertion challenging ''the rule's underlying premise or approach,'' or a claim that the rule ''would be ineffective or unacceptable without change.'' 60 FR 43108, 43111. As noted, this rule merely updates a reference in the CFR to reflect a change that occurs by statute.

If the Commission receives a significant adverse comment, the Commission will withdraw this direct

[5] 15 U.S.C. 1278a.

[6] 15 U.S.C. 2057c.

[7] 15 U.S.C. 2063(a)(5).

[8] 15 U.S.C. 2056a(d).

final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section F. Direct Final Rule Process of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply. CPSC also notes the limited nature of this document, which merely updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

H. Paperwork Reduction Act

The current mandatory standard for infant swings includes requirements for marking, labeling, and instructional literature that constitute a ''collection of information,'' as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501–3521). While the revised mandatory standard updates the provisions for marking, labeling, and instructional literature regarding consistency and clarity to be consistent with other ASTM voluntary standards, the revised mandatory standard does not alter these requirements substantively. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR part 1223, including obtaining approval and a control number. Because the information collection is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

I. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement where they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

J. Preemption

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA deems rules issued under that provision ''consumer product safety standards.'' Therefore, once a rule issued under section 104 of the CPSIA takes effect, it will preempt state or political subdivision of a state requirements in accordance with section 26(a) of the CPSA.

K. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. 15 U.S.C. 2056a(b)(4)(B). The Commission is taking neither of those actions with respect to the standard for infant swings. Therefore, ASTM F2088–21 will take effect as the new mandatory standard for infant swings on January 29, 2022, 180 days after the Commission received notice of the revision on August 2, 2021. Because it is a direct final rule, unless the Commission receives a significant adverse comment within 30 days of this notification, the rule will become effective on January 29, 2022.

L. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a ''major rule.'' Pursuant to the CRA, this rule does not qualify as a ''major rule,'' as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1223

Consumer protection, Imports, Incorporation by reference, Imports, Infants and children, Law enforcement, Safety, Toys.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

PART 1223—SAFETY STANDARD FOR INFANT SWINGS

■ 1. The authority citation for part 1223 continues to read as follows:

Authority: Sec. 104, Public Law 110–314, 122 Stat. 3016 (15 U.S.C. 2056a); Sec 3, Public Law 112–28, 125 Stat. 273.

■ 2. Revise § 1223.2 to read as follows:

§ 1223.2 Requirements for infant swings.

Each infant swing shall comply with all applicable provisions of ASTM F2088–21, *Standard Consumer Safety Specification for Infant and Cradle Swings,* approved on May 15, 2021. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: (610) 832–9585; *www.astm.org.* A read-only copy of the standard is available for viewing on the ASTM website at *https://www.astm.org/READINGLIBRARY/.* You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email: *cpsc-os@cpsc.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Alberta E. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2021–23453 Filed 10–27–21; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice: 11465]

RIN 1400–AE15

Schedule of Fees for Consular Services—Passport Security Surcharge

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule adopts as final the notice of proposed rulemaking (NPRM) published in the **Federal Register** on March 26, 2021. This final rule adjusts the Schedule of Fees for Consular Services (Schedule of Fees) by increasing the passport book security surcharge (PSS) from $60 to $80. This increase reflects increases in security-related costs for processing passports attributed to the PSS. Increases in security-related costs are largely due to a 37 percent increase in compensation costs for passport adjudicators and enhanced printing technology costs for the Next Generation (NextGen) passport book. Based on FY 2022 projections of 15.9 million passport products for which the PSS is included as part of the overall fee (passport books, and passport books and card combinations), the Department anticipates an additional $318 million in revenue. The Department retains all PSS revenue, and it is used to cover the costs associated with passport application processing that support enhanced border security. The adjustment will result in a more accurate alignment of the fees for consular services to the costs of providing the services.

DATES: This final rule is effective on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Johanna Cruz, Management Analyst, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202–485–8915, telefax: 202–485–6826; email: *fees@state.gov.*

SUPPLEMENTARY INFORMATION:

Background

This final rule adjusts the Schedule of Fees for Consular Services (Schedule of Fees) by increasing the PSS from $60 to $80. The Department of State (Department) published a NPRM on March 26, 2021 (86 FR 16149), with 60 days provided for public comment. This rule addresses the two comments received by the Department. Justification for this rulemaking and PSS change, including relevant authorities and information on the study used to calculate this surcharge, can be found in the NPRM.

Analysis of Comments

As noted above, the Department received two comments in response to the NPRM. One commenter requested to view the entire activity dictionary, or at least the list of activities before and after it was streamlined. The commenter suggested that this comparison would allow the public to understand what tasks changed and how those changes led to the fee increase. As explained in the NPRM, the activity dictionary changes focused on standardizing and clarifying tasks, ultimately improving accuracy in cost assignments. These changes resulted in more security-related costs being attributed to the PSS, since this methodology update determined more precisely which passport activities are security-related and assigned them accordingly. For example, the new dictionary has an activity called ''Adjudicate,'' which combines several of the previous model's sub-activities (or tasks) like ''process and adjudicate first-time passport applications for Minors (DS–11),'' ''process and adjudicate passport renewal applications (DS–82),'' and ''process EPDP [emergency photo digital passport] passports.'' The Department found that these sub-activities could be consolidated, because they require the same amount of effort and resources and follow the same process steps. The consolidated activities help reduce possibilities for over-, mis-, or under-attribution of costs to the sub-activity level. By consolidating the sub-activities, the model more accurately reflects the activities required to accept, adjudicate, and issue passports and better assigns costs more consistently to those activities. It is important to note, however, that the activity dictionary update is not the main driver that led to the proposed increase in the PSS. The Department has experienced a steady increase each year in costs associated with passport application processing that support enhanced border security since the last adjustment to the PSS. As detailed in the NPRM, the increases in security-related costs are largely due to an increase in compensation costs for passport adjudicators (an approximately $8.00 per unit increase), passport books (a $7.00 per unit increase), and enhanced printing technology costs for the more secure Next Generation (NextGen) passport books that include state-of-the-art anti-counterfeiting improvements (a $3.45 per unit increase). Other less significant increases and decreases in the many other cost categories comprise the small remainder of the $20.00 cost increase.

A second comment, which was duplicated three times, suggested that the fee increase is too high and that every taxpayer should receive no-fee services as tax dollars should fund this activity. While the Department is sympathetic to the impact the fee increase may have on those who seek this service, the Department generally sets consular fees at an amount calculated to achieve full cost recovery for the U.S. Government of providing the consular service, consistent with its statutory authorities and guidance from the Office of Management and Budget (OMB). As set forth in OMB Circular A–25, as a general policy, each identifiable recipient should pay a user charge for government services, resources, or goods from which he or she derives a special benefit, at an amount sufficient for the U.S. Government to recover the full costs of providing the service, resource, or good. *See* OMB Circular No. A–25, sec. 6(a)(1), (a)(2)(a). Similarly, the Government Accountability Office's Federal User Fees Guide (*https://www.gao.gov/products/gao-08-386sp*) states that ''user fees can be designed to reduce the burden on taxpayers to finance the portions of activities that provide benefits to identifiable users above and beyond what is normally provided to the public. By charging the costs of those programs or activities to beneficiaries, user fees can also promote economic efficiency and equity.''

Fees collected for passport processing and retained by the Department are the main source of operational funding for the Passport office, which typically does not rely on taxpayer or appropriated funding to support its operations. Passport fees are set based on the costs the Department incurs in processing passports and charged only to individuals applying for a passport. While the PSS is proposed to increase 33 percent, it is only one component of the overall adult passport book fee. The PSS increase will result in an increase from $110 to $130 in the overall passport book application fee for adults seeking a renewal (DS–82), which is an 18 percent increase overall, or a 1.8 percent increase each year during the 10-year validity of an adult passport book. This increase to the PSS is necessary to assist the Department in its effort to continue to support services, such as passport services, that benefit only identifiable recipients instead of the general public. These services are funded primarily with fee collections instead of taxpayer dollars/appropriations.

Conclusion

The Department will adjust the PSS in light of the Cost of Service Model's findings that the U.S. government is not recovering fully its costs related to enhanced border security for passport services. Consistent with OMB guidance, the Department endeavors to recover through user fees the cost of services that provide special benefits to an identifiable recipient beyond those that accrue to the general public. *See* OMB Circular A–25, sec. 6(a)(1), (a)(2)(a). For this reason, the Department will adjust the Schedule of Fees.

Regulatory Findings

Administrative Procedure Act

The Department published this rulemaking as a proposed rule and provided 60 days for public comment. It will be effective 60 days after publication, in accordance with 5 U.S.C. 553(d).

Regulatory Flexibility Act

The Department has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6).

Unfunded Mandates Act of 1995

This rule is not expected to result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501–1504.

Congressional Review Act

This rule is a major rule as defined by 5 U.S.C. 804(2).

Executive Orders 12866 and 13563

The Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Orders. OMB has determined that this rule is economically significant under Executive Order 12866.

The final rule is necessary in light of the Department of State's Cost of Service Model's findings that costs associated with passport application processing that support enhanced border security have increased significantly since the last update to the PSS and justify this adjustment through the rulemaking process. *See* Public Law 109–472, section 6, 120 Stat. 3555, reproduced at 8 U.S.C. 1714 (note) (requiring that the amount of the surcharge be reasonably related to the costs of providing the service).

The following table summarizes the impact of this final rule:

Item No.	Fee	Current fee	Change in fee	Percentage increase	Estimated annual number of applications [1]	Estimated change in annual fees collected [2]
Schedule of Fees For Consular Services						
* * *	*	*	*	*	*	
Passport and Citizenship Services						
2. Passport Book Application Services for: (g) Passport book security surcharge (enhanced border security fee)	$80	$60	$20	33.33	FY22: 15,900,000	FY22: $318,000,000
Total	80	60	20	33.33	15,900,000	318,000,000
* * *	*	*	*	*	*	

[1] Projected passport workload is FY 2022 receipts projected by the PPT directorate as of July 2021.
[2] The Department of State retains this fee.
[3] The Department anticipates implementing this fee change in FY 2022. FY 2022 volumes are used to project fee collection totals.

As noted in the NPRM, the Department of State does not anticipate that demand for passport services will change significantly as a result of this rule. The price of a passport book or card will remain minor in comparison with other costs associated with foreign travel. As a result, the Department does not believe passport demand will be significantly affected by the new fee. This is especially true because an adult passport book is valid for 10 years, and a minor passport book is valid for 5 years or until the applicant turns 18. As a result, the cost to the applicant of the PSS increase is spread over the lifetime of the passport book use.

Executive Order 12372 and 13132

This regulation will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 22

Consular services, Fees.

Accordingly, for the reasons stated in the preamble, 22 CFR part 22 is amended as follows:

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

■ 1. Revise the authority citation for part 22 to read as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1157 note, 1183a note, 1184(c)(12), 1201(c), 1351, 1351 note, 1713, 1714, 1714 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 214 note, 1475e, 2504(h), 2651a, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O.

11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

■ 2. In § 22.1, amend the table by revising entry 2(g) under the heading ''Passport and Citizenship Services'' to read as follows:

§ 22.1 Schedule of fees.

* * * * *

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
Schedule of Fees for Consular Services	
Passport and Citizenship Services	
* * * * * * *	
2. Passport Book Application Services for:	
* * * * * * *	
(g) Passport book security surcharge (enhanced border security fee)	$80
* * * * * * *	

Rena Bitter,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 2021–23449 Filed 10–27–21; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 589

Publication of Ukraine-Related Web General License 16 and Subsequent Iterations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing six Ukraine-related web general licenses (GLs) in the **Federal Register**: GL 16, GL 16A, GL 16B, GL 16C, and GL 16D, each of which was previously issued on OFAC's website and is now expired, as well as GL 16E, which was previously issued on OFAC's website and was revoked.

DATES: GL 16E was revoked on January 27, 2019. See **SUPPLEMENTARY INFORMATION** of this rule for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treasury.gov/ofac.*

Background

On March 6, 2014, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA), issued Executive Order (E.O.) 13660, ''Blocking Property of Certain Persons Contributing to the Situation in Ukraine'' (79 FR 13493, March 10, 2014). In E.O. 13660, the President determined that the actions and policies of persons including persons who have asserted governmental authority in the Crimean region without the authorization of the Government of Ukraine that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and declared a national emergency to deal with that threat.

The President subsequently issued E.O. 13661 of March 16, 2014, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'' (79 FR 15535, March 19, 2014), and E.O. 13662 of March 20, 2014, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'' (79 FR 16169, March 24, 2014), pursuant to the national emergency declared in E.O. 13660. E.O. 13661 and E.O. 13662 expanded the scope of the national emergency declared in E.O. 13660. On May 8, 2014, OFAC published the Ukraine Related Sanctions Regulations, 31 CFR part 589 (the ''Regulations''), to implement E.O. 13660, E.O. 13661, and E.O. 13662 (79 FR 26365, May 8, 2014). The President has issued additional Executive orders pursuant to the national emergency declared in E.O. 13660, and expanded in E.O. 13661 and E.O. 13662, which are not discussed in this publication as they are not relevant to the web GLs being published.

OFAC, in consultation with the Department of State, issued GL 16 on June 4, 2018, pursuant to the Regulations, to authorize certain transactions and activities ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving EN+ Group PLC, JSC EuroSibEnergo, or any entity in which EN+ Group PLC or JSC EuroSibEnergo owns, directly or indirectly, a 50 percent or greater interest, and that were in effect prior to April 6, 2018, through 12:01 a.m. eastern daylight time, October 23, 2018.

Subsequently, OFAC issued five further iterations of GL 16, each of which extended the period the authorizations in GL 16 remained in effect: On September 21, 2018, OFAC issued GL 16A, which replaced and superseded GL 16, and extended the authorizations through 12:01 a.m. eastern standard time, November 12, 2018; on October 12, 2018, OFAC issued GL 16B, which replaced and superseded GL 16A, and extended the authorizations through 12:01 a.m. eastern standard time, December 12, 2018; on November 9, 2018, OFAC issued GL 16C, which replaced and superseded GL 16B, and extended the authorizations through 12:01 a.m. eastern standard time, January 7, 2019;

on December 7, 2018, OFAC issued GL 16D, which replaced and superseded GL 16C, and extended the authorizations through 12:01 a.m. eastern standard time, January 21, 2019; and on January 16, 2019, OFAC issued GL 16E, which replaced and superseded GL 16D, and extended the authorizations through 12:01 a.m. eastern standard time, January 28, 2019. Following the delisting of EN+ Group PLC and JSC EuroSibEnergo on January 27, 2019, OFAC authorization was no longer required to transact with these companies or any other entity in which EN+ Group PLC or JSC EuroSibEnergo owns, directly or indirectly, a 50 percent or greater interest. The texts of GLs 16, 16A, 16B, 16C, 16D, and 16E are provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

GENERAL LICENSE NO. 16

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts With EN+ Group PLC or JSC EuroSibEnergo

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving EN+ Group PLC, JSC EuroSibEnergo, or any entity in which EN+ Group PLC or JSC EuroSibEnergo owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, are authorized through 12:01 a.m. eastern daylight time, October 23, 2018.

(b) Except as authorized by Ukraine Related General License 14, any payment to or for the direct or indirect benefit of a blocked person that is ordinarily incident and necessary to give effect to a transaction authorized in paragraph (a) of this general license must be made into a blocked, interest-bearing account located in the United States in accordance with 31 CFR 589.203. Any such payment that is directly or indirectly to the account of a blocked U.S. person identified in paragraph (a) at a U.S. financial institution may be processed in accordance with the original wire transfer instructions, provided that those instructions are consistent with this general license.

(c) All funds in accounts of blocked U.S. persons identified in paragraph (a), including funds originating from authorized payments to such accounts received on or after April 6, 2018, may be used for maintenance or wind-down activities authorized by this general license.

(d) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons identified above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons identified in paragraph (a) of this general license;

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a), (b), or (c); or

(4) The exportation of goods from the United States.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

Dated: June 4, 2018.

Bradley T. Smith,

Acting Deputy Director, Office of Foreign Assets Control.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

GENERAL LICENSE NO. 16A

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts With EN+ Group PLC or JSC EuroSibEnergo

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving EN+ Group PLC, JSC EuroSibEnergo, or any entity in which EN+ Group PLC or JSC EuroSibEnergo owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, are authorized through 12:01 a.m. eastern standard time, November 12, 2018.

(b) Except as authorized by Ukraine Related General License 14A, any payment to or for the direct or indirect benefit of a blocked person that is ordinarily incident and necessary to give effect to a transaction authorized in paragraph (a) of this general license must be made into a blocked, interest-bearing account located in the United States in accordance with 31 CFR 589.203. Any such payment that is directly or indirectly to the account of a blocked U.S. person identified in paragraph (a) at a U.S. financial institution may be processed in accordance with the original wire transfer instructions, provided that those instructions are consistent with this general license.

(c) All funds in accounts of blocked U.S. persons identified in paragraph (a), including funds originating from authorized payments to such accounts received on or after April 6, 2018, may be used for maintenance or wind-down activities authorized by this general license.

(d) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons identified above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons identified in paragraph (a) of this general license;

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a), (b), or (c); or

(4) The exportation of goods from the United States.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the

Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) Effective September 21, 2018, General License No. 16, dated June 4, 2018, is replaced and superseded in its entirety by this General License No. 16A.

Dated: September 21, 2018.

Andrea Gacki,

Director, Office of Foreign Assets Control.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

GENERAL LICENSE NO. 16B

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts With EN+ Group PLC or JSC EuroSibEnergo

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving EN+ Group PLC, JSC EuroSibEnergo, or any entity in which EN+ Group PLC or JSC EuroSibEnergo owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, are authorized through 12:01 a.m. eastern standard time, December 12, 2018.

(b) Except as authorized by Ukraine Related General License 14B, any payment to or for the direct or indirect benefit of a blocked person that is ordinarily incident and necessary to give effect to a transaction authorized in paragraph (a) of this general license must be made into a blocked, interest-bearing account located in the United States in accordance with 31 CFR 589.203. Any such payment that is directly or indirectly to the account of a blocked U.S. person identified in paragraph (a) at a U.S. financial institution may be processed in accordance with the original wire transfer instructions, provided that those instructions are consistent with this general license.

(c) All funds in accounts of blocked U.S. persons identified in paragraph (a), including funds originating from authorized payments to such accounts received on or after April 6, 2018, may be used for maintenance or wind-down activities authorized by this general license.

(d) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons identified above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons identified in paragraph (a) of this general license;

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a), (b), or (c); or

(4) The exportation of goods from the United States.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) Effective October 12, 2018, General License No. 16A, dated September 21, 2018, is replaced and superseded in its entirety by this General License No. 16B.

Dated: October 12, 2018.

Andrea Gacki,

Director, Office of Foreign Assets Control.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

GENERAL LICENSE NO. 16C

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts With EN+ Group PLC or JSC EuroSibEnergo

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving EN+ Group PLC, JSC EuroSibEnergo, or any entity in which EN+ Group PLC or JSC EuroSibEnergo owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, are authorized through 12:01 a.m. eastern standard time, January 7, 2019.

(b) Except as authorized by Ukraine Related General License 14C, any payment to or for the direct or indirect benefit of a blocked person that is ordinarily incident and necessary to give effect to a transaction authorized in paragraph (a) of this general license must be made into a blocked, interest-bearing account located in the United States in accordance with 31 CFR 589.203. Any such payment that is directly or indirectly to the account of a blocked U.S. person identified in paragraph (a) at a U.S. financial institution may be processed in accordance with the original wire transfer instructions, provided that those instructions are consistent with this general license.

(c) All funds in accounts of blocked U.S. persons identified in paragraph (a), including funds originating from authorized payments to such accounts received on or after April 6, 2018, may be used for maintenance or wind-down activities authorized by this general license.

(d) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons identified above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons identified in paragraph (a) of this general license;

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a), (b), or (c); or

(4) The exportation of goods from the United States.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office

of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) Effective November 9, 2018, General License No. 16B, dated October 12, 2018, is replaced and superseded in its entirety by this General License No. 16C.

Dated: November 9, 2018

Andrea Gacki,

Director, Office of Foreign Assets Control.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

GENERAL LICENSE NO. 16D

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts With EN+ Group PLC or JSC EuroSibEnergo

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving EN+ Group PLC, JSC EuroSibEnergo, or any entity in which EN+ Group PLC or JSC EuroSibEnergo owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, are authorized through 12:01 a.m. eastern standard time, January 21, 2019.

(b) Except as authorized by Ukraine Related General License 14D, any payment to or for the direct or indirect benefit of a blocked person that is ordinarily incident and necessary to give effect to a transaction authorized in paragraph (a) of this general license must be made into a blocked, interest-bearing account located in the United States in accordance with 31 CFR 589.203. Any such payment that is directly or indirectly to the account of a blocked U.S. person identified in paragraph (a) at a U.S. financial institution may be processed in accordance with the original wire transfer instructions, provided that those instructions are consistent with this general license.

(c) All funds in accounts of blocked U.S. persons identified in paragraph (a), including funds originating from authorized payments to such accounts received on or after April 6, 2018, may be used for maintenance or wind-down activities authorized by this general license.

(d) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons identified above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons identified in paragraph (a) of this general license;

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a), (b), or (c); or

(4) The exportation of goods from the United States.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) Effective December 7, 2018, General License No. 16C, dated November 9, 2018, is replaced and superseded in its entirety by this General License No. 16D.

Dated: December 7, 2018.

Andrea Gacki,

Director, Office of Foreign Assets Control.

OFFICE OF FOREIGN ASSETS CONTROL

Ukraine Related Sanctions Regulations 31 CFR Part 589

GENERAL LICENSE NO. 16E

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts With EN+ Group PLC or JSC EuroSibEnergo

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 CFR part 589, that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving EN+ Group PLC, JSC EuroSibEnergo, or any entity in which EN+ Group PLC or JSC EuroSibEnergo owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, are authorized through 12:01 a.m. eastern standard time, January 28, 2019.

(b) Except as authorized by Ukraine Related General License 14E, any payment to or for the direct or indirect benefit of a blocked person that is ordinarily incident and necessary to give effect to a transaction authorized in paragraph (a) of this general license must be made into a blocked, interest-bearing account located in the United States in accordance with 31 CFR 589.203. Any such payment that is directly or indirectly to the account of a blocked U.S. person identified in paragraph (a) at a U.S. financial institution may be processed in accordance with the original wire transfer instructions, provided that those instructions are consistent with this general license.

(c) All funds in accounts of blocked U.S. persons identified in paragraph (a), including funds originating from authorized payments to such accounts received on or after April 6, 2018, may be used for maintenance or wind-down activities authorized by this general license.

(d) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons identified above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons identified in paragraph (a) of this general license;

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a), (b), or (c); or

(4) The exportation of goods from the United States.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S.

Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

(f) Effective January 16, 2019, General License No. 16D, dated December 7, 2018, is replaced and superseded in its entirety by this General License No. 16E.

Dated: January 16, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: October 25, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2021–23473 Filed 10–27–21; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Parts 604, 690 and 691

RIN 1840—AD46

Federal-State Relationship Agreements, Federal Pell Grant Program, Academic Competitiveness Grant, and National Science and Mathematics Access To Retain Talent Grant

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations implementing the Federal Pell Grant Program to conform with changes made by the Department of Education Appropriations Act, 2012 and the Department of Education Appropriations Act, 2017. The Secretary also removes obsolete regulations for Federal-State Relationship Agreements and the Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) programs. These regulations also make technical corrections and delete references to programs that are no longer authorized or funded.

DATES: These final regulations are effective October 28, 2021.

FOR FURTHER INFORMATION CONTACT: Aaron Washington, 400 Maryland Avenue SW, Room 2C182, Washington, DC 20202.

Telephone: (202) 453–7241.

Email: Aaron.Washington@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:

Executive Summary

Purpose of This Regulatory Action: This regulatory action amends or removes various Department regulations to conform with statutory changes.

The Secretary removes and reserves 34 CFR part 604, Federal-State Relationship Agreements, to reflect that section 1203 of the Higher Education Act of 1965, as amended (HEA), was eliminated by the Higher Education Amendments of 1998, Public Law 105–244.

Section 401A(g) of the HEA authorized the ACG and National SMART Grant programs only through the end of the 2010–2011 award year. Therefore, the Secretary also removes and reserves the implementing regulations for those programs in 34 CFR part 691.

The Secretary also amends part 690 to make conforming changes that are consistent with the statutory provisions referenced above and to make technical revisions to delete references to the ACG and National SMART Grant programs, which are no longer authorized.

Summary of the Major Provisions of this Regulatory Action: In the final regulations we amend 34 CFR part 690 to reflect the following statutory changes to the Pell Grant Program.

Duration of Student Eligibility (§ 690.6)

In December 2011, section 309 of the Department of Education Appropriations Act, 2012 (title III of division F of the Consolidated Appropriations Act, 2012, Pub. L. 112–74) amended section 401(c)(5) of the HEA to reduce the duration of a student's eligibility to receive a Federal Pell Grant from 18 semesters (or its equivalent) to 12 semesters (or its equivalent).

Calculation of a Federal Pell Grant (§ 690.62)

In December 2011, Public Law 112–74 amended section 401(b)(4) of the HEA to change the minimum Federal Pell Grant award calculation. The law set the minimum Federal Pell Grant award for a student at 10 percent of the maximum award amount for the award year. In addition, it eliminated the provision that permitted a student who would be eligible to receive a Federal Pell Grant of between five and 10 percent of the award year's maximum award to receive an award of 10 percent of the maximum award.

One and One-Half Federal Pell Grants in One Award Year (§§ 690.63(g), 690.64(b), 690.65(c), (d)(2), and (f), and 690.67)

In May 2017, section 310 of the Department of Education Appropriations Act, 2017 (title III of division H of Pub. L. 115–31, the Consolidated Appropriations Act, 2017), added section 401(b)(8) to the HEA to allow a student to receive Federal Pell Grant funds for up to 150 percent of the student's Pell Grant Scheduled Award for an award year, if the student is enrolled at least half time in a certificate, associate degree, or baccalaureate degree program, effective as of the 2017–2018 award year.

Prior to the publication of these final regulations, we provided guidance in Dear Colleague Letter GEN–17–06 (available at: *https://ifap.ed.gov/dpcletters/GEN1706.html*) to institutions on how to implement the provisions of section 401(b)(8) to allow certain students to receive one and one-half Pell Grants in one award year beginning with the 2017–2018 award year.

Costs and Benefits: As further detailed in the *Regulatory Impact Analysis,* the statutory changes reflected in these regulations provide a substantial net benefit to students and result in transfers between the Federal Government and students.

Significant Regulations

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect.

Part 604—Federal-State Relationship Agreements

Statute: Section 1203 of the HEA, as amended by the Education Amendments of 1980, established the procedure for State participation in the Continuing Education Outreach Program, the State Student Incentive Grant Program (currently the Leveraging Educational Assistance Partnership Program (LEAP) Program), and the Undergraduate Academic Facilities Program. States wishing to participate in these programs were required to enter into a Federal-State Relationship Agreement with the Secretary. The agreement had to contain assurances, and the means by which they would be met, relating to administration, financial management, treatment of applicants, supplement, not supplant requirements, and planning. The provisions of the agreement could not supersede any reporting requirements established by the applicable programs.

Current Regulations: Current 34 CFR part 604 provides that a State must enter into an agreement with the Secretary if it wishes to participate in the Continuing Education Outreach program, title I–B, with the exception of sections 116 and 117 of the HEA; the State Student Incentive Grant program (currently the LEAP Program), subpart 3 of title IV–A of the HEA; and the Undergraduate Academic Facilities Grant program, title VII–A of the HEA. The agreement must contain assurances relating to administration, financial management, treatment of applicants for subgrants and contracts, supplement, not supplant requirements, and planning.

New Regulations: We are removing and reserving 34 CFR part 604.

Reasons: Section 1203 of the HEA was repealed on October 7, 2008, by the Higher Education Amendments of 1998, Public Law 105–244. Therefore, the Secretary removes and reserves the implementing regulations for the Federal-State Relationship Agreements in 34 CFR part 604.

Part 690—Federal Pell Grant Program

Duration of Student Eligibility (§ 690.6)

Statute: Section 401(c)(5) of the HEA provides that the duration of a student's eligibility to receive a Federal Pell Grant is 12 semesters (or its equivalent).

Current Regulations: Current § 690.6(e) provides that if a student receives a Federal Pell Grant for the first time on or after July 1, 2008, the student may receive no more than nine Scheduled Awards. A student may receive a maximum of one Scheduled Award per academic year.

New Regulations: Revised § 690.6(e) provides that a student may receive no more than six Scheduled Awards as determined by the Secretary.

Reasons: These final regulations amend § 690.6(e) to conform to amended section 401(c)(5) of the HEA, by reducing the number of Scheduled Awards a student may receive to six (or the equivalent of 12 semesters).

Institutional Participation (§ 690.7(a), (d), and (e))

Statute: Section 401A(c)(1) of the HEA provides that a student must be eligible for a Federal Pell Grant to qualify for an ACG or National SMART Grant. Section 401(j) of the HEA provides that no institution of higher education is eligible to participate in the Federal Pell Grant Program if that institution is ineligible to participate in the Federal Family Education Loan (FFEL) or William D. Ford Federal Direct Loan (Direct Loan) programs as a result of a final default rate determination made by the Secretary.

Current Regulations: Section 690.7(a) provides that an institution may not participate in the Federal Pell Grant Program if it has at least one eligible program under § 691.2(d) and does not participate in the ACG or National SMART Grant programs, as applicable. Section 690.7(d) provides that if an institution loses its eligibility to participate in the FFEL or Direct Loan program under the provisions of subpart M of 34 CFR part 668, it also loses its eligibility to participate in the Federal Pell Grant Program for the same period of time. Section 690.7(e) provides that an institution must provide to the Secretary, within 45 days after the effective date of loss of eligibility, student-level disbursement information and an accounting of the Federal Pell Grant expenditures for that award year to the date of termination.

New Regulations: We are removing paragraph (a) of § 690.7 and making technical changes to the remaining paragraphs.

Reasons: Section 401A(g) of the HEA authorized the ACG and National SMART Grant programs only through the end of the 2010–2011 award year. Therefore, we are removing § 690.7(a), which references these two programs. With the removal of paragraph (a), current paragraphs (d) and (e) are redesignated as paragraphs (c) and (d). In redesignated paragraph (c)(1), we are removing the reference to the FFEL program and adding a reference to subpart N, which includes regulations for calculating the three-year cohort default rate and parallels the provisions in subpart M, part 668, which includes regulations for calculating a two-year cohort default rate. In redesignated paragraph (c)(2), we are revising the citations to include §§ 668.187(d) and 668.206(d) of subpart M and N, part 668, respectively, to describe the consequences of cohort default rates on an institution's ability to participate in the Federal Pell Grant Program. In redesignated paragraph (d), we are adding ''or for whom the institution obtained a valid ISIR'' to include the electronic equivalent of the Student Aid Report.

Calculation of a Federal Pell Grant (§ 690.62(b))

Statute: Section 401(b)(4) of the HEA provides that a Federal Pell Grant may not be awarded to a student if the amount of that grant for that student for any academic year is less than 10 percent of the maximum amount of a Federal Pell Grant award determined for such academic year.

Current Regulations: Current § 690.62(b) states that no payment may be made to a student if the student's annual award is less than $200. However, a student who is eligible for an annual award that is equal to or greater than $200, but less than or equal to $400, will be awarded a Federal Pell Grant of $400.

New Regulations: We are removing § 690.62(b).

Reasons: We are removing § 690.62(b), which has been superseded by section 401(b)(4) of the HEA. Since the 2012–2013 award year, this change in the law has been explained in the annual Dear Colleague Letter that accompanies the Pell Grant Payment and Disbursement Schedules (available at: *https://ifap.ed.gov/dpcletters/P1201.html*).

One and One-Half Federal Pell Grants in an Award Year (§§ 690.63(g), 690.64(b), 690.65(c), (d)(2), and (f), and 690.67)

Statute: Section 401(b)(8) of the HEA provides that a student may receive up to one and one-half consecutive Federal Pell Grant Scheduled Awards during a single award year, if the student is enrolled at least half-time in the payment period(s) for which the student receives additional Pell Grant funds in excess of 100 percent of the student's Pell Grant Scheduled Award. The student must also be enrolled in a certificate, associate degree, or baccalaureate degree program. Section 484(s)(3) of the HEA provides the authority to waive this provision for students with intellectual disabilities who enroll in a comprehensive transition and postsecondary program.

Calculation of a Federal Pell Grant for a Payment Period (§ 690.63(g))

Current Regulations: Current § 690.63(g)(1) provides that the amount of a student's award for the award year may not exceed his or her Scheduled Federal Pell Grant award for the award year.

New Regulations: We are revising § 690.63(g)(1) to provide that a student is eligible to receive one and one-half of the student's Scheduled Federal Pell Grant award in the same award year.

Under new § 690.63(g)(2), if a student is eligible for the remaining portion of a first Scheduled Award in an award year and for a payment from the additional one-half Scheduled Award, the student's payment is calculated using the annual award for his or her enrollment status for the payment period. The student's payment is the remaining amount of the first Scheduled Award being completed plus an amount from the additional one-half Scheduled Award in the award year up to the total

amount of the payment for the payment period.

Reasons: We are revising § 690.63(g)(1) to establish procedures for awarding a student with one and one-half of the student's Scheduled Award in an award year as required by section 401(b)(8) of the HEA.

The revisions to paragraph (g)(2) allow for the calculation of a student's Federal Pell Grant payment when the student is eligible to receive a payment from his or her first Scheduled Award and an additional one-half Scheduled Award in a payment period. In addition, we are making conforming changes to § 690.63(f).

Determining the Award Year for a Federal Pell Grant Payment Period That Occurs in Two Award Years (§ 690.64(b))

Current Regulations: Current § 690.64(b) provides that an institution may not make a payment that will result in the student receiving more than his or her Scheduled Federal Pell Grant for an award year.

New Regulations: We are revising current § 690.64(b) to provide that a student is eligible to receive one and one-half of the student's Scheduled Federal Pell Grant award in the same award year.

Reasons: We are revising § 690.64(b) to conform to section 401(b)(8) of the HEA.

Transfer Student: Attendance at More Than One Institution During an Award Year (§ 690.65(c), (d)(2), and (f))

Current Regulations: Current § 690.65(c) provides that a student who receives a Federal Pell Grant at one institution and subsequently enrolls at a second institution within the same award year may only be paid at the second institution for the period of time the student is enrolled at that institution. The institution must adjust the student's grant to ensure that funds received by the student for the award year do not exceed the student's Scheduled Federal Pell Grant for that award year.

Current § 690.65(d)(2) provides that the percentage of a student's Scheduled Federal Pell Grant used at the first institution is subtracted from 100 percent to determine the percentage of the Scheduled Federal Pell Grant the student is eligible to receive at the second institution.

Current § 690.65(f) provides that a transfer student must repay any amount received in an award year that exceeds his or her first Scheduled Federal Pell Grant.

New Regulations: To conform to section 401(b)(8) of the HEA, we are revising current § 690.65(c), (d)(2), and (f) to establish procedures for awarding a student an additional Pell Grant in an amount up to one-half of his or her Scheduled Award in an award year.

Reasons: Section 401(b)(8) provides that an otherwise eligible student could receive more than one Federal Pell Grant in an award year. Therefore, we are establishing procedures for awarding a student an additional Pell Grant in an amount up to one-half of his or her Scheduled Award in an award year.

Eligibility To Receive Additional Federal Pell Grant Funds in an Amount Up to One-Half of a Scheduled Award During a Single Award Year (§ 690.67)

Current Regulations: None.

New Regulations: New § 690.67 provides that an institution participating in the Federal Pell Grant Program must award an additional Federal Pell Grant in an amount up to one-half of a Scheduled Award to a student in an award year if the student is enrolled (1) in an eligible bachelor's or associate's degree program, or program leading to another recognized educational credential, for one or more additional payment periods during the same award year that are not fully covered by the student's initial Federal Pell Grant Scheduled Award; and (2) at least as a half-time student in the payment period(s) for which the student receives any portion of the additional Federal Pell Grant funds. This provision does not apply to students with intellectual disabilities, to the extent provided in 34 CFR part 668, subpart O, and section 484(s) of the HEA.

Reasons: These regulations establish procedures for awarding a student an additional Pell Grant in an amount up to one-half of his or her Scheduled Award in an award year, in accordance with the statute.

Part 691—Academic Competitiveness Grant (ACG) and National Science and Mathematics Access To Retain Talent Grant (National SMART Grant) Programs

Statute: Section 401A of the HEA established the ACG and National SMART Grant programs to assist eligible students in paying their college education expenses.

Current Regulations: Current 34 CFR part 691 provides guidance for the administration of the ACG and National SMART Grant programs. The ACG Program awards grants to help eligible financially needy first- and second-year undergraduate students, who complete rigorous secondary school programs of study, meet the cost of their postsecondary education.

The National SMART Grant Program awards grants to help eligible financially needy third-, fourth-, and, in the case of a program with at least five full years, fifth-year undergraduate students who are pursuing eligible majors in the physical, life, or computer sciences, mathematics, technology, or engineering or a critical foreign language meet the cost of their postsecondary education.

New Regulations: We are removing and reserving 34 CFR part 691.

Reasons: Section 401A(g) of the HEA authorized the ACG and National SMART Grant programs only through the end of the 2010–2011 award year. Therefore, the Secretary removes and reserves the implementing regulations for the ACG and National SMART Grant programs in 34 CFR part 691.

Waiver of Rulemaking and Delayed Effective Date: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B).

There is good cause here for waiving rulemaking under the APA because this regulatory action merely rescinds regulations that have become obsolete due to statutory changes and revises others to conform to those changes. This regulatory action does not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that obtaining public comment on this regulatory action is unnecessary.

Notice and comment is ''unnecessary'' when ''the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'' *Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 94 (D.C. Cir. 2012); *Util. Solid Waste Activities Grp.* v. *EPA,* 236 F.3d 749, 755 (D.C. Cir. 2001). *See also Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1484 (9th Cir. 1992) (''Notice and comment is 'unnecessary' when 'the regulation is technical or minor.' '') (quoting *Levesque* v. *Block,* 723 F.2d 175, 184 (1st Cir. 1983)).

The APA generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). In addition, this final rule has been

determined to be a major rule for purposes of the Congressional Review Act (CRA) (5 U.S.C. 801, *et seq.*). Generally, under the CRA, a major rule takes effect 60 days after the date on which the rule is published in the **Federal Register**. Section 808(2) of the CRA, however, provides that any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.

As previously stated, because the final regulations merely reflect statutory changes and remove and update obsolete regulatory provisions, there is good cause to waive the delayed effective dates in the APA and the CRA and make the final regulations effective upon publication.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

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

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

The final regulations will result in transfers between the Federal Government and students of more than $100 million. Therefore, this final action is ''economically significant'' and subject to review by OMB under section 3(f)(1) of Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).

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

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

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

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

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

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

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

We are issuing these final regulations only on a reasoned determination that their benefits would justify their costs. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

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

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The final regulations are expected to have an economically significant impact on the Federal Government and students. As discussed further in the costs, benefits, and transfers section, there will be transfers between the Federal Government and students as a result of the statutory changes, which are reflected in these regulations. In this Regulatory Impact Analysis, we discuss the need for regulatory action; costs, benefits, and transfers; net budget impacts; and regulatory alternatives we considered.

Need for Regulatory Action

Over the past nine years, there have been several self-implementing statutory changes that have not been reflected in the Federal Pell Grant Program regulations. In December 2011, Public Law 112–74 amended section 401(b)(4) of the HEA to change the minimum Federal Pell Grant award calculation. The law established the minimum Federal Pell Grant award for a student at 10 percent of the maximum award amount for the award year. In addition, it eliminated the provision that permitted a student who would be eligible to receive a Federal Pell Grant of between five and 10 percent of the award year's maximum award to receive an award of 10 percent of the maximum award. Therefore, beginning with the 2012–2013 award year, students could not receive a Federal Pell Grant unless they were eligible for at least 10 percent of the maximum award for the academic year. This change in the law has been described in the annual Dear Colleague Letter that accompanies the Pell Grant Payment and Disbursement Schedules since the 2012–2013 award year.

Section 309 of the Department of Education Appropriations Act, 2012 (title III of division F of the Consolidated Appropriations Act, 2012, Pub, L. 112–74) amended section 401(c)(5) of the HEA to reduce the duration of a student's eligibility to receive a Federal Pell Grant from 18 semesters (or its equivalent) to 12 semesters (or its equivalent), effective beginning with the 2012–2013 award year. The calculation of the duration of a student's eligibility includes all years of the student's receipt of Federal Pell Grant funding. This change in the duration of students' Federal Pell Grant eligibility is not limited to students who received their first Federal Pell Grant on or after the 2008–2009 award year, as the HEA previously provided when the duration of eligibility was 18 semesters. Although the Department issued guidance in Dear Colleague Letter GEN–13–14, the Department needs to update

its regulations to reflect this statutory change.

In May 2017, section 310 of the Department of Education Appropriations Act, 2017 (title III of division H of Pub. L. 115–31, the Consolidated Appropriations Act, 2017), added section 401(b)(8) to the HEA to allow a student to receive Federal Pell Grant funds for up to 150 percent of the student's Pell Grant Scheduled Award for an award year, if the student is enrolled at least half-time in a certificate, associate degree, or baccalaureate degree program, effective as of the 2017–2018 award year. The regulations preceding this statutory change restricted students to the maximum of one Pell award in an award year. Although the Department issued guidance via Dear Colleague Letter GEN–17–06 for the 2017–2018 award year, we need to revise our current regulations to reflect these statutory changes.

Furthermore, these regulatory changes will impact institutions' financial aid operations and the Department must revise current regulations to ensure that institutions have the correct guidance to properly disburse Pell awards.

Discussion of Costs, Benefits, and Transfers

The final regulations decrease the maximum number of Federal Pell Grant Scheduled Awards from nine to six and increase the annual award value from one Scheduled Award to one and one-half of a Scheduled Award. In the following sections, the Department summarizes the effects these final regulations are likely to have on students, institutions of higher education, and the Federal Government.

Students

The statutory changes reflected in these regulations provide a substantial net benefit to students and changes in the transfers between the Federal Government and Pell recipients. The change to allow one and a half Pell grants in an award year increases transfers to students in any given award year. Students who qualify for the additional half Pell grant may be able to reduce their borrowing needs and exit college with less debt than they would have under the previous statute and rules. Students may also consider taking additional classes during the summer semester as a result of increased funding, which could allow them to graduate earlier and enter the job market earlier. A recent study published in Education Finance and Policy journal found that $1,000 per student in additional year-round Pell funding increased summer enrollment, completion rates, and post-college earnings.[1]

At the time of its enactment, the Department estimated that this change would benefit approximately 905,000 Pell recipients at a cost of $1.5 billion for the 2018–19 award year. Over the 10-year budget window, it was expected to benefit an average of 980,000 Pell recipients annually with an average additional award of approximately $1,650.

The expiration of the Academic Competitiveness Grants (ACG) and National Science and Mathematics Access to Retain Talent (SMART) grant programs reduced transfers to students. The programs awarded ACG grants to first- and second-year undergraduates who completed a rigorous high school curriculum, and SMART Grants to third- and fourth-year undergraduates majoring in physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language.

Academic Competitiveness Grants were awarded to students who were eligible for a Federal Pell Grant. First-year applicants, who may receive up to $750, also must have been first-time undergraduates who had completed a rigorous secondary school program and were enrolled or accepted for enrollment in a 2- or 4-year degree-granting institution. Second-year ACG applicants qualified for an award of up to $1,300 if they had completed a rigorous program and maintained a cumulative grade point average of at least 3.0 during their first year as an undergraduate.

SMART Grant applicants had to maintain a cumulative GPA of at least 3.0 in the coursework required by their major to qualify for up to $4,000 for their third and fourth years of undergraduate study. SMART Grants, in combination with the Federal Pell Grant and other student financial assistance, were not allowed to exceed the student's cost of attendance.

In the 2010–11 award year, the final year of these programs, the Department estimated that there were 786,000 recipients of ACG grants with an average grant of $697 and 150,000 SMART grant recipients with an average grant of $2,560. With the sunset of the program, future students who may have qualified had to find other sources for these funds, including programs that would be affected by the higher unmet need resulting from the elimination of these grants.

Another policy that affected a segment of Pell grant recipients was the statutory change to set the minimum Pell award to 10 percent of the maximum award. This reduced the maximum expected family contribution (EFC) with which a student can be eligible, decreasing the potential pool of recipients. This change was expected to affect those at the higher end of the income range eligible for Pell Grants. As described in the Net Budget Impacts, at the time of its enactment, this was estimated to reduce transfers to recipients by $23 million in the 2012–13 award year and $389 million in the applicable 10-year budget window.

The statutory change to reduce a Pell recipient's lifetime limit to 12 semesters was meant to emphasize timely completion of programs. At the time of its enactment, the Department estimated that 66,000 recipients would be affected in the 2012–13 award year and that total savings over the 10-year budget window would be approximately $2.9 billion. For students, this policy may limit their ability to transfer institutions, switch educational programs, or restart their undergraduate education and complete a program. The Pell Grant duration for a student is calculated by adding together each of the annual percentages of a student's Scheduled Award that was actually disbursed to the student. For example, a student whose 2010–2011 Federal Pell Grant Scheduled Award was $5,550 (the maximum award that year), but who received $2,775 because she was only enrolled for one semester, will have used 50 percent of that award year's Scheduled Award. Similarly, a student who was enrolled three-quarter time for the 2011–2012 award year would have used 75 percent of his Scheduled Award. If these examples were for the same student and she did not receive Pell Grant funds for any other award year, her total Lifetime Eligibility Used (LEU) would be 125 percent. The combination of policies—the LEU and the possibility of receiving up to 150 percent of an award in one year—means students will have to track their Pell usage carefully as they plan their educational programs.

[1] Vivian Yuen Ting Liu, Is School Out for the Summer? The Impact of Year-Round Pell Grants on Academic and Employment Outcomes of Community College Students, Education Finance and Policy 2020 15:2, 241–269. Available at *www.mitpressjournals.org/doi/full/10.1162/edfp_a_00277.* ''The study finds that for each $1,000 of additional YRP grant funding, summer enrollment increases by 28 percentage points, diploma completion rates increase by 1.6 percentage points, and third-year earnings from college entry increase by $200. For YRP-eligible students who started in a short-term program, the gains are a 2 percentage point higher certificate attainment rate, 3.6 percentage point increase in associate degree completion, and no effect on four-year transfer rates.''

Institutions

The effect of the statutory change reflected in these final regulations on institutions will depend on the percentage of recipients who receive more than one Pell award in a given award year. Institutions might benefit if they choose to decrease the amount of institutional aid they give to students receiving both institutional grants and also Pell Grants for an additional semester, or reallocate that aid to other students. Some institutions may decide to increase tuition because of the increased availability of Pell Grants. Research from the Federal Reserve Bank of New York found a correlation between increased maximum Pell awards and tuition and fees and a reduction in institutional grants.[2]

If an institution spends additional revenue on academic or student support services, that would benefit all students. If the Pell Grants displace other non-institutional sources used to pay tuition (*e.g.,* State aid or Federal loans), we would expect little financial impact on institutions.

We expect little impact on costs to institutions from increases in enrollment intensity by the marginal student, as it would require very little in additional resources. Full-time students are typically more cost-effective for institutions, given that they pay more tuition but require or use the same amount of many campus resources as part-time students. Large-scale shifts in student behavior, though, may require increasing capacity like adding sections of courses. This may be particularly true for institutions that have not historically had robust summer terms, but see increased demand for such courses due to the expanded access to Pell grants.

The actual impact of this statutory change on institutions will vary according to student behavior and institutional decision-making. In the 2018–19 award year, transfers to recipients increased by approximately $1.3 billion.

The elimination of ACG and SMART grants eliminated these sources of funding but also costs of administering the programs for institutions. The change in the lifetime limit also reduces the maximum amount of Pell Grants an institution may receive with respect to individual recipients. If the reduced aid prompted any students to leave school, institutions would also lose out on the net tuition revenue from those students. The effect on costs is less clear. Students may accelerate their coursework and take more credits per semester, potentially increasing the expense associated with them in any given semester. On the other hand, students may focus on their program of study sooner and take fewer classes outside their major and reduce costs by finishing faster.

Federal Government

The administrative changes associated with the statutory and regulatory changes described in this rule have already been implemented and are not expected to have significant costs. The effects on the Pell Grant program are described in the *Net Budget Impacts* section of this document.

Net Budget Impacts

Because Pell Grants are an entitlement to eligible recipients, changes to eligibility or award value change costs of the Pell Grant Program. These regulations increase the maximum annual award from one Scheduled Award to one and one-half of a Scheduled Award. With this change, more money may be awarded per award year over fewer award years. The Department will see increased costs in the form of Pell awards as a result of the statutory change reflected in the year-round Pell regulations. At the time of enactment the Department estimated that year-round Pell would benefit approximately 905,000 Pell recipients at a cost of $1,502,000,000 in the 2018–19 award year and would have an estimated cost of $16.3 billion over the 10-year budget window. This estimate was derived using the take-up rate and other student data from the 2010–11 award year when year-round Pell grants were previously available. In the 2010–11 award year students were able to receive two full Scheduled Awards rather than the current one and a half. This change was controlled for in applying the 2010–11 data to the current award year conditions. The newest iteration of year-round Pell grants has now been in place for three full award years. Most recently, in the 2019–20 award year approximately 823,000 recipients benefitted at a cost of about $1,300,000,000. In future estimates the Department will take into account these additional data points.

While the change to year-round Pell increased transfers to recipients, the implementation of the 10 percent minimum award and 12 semester lifetime Pell eligibility limit reflected in these regulations reduced the cost of the Pell Grant program. The statutory change to set the minimum Pell award to 10 percent of the maximum award reduces the maximum EFC with which a student can be eligible, thus reducing the potential pool of recipients. At the time of enactment this change was estimated to save $23 million in the 2012–13 award year and $389 million over the 10-year budget window. Limiting Pell recipients' lifetime limit to 12 semesters was estimated to save $247 million in the 2012–13 award year and $2,862 million over the 10-year budget window.

The elimination of the ACG and SMART grant programs were not expected to have a significant budget impact because they were expected to sunset in 2010–11 and that was reflected in the Department's budget baselines at the time.

Alternatives Considered

No alternatives were considered for the revisions to the regulations included in this document because these changes implement changes to the HEA enacted by Congress, and the Department did not exercise discretion in developing these amendments.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the changes in annual monetized transfers in constant 2017 dollars as a result of these final regulations. Expenditures are classified as transfers from the Federal Government to financial aid recipients.

[2] Lucca, D., Nadauld, T. & Shen, K., July 2015, Credit Supply and the Rise in College Tuition: Evidence from the expansion in Federal Student Aid Programs, Federal Reserve Bank of New York.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers	
	7%	3%
Annualized Monetized Transfers related to year-round Pell	$1,407.5	$1,436.4
Annualized Monetized Transfers related to minimum Pell award	−28.4	−30.1
Annualized Monetized Transfers related to 12 semester lifetime limit	−248.0	−254.6
From Whom to Whom?	From the Federal Government to financial aid recipients	

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under 5 U.S.C. 553.

Paperwork Reduction Act of 1995

The final regulations do not create any new information collection requirements.

We are removing OMB control numbers from certain regulations because they either are no longer necessary, or the applicable burden is now captured under a separate control number. OMB Control Number 1840–0536, ''Pell Grant Program (Recordkeeping Requirements),'' which we are removing from § 690.81 ''Fiscal control and fund accounting procedures,'' was disapproved on November 16, 1990. Section 690.81 cross references requirements for maintaining general fiscal records and general funds received in accordance with other sections of the Department's regulations. Any burden associated with those requirements is accounted for under OMB control numbers associated with those other regulations.

OMB Control Number 1840–0681, ''Federal Pell Grant Program, Information Collection Presidential Access Scholarship Program, Information Collection,'' expired on December 31, 1997. It was associated with §§ 690.12, 690.13, and 690.82. The Presidential Access Scholarship Program is no longer active. Any burden associated with §§ 690.12 and 690.13 is captured under OMB Control Number 1845–0001, ''Free Application for Federal Student Aid (FAFSA).'' Section 690.82 cross-references record retention and examination provisions in § 668.24. Any burden associated with § 668.24 is accounted for under OMB Control Number 1845–0038.

OMB Control Number 1845–NEW5 was associated with an information collection in § 690.63(h), which was removed through a prior interim final rule (77 FR 25893, May 2, 2012) due to statutory changes. Therefore, we are deleting the OMB control number from § 690.63, as the information collection request has been discontinued and is no longer applicable to that section.

Intergovernmental Review

The Federal Pell Grant, ACG, and National SMART Grant programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

Based on our own review, we have determined that the final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, Braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

You may also view this document in text or PDF at the following site: *www.ifap.ed.gov/.*

(Catalog of Federal Domestic Assistance Numbers: 84.063 Federal Pell Grants; 84.375 Academic Competitiveness Grants; and 84.376 National Science and Mathematics Access to Retain Talent Grants.)

List of Subjects

34 CFR Part 604

Colleges and universities, Grant programs—education, Intergovernmental relations.

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 691

Colleges and universities, Elementary and secondary education, Grant programs—education, Student aid.

Miguel A. Cardona,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 604, 690, and 691 of title 34 of the Code of Federal Regulations as follows:

PART 604 [Removed and Reserved]

■ 1. Under the authority of 20 U.S.C. 1221e–3, part 604 is removed and reserved.

PART 690—FEDERAL PELL GRANT PROGRAM

■ 2. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, 1070g, unless otherwise noted.

§ 690.2 [Amended]

■ 3. Section 690.2 is amended by:

■ a. In paragraph (b), removing the terms ''Academic Competitiveness Grant (ACG) Program'', ''Federal Family Education Loan (FFEL) Program'', ''Federal Perkins Loan Program'', and ''National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program''.

■ b. Removing the parenthetical authority citation at the end of the section.

■ 4. Section 690.6 is amended by:
■ a. Revising paragraph (e).
■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 690.6 Duration of student eligibility.

* * * * *

(e) A student may receive no more than six Scheduled Awards, as determined by the Secretary.

* * * * *

§ 690.7 [Amended]

■ 5. Section § 690.7 is amended by:
■ a. Removing paragraph (a).
■ b. Redesignating paragraphs (b) through (e) as paragraphs (a) through (d), respectively.
■ c. In newly redesignated paragraph (c)(1), removing the words ''FFEL or'' and adding the words ''or N'' after the words ''subpart M''.
■ d. In newly redesignated paragraph (c)(2), removing the citation ''668.187'' and adding in its place the citations ''668.187(d) or 668.206(d)''.
■ e. In newly redesignated paragraph (d)(1), adding the words ''or for whom the institution obtained a valid ISIR'' after the word ''institution''.
■ f. Removing the parenthetical authority citation at the end of the section.

§ 690.10 [Amended]

■ 6. Section § 690.10 is amended by:
■ a. In paragraph (b), removing the words and punctuation ''Federal Perkins Loan,''.
■ b. Removing the parenthetical authority citation at the end of the section.

§ 690.12 [Amended]

■ 7. Section § 690.12 is amended by removing the parenthetical OMB control number and authority citation at the end of the section.

§ 690.13 [Amended]

■ 8. Section § 690.13 is amended by removing the parenthetical OMB control number and authority citation at the end of the section.

§ 690.14 [Amended]

■ 9. Section § 690.14 is amended by:
■ a. In paragraph (c)(2), removing the citation ''34 CFR 668.57'' and adding in its place the citation ''subpart E of part 668 of this chapter''.
■ b. Removing the parenthetical authority citation at the end of the section.

■ 10. Section 690.62 is revised to read as follows:

§ 690.62 Calculation of a Federal Pell Grant.

The amount of a student's Pell Grant for an academic year is based upon the payment and disbursement schedules published by the Secretary for each award year.

■ 11. Section 690.63 is amended by:
■ a. Revising paragraphs (f) and (g).
■ b. Removing the parenthetical OMB control number and authority citation at the end of the section.

The revisions read as follows:

§ 690.63 Calculation of a Federal Pell Grant for a payment period.

* * * * *

(f) *Calculating payments that exceed 50 percent of a student's annual award.* A single disbursement may not exceed 50 percent of any award determined under paragraphs (d) and (g)(2) of this section. If a payment for a payment period calculated under paragraphs (d) and (g)(2) of this section would require the disbursement of more than 50 percent of a student's annual award in that payment period, the institution must make at least two disbursements to the student in that payment period. The institution may not disburse an amount that exceeds 50 percent of the student's annual award until the student has completed the period of time in the payment period that equals, in terms of weeks of instructional time, 50 percent of the weeks of instructional time in the program's academic year.

(g) *Additional Federal Pell Grant funds and defining an academic year.* (1) Notwithstanding paragraphs (b), (c), (d), and (e) of this section and § 690.66, the amount of a student's award for an award year may not exceed one and one-half of his or her Scheduled Federal Pell Grant award for that award year.

(2) A student's payment for the payment period may include the remaining amount of the student's Scheduled Award plus an amount from the additional Federal Pell Grant funds not to exceed one-half of a student's Scheduled Award.

(3) For purposes of this section and § 690.66, an institution must define an academic year for each of its eligible programs in terms of the number of credit or clock hours and weeks of instructional time in accordance with the requirements of 34 CFR 668.3.

* * * * *

§ 690.64 [Amended]

■ 12. Section 690.64 is amended by:
■ a. In paragraph (b), adding the words ''one and one-half of'' after the words ''more than''.
■ b. Removing the parenthetical authority citation at the end of the section.

§ 690.65 [Amended]

■ 13. Section 690.65 is amended by:
■ a. In paragraph (c), adding the words ''one and one-half of'' after the words ''not exceed''.
■ b. In paragraph (d)(2), adding the words ''or 150 percent, if the student is eligible to receive additional Federal Pell Grant funds in an amount up to one-half of a Scheduled Award during a single award year'' after the words ''100 percent''.
■ c. In paragraph (f), adding the punctuation and words '', or one and one-half of his or her Scheduled Federal Pell Grant, whichever is applicable'' after the word ''Grant''.
■ d. Removing the parenthetical authority citation at the end of the section.

■ 14. Section 690.67 is added to read as follows:

§ 690.67 Eligibility to receive additional Federal Pell Grant funds in an amount up to one-half of a Scheduled Award during a single award year.

An institution awards additional Federal Pell Grant funds up to one-half of a Scheduled Award to a student in an award year if the student is enrolled—

(a) In an eligible program leading to a bachelor's or associate's degree or other recognized educational credential, except as provided in 34 CFR part 668, subpart O, for students with intellectual disabilities, for one or more additional payment periods during the same award year that are not fully covered by the student's initial Federal Pell Grant Scheduled Award; and

(b) At least as a half-time student in the payment period(s) for which the student receives any portion of the additional Federal Pell Grant funds.

§ 690.81 [Amended]

■ 15. Section 690.81 is amended by removing the parenthetical OMB control number and authority citation at the end of the section.

§ 690.82 [Amended]

■ 16. Section 690.82 is amended by removing the parenthetical OMB control number and authority citation at the end of the section.

§ 690.83 [Amended]

■ 17. Section 690.83 is amended by:
■ a. In paragraph (d)(2), removing the citation ''34 CFR 668.23(c)'' and adding

in its place the citation ''34 CFR 668.23(b)''.
■ b. In the parenthetical OMB control number at the end of the section, removing the words ''control number 1840–0688'' and adding in their place the words ''control number 1845–0039''.
■ c. Removing the parenthetical authority citation at the end of the section

PART 691 [Removed and Reserved]

■ 18. Under the authority of 20 U.S.C. 1221e–3, part 691 is removed and reserved.

[FR Doc. 2021–23423 Filed 10–27–21; 8:45 am]

BILLING CODE 4000–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2020–11]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: In this final rule, the Librarian of Congress adopts exemptions to the provision of the Digital Millennium Copyright Act (''DMCA'') that prohibits circumvention of technological measures that control access to copyrighted works. As required under the statute, the Register of Copyrights, following a public proceeding, submitted a recommendation concerning proposed exemptions to the Librarian of Congress (''Register's Recommendation''). After careful consideration, the Librarian adopts final regulations based upon the Register's Recommendation.

DATES: Effective October 28, 2021.

FOR FURTHER INFORMATION CONTACT: Kevin R. Amer, Acting General Counsel and Associate Register of Copyrights, by email at *kamer@copyright.gov,* or Mark Gray, Attorney-Advisor, by email at *mgray@copyright.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION: The Librarian of Congress, pursuant to section 1201(a)(1) of title 17, United States Code, has determined in this eighth triennial rulemaking proceeding that the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply for the next three years to persons who engage in certain noninfringing uses of certain classes of such works. This determination is based upon the Register's Recommendation.

The below discussion summarizes the rulemaking proceeding and the Register's recommendations, announces the Librarian's determination, and publishes the regulatory text specifying the exempted classes of works. A more complete discussion of the rulemaking process, the evidentiary record, and the Register's analysis with respect to each proposed exemption can be found in the Register's Recommendation, which is posted at *www.copyright.gov/1201/2021/.*

I. Background

A. Statutory Requirements

Congress enacted the DMCA in 1998 to implement certain provisions of the WIPO Copyright and WIPO Performances and Phonograms Treaties. Among other things, title I of the DMCA, which added a new chapter 12 to title 17 of the U.S. Code, prohibits circumvention of technological measures employed by or on behalf of copyright owners to protect access to their works. In enacting this aspect of the law, Congress observed that technological protection measures (''TPMs'') can ''support new ways of disseminating copyrighted materials to users, and . . . safeguard the availability of legitimate uses of those materials by individuals.'' [1]

Section 1201(a)(1) provides in pertinent part that ''[n]o person shall circumvent a technological measure that effectively controls access to a work protected under [title 17].'' Under the statute, to ''circumvent a technological measure'' means ''to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner.'' [2] A technological measure that ''effectively controls access to a work'' is one that ''in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.'' [3]

Section 1201(a)(1) also includes what Congress characterized as a ''fail-safe'' mechanism,[4] which requires the Librarian of Congress, following a rulemaking proceeding, to exempt any class from the prohibition for a three-year period if she has determined that noninfringing uses by persons who are users of copyrighted works in that class are, or are likely to be, adversely affected by the prohibition against circumvention during that period.[5] The Librarian's determination to grant an exemption is based upon the recommendation of the Register of Copyrights, who conducts the rulemaking proceeding.[6] The Register consults with the Assistant Secretary for Communications and Information of the Department of Commerce, who oversees the National Telecommunications and Information Administration (''NTIA''), in the course of formulating her recommendations.[7]

Exemptions adopted by rule under section 1201(a)(1) apply only to the conduct of circumventing a technological measure that controls access to a copyrighted work. Other parts of section 1201 address the manufacture and provision of—or ''trafficking'' in—products and services designed for purposes of circumvention. Section 1201(a)(2) bars trafficking in products and services that are used to circumvent technological measures that control access to copyrighted works (for example, a password needed to open a media file),[8] while section 1201(b) bars trafficking in products and services used to circumvent technological measures that protect the exclusive rights of the copyright owner (for example, technology that prevents the work from being reproduced).[9] The Librarian has no authority to adopt exemptions for the anti-trafficking prohibitions contained in section 1201(a)(2) or (b).[10]

The statute contains certain permanent exemptions to permit specified uses. These include section 1201(d), which exempts certain activities of nonprofit libraries, archives, and educational institutions; section 1201(e), which exempts ''lawfully authorized investigative, protective, information security, or intelligence activity'' of a state or the federal

[1] Staff of H. Comm. on the Judiciary, 105th Cong., Section-by-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998, at 6 (Comm. Print 1998).

[2] 17 U.S.C. 1201(a)(3)(A).

[3] 17 U.S.C. 1201(a)(3)(B).

[4] *See* H.R. Rep. No. 105–551, pt. 2, at 36 (1998).

[5] *See* 17 U.S.C. 1201(a)(1).

[6] 17 U.S.C. 1201(a)(1)(C).

[7] *Id.*

[8] 17 U.S.C. 1201(a)(2).

[9] 17 U.S.C. 1201(b).

[10] *See* 17 U.S.C. 1201(a)(1)(E) (''Neither the exception under subparagraph (B) from the applicability of the prohibition contained in subparagraph (A), nor any determination made in a rulemaking conducted under subparagraph (C), may be used as a defense in any action to enforce any provision of this title other than this paragraph.'').

government; section 1201(f), which exempts certain ''reverse engineering'' activities to facilitate interoperability; section 1201(g), which exempts certain types of research into encryption technologies; section 1201(h), which exempts certain activities to prevent the ''access of minors to material on the internet''; section 1201(i), which exempts certain activities ''solely for the purpose of preventing the collection or dissemination of personally identifying information''; and section 1201(j), which exempts certain acts of ''security testing'' of computers and computer systems.

B. Rulemaking Standards

In adopting the DMCA, Congress imposed legal and evidentiary requirements for the section 1201 rulemaking proceeding, as discussed in greater detail in the Register's Recommendation [11] and the Copyright Office's 2017 policy study on section 1201.[12] The Register will recommend granting an exemption only ''when the preponderance of the evidence in the record shows that the conditions for granting an exemption have been met.'' [13] The evidence must show ''that it is more likely than not that users of a copyrighted work will, in the succeeding three-year period, be adversely affected by the prohibition on circumvention in their ability to make noninfringing uses of a particular class of copyrighted works.'' [14]

The Librarian must assess whether the implementation of access controls impairs the ability of individuals to make noninfringing uses of copyrighted works within the meaning of section 1201(a)(1). To aid in this process, the Register develops a comprehensive administrative record using information submitted by interested members of the public, and makes recommendations to the Librarian concerning whether exemptions are warranted based on that record.

To establish the need for an exemption, proponents must show, at a minimum, (1) that uses affected by the prohibition on circumvention are or are likely to be noninfringing; and (2) that as a result of a technological measure controlling access to a copyrighted work, the prohibition is causing, or in the next three years is likely to cause, an adverse impact on those uses. In addition, the Librarian must examine the statutory factors listed in section 1201(a)(1): (1) The availability for use of copyrighted works; (2) the availability for use of works for nonprofit archival, preservation, and educational purposes; (3) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research; (4) the effect of circumvention of technological measures on the market for or value of copyrighted works; and (5) such other factors as the Librarian considers appropriate.

Finally, section 1201(a)(1) specifies that any exemption adopted as part of this rulemaking must be defined based on ''a particular class of works.'' [15] Among other things, the determination of the appropriate scope of a ''class of works'' recommended for exemption may take into account the adverse effects an exemption may have on the market for or value of copyrighted works. Accordingly, ''it can be appropriate to refine a class by reference to the use or user in order to remedy the adverse effect of the prohibition and to limit the adverse consequences of an exemption.'' [16]

II. History of the Eighth Triennial Proceeding

The Office initiated the eighth triennial rulemaking proceeding through a Notice of Inquiry (''NOI'') on June 22, 2020.[17] The NOI requested petitions for renewal of exemptions adopted in the 2018 rulemaking, petitions in opposition to renewal, and any petitions for new exemptions, including proposals to expand a current exemption. The Office received twenty-six petitions for new exemptions, including thirteen comments seeking to expand certain current exemptions.

As in the prior rulemaking, the Office employed a streamlined process for renewing existing exemptions in this proceeding, detailing the renewal process in its public notices.[18] Streamlined renewal is based upon a determination that, due to a lack of legal, marketplace, or technological changes, the factors that led the Register to recommend adoption of the exemption in the prior rulemaking are expected to continue into the forthcoming triennial period.[19] That is, the same material facts and circumstances underlying the previously-adopted regulatory exemption may be relied on to renew the exemption. Because the statute requires that exemptions be adopted upon a new determination concerning the next three-year period, the fact that the Librarian previously adopted an exemption creates no presumption that readoption is appropriate.

The Register's Recommendation provides a detailed description of the process the Office used to create a record for each renewal petition.[20] In brief, the Office first solicited renewal petitions as well as comments from participants opposing the readoption of the exemption. The Office received thirty-two renewal petitions and fifteen comments in response to those petitions. Seven comments supported renewal of a current exemption, and eight comments raised discrete concerns with specific petitions, but did not oppose readoption of the relevant exemption.[21]

On October 15, 2020, the Office issued its notice of proposed rulemaking (''NPRM'') identifying the existing exemptions for which the Register intended to recommend renewal, and outlined the proposed classes for new exemptions, for which three rounds of public comments were initiated.[22] Those proposals were organized into seventeen classes of works. Six of the seventeen proposed exemptions sought

[11] Register of Copyrights, Section 1201 Rulemaking: Eighth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights (Oct. 2021), *https://cdn.loc.gov/copyright/1201/2021/2021_Section_1201_Registers_Recommendation.pdf* (Register's Recommendation'').

[12] Register's Recommendation at section II.C; U.S. Copyright Office, Section 1201 of Title 17 111–12 (2017), *https://www.copyright.gov/policy/1201/section-1201-full-report.pdf* (''Section 1201 Report'').

[13] Section 1201 Report at 111–12; *accord* Register of Copyrights, Section 1201 Rulemaking: Seventh Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 12–13 (Oct. 2018). References to the Register's recommendations in prior rulemakings are cited by the year of publication followed by ''Recommendation'' (*e.g.,* ''2018 Recommendation''). Prior Recommendations are available on the Copyright Office website at *https://www.copyright.gov/1201/*.

[14] Section 1201 Report at 112.

[15] 17 U.S.C. 1201(a)(1)(B).

[16] 2006 Recommendation at 19.

[17] Exemptions to Permit Circumvention of Access Controls on Copyrighted Works, 85 FR 37399 (June 22, 2020).

[18] Exemptions to Permit Circumvention of Access Controls on Copyrighted Works, 85 FR 37399, 37400–02 (June 22, 2020); Exemptions to Permit Circumvention of Access Controls on Copyrighted Works, 85 FR 65293, 65294–95 (Oct. 15, 2020).

[19] Exemptions to Permit Circumvention of Access Controls on Copyrighted Works, 85 FR 37399, 37401–02 (June 22, 2020); Exemptions to Permit Circumvention of Access Controls on Copyrighted Works, 85 FR 65293, 65295 (Oct. 15, 2020).

[20] Register's Recommendation at III.D & IV.

[21] The submissions received in response to the NOI are available at *https://www.copyright.gov/1201/2021/*. References to these submissions are by party and class name (abbreviated where appropriate) followed by ''Renewal Pet.,'' ''Renewal Comment,'' or party name and class number followed by ''Pet.,'' ''Initial,'' ''Opp'n,'' or ''Reply'' for comments submitted in the first, second, or third round, as applicable.

[22] Exemptions to Permit Circumvention of Access Controls on Copyrighted Works, 85 FR 65293, 65293 (Oct. 15, 2020).

expansions of existing exemptions, seven proposed entirely new exemptions, and four contained a combination of both expansions and new exemptions. The Office then held seven days of public hearings in which it heard testimony from numerous participants. After the hearings, the Office issued written questions to hearing participants regarding certain proposed classes.[23] Finally, the Office held several *ex parte* meetings with participants concerning ten proposed classes.[24]

As required by section 1201(a)(1), the Register consulted with NTIA during this rulemaking. NTIA provided input at various stages and participated in the virtual public hearings. NTIA formally communicated its views on each of the proposed exemptions to the Register on October 1, 2021. The Office addresses NTIA's substantive views on the proposed classes below. NTIA's recommendations can be viewed at *https://cdn.loc.gov/copyright/1201/2021/2021_NTIA_DMCA_Letter.pdf.*

III. Summary of Register's Recommendation

A. Renewal Recommendations

As set forth in the NPRM, the Register received petitions to renew each of the exemptions adopted pursuant to the seventh triennial rulemaking. Eight comments in response to renewal petitions raised discrete concerns with specific petitions, but none opposed the verbatim readoption of an existing regulatory exemption or disputed the reliability of the previously analyzed administrative record.[25] The Register recommends renewal of these exemptions based on the information provided in the renewal petitions and the lack of meaningful opposition, finding that the conditions that led to adoption of the exemptions are likely to continue during the next triennial period. The existing exemptions, and the bases for the recommendation to readopt each exemption in accordance with the streamlined renewal process, are discussed in detail in the Recommendation and summarized briefly below. Where noted, these exemptions serve as a baseline in considering requests for expansion.

1. Audiovisual Works—Educational and Derivative Uses

Multiple individuals and organizations petitioned to renew the exemption covering the use of short portions of motion pictures for various educational and derivative uses.[26] The Office did not receive meaningful opposition to readoption of these exemptions. Petitions to renew the various subparts of the exemption are discussed below. The existing exemption and its various subparts collectively serve as the baseline in assessing whether to recommend any expansions in Class 1.

a. Audiovisual Works—Criticism and Comment, Teaching, or Scholarship—Universities and K–12 Educational Institutions.[27]

Multiple individuals and organizations petitioned to renew the exemption for motion pictures for educational purposes by college and university or K–12 faculty and students. The Office did not receive substantive opposition to readoption of this exemption. The petitions demonstrated that educators and students continue to rely on excerpts from digital media for class presentations and coursework. For example, a collective of individuals and organizations provided several examples of professors using DVD clips in the classroom. A group of individual educators and educational organizations[28] broadly suggested that the ''entire field'' of video essays or multimedia criticism ''could not have existed in the United States without fair use and the 1201 educational exemption.''[29] Petitioners demonstrated personal knowledge and experience with regard to this exemption based on their representation of thousands of digital and literacy educators and/or members supporting educators and students, combined with past participation in the section 1201 triennial rulemaking. The Register finds that petitioners demonstrated a continuing need and justification for the exemption.

b. Audiovisual Works—Criticism and Comment—Massive Open Online Courses (''MOOCs'').[30]

A collective of individuals and organizations and Brigham Young University (''BYU'') petitioned to renew the exemption for educational uses of motion pictures in MOOCs. The Office did not receive meaningful opposition to readoption of this exemption. The petitions demonstrated the continuing need and justification for the exemption, stating that instructors continue to rely on the exemption to develop, provide, and improve MOOCs, as well as to increase the number of (and therefore access to) MOOCs in the field of film and media studies.

c. Audiovisual Works—Criticism and Comment—Digital and Media Literacy Programs[31]

Library Copyright Alliance (''LCA'') and Renee Hobbs petitioned to renew the exemption for motion pictures for educational uses in nonprofit digital and media literacy programs offered by libraries, museums, and other organizations. No oppositions were filed against readoption of this exemption. The petition stated that librarians across the country have relied on the current exemption and will continue to do so for their digital and media literacy programs, thereby demonstrating the continuing need and justification for the exemption.

d. Audiovisual Works—Criticism and Comment—Multimedia E-books[32]

Multiple petitioners jointly sought to renew the exemption for the use of motion picture excerpts in nonfiction multimedia e-books. The Office did not receive meaningful opposition to readoption of this exemption. The petition demonstrated the continuing need and justification for the exemption. In addition, the petitioners demonstrated personal knowledge through Bobette Buster's continued work on an e-book series based on her lecture series, ''Deconstructing Master Filmmakers: The Uses of Cinematic Enchantment,'' which ''relies on the

[23] Participants' post-hearing letter responses are available at *https://www.copyright.gov/1201/2021/post-hearing/.*

[24] All *ex parte* letters in the eighth triennial rulemaking can be found at *https://www.copyright.gov/1201/2021/ex-parte-communications.html.*

[25] Exemptions to Permit Circumvention of Access Controls on Copyrighted Works, 85 FR 65293, 65295 (Oct. 15, 2020); *see also* Exemptions to Permit Circumvention of Access Controls on Copyrighted Works, 85 FR 37399, 37402 (June 22, 2020) (describing ''meaningful opposition'' standard).

[26] *See* 37 CFR 201.40(b)(1). In the 2018 rulemaking, this recommended regulatory language was the result of consideration of one proposed class of works that grouped together five petitions. *See* 2018 Recommendation at 31–34.

[27] The Register's analysis and conclusions for this subpart, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.A.1.

[28] The individuals and organizations include Peter Decherney, Katherine Sender, John L. Jackson, Int'l Commc'n Ass'n, Soc'y for Cinema and Media Studies, Console-ing Passions, Library Copyright All., and Am. Ass'n of Univ. Professors.

[29] Joint Educators AV Educ. Renewal Pet. at 3.

[30] The Register's analysis and conclusions for this subpart, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.A.2.

[31] The Register's analysis and conclusions for this subpart, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.A.3.

[32] The Register's analysis and conclusions for this subpart, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.A.4.

availability of high-resolution video not available without circumvention of TPMs.'' [33]

e. Audiovisual Works—Criticism and Comment—Filmmaking [34]

Multiple organizations petitioned to renew the exemption for motion pictures for uses in documentary films or other films where the use is a parody or based on the work's biographical or historically significant nature. The Office did not receive meaningful opposition to readoption of this exemption. Petitioners stated that they personally know many filmmakers who have found it necessary to rely on this exemption and will continue to do so. The petitions summarized the continuing need and justification for the exemption.

f. Audiovisual Works—Criticism and Comment—Noncommercial Videos [35]

Two organizations petitioned to renew the exemption for motion pictures for uses in noncommercial videos. The Office did not receive meaningful opposition to readoption of this exemption. Petitioners stated that they had personal knowledge that video creators have relied on this exemption and anticipate needing to continue to use the exemption in the future. The Organization for Transformative Works (''OTW'') included an account from an academic who stated that footage ripped from DVDs and Blu-ray is preferred for ''vidders'' (noncommercial remix artists) because ''it is high quality enough to bear up under the transformations that vidders make to it.'' [36] The petitions therefore demonstrated the continuing need and justification for the exemption.

2. Audiovisual Works—Accessibility [37]

Multiple organizations petitioned to renew the exemption for motion pictures for the provision of captioning and/or audio description by disability services offices or similar units at educational institutions for students with disabilities. No oppositions were filed in connection with readoption of this exemption. The petitions demonstrated the continuing need and justification for the exemption, and the petitioners demonstrated personal knowledge and experience as to the exemption. For example, BYU asserted that its disability services offices ''sometimes need to create accessible versions of motion pictures'' to accommodate its students with disabilities.[38] The petitions stated that there is a need for the exemption going forward; indeed, one group of petitioners stated that ''the need is likely to increase significantly in light of the ongoing COVID–19 pandemic as many educational institutions shift to online learning and the use of digital multimedia by faculty increases.'' [39] This existing exemption serves as the baseline in assessing whether to recommend any expansions in Class 3.

3. Literary Works Distributed Electronically—Accessibility [40]

Multiple organizations petitioned to renew the exemption for literary works distributed electronically (*i.e.,* e-books), for use with assistive technologies for persons who are blind, visually impaired, or have print disabilities. No oppositions were filed against readoption of this exemption. The petitions demonstrated the continuing need and justification for the exemption, stating that individuals who are blind, visually impaired, or print disabled have difficulty obtaining accessible e-book content because TPMs interfere with the use of assistive technologies. Petitioners noted that their members frequently cite accessibility of e-books as a top priority. Finally, petitioners demonstrated personal knowledge and experience with regard to the assistive technology exemption because they are all organizations that advocate for the blind, visually impaired, and print disabled. This existing exemption serves as the baseline in assessing whether to recommend any expansions in Class 8.

4. Literary Works—Medical Device Data [41]

Hugo Campos petitioned to renew the exemption covering access to patient data on networked medical devices. No oppositions were filed against readoption of this exemption, and Consumer Reports submitted a comment in support of the renewal petition. Mr. Campos's petition demonstrated the continuing need and justification for the exemption, stating that patients continue to need access to data output from their medical devices to manage their health. Mr. Campos demonstrated personal knowledge and experience with regard to this exemption, as he is a patient needing access to the data output from his medical device and a member of a coalition whose members research the effectiveness of networked medical devices. This existing exemption serves as the baseline in assessing whether to recommend any expansions in Class 9.

5. Computer Programs—Unlocking [42]

Multiple organizations petitioned to renew the exemption for computer programs that operate cellphones, tablets, mobile hotspots, or wearable devices (*e.g.,* smartwatches) to allow connection of a new or used device to an alternative wireless network (''unlocking'').[43] No oppositions were filed against readoption of this exemption, and Consumer Reports submitted a comment in support of the renewal petition. The petitions demonstrated the continuing need and justification for the exemption, stating that consumers of the enumerated products continue to need to be able to unlock the devices so they can switch network providers. For example, the Institute of Scrap Recycling Industries, Inc. (''ISRI'') stated that its members continue to purchase or acquire donated cell phones, tablets, and other wireless devices and try to reuse them, but that wireless carriers lock devices to prevent them from being used on other carriers.[44] In addition, petitioners demonstrated personal knowledge and experience with regard to this exemption. This existing exemption serves as the baseline in assessing whether to recommend any expansions in Class 10.

6. Computer Programs—Jailbreaking [45]

Multiple organizations petitioned to renew the exemptions for computer programs that operate smartphones,

[33] Bobette Buster, Authors All. & Am. Ass'n of Univ. Professors Nonfiction Multimedia E-Books Renewal Pet. at 3.

[34] The Register's analysis and conclusions for this subpart, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.A.5.

[35] The Register's analysis and conclusions for this subpart, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.A.6.

[36] OTW Noncommercial Videos Renewal Pet. at 3.

[37] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.B.

[38] BYU Captioning Renewal Pet. at 3.

[39] Accessibility Petitioners Captioning Renewal Pet. at 3.

[40] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.C.

[41] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.D.

[42] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.E.

[43] Competitive Carriers Ass'n Unlocking Renewal Pet.; Inst. of Scrap Recycling Indus., Inc. Unlocking Renewal Pet.

[44] ISRI Unlocking Renewal Pet. at 3.

[45] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.F.

tablets and other portable all-purpose mobile computing devices, smart TVs, or voice assistant devices to allow the device to interoperate with or to remove software applications (''jailbreaking''). No oppositions were filed against readoption of this exemption, and Consumer Reports submitted a comment in support of the renewal petition. The petitions demonstrated the continuing need and justification for the exemption, and that petitioners have personal knowledge and experience with regard to this exemption. For example, regarding smart TVs specifically, the Software Freedom Conservancy (''SFC'') asserted that it has ''reviewed the policies and product offerings of major Smart TV manufacturers (Sony, LG, Samsung, etc.) and they are substantially the same as those examined during the earlier rulemaking process.'' [46] The petitions stated that, absent an exemption, TPMs applied to the enumerated products would have an adverse effect on noninfringing uses, such as being able to install third-party applications on a smartphone or download third-party software on a smart TV to enable interoperability. This existing exemption serves as the baseline in assessing whether to recommend any expansions in Class 11.

7. Computer Programs—Repair of Motorized Land Vehicles [47]

Multiple organizations petitioned to renew the exemption for computer programs that control motorized land vehicles, including farm equipment, for purposes of diagnosis, repair, or modification of a vehicle function. The Office did not receive meaningful opposition to readoption of this exemption, and Consumer Reports submitted a comment in support of the renewal petition. The petitions demonstrated the continuing need and justification for the exemption. For example, the Motor & Equipment Manufacturers Association (''MEMA'') stated that over the past three years, its membership ''has seen firsthand that the exemption is helping protect consumer choice and a competitive market, while mitigating risks to intellectual property and vehicle safety.'' [48] Similarly, the Auto Care Association (''ACA'') stated that ''[u]nless this exemption is renewed, the software measures manufacturers deploy for the purpose of controlling access to vehicle software will prevent Auto Care members from lawfully assisting consumers in the maintenance, repair, and upgrade of their vehicles.'' [49] The petitioners demonstrated personal knowledge and experience with regard to this exemption; each either represents or gathered information from individuals or businesses that perform vehicle service and repair. This existing exemption, as well as the existing exemption pertaining to repair of smartphones, home appliances, and home systems, serve as the baseline in assessing whether to recommend any expansions in Class 12.

8. Computer Programs—Repair of Smartphones, Home Appliances, and Home Systems [50]

Multiple organizations petitioned to renew the exemption for computer programs that control smartphones, home appliances, or home systems, for diagnosis, maintenance, or repair of the device or system. The Office did not receive meaningful opposition to readoption of this exemption, and Consumer Reports submitted a comment in support of the renewal petition. The petitions demonstrated the continuing need and justification for the exemption. For example, the Electronic Frontier Foundation (''EFF''), the Repair Association, and iFixit asserted that ''[m]anufacturers of these devices continue to implement [TPMs] that inhibit lawful repairs, maintenance, and diagnostics, and they show no sign of changing course.'' [51] This existing exemption, as well as the existing exemption pertaining to repair of motorized land vehicles, serve as the baseline in assessing whether to recommend any expansions in Class 12.

9. Computer Programs—Security Research [52]

Multiple organizations and security researchers petitioned to renew the exemption permitting circumvention for purposes of good-faith security research. No oppositions were filed against readoption of this exemption, and Consumer Reports submitted a comment in support of the renewal petition. The petitioners demonstrated the continuing need and justification for the exemption, as well as personal knowledge and experience with regard to this exemption. For example, J. Alex Halderman, the Center for Democracy and Technology (''CDT''), and the U.S. Technology Policy Committee of the Association for Computing Machinery (''ACM'') highlighted the need to find and detect vulnerabilities in voting machines and other election systems in response to increasing aggressiveness on the part of threat actors, including other nation states.[53] MEMA stated that its membership ''experienced firsthand that the exemption is helping encourage innovation in the automotive industry while mitigating risks to intellectual property and vehicle safety,'' and opined that the current exemption strikes an ''appropriate balance.'' [54] This existing exemption serves as the baseline in assessing whether to recommend any expansions in Class 13.

10. Computer Programs—Software Preservation [55]

The Software Preservation Network (''SPN'') and LCA petitioned to renew the exemption for computer programs, other than video games, for the preservation of computer programs and computer program-dependent materials by libraries, archives, and museums. No oppositions were filed against readoption of this exemption. The petition stated that libraries, archives, and museums continue to need the exemption to preserve and curate software and materials dependent on software. For example, the petition explained that researchers at the University of Virginia designed a project in order to access a collection of drawings and plans from a local Charlottesville architecture firm, and that without the exemption, the outdated Computer Aided Design software used to create many of the designs ''may have remained inaccessible to researchers, rendering the designs themselves inaccessible, too.'' [56] In addition, petitioners demonstrated personal knowledge and experience with regard to this exemption through past participation in the section 1201 triennial rulemaking relating to access controls on software, and/or representing major library associations with members who have relied on this exemption. This existing

[46] SFC Jailbreaking Renewal Pet. at 3.

[47] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.G.

[48] MEMA Vehicle Repair Renewal Pet. at 3.

[49] ACA Vehicle Repair Renewal Pet. at 3.

[50] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.H.

[51] EFF Device Repair Renewal Pet. at 3; EFF, Repair Ass'n & iFixit Device Repair Renewal Pet. at 3.

[52] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.I.

[53] J. Alex Halderman, CDT & ACM Security Research Renewal Pet. at 4.

[54] MEMA Security Research Renewal Pet. at 3.

[55] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.J.

[56] SPN & LCA Software Preservation Renewal Pet. at 3.

exemption, as well as the exemption pertaining to video game preservation, serve as the baseline in assessing whether to recommend any expansions in Class 14.

11. Computer Programs—Video Game Preservation [57]

SPN and LCA petitioned to renew the exemption for preservation of video games for which outside server support has been discontinued. No oppositions were filed against readoption of this exemption, and Consumer Reports submitted a comment in support of the renewal petition. The petition stated that libraries, archives, and museums continue to need the exemption to preserve and curate video games in playable form. For example, the petition highlighted Georgia Tech University Library's Computing Lab, retroTECH, which has made a significant collection of recovered video game consoles accessible for research and teaching uses pursuant to the exemption.[58] Petitioners demonstrated personal knowledge and experience with regard to this exemption through past participation in the section 1201 triennial rulemaking, and/or through their representation of members who have relied on this exemption. This existing exemption, as well as the above exemption pertaining to software preservation, serve as the baseline in assessing whether to recommend any expansions in Class 14.

12. Computer Programs—3D Printers [59]

Michael Weinberg petitioned to renew the exemption for computer programs that operate 3D printers to allow use of alternative feedstock. No oppositions were filed against readoption of this exemption. The petition demonstrated the continuing need and justification for the exemption, and petitioner demonstrated personal knowledge and experience regarding the exemption. Specifically, Mr. Weinberg declared that he is a member of the 3D printing community and previously participated in the section 1201 triennial rulemaking. In addition, the petition stated that manufacturers of 3D printers continue to limit the types of materials that may be used with the devices. This existing exemption serves as the baseline in assessing whether to recommend any expansions in Class 15.

B. New or Expanded Designations of Classes

Based upon the record in this proceeding regarding proposed expansions to existing exemptions or newly proposed exemptions, the Register recommends that the Librarian determine that the following classes of works be exempt from the prohibition against circumvention of technological measures set forth in section 1201(a)(1):

1. Proposed Class 1: Audiovisual Works—Criticism and Comment [60]

Proposed Class 1 sought to expand the existing exemption that permits circumvention of access controls protecting excerpts of motion pictures on DVDs, Blu-ray discs, and digitally transmitted video for the purposes of criticism and comment, including for educational purposes by certain users. Three different petitions were filed in this class. OTW's proposed exemption sought to eliminate multiple limitations, including the requirement that a user consider whether screen capture technology is a viable alternative before circumvention. BYU's proposed exemption would permit circumvention by college or university employees or students or by K–12 educators or students acting under the direct supervision of an educator, and would significantly alter the language of the current exemption regarding the purpose of the circumvention. A group of individual educators and educational organizations (''Joint Educators'') proposed an exemption that would permit circumvention by ''educators and preparers of online learning materials'' to be used on online learning platforms. All three proposals sought to remove the reference to screen capture from the existing exemption. OTW and Joint Educators' proposals sought to use short portions of motion pictures; the BYU proposal sought use of full-length works. The proposals addressed several uses of motion pictures that proponents contended are noninfringing and that they argued are adversely affected by TPMs. NTIA supported the proposed exemption, but proposed some amendments to the text.

Opponents argued that the proposed changes were unwarranted or unnecessary. The Motion Picture Association, the Alliance for Recorded Music, and the Entertainment Software Association (collectively, ''Joint Creators'') and the DVD Copy Control Association (''DVD CCA'') and the Advanced Access Content System Licensing Administrator, LLC (''AACS LA'') argued that screen capture technology has improved and remains an adequate alternative in some circumstances. Joint Creators also argued that the Joint Educators' proposal to expand the exemption to ''educators and preparers of online learning materials'' could permit circumvention by businesses and threaten the market for licensed clips. DVD CCA and AACS LA contended that expanding the exemption to cover employees of a qualifying MOOC was unnecessary for online educators to prepare materials.

For the reasons detailed in the Register's Recommendation, the Register recommended expanding the exemption to permit employees of colleges and universities to circumvent at the direction of a faculty member for the purpose of teaching a course, and also to cover similar uses by both faculty and employees acting at the direction of faculty members of accredited nonprofit educational institutions for the purposes of offering MOOCs. The Register further recommended retaining the screen capture provision in the exemption to anticipate the possibility that screen capture technology could be found to involve circumvention. The Register concluded that the exemption should not be expanded or amended to cover copying for the purpose of performing full-length motion pictures for educational purposes; to replace the phrase ''short portions'' with ''reasonable and limited portions''; to enable circumvention by for-profit and/or unaccredited educational companies and organizations; or to cover the broadly defined ''educators and preparers of online learning materials'' of ''online learning platforms.''

2. Proposed Class 3: Audiovisual Works—Accessibility [61]

Class 3 proponents sought to expand several provisions of the current exemption for adding captions or audio description to motion pictures for the benefit of students with disabilities. Proponents requested expanding the exemption to include faculty and staff with disabilities at educational institutions as beneficiaries, explicitly permitting reuse of previously remediated materials, allowing for proactive remediation in advance of a

[57] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.K.

[58] SPN & LCA Abandoned Video Game Renewal Pet. at 3.

[59] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at IV.L.

[60] The Register's analysis and conclusions for these classes, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.A.

[61] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.C.

specific request for accessible material, and clarifying the market-check requirement to encompass only works on the market that are of ''sufficient quality.'' Joint Creators and DVD CCA & AACS LA filed oppositions. NTIA supported the proposed exemption.

For the reasons discussed in the Register's Recommendation, the Register concluded that expanding the exemption to faculty and staff with disabilities, allowing reuse of previously remediated material, and permitting proactive remediation are likely fair uses because they are directed towards adding captions or audio descriptions in compliance with disability law, the same purpose found fair in the Register's 2018 Recommendation. Additionally, the Register concluded that proponents had provided sufficient evidence that they would be adversely affected if the exemption were not expanded.

3. Proposed Class 5: Audiovisual Works—Preservation and Replacement [62]

Class 5 proponents sought to permit circumvention of TPMs on motion pictures (including television shows and videos) stored on DVDs or Blu-ray discs that are no longer reasonably available in the marketplace to enable libraries, archives, and museums to make preservation and replacement copies of those works. The proposed exemption would permit qualifying institutions to make copies of discs that are damaged or deteriorating, as well as discs that have not yet begun to deteriorate; to make physical or digital copies of the motion pictures; and to make any digital copies available outside the premises of the institution. NTIA supported the proposed exemption.

Joint Creators and DVD CCA and AACS LA opposed the exemption, arguing that it would enable institutions to space-shift [63] their film collections and launch online streaming services. Opponents contended that, should an exemption be granted, it should apply only to damaged or deteriorating discs; it should prohibit off-premises access to the copied works; and the market check should include a requirement that institutions determine if the motion picture is available for streaming through a licensed source.

For the reasons detailed in the Register's Recommendation, the Register concluded that it was likely to be a fair use for qualifying institutions to copy motion pictures from discs that are damaged or deteriorating if the motion pictures on those discs are not reasonably available in the marketplace for purchase or streaming. The Register concluded that proponents had not demonstrated that providing off-premises access to the replacement copies of motion pictures is likely to be noninfringing. The Register concluded that proponents had provided substantial evidence that granting the exemption would benefit preservation, education, and scholarship by making available motion pictures that might otherwise be lost to history and that the exemption is unlikely to adversely affect the market for or value of the motion pictures.

4. Proposed Classes 7(a): Motion Pictures and 7(b): Literary Works—Text and Data Mining [64]

Authors Alliance, the American Association of University Professors, and LCA jointly filed a petition proposing Classes 7(a) and 7(b), seeking to permit circumvention of TPMs on motion pictures and literary works stored on DVDs or Blu-ray discs or made available for digital download to enable researchers to perform text and data mining (''TDM'') techniques for the purpose of scholarly research and teaching. Proponents argued that copying literary works and motion pictures to create large collections on which to perform TDM research is a fair use, and that requirements to use security measures to protect the corpora from public access or further distribution should afford qualifying institutions flexibility to tailor the measures to the size and content of the corpus. NTIA supported the proposed exemptions.

Joint Creators and DVD CCA and AACS LA opposed the proposed exemption for class 7(a), and the American Association for Publishers (''AAP'') and the Software and Information Industry Association opposed the proposed exemption for class 7(b). They argued that TDM research would interfere with the licensing market for collections of literary works and motion pictures and that researchers' ability to view the entirety of the works in a corpus would create a risk of substitutional use. They also argued that any exemption must require specific, robust security measures.

As discussed in greater detail in the Register's Recommendation, the Register found that the prohibition on circumvention adversely affects researchers' ability to conduct TDM research projects, which are likely to be noninfringing with the addition of several limitations. Most importantly, the Register recommended requiring the institution of higher education storing or hosting a corpus of copyrighted works to implement either security measures that have been agreed upon by copyright owners and institutions of higher education, or, in the absence of such measures, those measures that the institution uses to keep its own highly confidential information secure. The Register also recommended adding a limitation that the person undertaking the circumvention view or listen to the contents of the copyrighted works in the corpus solely for the purpose of verification of the research findings, not for the works' expressive purposes. The Register concluded that existing alternatives to circumvention do not meet researchers' needs.

5. Proposed Class 8: Literary Works—Accessibility [65]

Class 8 proponents sought to modify the current exemption for e-book accessibility to align with recent changes to the Copyright Act as a result of the Marrakesh Treaty Implementation Act. Proponents requested expanding the class of beneficiaries to ''eligible persons'' as defined in section 121 of the Copyright Act, expanding the exemption to cover previously published musical works, and replacing references to a ''mainstream copy'' in the remuneration requirement with the term ''inaccessible copy.'' Proponents also sought guidance on whether import and export activity under section 121A was implicated by the prohibition on circumvention. Joint Creators stated that they did not oppose the exemption to the extent it is consistent with sections 121 and 121A. AAP filed a reply comment in support of this class, and NTIA supported the proposed exemption.

For the reasons discussed in the Register's Recommendation, the Register concluded that without the proposed modifications, print-disabled

[62] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.E.

[63] Space-shifting occurs when a work is transferred from one storage medium to another, such as from a DVD to a computer hard drive. *See* 2015 Recommendation at 107.

[64] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.G.

[65] The Register's analysis and conclusions for these classes, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.H.

individuals would be adversely affected in their ability to engage in the proposed noninfringing uses. The Register also determined that replacement of the reference to a ''mainstream copy'' with an ''inaccessible copy'' is a non-substantive change. Finally, the Register declined to recommend language regarding import and export of accessible works because the record did not indicate that such activity implicates the prohibition on circumvention. Proponents and Joint Creators filed a joint post-hearing submission proposing regulatory language that excludes sound recordings of performances of musical works from the exemption, which the Register recommended including.

6. Proposed Class 9: Literary Works—Medical Device Data [66]

Class 9 proponents sought to expand several provisions of the current exemption that permits the circumvention of TPMs on medical devices to access their data outputs. Proponents filed a petition seeking to eliminate the current limitation of the exemption to ''wholly or partially implanted'' devices; permit authorized third parties to perform the circumvention on behalf of a patient; extend the exemption to non-passive monitoring; and remove the condition that circumvention not violate other applicable laws. ACT|The App Association opposed the proposed exemption. NTIA supported adopting the proposed exemption, with some modification.

For the reasons detailed in the Register's Recommendation, the Register concluded that accessing medical data outputs likely qualifies as a fair use and that expanding the exemption to include non-implanted medical devices and non-passive monitoring would not alter the fair use analysis. Additionally, the Register concluded that proponents set forth sufficient evidence that the ''wholly or partially implanted'' language and the passive monitoring limitation are causing, or are likely to cause, adverse effects on these noninfringing uses. The Register also recommended expanding the exemption to permit circumvention ''by or on behalf of a patient.'' After consultation with the U.S. Food and Drug Administration, the Register recommended removing the language requiring compliance with other laws, and replacing it with a statement that eligibility for the exemption does not preclude liability from other applicable laws.

7. Proposed Class 10: Computer Programs—Unlocking [67]

ISRI petitioned to expand the existing exemption for unlocking to either (1) add a new device category for laptop computers or (2) remove enumerated device categories from the current exemption and permit unlocking of all wireless devices. It argued that the proposed uses are noninfringing based on the Register's previous findings that unlocking of certain types of devices is a fair use, contending that the legal analysis does not differ depending on the type of device that is unlocked. The only opposition comment was filed by MEMA, which opposed expanding the exemption to permit unlocking cellular-enabled vehicles. NTIA supported expanding the exemption to permit unlocking all lawfully-acquired devices.

For the reasons discussed in the Register's Recommendation, the Register concluded that proponents established that unlocking is likely to be a fair use regardless of the type of device involved. Proponents offered unrebutted evidence that many different types of wireless devices share the same wireless modem. Because the Register concluded that unlocking those modems is likely a fair use, she determined that users of these devices experience the same adverse effects from the prohibition on circumvention.

8. Proposed Class 11: Computer Programs—Jailbreaking [68]

Two petitions were filed for new or expanded exemptions relating to the circumvention of computer programs for jailbreaking purposes. EFF filed a petition seeking to clarify and expand the current exemption pertaining to jailbreaking smart TVs to include video streaming devices. SFC filed a petition for a new exemption to allow jailbreaking of routers and other networking devices to enable the installation of alternative firmware. ACT|The App Association, DVD CCA and AACS LA, and Joint Creators opposed this proposed class. NTIA supported adopting both proposed exemptions.

In supporting comments, EFF clarified that its proposed exemption would cover devices whose primary purpose is to run applications that stream video from the internet for display on a screen, and would not extend to DVD or Blu-ray players or video game consoles. The Register concluded that jailbreaking video streaming devices likely constitutes a fair use. Additionally, the Register concluded that the prohibition on circumvention is likely to adversely affect proponents' ability to engage in such activities. She recommended that the regulatory language contain certain limitations to address opponents' concerns over potential market harm.

With respect to SFC's petition, the Register concluded that jailbreaking routers and other networking devices is likely to qualify as a fair use. Additionally, the Register concluded that the prohibition on circumvention is likely to prevent users from installing free and open source software (''FOSS'') on routers and other networking devices and that there are no viable alternatives to circumvention to accomplish that purpose.

9. Proposed Class 12: Computer Programs—Repair [69]

Several organizations submitted petitions for new or expanded exemptions relating to the diagnosis, maintenance, repair, and modification of software-enabled devices. EFF and, jointly, iFixit and the Repair Association filed petitions seeking to merge and expand the two existing exemptions to cover all devices and vehicles and permit ''modification'' of all devices. Opponents objected that the proposed expansion to cover all devices was overbroad and that proponents failed to develop a record demonstrating sufficient commonalities among the various types of software-enabled devices. In addition, they argued that specific types of devices for which circumvention of TPMs raises piracy and safety concerns should be excluded from the proposed class. Opponents also contended that the term ''modification'' is so broad that it could implicate infringing activities, including violating copyright owners' exclusive right to prepare derivative works.

Separately, Public Knowledge and iFixit jointly petitioned for an exemption to repair optical drives in video game consoles and to replace damaged hardware in such devices. They asserted that authorized repair services are inadequate, particularly for

[66] The Register's analysis and conclusions for these classes, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.I.

[67] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.J.

[68] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.K.

[69] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.L.

certain legacy consoles that manufacturers no longer support. Opponents argued that the proposed exemption would create a risk of market harm for these devices and that adequate alternatives to circumvention exist.

NTIA recommended expanding the current exemptions by merging them into a single exemption that would permit circumvention for the diagnosis, maintenance, and repair of all software-enabled devices, machines, and systems. In addition, NTIA recommended allowing ''lawful modification that is necessary for a repair or maintenance'' and software modifications relating to device functionality.

For the reasons discussed in the Register's Recommendation, the Register recommended expanding the existing exemption for diagnosis, maintenance, and repair of certain categories of devices to cover any software-enabled device that is primarily designed for use by consumers. For video game consoles, the Register concluded that an exemption is warranted solely for the repair of optical drives.

The proposals to merge the two existing repair exemptions would also effectively broaden the existing vehicle exemption by: (1) No longer limiting the class to ''motorized land vehicles''; and (2) removing other limitations in the exemption, including that users comply with other laws. Opponents did not object to including marine vessels in the vehicle exemption, but opposed removing language requiring compliance with other laws. For the reasons discussed in the Register's Recommendation, the Register recommended that the exemption for land vehicles be expanded to cover marine vessels and to remove the condition requiring compliance with other laws.

Finally, Summit Imaging, Inc. and Transtate Equipment Co., Inc. petitioned to exempt circumvention of TPMs on software-enabled medical devices and systems for purposes of diagnosis, maintenance, and repair. Petitioners also sought access to related data files stored on medical devices and systems, including manuals and servicing materials. Opponents argued that this exemption is unnecessary because adequate authorized repair services are available. They also contended that the proposed uses are commercial in nature, would harm the market for medical devices and systems, may undermine patient safety and create cybersecurity risks, and would interfere with manufacturers' regulatory compliance obligations. For the reasons discussed in the Register's Recommendation, the Register recommended a new exemption allowing circumvention of TPMs restricting access to firmware and related data files on medical devices and systems for the purposes of diagnosis, maintenance, and repair.

10. Proposed Class 13: Computer Programs—Security Research [70]

Two petitions sought to expand the current exemption that permits circumvention of TPMs on computer programs for good-faith security research. Together, the petitions sought to eliminate several limitations within the exemption and to explicitly extend the exemption to privacy research. Proponents generally argued that the limitations have chilled valuable security research, primarily by creating uncertainty about whether conducting or reporting security research could result in liability under section 1201. Six parties opposed class 13 at least in part; they argued that the existing exemption has sufficiently enabled good-faith security research and that the record did not justify removing the limitations. NTIA supported the elimination of several limitations, but did not recommend modifying the existing exemption to address privacy-related research activities explicitly.

For the reasons discussed in the Register's Recommendation, the Register concluded that because the exemption is broadly defined and is not limited to specific issues or subjects relating to security flaws or vulnerabilities, expanding it to expressly cover privacy research is unnecessary. Regarding the specific limitations, the Register recommended removing the condition that circumvention not violate ''other laws'' and instead clarifying that the exemption does not provide a safe harbor from liability under other laws. The Department of Justice submitted comments supporting this change. The Register declined to recommend removal of limitations pertaining to access to and use of computer programs, finding a lack of specific evidence establishing adverse effects resulting from those provisions. The Register also did not recommend removal of the requirement that devices be lawfully acquired.

11. Proposed Class 14(a): Computer Programs and 14(b) Video Games—Preservation [71]

Proposed Classes 14(a) and 14(b) seek to amend the existing exemptions permitting libraries, archives, and museums to circumvent TPMs on computer programs and video games, respectively, for the purpose of preservation activities. Specifically, proponents seek to remove the requirement that the preserved computer program or video game must not be distributed or made available outside of the physical premises of the institution. Proposed Class 14(b) would also incorporate the current eligibility requirements for the software preservation exemption into the video game preservation exemption.

Proponents argued that enabling remote access to the works is likely to be a fair use, based in part on a general federal policy favoring remote access to preservation materials, as reflected in various provisions of the Copyright Act. They also argued that the proposed uses would not affect the potential market for or value of the copyrighted works because only works that are no longer reasonably available in the commercial marketplace would be subject to the exemption. NTIA supported the removal of the premises limitation in both exemptions.

Joint Creators and the Entertainment Software Association opposed removing the premises limitation, with most arguments directed to the video game class. They expressed concern that, because the proposed exemption did not limit beneficiaries of the exemption to authenticated educators or researchers, if preserved video games were made available outside the premises of an institution, they would become accessible to the general public, thereby adversely affecting the existing market for older video games.

For the reasons discussed in the Register's Recommendation, the Register concluded that off-premises access to software as described in the proposal is likely to be noninfringing, with the limitation that the work be accessible to only one user at a time and for a limited time. With respect to video games, the Register concluded that proponents failed to carry their burden to show that the uses are likely noninfringing, and noted the greater risk of market harm in this context given the market for legacy video games. The Register therefore recommends that the Librarian amend

[70] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.M.

[71] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.N.

the exemption for Class 14(a) to address the eligibility requirements for libraries, archives, and museums, but not to remove the premises limitation. The Register recommends removing the premises limitation in the exemption for Class 14(a).

12. Proposed Class 15: Computer Programs—3D Printing [72]

Class 15 seeks to expand two provisions of the current exemption that permits the circumvention of access controls on computer programs in 3D printers to enable the use of non-manufacturer approved feedstock. Michael Weinberg filed a petition to replace the term ''feedstock'' with the term ''material,'' stating that the latter is more commonly used within the industry and that the two terms are interchangeable. Additionally, Mr. Weinberg sought to eliminate the phrase ''microchip-reliant'' from the exemption, arguing that 3D printers may use technology other than microchips to verify 3D printing materials. Mr. Weinberg provided evidence that manufacturers are increasingly moving beyond microchip-based verification techniques, such as using optical scanners. No parties opposed proposed class 15. NTIA supported the proposed exemption.

For the reasons discussed in greater detail in the Register's Recommendation, the Register concluded that changing the word ''feedstock'' to ''material'' is not a substantive change, and found that the removal of the term ''microchip-reliant'' does not alter the fair use analysis because the expansion is directed at the same uses the Office previously concluded were fair.

13. Proposed Class 16: Computer Programs—Copyright License Investigation [73]

SFC petitioned for a new exemption that would permit investigating whether a particular computer program includes FOSS, and if so, whether the use of the program complies with applicable license terms. SFC, supported by the Free Software Foundation, subsequently agreed to add limitations to require that the circumvention be undertaken on a lawfully acquired device or machine; that it be solely for the purpose of investigating potential copyright infringement; that it be performed by, or at the direction of, a party that has standing to bring a breach of license claim; and that it otherwise comply with applicable law. NTIA supported the proposed exemption as modified.

Opponents—DVD CCA and AACS LA; the Equipment Dealers Association, and its regional affiliates, and Associated Equipment Distributors; Joint Creators; and Marcia Wilbur—argued that FOSS licensors could obtain the information they seek by other means. They objected to application of the proposed exemption to a broad category of devices, and requested exclusion of DVD and Blu-ray players, video game consoles, set-top boxes, and vehicles. They argued that any exemption should be limited to investigating potential violations of FOSS licenses, rather than infringement of any proprietary software, and that the investigation must be based on a good-faith, reasonable belief that the device may violate FOSS license terms. Finally, opponents expressed concerns about devices being left exposed to piracy or unauthorized access after circumvention.

For the reasons discussed in the Register's Recommendation, the Register recommended adopting an exemption with several limitations. First, the purpose of the investigation must be limited to investigating whether a computer program potentially infringes FOSS, and the user must have a good-faith, reasonable belief in the need for the investigation. Second, circumvention must be undertaken by, or at the direction of, a party that would have standing to bring either a breach of license claim or a copyright infringement claim. Third, the copy of a computer program made pursuant to the exemption, or the device or machine on which it operates, cannot be used in a manner that facilitates copyright infringement. Finally, video game consoles should be excluded from the types of devices on which TPMs may be circumvented.

14. Proposed Class 17: All Works—Accessibility Uses [74]

Petitioners, a coalition of accessibility groups, requested a new exemption to create accessible versions of any copyrighted works that are inaccessible to individuals with disabilities. They argued that the Librarian has the authority to define a class of works that share the attribute of being inaccessible to individuals with disabilities and that creating accessible versions of inaccessible works is unquestionably a fair use. Proponents argued that a broad exemption is warranted to prevent individuals with disabilities from being forced to make piecemeal requests every three years when new accessibility issues arise. NTIA supported the proposed exemption.

Joint Creators, DVD CCA and AACS LA, and AAP filed comments opposing the proposed exemption, focusing primarily on the ground that the statute does not give the Librarian the authority to adopt a class consisting of ''all works'' sharing a particular attribute. Joint Creators also raised concerns about the lack of limitations on the use of copies, such as prohibiting further distribution to individuals without disabilities.

As discussed in greater detail in the Register's Recommendation, although the Register supports the policy goals that underpin the proposed exemption, the statute requires proponents to provide evidence of actual or likely adverse effects resulting from the prohibition on circumvention with respect to ''particular class[es]'' of works. Here, the Register determined that proponents submitted insufficient evidence of such adverse effects as to most types of works. Proponents did, however, provide evidence to support an exemption to enable individuals with disabilities to use alternate input devices to play video games.

C. Classes Considered but Not Recommended

Based upon the record in this proceeding, the Register recommended that the Librarian determine that the following classes of works shall not be exempt during the next three-year period from the prohibition against circumvention of technological measures set forth in section 1201(a)(1):

1. Proposed Class 2: Audiovisual Works—Texting [75]

Proposed Class 2 would allow circumvention of technological measures protecting motion pictures and other audiovisual works to create short audiovisual clips for expressive purposes in text messages. Petitioner did not provide legal arguments or evidence in support of its petition and did not participate in the public hearings. Petitioner failed to explain how the proposed uses were noninfringing and why an exemption is

[72] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.O.

[73] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.P.

[74] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.Q.

[75] The Register's analysis and conclusions for these classes, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.B.

necessary. NTIA recommended denying the proposed exemption. As discussed more fully in the Register's Recommendation, due to the *de minimis* showing provided by proponents, the Register does not recommend the adoption of an exemption for proposed Class 2.

2. Proposed Class 4: Audiovisual Works—Livestream Recording [76]

Proposed Class 4 would allow circumvention of HTTP Live Streaming technology for the purpose of recording audiovisual works originating as livestreams. Petitioner did not provide legal arguments or evidence to support its petition and did not participate in the public hearings. Petitioner first described the exemption as encompassing sports and other competitive events, but elsewhere stated that the class includes ''any and all works'' where audiovisual recordings may be made, including individual school performances. NTIA recommended denying the proposed exemption. As discussed more fully in the Register's Recommendation, the Register does not recommend the adoption of an exemption for proposed Class 4.

3. Proposed Class 6: Audiovisual Works—Space-Shifting [77]

Proposed Class 6 would allow circumvention of TPMs protecting motion pictures and other audiovisual works to engage in space-shifting. Petitioner failed to provide legal arguments or evidence to demonstrate that space-shifting is a noninfringing use. Additionally, petitioner did not participate in the public hearings to support its petition or clarify whether the proposed exemption would extend to commercial services. Opponents argued that petitioner did not provide the evidence necessary to support an exemption, citing several substantive and procedural deficiencies. NTIA recommended denying the proposed exemption. As discussed more fully in the Register's Recommendation, the Register does not recommend the adoption of an exemption for proposed Class 6.

D. Conclusion

Having considered the evidence in the record, the contentions of the commenting parties, and the statutory objectives, the Register of Copyrights has recommended that the Librarian of Congress publish certain classes of works, as designated above, so that the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply for the next three years to persons who engage in noninfringing uses of those particular classes of works.

Dated: October 20, 2021.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Determination of the Librarian of Congress

Having duly considered and accepted the recommendation of the Register of Copyrights, the Librarian of Congress, pursuant to 17 U.S.C. 1201(a)(1)(C) and (D), hereby publishes as a new rule the classes of copyrighted works that shall for a three-year period be subject to the exemption provided in 17 U.S.C. 1201(a)(1)(B) from the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A).

List of Subjects in 37 CFR Part 201

Copyright, Exemptions to prohibition against circumvention.

Final Regulations

For the reasons set forth in the preamble, 37 CFR part 201 is amended as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Section 201.40 is amended by revising paragraph (b) to read as follows:

§ 201.40 Exemption to prohibition against circumvention.

* * * * *

(b) *Classes of copyrighted works.* Pursuant to the authority set forth in 17 U.S.C. 1201(a)(1)(C) and (D), and upon the recommendation of the Register of Copyrights, the Librarian has determined that the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) shall not apply to persons who engage in noninfringing uses of the following classes of copyrighted works:

(1) Motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Content System, or via a digital transmission protected by a technological measure, and the person engaging in circumvention under paragraphs (b)(1)(i) and (b)(1)(ii)(A) and (B) of this section reasonably believes that non-circumventing alternatives are unable to produce the required level of high-quality content, or the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, where circumvention is undertaken solely in order to make use of short portions of the motion pictures in the following instances:

(i) For the purpose of criticism or comment:

(A) For use in documentary filmmaking, or other films where the motion picture clip is used in parody or for its biographical or historically significant nature;

(B) For use in noncommercial videos (including videos produced for a paid commission if the commissioning entity's use is noncommercial); or

(C) For use in nonfiction multimedia e-books.

(ii) For educational purposes:

(A) By college and university faculty and students or kindergarten through twelfth-grade (K–12) educators and students (where the K–12 student is circumventing under the direct supervision of an educator), or employees acting at the direction of faculty of such educational institutions for the purpose of teaching a course, including of accredited general educational development (GED) programs, for the purpose of criticism, comment, teaching, or scholarship;

(B) By faculty of accredited nonprofit educational institutions and employees acting at the direction of faculty members of those institutions, for purposes of offering massive open online courses (MOOCs) to officially enrolled students through online platforms (which platforms themselves may be operated for profit), in film studies or other courses requiring close analysis of film and media excerpts, for the purpose of criticism or comment, where the MOOC provider through the online platform limits transmissions to the extent technologically feasible to such officially enrolled students, institutes copyright policies and provides copyright informational materials to faculty, students, and relevant staff members, and applies technological measures that reasonably

[76] The Register's analysis and conclusions for these classes, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.D.

[77] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Register's Recommendation at V.F.

prevent unauthorized further dissemination of a work in accessible form to others or retention of the work for longer than the course session by recipients of a transmission through the platform, as contemplated by 17 U.S.C. 110(2); or

(C) By educators and participants in nonprofit digital and media literacy programs offered by libraries, museums, and other nonprofit entities with an educational mission, in the course of face-to-face instructional activities, for the purpose of criticism or comment, except that such users may only circumvent using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted.

(2)(i) Motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, where the motion picture is lawfully acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Content System, or via a digital transmission protected by a technological measure, where:

(A) Circumvention is undertaken by a disability services office or other unit of a kindergarten through twelfth-grade educational institution, college, or university engaged in and/or responsible for the provision of accessibility services for the purpose of adding captions and/or audio description to a motion picture to create an accessible version for students, faculty, or staff with disabilities;

(B) The educational institution unit in paragraph (b)(2)(i)(A) of this section has a reasonable belief that the motion picture will be used for a specific future activity of the institution and, after a reasonable effort, has determined that an accessible version of sufficient quality cannot be obtained at a fair market price or in a timely manner, including where a copyright holder has not provided an accessible version of a motion picture that was included with a textbook; and

(C) The accessible versions are provided to students or educators and stored by the educational institution in a manner intended to reasonably prevent unauthorized further dissemination of a work.

(ii) For purposes of paragraph (b)(2) of this section,

(A) ''Audio description'' means an oral narration that provides an accurate rendering of the motion picture;

(B) ''Accessible version of sufficient quality'' means a version that in the reasonable judgment of the educational institution unit has captions and/or audio description that are sufficient to meet the accessibility needs of students, faculty, or staff with disabilities and are substantially free of errors that would materially interfere with those needs; and

(C) Accessible materials created pursuant to this exemption and stored pursuant to paragraph (b)(2)(i)(C) of this section may be reused by the educational institution unit to meet the accessibility needs of students, faculty, or staff with disabilities pursuant to paragraphs (b)(2)(i)(A) and (B) of this section.

(3)(i) Motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, where the motion picture is lawfully acquired on a DVD protected by the Content Scramble System, or on a Blu-ray disc protected by the Advanced Access Content System, solely for the purpose of lawful preservation or the creation of a replacement copy of the motion picture, by an eligible library, archives, or museum, where:

(A) Such activity is carried out without any purpose of direct or indirect commercial advantage;

(B) The DVD or Blu-ray disc is damaged or deteriorating;

(C) The eligible institution, after a reasonable effort, has determined that an unused and undamaged replacement copy cannot be obtained at a fair price and that no streaming service, download service, or on-demand cable and satellite service makes the motion picture available to libraries, archives, and museums at a fair price; and

(D) The preservation or replacement copies are not distributed or made available outside of the physical premises of the eligible library, archives, or museum.

(ii) For purposes of paragraph (b)(3)(i) of this section, a library, archives, or museum is considered ''eligible'' if—

(A) The collections of the library, archives, or museum are open to the public and/or are routinely made available to researchers who are not affiliated with the library, archives, or museum;

(B) The library, archives, or museum has a public service mission;

(C) The library, archives, or museum's trained staff or volunteers provide professional services normally associated with libraries, archives, or museums;

(D) The collections of the library, archives, or museum are composed of lawfully acquired and/or licensed materials; and

(E) The library, archives, or museum implements reasonable digital security measures as appropriate for the activities permitted by paragraph (b)(3)(i) of this section.

(4)(i) Motion pictures, as defined in 17 U.S.C. 101, where the motion picture is on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Content System, or made available for digital download where:

(A) The circumvention is undertaken by a researcher affiliated with a nonprofit institution of higher education, or by a student or information technology staff member of the institution at the direction of such researcher, solely to deploy text and data mining techniques on a corpus of motion pictures for the purpose of scholarly research and teaching;

(B) The copy of each motion picture is lawfully acquired and owned by the institution, or licensed to the institution without a time limitation on access;

(C) The person undertaking the circumvention views or listens to the contents of the motion pictures in the corpus solely for the purpose of verification of the research findings; and

(D) The institution uses effective security measures to prevent further dissemination or downloading of motion pictures in the corpus, and to limit access to only the persons identified in paragraph (b)(4)(i)(A) of this section or to researchers affiliated with other institutions of higher education solely for purposes of collaboration or replication of the research.

(ii) For purposes of paragraph (b)(4)(i) of this section:

(A) An institution of higher education is defined as one that:

(*1*) Admits regular students who have a certificate of graduation from a secondary school or the equivalent of such a certificate;

(*2*) Is legally authorized to provide a postsecondary education program;

(*3*) Awards a bachelor's degree or provides not less than a two-year program acceptable towards such a degree;

(*4*) Is a public or other nonprofit institution; and

(*5*) Is accredited by a nationally recognized accrediting agency or association.

(B) The term ''effective security measures'' means security measures that have been agreed to by interested copyright owners of motion pictures and institutions of higher education; or, in the absence of such measures, those measures that the institution uses to keep its own highly confidential information secure. If the institution uses the security measures it uses to protect its own highly confidential

information, it must, upon a reasonable request from a copyright owner whose work is contained in the corpus, provide information to that copyright owner regarding the nature of such measures.

(5)(i) Literary works, excluding computer programs and compilations that were compiled specifically for text and data mining purposes, distributed electronically where:

(A) The circumvention is undertaken by a researcher affiliated with a nonprofit institution of higher education, or by a student or information technology staff member of the institution at the direction of such researcher, solely to deploy text and data mining techniques on a corpus of literary works for the purpose of scholarly research and teaching;

(B) The copy of each literary work is lawfully acquired and owned by the institution, or licensed to the institution without a time limitation on access;

(C) The person undertaking the circumvention views the contents of the literary works in the corpus solely for the purpose of verification of the research findings; and

(D) The institution uses effective security measures to prevent further dissemination or downloading of literary works in the corpus, and to limit access to only the persons identified in paragraph (b)(5)(i)(A) of this section or to researchers or to researchers affiliated with other institutions of higher education solely for purposes of collaboration or replication of the research.

(ii) For purposes of paragraph (b)(5)(i) of this section:

(A) An institution of higher education is defined as one that:

(1) Admits regular students who have a certificate of graduation from a secondary school or the equivalent of such a certificate;

(2) Is legally authorized to provide a postsecondary education program;

(3) Awards a bachelor's degree or provides not less than a two-year program acceptable towards such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(B) The term ''effective security measures'' means security measures that have been agreed to by interested copyright owners of literary works and institutions of higher education; or, in the absence of such measures, those measures that the institution uses to keep its own highly confidential information secure. If the institution uses the security measures it uses to protect its own highly confidential information, it must, upon a reasonable request from a copyright owner whose work is contained in the corpus, provide information to that copyright owner regarding the nature of such measures.

(6)(i) Literary works or previously published musical works that have been fixed in the form of text or notation, distributed electronically, that are protected by technological measures that either prevent the enabling of read-aloud functionality or interfere with screen readers or other applications or assistive technologies:

(A) When a copy or phonorecord of such a work is lawfully obtained by an eligible person, as such a person is defined in 17 U.S.C. 121; provided, however, that the rights owner is remunerated, as appropriate, for the market price of an inaccessible copy of the work as made available to the general public through customary channels; or

(B) When such a work is lawfully obtained and used by an authorized entity pursuant to 17 U.S.C. 121.

(ii) For the purposes of paragraph (b)(6)(i) of this section, a ''phonorecord of such a work'' does not include a sound recording of a performance of a musical work unless and only to the extent the recording is included as part of an audiobook or e-book.

(7) Literary works consisting of compilations of data generated by medical devices or by their personal corresponding monitoring systems, where such circumvention is undertaken by or on behalf of a patient for the sole purpose of lawfully accessing data generated by a patient's own medical device or monitoring system. Eligibility for this exemption is not a safe harbor from, or defense to, liability under other applicable laws, including without limitation the Health Insurance Portability and Accountability Act of 1996, the Computer Fraud and Abuse Act of 1986, or regulations of the Food and Drug Administration.

(8) Computer programs that enable wireless devices to connect to a wireless telecommunications network, when circumvention is undertaken solely in order to connect to a wireless telecommunications network and such connection is authorized by the operator of such network.

(9) Computer programs that enable smartphones and portable all-purpose mobile computing devices to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the smartphone or device, or to permit removal of software from the smartphone or device. For purposes of this paragraph (b)(9), a ''portable all-purpose mobile computing device'' is a device that is primarily designed to run a wide variety of programs rather than for consumption of a particular type of media content, is equipped with an operating system primarily designed for mobile use, and is intended to be carried or worn by an individual.

(10) Computer programs that enable smart televisions to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the smart television, and is not accomplished for the purpose of gaining unauthorized access to other copyrighted works. For purposes of this paragraph (b)(10), ''smart televisions'' includes both internet-enabled televisions, as well as devices that are physically separate from a television and whose primary purpose is to run software applications that stream authorized video from the internet for display on a screen.

(11) Computer programs that enable voice assistant devices to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the device, or to permit removal of software from the device, and is not accomplished for the purpose of gaining unauthorized access to other copyrighted works. For purposes of this paragraph (b)(11), a ''voice assistant device'' is a device that is primarily designed to run a wide variety of programs rather than for consumption of a particular type of media content, is designed to take user input primarily by voice, and is designed to be installed in a home or office.

(12) Computer programs that enable routers and dedicated network devices to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the router or dedicated network device, and is not accomplished for the purpose of gaining unauthorized access to other copyrighted works. For the purposes of this paragraph (b)(12), ''dedicated network device'' includes switches, hubs, bridges, gateways, modems, repeaters, and access points, and excludes devices that are not lawfully owned.

(13) Computer programs that are contained in and control the functioning

of a lawfully acquired motorized land vehicle or marine vessel such as a personal automobile or boat, commercial vehicle or vessel, or mechanized agricultural vehicle or vessel, except for programs accessed through a separate subscription service, when circumvention is a necessary step to allow the diagnosis, repair, or lawful modification of a vehicle or vessel function, where such circumvention is not accomplished for the purpose of gaining unauthorized access to other copyrighted works. Eligibility for this exemption is not a safe harbor from, or defense to, liability under other applicable laws, including without limitation regulations promulgated by the Department of Transportation or the Environmental Protection Agency.

(14) Computer programs that are contained in and control the functioning of a lawfully acquired device that is primarily designed for use by consumers, when circumvention is a necessary step to allow the diagnosis, maintenance, or repair of such a device, and is not accomplished for the purpose of gaining access to other copyrighted works. For purposes of this paragraph (b)(14):

(i) The ''maintenance'' of a device is the servicing of the device in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that device; and

(ii) The ''repair'' of a device is the restoring of the device to the state of working in accordance with its original specifications and any changes to those specifications authorized for that device. For video game consoles, ''repair'' is limited to repair or replacement of a console's optical drive and requires restoring any technological protection measures that were circumvented or disabled.

(15) Computer programs that are contained in and control the functioning of a lawfully acquired medical device or system, and related data files, when circumvention is a necessary step to allow the diagnosis, maintenance, or repair of such a device or system. For purposes of this paragraph (b)(15):

(i) The ''maintenance'' of a device or system is the servicing of the device or system in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that device or system; and

(ii) The ''repair'' of a device or system is the restoring of the device or system to the state of working in accordance with its original specifications and any changes to those specifications authorized for that device or system.

(16)(i) Computer programs, where the circumvention is undertaken on a lawfully acquired device or machine on which the computer program operates, or is undertaken on a computer, computer system, or computer network on which the computer program operates with the authorization of the owner or operator of such computer, computer system, or computer network, solely for the purpose of good-faith security research.

(ii) For purposes of paragraph (b)(16)(i) of this section, ''good-faith security research'' means accessing a computer program solely for purposes of good-faith testing, investigation, and/or correction of a security flaw or vulnerability, where such activity is carried out in an environment designed to avoid any harm to individuals or the public, and where the information derived from the activity is used primarily to promote the security or safety of the class of devices or machines on which the computer program operates, or those who use such devices or machines, and is not used or maintained in a manner that facilitates copyright infringement.

(iii) Good-faith security research that qualifies for the exemption under paragraph (b)(16)(i) of this section may nevertheless incur liability under other applicable laws, including without limitation the Computer Fraud and Abuse Act of 1986, as amended and codified in title 18, United States Code, and eligibility for that exemption is not a safe harbor from, or defense to, liability under other applicable laws.

(17)(i) Video games in the form of computer programs embodied in physical or downloaded formats that have been lawfully acquired as complete games, when the copyright owner or its authorized representative has ceased to provide access to an external computer server necessary to facilitate an authentication process to enable gameplay, solely for the purpose of:

(A) Permitting access to the video game to allow copying and modification of the computer program to restore access to the game for personal, local gameplay on a personal computer or video game console; or

(B) Permitting access to the video game to allow copying and modification of the computer program to restore access to the game on a personal computer or video game console when necessary to allow preservation of the game in a playable form by an eligible library, archives, or museum, where such activities are carried out without any purpose of direct or indirect commercial advantage and the video game is not distributed or made available outside of the physical premises of the eligible library, archives, or museum.

(ii) Video games in the form of computer programs embodied in physical or downloaded formats that have been lawfully acquired as complete games, that do not require access to an external computer server for gameplay, and that are no longer reasonably available in the commercial marketplace, solely for the purpose of preservation of the game in a playable form by an eligible library, archives, or museum, where such activities are carried out without any purpose of direct or indirect commercial advantage and the video game is not distributed or made available outside of the physical premises of the eligible library, archives, or museum.

(iii) Computer programs used to operate video game consoles solely to the extent necessary for an eligible library, archives, or museum to engage in the preservation activities described in paragraph (b)(17)(i)(B) or (b)(17)(ii) of this section.

(iv) For purposes of this paragraph (b)(17), the following definitions shall apply:

(A) For purposes of paragraphs (b)(17)(i)(A) and (b)(17)(ii) of this section, ''complete games'' means video games that can be played by users without accessing or reproducing copyrightable content stored or previously stored on an external computer server.

(B) For purposes of paragraph (b)(17)(i)(B) of this section, ''complete games'' means video games that meet the definition in paragraph (b)(17)(iv)(A) of this section, or that consist of both a copy of a game intended for a personal computer or video game console and a copy of the game's code that was stored or previously stored on an external computer server.

(C) ''Ceased to provide access'' means that the copyright owner or its authorized representative has either issued an affirmative statement indicating that external server support for the video game has ended and such support is in fact no longer available or, alternatively, server support has been discontinued for a period of at least six months; provided, however, that server support has not since been restored.

(D) ''Local gameplay'' means gameplay conducted on a personal computer or video game console, or locally connected personal computers or consoles, and not through an online service or facility.

(E) A library, archives, or museum is considered ''eligible'' if—

(*1*) The collections of the library, archives, or museum are open to the public and/or are routinely made available to researchers who are not affiliated with the library, archives, or museum;

(*2*) The library, archives, or museum has a public service mission;

(*3*) The library, archives, or museum's trained staff or volunteers provide professional services normally associated with libraries, archives, or museums;

(*4*) The collections of the library, archives, or museum are composed of lawfully acquired and/or licensed materials; and

(*5*) The library, archives, or museum implements reasonable digital security measures as appropriate for the activities permitted by this paragraph (b)(17).

(18)(i) Computer programs, except video games, that have been lawfully acquired and that are no longer reasonably available in the commercial marketplace, solely for the purpose of lawful preservation of a computer program, or of digital materials dependent upon a computer program as a condition of access, by an eligible library, archives, or museum, where such activities are carried out without any purpose of direct or indirect commercial advantage. Any electronic distribution, display, or performance made outside of the physical premises of an eligible library, archives, or museum of works preserved under this paragraph may be made to only one user at a time, for a limited time, and only where the library, archives, or museum has no notice that the copy would be used for any purpose other than private study, scholarship, or research.

(ii) For purposes of the exemption in paragraph (b)(18)(i) of this section, a library, archives, or museum is considered ''eligible'' if—

(A) The collections of the library, archives, or museum are open to the public and/or are routinely made available to researchers who are not affiliated with the library, archives, or museum;

(B) The library, archives, or museum has a public service mission;

(C) The library, archives, or museum's trained staff or volunteers provide professional services normally associated with libraries, archives, or museums;

(D) The collections of the library, archives, or museum are composed of lawfully acquired and/or licensed materials; and

(E) The library, archives, or museum implements reasonable digital security measures as appropriate for the activities permitted by this paragraph (b)(18).

(19) Computer programs that operate 3D printers that employ technological measures to limit the use of material, when circumvention is accomplished solely for the purpose of using alternative material and not for the purpose of accessing design software, design files, or proprietary data.

(20) Computer programs, solely for the purpose of investigating a potential infringement of free and open source computer programs where:

(i) The circumvention is undertaken on a lawfully acquired device or machine other than a video game console, on which the computer program operates;

(ii) The circumvention is performed by, or at the direction of, a party that has a good-faith, reasonable belief in the need for the investigation and has standing to bring a breach of license or copyright infringement claim;

(iii) Such circumvention does not constitute a violation of applicable law; and

(iv) The copy of the computer program, or the device or machine on which it operates, is not used or maintained in a manner that facilitates copyright infringement.

(21) Video games in the form of computer programs, embodied in lawfully acquired physical or downloaded formats, and operated on a general-purpose computer, where circumvention is undertaken solely for the purpose of allowing an individual with a physical disability to use software or hardware input methods other than a standard keyboard or mouse.

* * * * *

Dated: October 21, 2021.

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2021–23311 Filed 10–27–21; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0445; FRL–8779–02–R4]

Air Plan Approval; SC; Revisions to Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of a State Implementation Plan (SIP) revision submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC or Department), on April 24, 2020. The SIP revision updates the definition of ''Spec. Oil (Specification Oil)'' and makes minor updates to formatting and numbering. EPA is finalizing approval of these changes pursuant to the Clean Air Act (CAA or Act) and implementing federal regulations.

DATES: This rule is effective November 29, 2021.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2020–0445. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8966. Mr. Febres can also be reached via electronic mail at *febres-martinez.andres@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 24, 2020, SC DHEC submitted a SIP revision to EPA for approval that includes changes to South Carolina Regulation 61–62.1, Section I—*Definitions.*[1] First, SC DHEC's April 24,

[1] In the April 24, 2020, SIP revision SC DHEC also submitted to EPA changes to Regulations 61–62.1, Continued

2020, SIP revision includes minor updates to numbering and formatting. Second, the SIP revision updates the definition of ''Spec. Oil (Specification Oil)'' at Paragraph 97(a) within the definition of ''Used Oil.'' Specifically, the revised definition of ''Spec. Oil'' would remove the phrase ''Nickel—120 ppm [parts per million] maximum,'' thus eliminating the nickel specification for ''Spec. Oil.'' In the South Carolina SIP's definition of ''Used Oil,'' ''Spec. Oil'' and ''Non-Spec. Oil'' [2] are listed as ''[t]wo (2) types'' of ''used oil.'' Notably, the terms ''Spec. Oil'' and ''Specification Oil'' do not currently appear anywhere else in South Carolina's SIP outside of the definition of ''Used Oil.''

In a notice of proposed rulemaking (NPRM) published in the **Federal Register** on August 4, 2021 (86 FR 41914), EPA proposed to approve the aforementioned changes from South Carolina's April 24, 2020, SIP revision. The details of South Carolina's submittal and the rationale for EPA's approval are further explained in the August 4, 2021, NPRM. Comments on the August 4, 2021, NPRM were due on or before September 3, 2021. EPA did not receive any comments, adverse or otherwise, on the August 4, 2021, NPRM.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of South Carolina's Regulation 61–62.1, *Definitions and General Requirements,* Section I—*Definitions,* state effective on April 24, 2020. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[3]

III. Final Action

EPA is finalizing approval of revisions to the SIP-approved version of South Carolina Regulation 61–62.1, Section I—*Definitions,* state effective on April 24, 2020. EPA has determined that these revisions meet the applicable requirements of section 110 of the CAA and the applicable regulatory requirements at 40 CFR part 51.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this final rule merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this final rule for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (Settlement Act), ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition

Section II—*Permit Requirements;* 61–62.1, Section III—*Emission Inventory and Emissions Statement;* 61–62.1, Section IV—*Source Tests;* 61–62.1, Section V—*Credible Emissions;* 61–62.5, Standard No. 2—*Ambient Air Quality Standards;* 61–62.5, Standard 5.2—*Control of Oxides of Nitrogen (NO_X);* 61–62.5, Standard 7—*Prevention of Significant Deterioration;* and 61–62.5, Standard 7.1—*Nonattainment New Source Review (NSR).* EPA will address these SIP revisions in separate actions.

[2] ''Non-Spec. Oil (Off Spec Oil)'' is defined as ''[u]sed oil that does not meet the specification above.'' S.C. Code Regs. 61–62.1 sec. I (97)(b). Therefore, used oil that does not meet the definition of ''Spec. Oil'' is still considered ''Used Oil.'' *Id.*

[3] *See* 62 FR 27968 (May 22, 1997).

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation byreference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 21, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart PP—South Carolina

■ 2. Section 52.2120(c), is amended under the heading ''Regulation No. 62.1'' by revising the entry for ''Section I'' to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED SOUTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Regulation No. 62.1	Definitions and General Requirements.			
Section I	Definitions	4/24/2020	10/28/2021 [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 2021–23349 Filed 10–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0368; FRL–8716–02–R9]

Air Plan Approval; Nevada; Revisions to Clark County Ozone Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State of Nevada's state implementation plan (SIP) for Clark County. The revision consists of an update to certain elements of the maintenance plan for the Clark County air quality planning area for the 1997 8-hour ozone national ambient air quality standards (NAAQS or ''standards''), including certain emissions inventories and motor vehicle emissions budgets. The EPA is approving the SIP revision because the Clark County ozone maintenance plan, as revised, continues to provide for maintenance of the 1997 ozone NAAQS and will not interfere with attainment or reasonable further progress of the other NAAQS, and the motor vehicle emissions budgets meet the applicable transportation conformity requirements.

DATES: This rule will be effective on November 29, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R09–OAR–2021–0368. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business information or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; By phone: (775) 434–8176 or by email at *oconnor.karina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' or ''our'' refer to the EPA.

Table of Contents

I. Summary of the Proposed Action
II. Public Comments
III. Final Action
IV. Statutory and Executive Order Reviews

I. Summary of the Proposed Action

On August 9, 2021 (86 FR 43461), under section 110(k) of the Clean Air Act (''Act'' or CAA), the EPA proposed to approve a SIP revision titled ''Revision to Motor Vehicle Emissions Budgets for the 1997 Ozone NAAQS, Clark County, Nevada'' (August 2020) (herein referred to as the ''2020 Ozone Maintenance Plan Revision''), submitted by the Nevada Division of Environmental Protection (NDEP) on September 30, 2020.[1] The 2020 Ozone Maintenance Plan Revision updates certain elements of the maintenance plan for Clark County for the 1997 ozone NAAQS, including certain emissions inventories and the motor vehicle emissions budgets (''budgets'' or MVEBs). The 2020 Ozone Maintenance Plan Revision was prepared in response to the EPA's conditional approval of the ''Revision to Motor Vehicle Emissions Budgets in Ozone Redesignation Request and Maintenance Plan: Clark County, Nevada'' (October 2018) (herein referred to as the ''2018 Ozone Maintenance Plan Revision'').[2] The

[1] NDEP submitted the 2020 Ozone Maintenance Plan Revision electronically on September 30, 2020, as an attachment to a transmittal letter dated September 25, 2020.

[2] 84 FR 44699 (August 27, 2019).

2020 Ozone Maintenance Plan Revision revises certain budgets from the 2018 Ozone Maintenance Plan Revision to prevent interference with reasonable further progress or attainment of the 2008 and 2015 ozone NAAQS.[3]

As noted above, the 2020 Ozone Maintenance Plan Revision includes certain updated emissions inventories. In our August 9, 2021 proposed rule, we describe our evaluation of the updated inventories and conclude that, based on our review of the methods, assumptions, and data sources, the Clark County Department of Environment and Sustainability's estimates for 2017 and 2022 for the various source categories are based on the best available emissions models and data sources, and thus provide a reasonable basis upon which to evaluate whether the area will continue to maintain the 1997 ozone NAAQS through 2022 and whether the revised budgets for 2022 in the 2020 Ozone Maintenance Plan Revision would interfere with reasonable further progress (RFP) or attainment of the 2008 and 2015 ozone NAAQS.[4]

In our August 9, 2021 proposed rule, we also describe our review of the revised budgets for year 2022 in the 2020 Ozone Maintenance Plan Revision and conclude that they are consistent with the revised maintenance demonstration from the 2018 Ozone Maintenance Plan Revision; are based on control measures that have already been adopted and implemented; and meet all other applicable statutory and regulatory requirements including the adequacy criteria in 40 CFR 93.1118(e)(4) and (5).[5]

Lastly, in our August 9, 2021 proposed rule, we describe our review the 2020 Ozone Maintenance Plan Revision for possible interference with RFP or attainment with respect to the 2008 and 2015 ozone NAAQS in Clark County. In short, because the updated emissions inventories of ozone precursor emissions for 2022, including the revised budgets and related safety margins, would be less than the corresponding emissions inventories for year 2017, we conclude in our proposed rule that the 2020 Ozone Maintenance Plan Revision would not interfere with RFP or attainment for the 2008 and 2015 ozone NAAQS in Clark County and thus would be consistent with the requirements for SIP revisions under CAA section 110(l).[6]

For more information on the background for this action, including a description of the ozone NAAQS, the ozone area designations for Clark County, the 2011 Ozone Maintenance Plan and 2018 Ozone Maintenance Plan Revision, and the rationale for approval of the 2020 Ozone Maintenance Plan Revision, please see our August 9, 2021 proposed rule.

II. Public Comments

The public comment period for the EPA's August 9, 2021 proposed rule closed on September 8, 2021. The EPA did not receive any public comments.

III. Final Action

For the reasons discussed in our August 9, 2021 proposed rule and summarized herein, the EPA is taking final action under CAA section 110(k)(3) to approve the 2020 Ozone Maintenance Plan Revision submitted by NDEP on September 30, 2020, as a revision to the Clark County portion of the Nevada SIP. We are approving the 2020 Ozone Maintenance Plan Revision because we find that the 2011 Ozone Maintenance Plan, as revised by the 2018 Ozone Maintenance Plan Revision, and as further revised by the 2020 Ozone Maintenance Plan Revision, continues to provide for maintenance of the 1997 ozone NAAQS and will not interfere with RFP or attainment of the other NAAQS in Clark County.

In approving the 2020 Ozone Maintenance Plan Revision, the EPA is also finding adequate and approving the updated budgets for oxides of nitrogen (NO_X) and volatile organic compounds (VOC) for 2022 for the 1997 ozone NAAQS (shown in Table 1) based on our conclusion that the updated budgets meet the applicable transportation conformity and other CAA requirements.

TABLE 1—CLARK COUNTY YEAR 2022 OZONE MOTOR VEHICLE EMISSION BUDGETS

[County-wide, average summer weekday, tpd]

Year	2020 Ozone maintenance plan revision	
	NO_X	VOC
2022	32.16	23.92

Source: 2020 Ozone Maintenance Plan Revision, Table 3–1.

The revised budgets in Table 1 replace Clark County's existing budgets for the plan horizon year (2022) for the 1997 ozone NAAQS from the 2018 Ozone Maintenance Plan Revision.[7] The Regional Transportation Commission of Southern Nevada and U.S. Department of Transportation must use the revised budgets for future transportation conformity determinations for the 2015 ozone NAAQS until motor vehicle emissions budgets for that ozone NAAQS are found adequate or are approved.[8]

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves a state plan as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

[3] The 2018 Ozone Maintenance Plan Revision includes revisions to the attainment inventory, the maintenance demonstration, and budgets in the ''Ozone Redesignation Request and Maintenance Plan, Clark County, Nevada (March 2011)'' (herein referred to as the ''2011 Ozone Maintenance Plan'') to reflect updated emissions models, vehicle mix and speed data, and transportation activity projections.

[4] See 86 FR 43464–43466 (August 9, 2021 proposed rule).

[5] See 86 FR 43466–43467 (August 9, 2021 proposed rule).

[6] See 86 FR 43467–43468 (August 9, 2021 proposed rule).

[7] 40 CFR 93.118(f)(2)(iii).

[8] As noted in the proposed rule, through this action, we are removing the conditional approval regulatory text found at 40 CFR 52.1475(a).

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. The Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony has areas of Indian country geographically located within the Clark County 1997 ozone maintenance area. In those areas of Indian country, the action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 20, 2021.

Deborah Jordan,

Acting Regional Administrator, EPA Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart DD—Nevada

■ 2. Section 52.1470 is amended in the table in paragraph (e) by adding an entry for ''Revision to Motor Vehicle Emissions Budgets for the 1997 Ozone NAAQS, Clark County, Nevada (August 2020)'' after the entry for ''Revision to Motor Vehicle Emissions Budgets in Ozone Redesignation Request and Maintenance Plan: Clark County, Nevada (October 2018)'' to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEVADA NONREGULATORY AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
Air Quality Implementation Plan for the State of Nevada [1]				
*	*	*	*	*
Revision to Motor Vehicle Emissions Budgets for the 1997 Ozone NAAQS, Clark County, Nevada (August 2020).	Clark County, Nevada: That portion of Clark County that lies in hydrogeographic areas 164A, 164B, 165, 166, 167, 212, 213, 214, 216, 217, and 218, but excluding the Moapa River Indian Reservation and the Fort Mohave Indian Reservation.	9/30/20	[INSERT **Federal Register** CITATION], 10/28/21.	Submitted by NDEP electronically on September 30, 2020, as an attachment to a letter dated September 25, 2020. Approval of the 2020 Ozone Maintenance Plan Revision removes the condition placed on the approval of the 2018 Ozone Maintenance Plan Revision.
*	*	*	*	*

[1] The organization of this table generally follows from the organization of the State of Nevada's original 1972 SIP, which was divided into 12 sections. Nonattainment and maintenance plans, among other types of plans, are listed under Section 5 (Control Strategy). Lead SIPs and Small Business Stationary Source Technical and Environmental Compliance Assistance SIPs are listed after Section 12 followed by nonregulatory or quasi-regulatory statutory provisions approved into the SIP. Regulatory statutory provisions are listed in 40 CFR 52.1470(c).

* * * * *

§ 52.1475 [Removed and Reserved]

■ 3. Section 52.1475 is removed and reserved.

[FR Doc. 2021–23377 Filed 10–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0524; FRL–8762–02–R4]

Air Plan Approval; South Carolina; 2018 General Assembly New Source Review Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of State Implementation Plan (SIP) revisions submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SCDHEC or Department), on April 24, 2020. The SIP revisions update the State's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) regulations. Specifically, the SIP revisions add and update several definitions for consistency with the Federal regulations, update public participation requirements for PSD, clarify the applicability of ''source impact analysis'' for PSD, add an emissions offset banking provision for NNSR, and make administrative updates, such as typographical corrections and renumbering. Finally, the changes incorporate language that addresses the public notice rule provisions for NNSR, which removes the mandatory requirements to provide public notice in a newspaper and instead allows for electronic notice (''e-notice'') as an alternate noticing option for the State. EPA is approving these revisions pursuant to the Clean Air Act (CAA or Act) and implementing Federal regulations.

DATES: This rule is effective November 29, 2021.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2020–0524. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8966. Mr. Febres can also be reached via electronic mail at *febres-martinez.andres@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 24, 2020, SDHEC submitted SIP revisions to EPA for approval that include changes to South Carolina's major source New Source Review (NSR) permitting regulations to make them more closely align with Federal requirements for PSD and NNSR permitting; correct typographical errors; and update internal references, including renumbering throughout both regulations. Specifically, these changes update South Carolina Regulation 61–62.5, Standard No. 7—*Prevention of Significant Deterioration* and Standard No. 7.1—*Nonattainment New Source Review.*[1] Additionally, the SIP revisions include an update to the public noticing procedures for South Carolina's NNSR regulations to address changes promulgated in the Federal rule entitled ''Revisions to Public Notice Provisions in Clean Air Act Permitting Programs,'' (also referred to as the e-Notice Rule) that was finalized in 2016. *See* 81 FR 71613 (October 18, 2016).[2]

On July 29, 2021, EPA published a notice of proposed rulemaking (NPRM), proposing to approve with some exceptions, the changes submitted by South Carolina on April 24, 2020. [3] *See* 86 FR 40796. Comments on the NPRM were due by August 30, 2021. EPA received only one comment on the NPRM, which was in favor of EPA's action. The one comment received can be found in the docket for this action.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of South Carolina's Regulation 61–62.5, Standards No. 7—*Prevention of Significant Deterioration,* and Standard No. 7.1—*Nonattainment New Source Review,* both state effective on April 24, 2020, with the exception of paragraph (H), and a portion of paragraphs (A)(10)(t), and (B)(22)(c)(xx), from Regulation 61–62.5, Standard No. 7.1, as discussed in the NPRM.[4] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[5]

III. Final Action

As described in more detail in the NPRM, EPA is approving, with some exceptions, the changes to the South Carolina Regulation 61–62.5, Standards No. 7—*Prevention of Significant Deterioration,* and Standard No. 7.1—*Nonattainment New Source Review,* as submitted by South Carolina on April 24, 2020.

[1] On April 24, 2020, SDHEC also submitted to EPA SIP revisions to Regulations 61–62.1, Section I—*Definitions;* 61–62.1, Section II—*Permit Requirements;* 61–62.1, Section III—*Emission Inventory and Emissions Statement;* 61–62.1, Section IV—*Source Tests;* 61–62.1, Section V—*Credible Emissions;* 61–62.5, Standard No. 2—*Ambient Air Quality Standards;* and 61–62.5, Standard 5.2—*Control of Oxides of Nitrogen (NO_X).* EPA will address these SIP revisions in separate actions.

[2] EPA previously approved e-notice provisions for South Carolina's PSD program. *See* 83 FR 64285 (December 14, 2018). Although the e-notice provisions in the State's NNSR program are being incorporated into the SIP for the first time, the April 24, 2020, SIP revisions also include updates to the already SIP-approved e-notice provisions in South Carolina's SIP-approved PSD program.

[3] For more details on the exemptions to EPA's approval, see the NPRM for this action.

[4] *See* 86 FR 40796 at 40798.

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

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this final rule merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this final rule for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (Settlement Act), ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 21, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart PP—South Carolina

■ 2. Section 52.2120(c) is amended by revising the entries for ''Standard No. 7'' and ''Standard No. 7.1'' to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED SOUTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Standard No. 7	Prevention of Significant Deterioration.	4/24/2020	10/28/2021, [Insert citation of publication].	
Standard No. 7.1	Nonattainment New Source Review.	4/24/2020	10/28/2021, [Insert citation of publication].	Except for paragraph (H) and the ethanol production facilities exclusion in paragraphs (A)(10)(t) and (B)(22)(c)(xx).
*	*	*	*	*

* * * * *

[FR Doc. 2021–23350 Filed 10–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

EPA–R09–OAR–2021–0426; FRL–8710–02–R9]

Designation of Areas for Air Quality Planning Purposes; California; Eastern Kern, Sacramento Metro, and Western Nevada 2015 Ozone Nonattainment Areas; Reclassification to Serious

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is granting requests by the California Air Resources Board (CARB or ''State'') to reclassify three nonattainment areas in California from ''Moderate'' to ''Serious'' for the 2015 ozone national ambient air quality standards (NAAQS). These three areas are herein referred to as the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas. In connection with the reclassification, the EPA is establishing deadlines for submittal of revisions to the Eastern Kern, Sacramento Metro, and Western Nevada portions of the California State implementation plan (SIP) to meet additional requirements for Serious ozone nonattainment areas.

DATES: This rule is effective November 29, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0426. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ben Leers, Air Planning Office (AIR–2), EPA Region IX, (415) 947–4279, *leers.ben@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On August 13, 2021, the EPA proposed to grant requests by the State of California to reclassify the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS.[1] Our August 13, 2021 proposed rule provides background information on the EPA's promulgation of the 2015 ozone NAAQS and area designations, classifications, and reclassifications for the 2015 ozone NAAQS.

The proposed rule describes CARB's requests for reclassification of the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS and the basis for our proposed approval of the requests. The proposed rule also describes the Serious area requirements applicable to the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas following the EPA's approval of the voluntary reclassification requests and proposes a schedule for CARB to submit SIP revisions that address these requirements. Lastly, the proposed rule addresses the implications of the reclassification on the areas of Indian country geographically located within the borders of the Sacramento Metro nonattainment area. Please see the proposed rule for further detail concerning these topics.

In this document, we are taking final action to grant CARB's requests to reclassify the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas to Serious nonattainment for the 2015 ozone NAAQS. Pursuant to the reclassification, these areas will be required to attain the 2015 ozone NAAQS as expeditiously as practicable, but no later than August 3, 2027. We are also taking final action to establish a schedule for CARB to submit SIP revisions addressing Serious area requirements and to submit revisions to the title V operating permit rules for the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received no adverse comments and one comment in support of our proposed action. The comment letter is available in the docket for this rulemaking.

III. EPA Action

Pursuant to CAA section 181(b)(3) and 40 CFR 51.1103(b), the EPA is granting a request by the State of California to reclassify the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS. In connection with the reclassifications, the EPA is establishing a deadline of no later than August 3, 2022 (*i.e.,* four years from the areas' date of initial designation as nonattainment for the 2015 ozone NAAQS) for the submittal of SIP revisions addressing the Serious area requirements applicable to each of these areas.[2] Under CAA section 301(a), we are also establishing August 3, 2022, as the deadline for the submittal of any corresponding revisions, or certifications, as appropriate, to the NSR and title V program rules that apply in the affected areas. We are establishing a deadline of November 29, 2023 (*i.e.,* 24 months from the effective date of our reclassification of the areas to Serious) for the submittal of SIP revisions addressing the Serious area reasonably available control technology (RACT) requirements for each of these areas. Additionally, the EPA is establishing a deadline for implementation of Serious area RACT rules as expeditiously as practicable but no later than January 1, 2026.[3] Finally, as described in the

[1] 86 FR 44677.

[2] As described in the proposed rule, these requirements include an attainment demonstration, reasonable further progress demonstration, reasonably available control measures, contingency measures, enhanced motor vehicle inspection and maintenance program, and clean fuel vehicle program. The proposed rule includes more information about these requirements and their applicability to each area. See 86 FR 44677, 44678.

[3] Under 40 CFR 51.1312(a)(3)(ii), states must provide for implementation of RACT required pursuant to reclassification as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline (whichever is earlier). Because ozone nonattainment areas in California have a year-round ozone season, the start of the attainment year ozone season associated with each area's new attainment date is January 1, 2027. January 1 of the third year

proposed rule, CARB will be required to submit a transportation control demonstration by August 3, 2024, and every three years thereafter, and to submit transportation control measures as needed based on these demonstrations.[4]

IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this final action is not a ''significant regulatory action'' and therefore is not subject to Executive Order 12866. With respect to lands under state jurisdiction, voluntary reclassifications under CAA section 181(b)(3) are based solely upon requests by the state, and the EPA is required under the CAA to grant them. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by reclassification, reclassification does not impose a materially adverse impact under Executive Order 12866. For these reasons, this final action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

In addition, I certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and that this final rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), because the EPA is required to grant requests by states for voluntary reclassifications, and such reclassifications in and of themselves do not impose any federal intergovernmental mandate, and because tribes are not subject to implementation plan submittal deadlines that apply to states as a result of reclassifications.

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in Executive Order 13175 to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.'' Four Indian tribes have areas of Indian country located within the boundaries of the Sacramento Metro ozone nonattainment area, and there are no areas of Indian country located in the Eastern Kern and Western Nevada ozone nonattainment areas. The EPA implements federal CAA programs, including reclassifications, in these areas of Indian country within the boundaries of the Sacramento Metro area consistent with our discretionary authority under sections 301(a) and 301(d)(4) of the CAA. The EPA has concluded that this final rule might have tribal implications for the purposes of Executive Order 13175 but will not impose substantial direct costs upon the tribes, nor would it preempt tribal law. As discussed in section III of our August 13, 2021 proposed rule, this action does not affect the implementation of NSR or title V programs in these areas of Indian country, nor does it affect projects proposed in these areas of Indian country that require federal permits, approvals, or funding under the EPA's general conformity rule. None of the affected tribes will be required to submit an implementation plan as a result of this reclassification.

The EPA contacted tribal officials early in the process of developing this rulemaking to provide an opportunity to have meaningful and timely input into its development. On December 11, 2020, we sent letters to leaders of the four tribal governments representing the areas of Indian country in the nonattainment area offering government-to-government consultation and seeking input on how we could best communicate with the tribes on this rulemaking effort. No tribes requested government-to-government consultation on this action.

Executive Order 12898 establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This reclassification action does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898.

This final action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the National Government and the states, nor on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This final action does not alter the relationship or the distribution of power and responsibilities established in the CAA.

This final rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because the EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of Executive Order 13045 has the potential to influence the regulation.

As this final rule establishes a deadline for the submittal of CAA required plans and information, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27,

after the RACT SIP submittal deadline (as established in this final rule) is January 1, 2026.

[4] See 86 FR 44677, 44679.

2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, National parks, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds, Wilderness areas.

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

Dated: October 22, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

For the reasons stated in the preamble, the EPA amends part 81, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.305, the table entitled ''California—2015 8-Hour Ozone NAAQS [Primary and Secondary]'' is amended by revising the entries for ''Kern County (Eastern Kern), CA'', ''Nevada County (Western part), CA'', and ''Sacramento Metro, CA'' to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—2015 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
* * * * * * *				
Kern County (Eastern Kern), CA	.....	Nonattainment	11/29/21	Serious.
Kern County (part):				
That portion of Kern County (with the exception of that portion in Hydrologic Unit Number 18090205—the Indian Wells Valley) east and south of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.				
* * * * * * *				
Nevada County (Western part), CA	.....	Nonattainment	11/29/21	Serious.
Nevada County (part):				
That portion of Nevada County, which lies west of a line, described as follows: Beginning at the Nevada-Placer County boundary and running north along the western boundaries of Sections 24, 13, 12, 1, Township 17 North, Range 14 East, Mount Diablo Base and Meridian, and Sections 36, 25, 24, 13, 12, Township 18 North, Range 14 East to the Nevada-Sierra County boundary.				
* * * * * * *				
Sacramento Metro, CA	.....	Nonattainment	11/29/21	Serious.
El Dorado County (part):				
All portions of the county except that portion of El Dorado County within the drainage area naturally tributary to Lake Tahoe including said Lake.				
Placer County (part):				

CALIFORNIA—2015 8-HOUR OZONE NAAQS—Continued
[Primary and secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
All portions of the county except that portion of Placer County within the drainage area naturally tributary to Lake Tahoe including said Lake, plus that area in the vicinity of the head of the Truckee River described as follows: Commencing at the point common to the aforementioned drainage area crestline and the line common to Townships 15 North and 16 North, Mount Diablo Base and Meridian, and following that line in a westerly direction to the northwest corner of Section 3, Township 15 North, Range 16 East Mount Diablo Base and Meridian, thence south along the west line of Sections 3 and 10, Township 15 North, Range 16 East, Mount Diablo Base and Meridian, to the intersection with the said drainage area crestline, thence following the said drainage area boundary in a southeasterly, then northeasterly direction to and along the Lake Tahoe Dam, thence following the said drainage area crestline in a northeasterly, then northwesterly direction to the point of beginning.				
Sacramento County:				
Solano County (part):				
That portion of Solano County which lies north and east of a line described as follows: Beginning at the intersection of the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; Township 6 North, Range 2 West, Mount Diablo Base and Meridian, thence east along said ¼ section line to the east boundary of Section 36, Township 6 North, Range 2 West, thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, Township 5 North, Range 1 West, thence east along a line common to Township 5 North and Township 6 North to the northeast corner of Section 3, Township 5 North, Range 1 East, thence south along section lines to the southeast corner of Section 10, Township 3 North, Range 1 East, thence east along section lines to the south ¼ corner of Section 8, Township 3 North, Range 2 East, thence east to the boundary between Solano and Sacramento Counties.				
Sutter County (part):				
Portion south of a line connecting the northern border of Yolo County to the SW tip of Yuba County and continuing along the southern Yuba County border to Placer County.				
Yolo County:				
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria.				
United Auburn Indian Community of the Auburn Rancheria of California.				
Wilton Rancheria.				
Yoca Dehe Winton Nation.				
* * * * * * *				

[1] This date is July 20, 2012, unless otherwise noted.
[2] Excludes Indian country located in each area, unless otherwise noted.

* * * * *

[FR Doc. 2021–23454 Filed 10–27–21; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 86, No. 206
Thursday, October 28, 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 ENERGY

10 CFR Parts 429, 430, and 431

[EERE–2016–BT–TP–0011]

RIN 1904–AD95

Energy Conservation Program: Test Procedures for Residential and Commercial Clothes Washers

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

ACTION: Notice of proposed rulemaking; extension of public comment period.

SUMMARY: The U.S. Department of Energy (''DOE'') is extending the public comment period for the notice of proposed rulemaking (''NOPR'') regarding proposals to amend the test procedures for residential and commercial clothes washers. DOE published the NOPR in the **Federal Register** on September 1, 2021, establishing a 61-day public comment period ending November 1, 2021. On October 11, 2021, DOE received a comment requesting extension of the comment period by an additional 92 days to February 1, 2022. DOE is extending the public comment period for submitting comments and data on the NOPR document by an additional 28 days, to November 29, 2021, for a total of an 89-day comment period.

DATES: The comment period for the NOPR published on September 1, 2021 (86 FR 49140), is extended. DOE will accept comments, data, and information regarding this NOPR no later than November 29, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to the following address: *ResClothesWasher2016TP0011@ee.doe.gov.* Include ''Energy Conservation Program: Test Procedures for Residential and Commercial Clothes Washers'' and docket number EERE–2016–BT–TP–0011 and/or RIN number 1904–AD95 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing corona virus (COVID–19) pandemic. DOE is currently accepting only electronic submissions at this time. 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.

No telefacsimilies (faxes) will be accepted.

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

The docket web page can be found at *www.regulations.gov/docket/EERE-2016-BT-TP-0011.* The docket web page contains instructions on how to access all documents, including public comments in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, 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. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Kathryn McIntosh, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2002. Email: *KathrynMcIntosh@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.*

SUPPLEMENTARY INFORMATION: On September 1, 2021, DOE published a NOPR in the **Federal Register** soliciting public comment on its proposed amendments to the test procedures for residential and commercial clothes washers. 86 FR 49140. Comments were originally due on November 1, 2021. On October 11, 2021, DOE received a comment from the Association of Home Appliance Manufacturers to extend the comment period by 92 days to February 1, 2022.[1]

DOE has reviewed the request and considered the benefit to stakeholders in providing additional time to review the NOPR and gather information/data that DOE is seeking. Accordingly, DOE has determined that an extension of the comment period is appropriate and is hereby extending the comment period by an additional 28 days to November 29, 2021, for a total of an 89-day comment period.

Signing Authority

This document of the Department of Energy was signed on October 19, 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**.

[1] DOE has posted this comment to the docket at *www.regulations.gov/comment/EERE-2016-BT-TP-0011-0020.*

Signed in Washington, DC, on October 20, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–23242 Filed 10–27–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0886; Project Identifier MCAI–2021–00341–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

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 Airbus Helicopters EC120B helicopters. This proposed AD was prompted by a report of geometrical non-conformities in the tail rotor blade (TRB) root section discovered during an accident investigation of a Model EC130B helicopter. Due to the similarity of design and production requirements, certain TRBs for the Model EC120B helicopters were inspected and geometrical non-conformities were also found. This proposed AD would require an inspection (dimensional check) to verify conformity, and replacement of certain TRBs if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). This proposed AD would also prohibit rework, repair, or modification of affected parts in the affected area of the TRB assembly root. 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 December 13, 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 EASA 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;* internet: *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0886.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0886; 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: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; phone: (516) 228–7330; email: *andrea.jimenez@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–2021–0886; Project Identifier MCAI–2021–00341–R'' 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 Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; phone: (516) 228–7330; email: *andrea.jimenez@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0079, dated March 17, 2021 (EASA AD 2021–0079), to correct an unsafe condition for all Airbus Helicopters EC120B helicopters.

This proposed AD was prompted by a report of geometrical non-conformities in the TRB root section discovered during an accident investigation of a Model EC130B helicopter. Due to the similarity of design and production requirements, certain TRBs for the Model EC120B helicopters were inspected and geometrical non-conformities were also found. The FAA is proposing this AD to address geometrical non-conformities of the TRB root section which, if not addressed, could result in crack initiation and TRB failure, and possibly result in loss of control of the helicopter. See EASA AD 2021–0079 for additional background information.

Other Related Rulemaking

EASA issued EASA AD 2020–0282, dated December 17, 2020, address this issue on Model EC135 P1, EC135 P2, EC135 P2+, EC135 P3, EC135 T1, EC135 T2, EC135 T2+, EC135 T3, EC635 P2+, EC635 P3, EC635 T1, EC635 T2+, and EC635 T3 helicopters, and the FAA issued corresponding AD 2021–16–10, Amendment 39–21672 (86 FR 50242, September 8, 2021).

EASA issued EASA AD 2020–0187, dated August 21, 2020, to address this issue on Model EC130B4 and EC130T2 helicopters, and the FAA issued corresponding AD 2021–10–25, Amendment 39–21558 (86 FR 29176, June 1, 2021).

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0079 requires an inspection (dimensional check) to verify TRB conformity, and replacement of certain TRBs if necessary. EASA AD 2021–0079 also prohibits rework, repair, or modification of affected parts in the critical section (affected area of the TRB assembly root).

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

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0079, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed 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 2021–0079 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0079 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 2021–0079 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 2021–0079. Service information referenced in EASA AD 2021–0079 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0886 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 89 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	4 work-hours × $85 per hour = $340	$0	$340	$30,260

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Blade Replacement	10 work-hours × $85 per hour = $850	$4,000	$4,850

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2021–0886; Project Identifier MCAI–2021–00341–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 13, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters EC120B helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6410, Tail Rotor Blades.

(e) Unsafe Condition

This AD was prompted by a report of geometrical non-conformities in the tail rotor blade (TRB) root section discovered during an accident investigation of a Model EC130B helicopter. Due to the similarity of design and production requirements, certain TRBs for the Model EC120B helicopters were inspected and geometrical non-conformities were also found. The FAA is issuing this AD to detect and correct geometrical non-conformities of the TRB root section. The unsafe condition, if not addressed, could result in crack initiation and TRB failure, and possibly result in loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0079, dated March 17, 2021 (EASA AD 2021–0079).

(h) Exceptions to EASA AD 2021–0079

(1) Where EASA AD 2021–0079 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2021–0079 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the service information referenced in EASA AD 2021–0079 specifies discarding a part, this AD requires removing that part from service.

(4) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0079.

(5) Where the service information referenced in EASA AD 2021–0079 specifies to measure using the Smartphone application, the PowerPoint method, or ''Contacting customer support with a specific procedure,'' this AD requires determining the specified measurements but those methods of measurement are not required by this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0079 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the actions of this AD can be performed, provided no passengers are onboard.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-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.

(l) Related Information

(1) For EASA AD 2021–0079, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0886.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; phone: (516) 228–7330; email: *andrea.jimenez@faa.gov.*

Issued on October 19, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–23236 Filed 10–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0887; Project Identifier MCAI–2021–00045–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

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 Airbus Helicopters Model EC120B helicopters. This proposed AD was prompted by a report of corrosion found on the external tail boom skin, under the Very High Frequency (VHF) antenna. This proposed AD would require inspecting the tail boom at the VHF antenna attachments and depending on the results, repairing or modifying the tail boom skin, 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 December 13, 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 EASA material that is proposed for 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 the EASA material on the EASA website at *https://ad.easa.europa.eu.* For Airbus Helicopter service information identified in this NPRM, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0887.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0887; 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: Gregory Koenig, Aerospace Engineer, Airframe & Administrative Services Section, Chicago ACO Branch, Compliance & Airworthiness Division, FAA, 2300 E Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7127; email *Gregory.L.Koenig@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–2021–0887; Project Identifier MCAI–2021–00045–R'' 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 Gregory Koenig, Aerospace Engineer, Airframe & Administrative Services Section, Chicago ACO Branch, Compliance & Airworthiness Division, FAA, 2300 E Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7127; email *Gregory.L.Koenig@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0015, dated January 13, 2021 (EASA AD 2021–0015), to correct an unsafe condition for Airbus Helicopters (AH), formerly Eurocopter, Eurocopter France Model EC 120 B helicopters.

This proposed AD was prompted by a report of corrosion found on the external tail boom skin, under the VHF antenna of an EC120B helicopter. The FAA is proposing this AD to detect corrosion in that area and prevent the degradation of the tail boom structure. See EASA AD 2021–0015 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0015 requires a one-time inspection of the VHF antenna attachments to the tail boom and, depending on the results, corrective action or modification of the tail boom.

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.

Other Related Service Information

The FAA reviewed Airbus Helicopters Alert Service Bulletin No. EC120–53A017, Revision 1, dated November 26, 2020. This service information specifies procedures for inspecting and modifying the VHF antenna attachments on the tail boom.

The FAA also reviewed Airbus Helicopters Service Bulletin No. EC120–53–018, Revision 0, dated November 26, 2020. This service information specifies procedures for repairing the tail boom if there is any corrosion or a crack at the VHF antenna attachments.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in EASA AD 2021–0015. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0015, 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 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 2021–0015 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0015 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 2021–0015 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 2021–0015. Service information referenced in EASA AD 2021–0015 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0887 after the FAA final rule is published.

Differences Between This Proposed AD and the EASA AD

Where the service information referenced in EASA AD 2021–0015 specifies ''to check for corrosion under the VHF antenna base support,'' this proposed AD would require inspecting for corrosion because that action must be accomplished by a mechanic that meets the requirements of 14 CFR part 65 subpart D. Where the service information referenced in EASA AD 2021–0015 specifies to ''make sure that there is no aluminum oxide (white powder),'' ''make sure that there is no pitting corrosion,'' and ''make sure that there are no crack,'' this proposed AD would require inspecting for any aluminum oxide (white powder), pitting corrosion, and cracks instead. Where the service information referenced in EASA AD 2021–0015 specifies discarding parts, this proposed AD would require removing those parts from service instead.

Costs of Compliance

The FAA estimates that this proposed AD affects 89 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this proposed AD.

Inspecting and modifying each tail boom at VHF attachment would take about 4 work-hours and parts would cost about $4,745, for an estimated cost of $5,085 per helicopter and $452,565 for the U.S. fleet.

If required, repairing the VHF antenna attachment at the tail boom would take up to 15 work-hours and parts would cost up to $7,812, for an estimated cost of up to $9,087 per helicopter.

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:

Airbus Helicopters: Docket No. FAA–2021–0887; Project Identifier MCAI–2021–00045–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 13, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model EC120B helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 5302, Rotorcraft Tail Boom.

(e) Unsafe Condition

This AD was prompted by a report of corrosion found on the external tail boom skin of a Model EC120B helicopter under the Very High Frequency antenna. The FAA is issuing this AD to detect corrosion in that area and prevent the degradation of the tail boom structure. The unsafe condition, if not addressed, could result in possible roll-over during landing.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2021–0015, dated January 13, 2021 (EASA AD 2021–0015).

(h) Exceptions to EASA AD 2021–0015

(1) Where EASA AD 2021–0015 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where the service information referenced in paragraph (1) of EASA AD 2021–0015 specifies to check for corrosion, including to ''make sure that there is no aluminum oxide (white powder),'' ''make sure that there is no pitting corrosion,'' and ''make sure that there are no crack,'' this AD requires inspecting for any aluminum oxide (white powder), pitting corrosion, and cracks.

(3) Where the service information referenced in EASA AD 2021–0015 specifies discarding parts, this AD requires removing those parts from service.

(4) Where paragraph (4) of EASA AD 2021–0015 requires certain actions prior to the installation of a tail boom on any helicopter, including inspecting the tail boom, for this AD, the requirements of paragraph (h)(2) of this AD also apply to the inspection of the tail boom.

(5) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0015.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0015 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the 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.*

(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 EASA AD 2021–0015, 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 view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0887.

(2) For more information about this AD, contact Gregory Koenig, Aerospace Engineer, Airframe & Administrative Services Section, Chicago ACO Branch, Compliance & Airworthiness Division, FAA, 2300 E Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7127; email *Gregory.L.Koenig@faa.gov.*

Issued on October 19, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–23233 Filed 10–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0835; Project Identifier AD–2021–00971–E]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–11–15, which applies to certain International Aero Engines AG (IAE) V2500 model turbofan engines. AD 2021–11–15 requires performance of an ultrasonic inspection (USI) of the high-pressure turbine (HPT) 1st-stage disk and HPT 2nd-stage disk and, depending on the results of the inspections, replacement of the HPT 1st-stage disk or HPT 2nd-stage disk. Since the FAA issued AD 2021–11–15, the FAA determined the need to clarify the compliance time for inspection of any HPT 1st-stage disk or HPT 2nd-stage disk that is installed on a low-thrust model engine but had been previously operated on a high-thrust model engine. This proposed AD would require performance of a USI of the HPT 1st-stage disk and HPT 2nd-stage disk and, depending on the results of the inspections, replacement of the HPT 1st-stage disk or HPT 2nd-stage disk. 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 December 13, 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 International Aero Engines AG, 400 Main Street, East Hartford, CT 06118; phone: (800) 565–0140; email: *help24@prattwhitney.com;* website: *https://connect.prattwhitney.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–2021–0835; 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: Alberto Hernandez, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7329; fax: (781) 238–7199; email: *Alberto.J.Hernandez@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–2021–0835; Project Identifier AD–2021–00971–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 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 we receive 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 Alberto Hernandez, 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 issued AD 2021–11–15, Amendment 39–21577 (86 FR 30380, June 8, 2021), (AD 2021–11–15), for all IAE V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, V2531–E5, and V2533–A5 model turbofan engines with a certain HPT 1st-stage disk or HPT 2nd-stage disk installed. AD 2021–11–15 was prompted by an event involving an uncontained failure of an HPT 1st-stage disk that resulted in high-energy debris penetrating the engine cowling. On March 18, 2020, an Airbus Model A321–231 airplane, powered by IAE V2533–A5 model turbofan engines, experienced an uncontained HPT 1st-stage disk failure that resulted in an aborted takeoff. The uncontained failure of the HPT 1st-stage disk resulted in high-energy debris penetrating the engine cowling. The FAA published Emergency AD 2020–07–51 on March 21, 2020 (followed by publication in the **Federal Register** on April 13, 2020, as a Final Rule, Request for Comments (85 FR 20402)) and AD 2021–01–03 on January 6, 2021 (86 FR 458), to remove from service HPT 1st-stage and HPT 2nd-stage disks identified as having the highest risk of failure. Based on the root cause analysis performed since that event, the manufacturer identified a population of HPT 1st-stage disks and HPT 2nd-stage disks that require inspection and possible removal from service. AD 2021–11–15 requires the performance of an USI of the HPT 1st-stage disk and HPT 2nd-stage disk and, depending on the results of the inspections, replacement of the HPT 1st-stage disk or HPT 2nd-stage disk. The agency issued AD 2021–11–15 to prevent failure of the HPT 1st-stage disk and HPT 2nd-stage disk.

Actions Since AD 2021–11–15 Was Issued

Since the FAA issued AD 2021–11–15, the FAA determined the need to clarify the compliance time for inspection of any HPT 1st-stage disk or HPT 2nd-stage disk that is installed on a V2500 low-thrust model engine but that had been previously operated on a V2500 high-thrust model engine. The manufacturer categorizes V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 model turbofan engines as high-thrust model engines and V2522–A5, V2524–A5, V2525–D5, and V2527–A model turbofan engines as low-thrust model engines. The FAA determined that any HPT 1st-stage disk and HPT 2nd-stage disk that was operated on a high-thrust model engine must follow shortened compliance thresholds.

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 IAE Non-Modification Service Bulletin (NMSB) No. V2500–ENG–72–0713, Revision 1, dated January 26, 2021. This NMSB identifies the affected HPT 1st-stage disks and HPT 2nd-stage disks on IAE V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 model turbofan engines and specifies procedures for a USI of the HPT 1st-stage disk and HPT 2nd-stage disk. The Director of the Federal Register approved IAE NMSB V2500–ENG–72–0713, Revision 1, dated January 26, 2021 for incorporation by reference as of July 13, 2021 (86 FR 30380, June 8, 2021).

The FAA also reviewed IAE NMSB No. V2500–E5–72–0015, Revision 1, dated August 10, 2021. This NMSB identifies the affected HPT 1st-stage disks and HPT 2nd-stage disks on IAE V2531–E5 model turbofan engines and specifies procedures for a USI of the HPT 1st-stage disk and HPT 2nd-stage disk.

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 retain certain requirements of AD 2021–11–15. This proposed AD would require the performance of an USI of the HPT 1st-stage disk and HPT 2nd-stage disk and, depending on the results of the inspections, replacement of the HPT 1st-stage disk or HPT 2nd-stage disk.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,100 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
USI the HPT 1st-stage disk and HPT 2nd-stage disk.	20 work-hours × $85 per hour = $1,700	$0	$1,700	$1,870,000

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 the HPT 1st-stage disk or HPT 2nd-stage disk.	0 work-hours × $85 per hour = $0	$300,000	$300,000

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

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 that the proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive AD 2021–11–15, Amendment 39–21577 (86 FR 30380, June 8, 2021); and

■ b. Adding the following new airworthiness directive:

International Aero Engines AG: Docket No. FAA–2021–0835; Project Identifier AD–2021–00971–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by December 13, 2021.

(b) Affected ADs

This AD replaces AD 2021–11–15, Amendment 39–21577 (86 FR 30380, June 8, 2021) (AD 2021–11–15).

(c) Applicability

This AD applies to International Aero Engines AG (IAE) V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, V2531–E5, and V2533–A5 model turbofan engines with an installed:

(1) High-pressure turbine (HPT) 1st-stage disk, part number (P/N) 2A5001, with a serial number (S/N) listed in Appendix A, Table 1, of IAE Non-Modification Service Bulletin (NMSB) No. V2500–ENG–72–0713, Revision 1, dated January 26, 2021 (IAE NMSB V2500–ENG–72–0713, Revision 1) or IAE NMSB No. V2500–E5–72–0015, Revision 1, dated August 10, 2021 (IAE NMSB V2500–E5–72–0015, Revision 1); or

(2) HPT 2nd-stage disk, P/N 2A4802, with an S/N listed in Appendix A, Table 2, of IAE NMSB V2500–ENG–72–0713, Revision 1, or IAE NMSB V2500–E5–72–0015, Revision 1.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by an analysis performed by the manufacturer after an event involving an uncontained failure of a HPT 1st-stage disk that resulted in high-energy debris penetrating the engine cowling. The FAA is issuing this AD to prevent failure of the HPT 1st-stage disk and HPT 2nd-stage disk. The unsafe condition, if not addressed, could result in uncontained HPT disk failure, damage to the engine, damage to the airplane, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For IAE V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 model turbofan engines with an HPT 1st-stage disk, P/N 2A5001, with an S/N listed in Appendix A, Table 1, of IAE NMSB V2500–ENG–72–0713, Revision 1, within the compliance time specified in Figure 1 to paragraph (g)(1) of this AD, or within 10 flight cycles (FCs) after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection (USI) of the HPT 1st-stage disk using the Accomplishment Instructions, paragraph 6, of IAE NMSB V2500–ENG–72–0713, Revision 1.

Figure 1 to Paragraph (g)(1) – Inspection threshold

	Compliance time: Whichever occurs first, Row A or B
A	At the next engine shop visit after July 13, 2021 (the effective date of AD 2021-11-15)
B	Before the HPT 1st-stage disk or HPT 2nd-stage disk has accumulated 3,200 flight cycles (FCs) since July 13, 2021

Note 1 to paragraph (g)(1): The USI required by paragraphs (g)(1) through (6) of this AD requires the HPT 1st-stage disk and HPT 2nd-stage disks to be removed from the engine allowing piece-part opportunity inspections. Per the Airworthiness Limitations Section of the manufacturer's Instructions for Continued Airworthiness, the additional inspections are not required unless the part has more than 100 FCs since the last piece-part opportunity inspection, is damaged, or is the cause for the removal of the engine. Engine removal for the purposes of complying with this AD is not ''cause'' for removal as stated in the Airworthiness Limitations Section.

(2) For IAE V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 model turbofan engines with an HPT 2nd-stage disk, P/N 2A4802, with an S/N listed in Appendix A, Table 2, of IAE NMSB V2500–ENG–72–0713, Revision 1, within the compliance time specified in Figure 1 to paragraph (g)(1) of this AD, or within 10 FCs after the effective date of this AD, whichever occurs later, perform a USI of the HPT 2nd-stage disk using the Accomplishment Instructions, paragraph 7, of IAE NMSB V2500–ENG–72–0713, Revision 1.

(3) For IAE V2522–A5, V2524–A5, V2525–D5, and V2527–A5 model turbofan engines with an HPT 1st-stage disk, P/N 2A5001, with an S/N listed in Appendix A, Table 1, of IAE NMSB V2500–ENG–72–0713, Revision 1, within the following compliance times, perform a USI of the HPT 1st-stage disk using the Accomplishment Instructions, paragraph 6, of IAE NMSB V2500–ENG–72–0713, Revision 1:

(i) If the affected HPT 1st-stage disk has not operated at any time in an IAE V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, or V2533–A5 model turbofan engine, perform the inspection within the compliance time specified in Figure 2 to paragraph (g)(3)(i) of this AD, or within 10 FCs after the effective date of this AD, whichever occurs later; or

Figure 2 to Paragraph (g)(3)(i) – Inspection threshold

	Compliance time: Whichever occurs first, Row A or B
A	At the next HPT rotor and stator assembly (HPT module) removal after July 13, 2021 (the effective date of AD 2021-11-15)
B	Before the HPT 1st-stage disk or HPT 2nd-stage disk has accumulated 6,700 FCs since July 13, 2021

(ii) If the affected HPT 1st-stage disk has operated at any time in an IAE V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, or V2533–A5 model turbofan engine, perform the inspection within the compliance time specified in Figure 1 to paragraph (g)(1) of this AD, or within 10 FCs after the effective date of this AD, whichever occurs later.

(4) For IAE V2522–A5, V2524–A5, V2525–D5, and V2527–A5 model turbofan engines with an HPT 2nd-stage disk, P/N 2A4802, with an S/N listed in Appendix A, Table 2, of IAE NMSB V2500–ENG–72–0713, Revision 1, within the following compliance times, perform a USI of the HPT 2nd-stage disk using the Accomplishment Instructions, paragraph 7, of IAE NMSB V2500–ENG–72–0713, Revision 1:

(i) If the affected HPT 2nd-stage disk has not operated at any time in an IAE V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, or V2533–A5 model turbofan engine, perform the inspection within the compliance time specified in Figure 2 to paragraph (g)(3)(i) of this AD, or within 10 FCs after the effective date of this AD, whichever occurs later; or

(ii) If the affected HPT 2nd-stage disk has operated at any time in an IAE V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, or V2533–A5 model turbofan engine, perform the inspection within the compliance time specified in Figure 1 to paragraph (g)(1) of this AD, or within 10 FCs after the effective date of this AD, whichever occurs later.

(5) For IAE V2531–E5 model turbofan engines with an HPT 1st-stage disk, P/N 2A5001, with an S/N listed in Appendix A, Table 1, of IAE NMSB V2500–E5–72–0015, Revision 1, within the compliance time specified in Figure 1 to paragraph (g)(1) of this AD, or within 10 FCs after the effective date of this AD, whichever occurs later, perform a USI of the HPT 1st-stage disk using the Accomplishment Instructions, paragraph 6, of IAE NMSB V2500–E5–72–0015, Revision 1.

(6) For IAE V2531–E5 model turbofan engines with an HPT 2nd-stage disk, P/N 2A4802, with an S/N listed in Appendix A, Table 2, of IAE NMSB V2500–E5–72–0015, Revision 1, within the compliance time specified in Figure 1 to paragraph (g)(1) of this AD, or within 10 FCs after the effective date of this AD, whichever occurs later, perform a USI of the HPT 2nd-stage disk using the Accomplishment Instructions, paragraph 7, of IAE NMSB V2500–E5–72–0015, Revision 1.

(7) If, during the USI required by paragraphs (g)(1) through (6) of this AD, an HPT 1st-stage disk or HPT 2nd-stage disk does not pass the inspection as specified in the Accomplishment Instructions, paragraph 8, of IAE NMSB V2500–ENG–72–0713, Revision 1, or IAE NMSB V2500–E5–72–0015, Revision 1, as applicable, before further flight, remove the HPT 1st-stage disk or 2nd-stage disk, as applicable, from service and replace with a part eligible for installation.

(h) Definitions

(1) For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, H–P, except for the following situations, which do not constitute an engine shop visit.

(i) Separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance.

(ii) Engine removal for the purpose of performing field maintenance activities at a maintenance facility in lieu of performing them on-wing.

(2) For the purpose for this AD, a ''part eligible for installation'' is:

(i) An HPT 1st-stage disk or HPT 2nd-stage disk listed in Appendix A, Tables 1 and 2, of IAE NMSB V2500–ENG–72–0713, Revision 1, or Appendix A, Tables 1 and 2, of IAE NMSB V2500–E5–72–0015, Revision 1, that passed the USI required by paragraphs (g)(1) through (6) of this AD; or

(ii) An HPT 1st-stage disk or HPT 2nd-stage disk that is not listed in Appendix A, Tables 1 and 2, of IAE NMSB V2500–ENG–72–0713, Revision 1, or Appendix A, Tables 1 and 2, of IAE NMSB V2500–E5–72–0015, Revision 1.

(i) Credit for Previous Actions

You may take credit for the USI of the HPT 1st-stage disk and HPT 2nd-stage disk required by paragraphs (g)(5) and (6) of this AD and the replacement of the HPT 1st-stage disk and HPT 2nd-stage disk required by paragraph (g)(7) of this AD, if you performed these actions before the effective date of this AD in accordance with IAE NMSB No. V2500–E5–72–0015, original issue, dated December 15, 2020.

(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 paragraph (k)(1) of this AD. 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 Alberto Hernandez, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7329; fax: (781) 238–7199; email: *Alberto.J.Hernandez@faa.gov.*

(2) For service information identified in this AD, contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06118; phone: (800) 565–0140; email: *help24@prattwhitney.com;* website: *https://connect.prattwhitney.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 September 23, 2021.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–23180 Filed 10–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0888; Project Identifier MCAI–2021–00676–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 A318 series; A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N; A320 series; and A321 series airplanes. This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, 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 December 13, 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–2021–0888.

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–2021–0888; 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: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@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–2021–0888; Project Identifier MCAI–2021–00676–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 Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@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 2021–0140, dated June 14, 2021 (EASA AD 2021–0140) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A318–111, A318–112, A318–121, A318–122, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A319–151N, A319–153N, A320–211, A320–212, A320–214, A320–215, A320–216, A320–231, A320–232, A320–233, A320–251N, A320–252N, A320–253N, A320–271N, A320–272N, A320–273N, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, A321–232, A321–251N, A321–251NX, A321–252N, A321–252NX, A321–253N, A321–253NX, A321–271N, A321–271NX, A321–272N, and A321–272NX airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability. Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after November 10, 2020 must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

EASA previously published EASA AD 2020–0036R1 (which corresponds to FAA AD 2020–20–05, Amendment 39–21216 (85 FR 65197, October 15, 2020) (AD 2020–20–05)) that required actions described in Airbus A318/A319/A320/A321 ALS Part 2 Revision 8 issue 2. Specifically, Task 531135–03–2 was required by EASA AD 2020–0036R1. Since EASA AD 2020–0036R1 was issued, a discrepancy was found between AMM (Aircraft Maintenance Manual) 53–11–00–210–026–A (pre May-2019 version) and associated NTM (Nondestructive Testing Manual) 53–11–35, which are both related to Task 531135–03–2. EASA AD 2021–0140 invalidates (terminates) prior instructions for Task 531135–03–2 and assigns the task a different number (Task 531135–03–1) than the invalidated task. Accomplishing the actions required by this proposed AD, including incorporating Task 531135–03–1, would terminate Task 531135–03–2, as required by paragraph (i) of AD 2020–20–05.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0140 describes new or more restrictive airworthiness limitations for airplane structures and safe life limits.

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 has evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed AD Requirements

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2021–0140 described previously, as incorporated by reference. Any differences with EASA AD 2021–0140 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k)(1) of this proposed 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 2021–0140 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0140 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 2021–0140 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 2021–0140. Service information required by EASA AD 2021–0140 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0888 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to

airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in the AMOCs paragraph under ''Other FAA Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this proposed AD affects 1,728 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

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 has 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:

Airbus SAS: Docket No. FAA–2021–0888; Project Identifier MCAI–2021–00676–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 13, 2021.

(b) Affected ADs

This AD affects AD 2020–20–05, Amendment 39–21261 (85 FR 65197, October 15, 2020) (AD 2020–20–05).

(c) Applicability

This AD applies to Airbus SAS Model airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 10, 2020.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0140, dated June 14, 2021 (EASA AD 2021–0140).

(h) Exceptions to EASA AD 2021–0140

(1) Where EASA AD 2021–0140 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0140 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0140 specifies revising ''the approved [aircraft maintenance program] AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0140 is at the applicable ''thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0140, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraph (4) of EASA AD 2021–0140 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0140 does not apply to this AD.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no

alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0140.

(j) Terminating Action for Certain Requirements in AD 2020–20–05

Accomplishing the actions required by this AD, including incorporating Task 531135–03–1, terminates Task 531135–03–2, as required by paragraph (i) of AD 2020–20–05.

(k) 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 local Flight Standards District 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 (l)(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 local flight standards district office/certificate holding district 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):* Except as required by paragraph (k)(2) of this AD, 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.

(l) Related Information

(1) For information about EASA AD 2021–0140, 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–2021–0888.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

Issued on October 20, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–23216 Filed 10–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0844; Project Identifier AD–2021–00689–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This proposed AD was prompted by reports of a missing shim at a joint common to the main torque box (MTB) skin panel and rear spar root fitting. This proposed AD would require inspecting the MTB skin panel and rear spar root fitting for cracking and delamination, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 13, 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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0844.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0844; 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: Joseph Hodgin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3962; email: *joseph.j.hodgin@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–2021–0844; Project Identifier AD–2021–00689–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 Joseph Hodgin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3962; email: *joseph.j.hodgin@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating that a skin depression was noticed on the vertical fin, located at a joint common to the MTB skin panel, rear spar, and root fitting #4. The cause was discovered to be the omission of a shim during production, between the MTB skin panel and rear spar flange at the attachment to the root fitting. This condition, if not addressed, could result in a reduction in fatigue performance of the MTB skin panel and rear spar root fittings, which could affect the structural integrity of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB550011–00 RB, Issue 001, dated May 18, 2021. This service information specifies procedures for an ultrasonic test for cracking and delamination of the skin panel, an open hole high frequency eddy current (HFEC) inspection for cracking of the rear spar root fitting at the fastener holes common to the MTB skin panel and rear spar root fitting interface, and a surface HFEC inspection for cracking of visible rear spar root fitting surface areas, and applicable on-condition actions. On-condition actions include measurement of the gap between the MTB skin panel and the rear spar flange, installation of a new shim between the MTB skin panel and the rear spar flange, and installation of new fasteners in the MTB skin panel and the rear spar flange.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0844.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 91 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
Inspections	14 work-hours × $85 per hour = $1,190	$0	$1,190	$108,290

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Gap measurement	1 work-hour × $85 per hour = $85	$0	$85
Installation	10 work-hours × $85 per hour = $850	$11,330	$12,180

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

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

Authority for This Rulemaking

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

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

develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2021–0844; Project Identifier AD–2021–00689–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 13, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category, as specified in Boeing Alert Requirements Bulletin B787–81205–SB550011–00 RB, Issue 001, dated May 18, 2021.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of a missing shim at a joint common to the main torque box (MTB) skin panel and rear spar root fitting. The FAA is issuing this AD to address the omission of a shim between the MTB skin panel and rear spar flange at the attachment to the root fitting. This condition, if not addressed, could result in a reduction in fatigue performance of the MTB skin panel and rear spar root fittings, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB550011–00 RB, Issue 001, dated May 18, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB550011–00 RB, Issue 001, dated May 18, 2021.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB550011–00, Issue 001, dated May 18, 2021, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB550011–00 RB, Issue 001, dated May 18, 2021.

(h) Exceptions to Service Information Specifications

Where Boeing Alert Requirements Bulletin B787–81205–SB550011–00 RB, Issue 001, dated May 18, 2021, specifies contacting Boeing for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle 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 the attention of the person identified in Related Information. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(j) Related Information

(1) For more information about this AD, contact Joseph Hodgin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3962; email: *joseph.j.hodgin@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced 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 September 30, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–23218 Filed 10–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0831; Project Identifier AD–2021–00712–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) GEnx–1B and GEnx–2B model turbofan engines. This proposed AD was prompted by the manufacturer's report of two findings of sheared compressor discharge pressure (CDP) bolts during engine shop visits. This proposed AD would require initial and repetitive inspections of the CDP bolted joint and, depending on the findings, a piece part inspection of the stages 6–10 compressor rotor spool, CDP seal, and high-pressure turbine (HPT) rotor stage 1 disk. As a terminating action, this proposed AD would require operators to reassemble the CDP bolted joint using a specific torque wrench. 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 December 13, 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, 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–2021–0831; 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: Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; fax: (781) 238–7199; email: *Alexei.T.Marqueen@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–2021–0831; Project Identifier AD–2021–00712–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 Alexei Marqueen, 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 by the manufacturer of two findings of sheared CDP bolts at engine shop visits during disassembly of the CDP bolted joint on GEnx–1B70/75/P2 and GEnx–2B67/P model turbofan engines. Subsequent investigation by the manufacturer determined that the fracture and liberation of the CDP bolts was caused by the inadvertent over-torque condition of the bolts during assembly and reassembly with a 11C4525P01 torque fixture or during assembly with a 11C4629P01 torque wrench. In one finding, the fractured CDP bolt caused damage to the stages 6–10 compressor rotor spool, CDP seal, and HPT rotor stage 1 disk. This condition, if not addressed, could result in damage to the engine and damage to the airplane.

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 GEnx–1B Service Bulletin (SB) 72–0495 R00, dated May 11, 2021, (GEnx–1B SB 72–0495) and GE GEnx–2B SB 72–0433 R00, dated May 11, 2021 (GEnx–2B S/B 72–0433). GEnx–1B SB 72–0495 describes procedures for the inspection of the CDP bolted joint components on GEnx–1B model turbofan engines. GEnx–2B SB 72–0433 describes procedures for the inspection of the CDP bolted joint components on GEnx–2B 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 initial and repetitive inspections of the CDP bolted joint and, depending on the findings, a piece part inspection of the stages 6–10 compressor rotor spool, CDP seal, and HPT rotor stage 1 disk. As a terminating action, this proposed AD would require operators to reassemble the CDP bolted joint using a 11C4888P01 torque wrench.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 320 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
Inspection of CDP bolted joint	1 work-hour × $85 per hour = $85	$0	$85	$27,200

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Piece part inspection of stages 6–10 compressor rotor spool.	56 work-hours × $85 per hour = $4,760	$0	$4,760
Piece part inspection of CDP seal	22 work-hours × $85 per hour = $1,870	0	1,870
Piece part inspection of HPT rotor stage 1 disk	59 work-hours × $85 per hour = $5,015	0	5,015

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–2021–0831; Project Identifier AD–2021–00712–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 13, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) GEnx–1B64, GEnx–1B64/P1, GEnx–1B64/P2, GEnx–1B67, GEnx–1B67/P1, GEnx–1B67/P2, GEnx–1B70, GEnx–1B70/75/P1, GEnx–1B70/75/P2, GEnx–1B70/P1, GEnx–1B70/P2, GEnx–1B70C/P1, GEnx–1B70C/P2, GEnx–1B74/75/P1, GEnx–1B74/75/P2, GEnx–1B76/P2, GEnx–1B76A/P2, GEnx–2B67, GEnx–2B67B, and GEnx–2B67/P model turbofan engines with a compressor discharge pressure (CDP) bolted joint assembled or reassembled with the 11C4525P01 torque fixture or assembled with the 11C4629P01 torque wrench.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a report from the manufacturer of two findings of sheared CDP bolts during engine shop visits. The FAA is issuing this AD to prevent fracture of the CDP bolt. The unsafe condition, if not addressed, could result in damage to the engine and damage to the airplane.

(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 an inspection of the CDP bolted joint for fractured or missing material using the Accomplishment Instructions, paragraph 3.A.(2) of GE GEnx–1B Service Bulletin (SB) 72–0495 R00, dated May 11, 2021 (GEnx–1B SB 72–0495) (for GEnx–1B models) or Accomplishment Instructions, paragraph 3.A.(2) of GE GEnx–2B SB 72–0433 R00, dated May 11, 2021, (GEnx–2B SB 72–0433) (for GEnx–2B models).

(2) Repeat the inspection required by paragraph (g)(1) of this AD at every engine shop visit.

(3) If a fractured or missing bolt or nut is found during any inspection required by paragraph (g)(1) or (2) of this AD, before further flight, perform piece part inspections in accordance with the Instructions for Continued Airworthiness of the stages 6–10 compressor rotor spool, CDP seal, and high-pressure turbine rotor stage 1 disk.

(h) Terminating Action

As terminating action to the repetitive inspections required by paragraph (g)(2) of this AD, reassemble the CDP bolted joint using the 11C4888P01 torque wrench, in accordance with the Accomplishment Instructions, paragraph 3.B.(1) of GEnx–1B SB 72–0495 (for GEnx–1B models) or the Accomplishment Instructions, paragraph 3.B.(1) of GEnx–2B SB 72–0433 (for GEnx–2B models).

(i) Definition

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving a module exposure in which the mid fan shaft removal exposes the CDP bolted joint.

(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 ECO Branch, send it to the attention of the person identified in

paragraph (k)(1) of this AD. 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 Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; fax: (781) 238–7199; email: *Alexei.T.Marqueen@faa.gov.*

(2) For service information identified in this AD, contact General Electric Company, 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 September 21, 2021.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–23237 Filed 10–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0865; Airspace Docket No. 21–AAL–24]

RIN 2120–AA66

Proposed Establishment of United States Area Navigation (RNAV) Route T–417; Tok Junction, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish United States Area Navigation (RNAV) route T–417 in the vicinity of Tok Junction, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Comments must be received on or before December 13, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2021–0865; Airspace Docket No. 21–AAL–24 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessening the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2021–0865; Airspace Docket No. 21–AAL–24) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–0865; Airspace Docket No. 21–AAL–24.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO

7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

In 2003, Congress enacted the Vision 100-Century of Aviation Reauthorization Act (Pub L., 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide en route continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored Airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum En route Altitude (MEA) or Global Navigation Satellite System Minimum En route Altitude (GNSS MEA); (b) the replacement of the colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. The FAA proposes to establish RNAV route T–417 to offer RNAV routing in an area where published airways do not exist in order to provide instrument approach connectivity and access to the Tok Junction Airport (PFTO). The proposed route GNSS MEAs will provide continuity with future RNAV routes and ensure terrain/obstacle clearance with continuous two-way VHF voice communications.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV route T–417 in the vicinity of Tok Junction, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. The proposed route is described below.

T–415: The FAA proposes to establish T–417 from the CEBUN, AK, waypoint (WP) to the southwest of Northway, AK to the EGAXE, AK, fix to the west of PFTO.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11F dated August 10, 2021 and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document would be published subsequently in the Order.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–417 CEBUN, AK to EGAXE, AK [New]

CEBUN, AK	WP	(Lat. 62°38′09.30″ N, long. 144°16′27.61″ W)
HATIX, AK	WP	(Lat. 63°04′36.80″ N, long. 143°28′48.02″ W)
EGAXE, AK	FIX	(Lat. 63°26′31.64″ N, long. 143°36′50.29″ W)

* * * * *

Issued in Washington, DC, on October 19, 2021.

Michael R. Beckles,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–23176 Filed 10–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0816; Airspace Docket No. 21–AWP–27]

RIN 2120–AA66

Proposed Modification of Class D and Class E Airspace, and Proposed Establishment of Class E Airspace; Southwest Oregon Regional Airport, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class D and Class E surface airspace at Southwest Oregon Regional Airport, North Bend, OR. It also proposes to modify the Class E airspace by establishing an area that is designated as an extension to a Class D or Class E surface area, and to modify the Class E airspace extending upward from 700 feet above the surface. Lastly, this action proposes to remove navigational aids (NAVAID) from the legal description of the Class E2 and Class E5 text headers, and to update the Class D, Class E2, and Class E5 airspace legal descriptions and establish Class E4 airspace. This action would ensure the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 13, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2021–0816; Airspace Docket No. 21–ANM–27, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Healy, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2227.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–0816; Airspace Docket No. 21–ANM–27''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by modifying the Class D airspace at Southwest Oregon Regional Airport, North Bend, OR. To properly contain departing IFR aircraft flying toward or over rising terrain, the Class D should be extended to the east and southeast of the airport.

This action also proposes to modify the Class E airspace designated as surface area. The proposed Class E surface area legal description should be

coincident with the Class D legal description to properly contain departing IFR aircraft flying toward or over rising terrain.

Next, this action proposes to modify the Class E airspace by establishing an area that is designated as an extension to a Class D or Class E surface area. This airspace is needed to properly contain IFR arrivals; therefore, an extension east and another southwest of the airport should be established. The extensions are designed to contain arriving IFR aircraft when descending below 1,000 feet above the surface on the ILS or LOC Runway 5 and the VOR–B procedures.

This action also proposes to modify the Class E airspace extending upward from 700 feet above the surface. This airspace is designed to contain departing IFR aircraft until reaching 1,200 feet above the surface and arriving IFR aircraft descending below 1,500 feet above the surface. The Class E radius should be modified, and extensions to the northeast, east, southeast, south, southwest, and west of the airport should be established to contain IFR departures.

Additionally, this action proposes to remove the North Bend VORTAC and Emire LOM/NDB from the Class E2 text header and the airspace description. The navigational aids (NAVAID) are not required to describe the airspace area. Removal of the NAVAIDs simplifies the airspace's legal description.

This action also proposes to remove the North Bend VORTAC from the Class E5 text header and the airspace description and replace it with the Southwest Oregon Regional Airport's Airport Reference Point coordinates. The NAVAID is not required to describe the airspace area. Removal of the NAVAID simplifies the airspace's legal description.

Lastly, this action proposes an administrative update to replace the term ''Airport/Facility Directory'' in the last line of the Class D and Class E2 airspace descriptions with the term ''Chart Supplement.''

Class D, Class E2, Class E4, and Class E5 airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11F.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM OR D North Bend, OR [Amended]

Southwest Oregon Regional Airport, OR
(Lat. 43°25′01″ N, long. 124°14′49″ W)
Sunnyhill Airport, OR
(Lat. 43°28′59″ N, long. 124°12′10″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of the Southwest Oregon Regional Airport, and within 1.8 miles each side of the 059° bearing from the airport, extending from the 4.2-mile radius to 5.9 miles northeast of the airport, and within 2.9 miles each side of the 159° bearing from the airport, extending from the 4.2-mile radius to 6.4 miles south of the airport, excluding that airspace within a 0.9-mile radius of Sunnyhill Airport below 1,300 feet MSL. This Class D airspace area is effective during the specific dates and times established, in advance, by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ANM OR E2 North Bend, OR [Amended]

Southwest Oregon Regional Airport, OR
(Lat. 43°25′01″ N, long. 124°14′49″ W)
Sunnyhill Airport, OR
(Lat. 43°28′59″ N, long. 124°12′10″ W)

That airspace extending upward from the surface within a 4.2-mile radius of the Southwest Oregon Regional Airport, and within 1.8 miles each side of the 059° bearing from the airport, extending from the 4.2-mile radius to 5.9 miles northeast of the airport, and within 2.9 miles each side of the 159° bearing from the airport, extending from the 4.2-mile radius to 6.4 miles south of the airport, excluding that airspace within a 0.9-mile radius of Sunnyhill Airport below 1,300 feet MSL. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM OR E4 North Bend, OR [New]

Southwest Oregon Regional Airport, OR
(Lat. 43°25′01″ N, long. 124°14′49″ W)

That airspace upward from the surface within 3.6 miles north and 3.5 miles south of the 092° bearing from the airport, extending from the Southwest Oregon Regional Airport Class D 4.2-mile radius to 11.7 miles east of the airport, and within 2.0 miles southeast and 2.1 miles northwest of the 242° bearing from the airport, extending from the Class D 4.2-mile radius to 9.4 miles southwest of the airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM OR E5 North Bend, OR [Amended]

Southwest Oregon Regional Airport, OR
(Lat. 43°25′01″ N, long. 124°14′49″ W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius

of the airport, and within 2.0 miles northwest and 2.6 miles southeast of the 058° bearing from the airport, extending from the 9-mile radius to 10.4 miles northeast of the airport, and within 3.8 miles north and 3.7 miles south of the 92° bearing from the airport, extending from the 9-mile radius to 12.7 miles east of the airport, and within 1.9 miles each side of the 149° bearing from the airport, extending from the 9-mile radius to 12.1 miles southeast of the airport, and within 3.0 miles each side of the 199° bearing from the airport, extending from the 9-mile radius to 15 miles south of the airport, and within 8.1 miles southeast and 3.9 miles northwest of the 241° bearing from the airport, extending from the 9-mile radius to 19.2 miles southwest of the airport, and within 3.3 miles each side of the 275° bearing from the airport, extending from the 9-mile radius to 12.1 miles west of the airport.

Issued in Des Moines, Washington, on October 12, 2021.

B.G. Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2021–23217 Filed 10–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No. WY–050–FOR; Docket ID: OSM–2021–0004; S1D1S SS08011000 SX064A000 212S180110; S2D2S SS08011000 SX064A000 21XS501520]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed regulatory and statutory amendment to the Wyoming coal program (Wyoming program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On March 2, 2016 the Wyoming Environmental Quality Council approved a number of revisions to the rules governing coal exploration by drilling under the Wyoming program. Specifically, the proposed revisions include more detailed instructions for plugging and sealing drill holes, incorporate best management practices, and make additional formatting and organizational changes. Additionally, between 1978 and 2007 the Wyoming state legislature enacted a number of revisions to the statutes governing coal exploration by drilling. The proposed statutory revisions reflect organizational updates at the Wyoming Land Quality Division, correct a typographical error, provide more detailed instructions for plugging and sealing drill holes, incorporate provisions for the awarding of attorney fees and other litigation costs, and include more detailed instructions for bond release. Accordingly, the State submitted this proposal to OSMRE at its own initiative. This document gives the times and locations that the Wyoming program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., M.D.T., November 29, 2021. If requested, we may hold a public hearing or meeting on the amendment on November 22, 2021. We will accept requests to speak at a hearing until 4:00 p.m., M.D.T., on November 12, 2021.

ADDRESSES: You may submit comments, identified by SATS No. WY–050–FOR, by any of the following methods:

- *Mail/Hand Delivery:* OSMRE, Attn: Jeffrey Fleischman, P.O. Box 11018, 100 East B Street, Room 4100, Casper, Wyoming 82602.
- *Fax:* (307) 261–6552.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Wyoming program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Casper Field Office or the full text of the program amendment is available for you to read at *www.regulations.gov.*

Attn: Jeffrey Fleischman, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Casper, Wyoming 82602. Telephone: (307) 261–6550. Email: *jfleischman@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location: Attn: Kyle Wendtland, Administrator, Wyoming Department of Environmental Quality, Land Quality Division, 200 West 17th Street, Suite 10, Cheyenne, Wyoming 82002. Telephone: (307) 777–7046. Email: *kyle.wendtland@wyo.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Casper, Wyoming 82602, Telephone: (307) 261–6550. Email: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program in the November 26, 1980 **Federal Register** 45 FR 78637. You can also find later actions concerning the Wyoming program and program amendments at 30 CFR 950.10.

II. Description of the Proposed Amendment

By letter dated June 4, 2021 (Document ID No. OSM–2021–0004), Wyoming sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). We found Wyoming's proposed amendment administratively complete on July 13, 2021.

Between 1978 and 2007 the Wyoming state legislature enacted a number of revisions to the statutes governing coal exploration by drilling. Additionally, on March 2, 2016 the Wyoming Environmental Quality Council approved a number of revisions to the rules governing coal exploration by

drilling under the Wyoming program. The proposed amendment is a state initiative intended to update Chapter 14, which was last revised in 1998. The revised rules were updated to include more detailed directions for plugging and sealing requirements for drill holes. The rules were also updated to include best management practices and standards adopted by the Wyoming State Engineer's Office which conform with accepted practices by the American Society for Testing and Materials, American Water Works Association, and Wyoming DEQ, Water Quality Division regulations. Other revisions include a list of acceptable grout materials requirements to plug the entire hole and immediate capping of drill holes, and adding identification numbers to facilitate inspections. Additional formatting and organizational changes were also made to Chapter 14.

The proposed statutory revisions reflect organizational updates at the Wyoming Land Quality Division, correct a typographical error, provide more detailed instructions for plugging and sealing drill holes, incorporate provisions for the awarding of attorney fees and other litigation costs, and include more detailed instructions for bond release. The full text of the program and/or plan amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov.*

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available 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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., M.D.T. on November 12, 2021. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

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

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program and/or AML plan amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment.

We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 950

State regulatory program approval, state-federal cooperative agreement, required program amendments.

David A. Berry,

Regional Director, Unified Regions 5, 7–11.

[FR Doc. 2021–23314 Filed 10–27–21; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2021–0794]

RIN 1625–AA08

Special Local Regulation; Crown Bay, Charlotte Amalie, U.S. Virgin Islands

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local

regulation for the St. Thomas Lighted Boat Parade marine event for certain navigable waters of Crown Bay, Haulover Cut, and Charlotte Amalie Harbor, St. Thomas, U.S. Virgin Islands. This action is necessary to protect personnel, vessels, and the marine environment from potential hazards created by the lighted boat parade. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port San Juan.

DATES: Comments and related material must be received by the Coast Guard on or before November 29, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0794 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 on this rule, call or email Lieutenant Commander Christopher O'Connor, Sector San Juan Prevention Department, Waterways Management Division U.S. Coast Guard; telephone 787–729–2374, email *Christopher.M.OConnor@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, Purpose, and Legal Basis

On July 13, 2021, the St. Thomas/St. John Chamber of Commerce notified the Coast Guard that it would be conducting a Christmas Lighted Boat Parade from 6:30 to 9 p.m., on December 17, 2021. The lighted boat parade will begin in Crown Bay, move east through Haulover Cay, reach the Charlotte Amalie Harbor and then back to the original point. Hazards from the lighted boat parade include accidental collision with other participants' vessels or marine species due to limited visibility. The Captain of the Port San Juan (COTP) has determined that potential hazards associated with marine parade event will pose a safety concern for any persons and vessels within the regulated area.

The purpose of this action is to ensure safety of the event participants, vessels and the marine environment in the navigable waters of Crown Bay, Haulover Clay and Charlotte Amalie Harbor, St. Thomas, U.S. Virgin Islands (USVI), during the St. Thomas Lighted Boat Parade. 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 special local regulation on certain navigable waters of the Crown Bay, Haulover Cut, and Charlotte Amalie Harbor, St. Thomas, USVI during the St. Thomas Lighted Boat Parade from 6:30 p.m. through 9:00 p.m., on December 17, 2021. The regulated area will encompass all waters within a 100-foot radius of participating vessels, beginning with the lead vessel, ending with the last participating vessel, and at all times extending 100-feet on either side of the parade vessels. The parade route consist of a course that starts at Crown Bay Marina in potion 18°19′986″ N, 64°57′088″ W; proceeds thence east through Haulover Cut, thence northeast through Cay Bay, thence east towards the Coast Guard Base in Kings Warf and thence back through the same route to the beginning position. All coordinates are North American Datum 1983. The duration of the zone is intended to ensure the safety of vessels and navigable waters of Crown Bay, Haulover Clay and Charlotte Amalie Harbor, St. Thomas, USVI before, during, and after the scheduled 6:30 p.m. until 9 p.m. lighted boat parade. All persons and non-participating vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area 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, location, duration, and time-of-day of the regulated area. The regulated area will affect a small-designated area of Crown Bay, Haulover Cut, and St. Thomas Harbor, St. Thomas, USVI, during the event and thus is limited in scope. The temporary special local regulation will be enforced for only a total period of 2.5 hours and thus is limited in time, and during the evening when vessel traffic is normally low. Although persons and vessels will not be able to enter, transit through, anchor in, or remain within the zone without authorization from the Captain of the Port San Juan or a designated representative, they may operate in the surrounding area during the enforcement period. The rule will allow vessels to seek permission to enter the regulated area. Persons and vessels may still enter, transit through, anchor in, or remain within the regulated area during the enforcement period if authorized by the Captain of the Port San Juan or a designated representative. Moreover, 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 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 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 proposed 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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person 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 potential effects of this proposed 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 regulated area in conjunction with a regatta or marine parade to ensure the safety of vessels, spectators, and the public during the event lasting only 2.5 hours that will prohibit entry within 100-ft radius of participating vessels beginning with the lead vessel, ending with the last participating vessel, and at all times extending 100-feet on either side of the parade vessels during the Lighted Boat Parade. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. 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- 2021–0794 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 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGAGLE 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.T799–0945 to read as follows:

§ 100.T799–0945 Special Local Regulation Safety zones; St. Thomas Lighted Boat Parade, Crown Bay, Haulover Cut and Charlotte Amalie Harbor, St. Thomas, U.S. Virgin Islands.

(a) *Regulated Area.* The following area is a special local regulation: All waters within a 100-foot radius in front of the lead parade vessel, 100-feet behind the

last participating parade vessel, and at all times extending 100-feet on either side of participating parade vessels. The St. Thomas Lighted Boat Parade consists of a course that starts at Crown Bay Marina in position 18°19′986″ N, 64°57′088″ W; proceeds thence east through Haulouver Cut, thence northeast through Cay Bay, thence east towards the Coast Guard Base in Kings Wharf and thence west back through the same route to the beginning position. All coordinates are North American Datum 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 San Juan (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as participants in the race.

(c) *Regulations.*

(1) All persons and non-participant vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP San Juan or a designated representative.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the COTP San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization is granted by the COTP San Juan or a designated representative, all persons and vessels, receiving such authorization must comply with the instructions of the COTP San Juan or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) Enforcement Period. This rule will be enforced from 6:30 p.m. until 9:00 p.m., on December 17, 2021, unless sooner terminated by the COTP San Juan.

Gregory H. Magee

Captain, U.S. Coast Guard, Captain of the Port San Juan.

[FR Doc. 2021–23255 Filed 10–27–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA–R09–OAR–2021–0408; FRL–8902–03–R9]

Clean Air Plans; Base Year Emissions Inventories for the 2015 Ozone Standards; California; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the proposed rule ''Clean Air Plans; Base Year Emissions Inventories for the 2015 Ozone Standards; California.'' The agency is extending the comment period for 30 days in response to a stakeholder request for an extension. Thirty days from November 4, 2021, is December 4, 2021, which is a Saturday; therefore, the EPA is extending the comment period to the following Monday, December 6, 2021.

DATES: The comment period for the proposed rule published on October 5, 2021, at 86 FR 54887, is extended. Comments must be received on or before December 6, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0408 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Khoi Nguyen, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4120, or by email at *nguyen.khoi@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 5, 2021 (86 FR 54887), the EPA published the proposed rule ''Clean Air Plans; Base Year Emissions Inventories for the 2015 Ozone Standards; California'' in the **Federal Register**. The original deadline to submit comments was November 4, 2021. This action extends the comment period for 30 days. Written comments must now be received by December 6, 2021.

Dated: October 21, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2021–23370 Filed 10–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0452; FRL–9175–01–R4]

Air Plan Approval; NC; Removal of Transportation Facilities Rules for Mecklenburg County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg Local Implementation Plan (LIP). The revision was submitted by the State of North Carolina, through the North Carolina Division of Air Quality (NCDAQ), on behalf of Mecklenburg County Air Quality via a letter dated April 24, 2020. The SIP revision seeks to remove transportation facilities rules from the Mecklenburg County Air Pollution Control Ordinance (MCAPCO) rules incorporated into the LIP. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before November 29, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0452 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9222. Ms. Sheckler can also be reached via electronic mail at *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

North Carolina adopted transportation facilities rules at the state level on November 15, 1973, pursuant to a federal requirement that existed at that time at 40 CFR 51.18 to provide preconstruction permitting review of indirect sources.[1] These sources are known as indirect sources because they may indirectly increase emissions by causing increased motor vehicle traffic where they are built. North Carolina refers to indirect sources as complex sources. The State identifies transportation facilities in its definition of ''complex sources'' at North Carolina General Statute (N.C.G.S.) 143–213(22). This definition includes any facilities that ''will induce or tend to induce'' increased emissions from motor vehicles.[2]

North Carolina adopted these rules to address the national ambient air quality standards (NAAQS or standards). EPA approved North Carolina's transportation facilities rules and their subsequent amendments into the North Carolina regulatory portion of the SIP. *See* 41 FR 8964 (March 2, 1976); 51 FR 41501 (October 11, 1985); 61 FR 3584 (February 1, 1996); 62 FR 41277 (August 1, 1997); and 63 FR 72190 (December 31, 1998). Mecklenburg County adopted analog transportation facilities rules on February 1, 1976. EPA approved Mecklenburg County's transportation facilities rules into the LIP on May 2, 1991. *See* 56 FR 20140.

In 1974, EPA suspended the indirect source review program. In the 1977 CAA Amendments, Congress modified the CAA to allow states to include indirect source review regulations in their SIPs but prevented EPA from requiring them as a condition of SIP approval. *See* CAA section 110(a)(5)(A)(i).

In 2013, the North Carolina General Assembly enacted Session Law 2013–413 that sought to streamline the regulatory process and eliminate unnecessary regulations. NCDAQ recommended repealing the transportation facilities rules in 15A North Carolina Administrative Code (NCAC) 02D .0800—*Complex Sources* and 02Q .0600—*Transportation Facilities Procedures,* as outdated requirements that were not providing environmental benefits, and the State repealed these rules effective January 1, 2015. Additionally, NCDAQ stated that the transportation facilities rules served only an administrative function and that they constituted a regulatory burden on owners of transportation facilities who were required to obtain permits prior to construction.

On May 12, 2017, EPA approved a September 16, 2016, SIP revision submitted by NCDAQ that removed the State's transportation facilities rules from the North Carolina regulatory portion of the SIP. *See* 82 FR 22086. Subsequently, Mecklenburg County repealed its transportation facilities rules, resulting in the April 24, 2020, SIP revision subject to this proposed action. This proposed action proposes to approve the changes to the Mecklenburg LIP to remove Mecklenburg's transportation facilities rules because these rules are unnecessary and to be consistent with the previous action that removed the State's transportation facilities rules from the North Carolina regulatory portion of the SIP.

II. What action is EPA proposing to take?

The April 24, 2020,[3] SIP revision seeks to remove Mecklenburg's transportation facilities rules from the Mecklenburg LIP. Specifically, this SIP revision requests EPA to remove the MCAPCO rules in Article 2.0000—*Air Pollution Control Regulations and Procedures,* Section 2.0800—*Transportation Facilities,*[4] comprised of Rules 2.0801—*Purpose and Scope;* 2.0802—*Definitions;*[5] 2.0803—*Highway Projects;* and 2.0804—*Airport Facilities.*[6] [7]

EPA removed the State's transportation facilities rules from the North Carolina regulatory portion of the SIP on May 12, 2017. As a part of that action, EPA approved NCDAQ's September 16, 2016, SIP revision containing a demonstration showing that the repeal of the State's transportation facilities rules satisfied CAA section 110(l).[8] Section 110(l) prohibits EPA from approving a SIP

[1] To satisfy EPA requirements pursuant to 40 CFR 51.18, SIPs were required to ''set forth legally enforceable procedures which shall be adequate to enable the State or a local agency to determine whether the construction or modification of a facility, building, structure, or installation, or combination thereof, will . . . interfere with attainment or maintenance of a national standard either directly because of emissions from it, or indirectly, because of emission resulting from mobile source activities associated with it. . . . Such procedures shall include means by which the State or local agency responsible for final decision-making on an application for approval to construct or modify will prevent such construction or modification if it will . . . interfere with the attainment or maintenance of a national standard.'' *See* 40 CFR 51.18(a), (b) (1973).

[2] N.C.G.S. 143–213(22) defines ''complex sources'' as ''any facility which is or may be an air pollution source or which will induce or tend to induce development or activities which will or may be air pollution sources, and which shall include, but not be limited to, shopping centers; sports complexes; drive-in theaters; parking lots and garages; residential, commercial, industrial or institutional developments; amusement parks and recreation areas; highways; and any other facilities which will result in increased emissions from motor vehicles or stationary sources.''

[3] The submittal was received on June 19, 2020.

[4] Section 2.0800 is titled ''Complex Sources'' in the MCAPCO, however, it was erroneously listed in the CFR table as ''Transportation Facilities''. This document will continue to refer to the rule as ''Transportation Facilities'' as that is the title currently listed in the CFR.

[5] Section 2.0802 was originally titled ''Permits'' in the MCAPCO, however, it was erroneously listed in the CFR table as ''Definitions''. This document will continue to refer to the rule as ''Definitions'' as that is the title currently listed in the CFR.

[6] The April 24, 2020, submittal contains changes to other Mecklenburg LIP-approved rules that are not addressed in this document. EPA will be acting on those rules in separate actions.

[7] NCDAQ also asked EPA to remove Rules 2.0805—*Parking Facilities* and 2.0806—*Ambient Monitoring and Modeling Analysis.* EPA is not taking action to remove these two rules because they are not in the LIP.

[8] The demonstration submitted by NCDAQ as a part of the action announced in 82 FR 22086 on May 12, 2017 (hereinafter ''North Carolina 110(l) Demonstration''), is included in the docket for this proposed rulemaking.

revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act.

North Carolina's section 110(l) demonstration was a statewide analysis that included Mecklenburg County. The section 110(l) analysis associated with the removal of the State's rules from the SIP is therefore relevant to the proposed removal of Mecklenburg's rules from the LIP.

III. What is EPA's analysis of the April 24, 2020, SIP revision?

A. Affected Facilities

As mentioned above, North Carolina provided, and EPA approved, a statewide section 110(l) demonstration to demonstrate that removal of the State's transportation facilities rules would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. *See* 82 FR 22086 (May 12, 2017). The State's section 110(l) demonstration included information demonstrating that very few facilities would be affected by the repeal of the transportation facilities rules. From 2011–2015, both NCDAQ and Mecklenburg County issued, on average, approximately three transportation facility permits per year.[9] Since 2015, a year in which Mecklenburg County reviewed approximately four transportation facility permit applications, it has not reviewed or issued any transportation facility permit applications.[10] Of the few permits granted under the transportation facilities rules, none have required emissions controls.[11] Furthermore, as discussed below, Mecklenburg County is in attainment for all NAAQS with air quality values below the standards.

B. Evaluation of Relevant NAAQS Status for Motor Vehicle Emissions [12]

There are six NAAQS established to protect human health and the environment. These NAAQS are carbon monoxide (CO), lead, nitrogen dioxide (NO_2), ozone, particulate matter (PM)—including $PM_{2.5}$ [13] and PM_{10},[14] and sulfur dioxide (SO_2). Considering modern fuel types and the science and technology related to emissions from motor vehicles, EPA does not believe that there would be any changes in emissions for lead [15] from removing the transportation facilities rules from the Mecklenburg LIP. Furthermore, EPA does not believe that SO_2 [16] air quality would be threatened given the mandatory use of ultra-low sulfur (ULSD) diesel fuel. Therefore, this section is focused on evaluating air quality for CO, NO_2, ozone, and $PM_{2.5}$.[17]

[9] *See* North Carolina 110(l) Demonstration.

[10] *See* email from Leslie Rhodes, Mecklenburg County, to Lynorae Benjamin, EPA Region 4 (September 16, 2021), available in the docket for this proposed rulemaking.

[11] *See* id. and North Carolina 110(l) Demonstration. The transportation facilities rules are permitting requirements that do not expressly require emissions controls.

[12] All design values in this notice of proposed rulemaking are available on EPA's website at *https://www.epa.gov/air-trends/air-quality-design-values#report.*

[13] $PM_{2.5}$ refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, oftentimes referred to as ''fine'' particles.

[14] PM_{10} refers to particles with an aerodynamic diameter less than or equal to 10 micrometers, which includes $PM_{2.5}$.

[15] On November 12, 2008, EPA promulgated a revised lead NAAQS of 0.15 micrograms per cubic meter ($\mu g/m^3$). *See* 73 FR 66964. EPA designated the entire State of North Carolina, including Mecklenburg County, as unclassifiable/attainment for the 2008 lead NAAQS. *See* 76 FR 72097 (November 22, 2011). As of January 1, 1996, the sale of leaded fuel for use in on-road motor vehicles was banned. Therefore, removing the transportation facilities rule from the Mecklenburg LIP will not have any impact on ambient concentrations of lead.

[16] On June 22, 2010, EPA revised the 1-hour SO_2 NAAQS to 75 parts per billion (ppb) which became effective on August 23, 2010. *See* 75 FR 35520. On February 25, 2019, based on a review of the full body of currently available scientific evidence and exposure/risk information, EPA retained the existing 2010 1-hour SO_2 primary NAAQS. *See* 84 FR 9866. SO_2 designations for the 2010 1-hour SO_2 NAAQS have been determined in four separate phases. EPA designated Mecklenburg County as attainment/unclassifiable on April 9, 2018. *See* 83 FR 1098. In 2006, EPA finalized regulations that began to phase in a requirement to use ULSD, a diesel fuel with a maximum of 15 ppm sulfur. Since 2010, EPA's diesel standards have required that all highway diesel fuel vehicles use ULSD, and all highway diesel fuel supplied to the market is ULSD. Due to the requirements to use ULSD under the on-road diesel fuel standards, the amount of SO_2 emitted from on-road vehicles is already low, and removal of the transportation facilities rules from the Mecklenburg LIP will therefore not have any appreciable impact on ambient concentrations of SO_2.

[17] On March 15, 1991, EPA completed initial designations for the PM_{10} NAAQS. *See* 56 FR 11101. No area in North Carolina has ever been designated as nonattainment for the PM_{10} standard. On-road vehicle emissions would include direct $PM_{2.5}$ and precursor emissions for secondary formation of $PM_{2.5}$, which constitute the ''fine'' fraction of PM_{10}. The current primary and secondary PM_{10} NAAQS are each set at 150 $\mu g/m^3$ over a 24-hour average, not to be exceeded more than an average of once per year over a three-year period. The primary and secondary 24-hour $PM_{2.5}$ NAAQS are more stringent, each set at a level of 35 $\mu g/m^3$, determined by an average of the 98th percentile 24-hour average concentration over three years. Because the $PM_{2.5}$ NAAQS are more stringent than the PM_{10} NAAQS, and because the emissions from on-road vehicles which would utilize the transportation facilities would generally be $PM_{2.5}$, any impacts for particulate matter would be reflected of $PM_{2.5}$ issues before issues associated with PM_{10}. Therefore, focusing on $PM_{2.5}$ is appropriate for these purposes and would adequately address PM_{10}.

North Carolina in its entirety is in attainment for all NAAQS.

1. CO NAAQS

EPA promulgated the CO NAAQS in 1971 and has retained the standards since its last review of the standards in 2011. The primary NAAQS for CO consist of: (1) An 8-hour standard of 9 parts per million (ppm), not to be exceeded more than once in a year (*i.e.,* the second highest, non-overlapping 8-hour average concentration cannot exceed the standard); and (2) a 1-hour average of 35 ppm, not to be exceeded more than once in a year.

In 1978, EPA designated Mecklenburg County as nonattainment for the CO NAAQS. Subsequently, under the CAA amendments of 1990, Mecklenburg County was designated as nonattainment with a ''not classified'' classification. As a result of the not classified designation, Mecklenburg County had five years (*i.e.,* until November 15, 1995) to attain the CO NAAQS. North Carolina achieved this requirement, and on August 2, 1995, Mecklenburg County was redesignated to attainment.[18] *See* 60 FR 39258. North Carolina has maintained the standard ever since and is still in compliance with the CO NAAQS. As mentioned above, for North Carolina's SIP revision requesting removal for the transportation facilities rule, EPA approved a section 110(l) demonstration. That action showed that Mecklenburg County had a regional 8-hour CO design value of 1.3 ppm, or 14 percent of the NAAQS in the 2014–2015.[19] In the 2015–2016 period, Mecklenburg County had a regional 8-hour CO design value of 1.2 ppm, or 13 percent of the NAAQS.

The latest complete monitoring data is from 2019–2020 and shows that Mecklenburg County is still well below the 8-hour CO standard with a design value of 1.4 ppm.[20] The data demonstrates that Mecklenburg County

[18] In 2013, EPA approved the State's request to convert the second 10-year maintenance plan to a limited maintenance plan for the Charlotte, Raleigh/Durham, and Winston Salem CO maintenance areas (''Limited Maintenance Plan''). *See* 78 FR 37118 (June 20, 2013). The transportation facilities rules are not components of the Limited Maintenance Plan.

[19] *See* Memorandum from William G. Laxton dated June 18, 1990, ''Ozone and Carbon Monoxide Design Value Calculations''—''The design value is evaluated over a two-year period. Specifically, the design value is the higher of each year's annual second maximum, non-overlapping 8-hour average.''

[20] The design value is evaluated over a two-year period. Specifically, the design value is the higher of each year's annual second maximum, non-overlapping 8-hour average. The design value listed for each area is the highest among monitors with valid design values.

continues to maintain an 8-hour CO design value well below the NAAQS.

Regarding the 1-hour CO NAAQS, Mecklenburg County had a regional 1-hour CO design value of 1.7 ppm, or 5 percent of the NAAQS, in 2014–2015. For the 2015–2016 period, Mecklenburg County had a regional 1-hour CO design value of 1.4 ppm, or 4 percent of the NAAQS. The latest complete monitoring data is from 2019–2020 and shows that Mecklenburg County is still well below the 1-hour CO standard with a design value of 1.5 ppm or 4 percent of the NAAQS. The data demonstrates that Mecklenburg County continues to maintain a 1-hour CO design value well below the NAAQS.

2. NO_2 NAAQS

In 1971, EPA set an annual standard for NO_2 at a level of 53 parts per billion (ppb) which has since remained unchanged. *See* 36 FR 8186 (April 30, 1971). On February 9, 2010, EPA established a 1-hour NO_2 standard set at 100 ppb. *See* 75 FR 6474.

EPA designated Mecklenburg County as unclassifiable/attainment for the 2010 1-hour NO_2 NAAQS on February 17, 2012. *See* 77 FR 9532. Further, EPA has never designated Mecklenburg County or any area in North Carolina as nonattainment for either NO_2 NAAQS. The 2020 regional design value for the 1971 annual standard for NO_2 is 9 ppb, well below the NAAQS. The 2018–2020 regional design value for the 2010 1-hour NO_2 standard is 35 ppb, also well below the NAAQS.

3. Ozone NAAQS

EPA promulgated a revised 8-hour ozone standard of 0.08 ppm on July 18, 1997. *See* 62 FR 38856. Subsequently, on March 27, 2008, EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 ppm to provide increased protection of public health and the environment. *See* 73 FR 16435. The 2008 ozone NAAQS retain the same general form and averaging time as the 0.08 ppm NAAQS set in 1997 but are set at a more protective level. Under EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS are attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. *See* 40 CFR 50.15. On October 26, 2015 (80 FR 65292), EPA published a final rule lowering the level of the 8-hour ozone NAAQS to 0.070 ppm and retaining the same form and averaging time.

On April 30, 2004, EPA initially designated Mecklenburg County as nonattainment for the 1997 8-hour ozone standard as part of the Charlotte-Rock Hill, NC-SC area. *See* 69 FR 23858. EPA redesignated the North Carolina portion of the Charlotte-Rock Hill NC-SC area to attainment on December 2, 2013, for the 1997 8-hour ozone standard. [21] *See* 78 FR 72036. Subsequently, on May 21, 2012, EPA also initially designated Mecklenburg County as nonattainment for the 2008 ozone standard as part of the Charlotte-Rock Hill, NC-SC area. *See* 77 FR 30088. EPA redesignated the North Carolina portion of the Charlotte-Rock Hill, NC-SC area to attainment on July 28, 2015, for the 2008 ozone standard.[22] *See* 80 FR 44873. EPA designated the entire state of North Carolina (including Mecklenburg County) as attainment/unclassifiable for the 2015 ozone standard on November 16, 2017. *See* 82 FR 54232. Currently, Mecklenburg County is designated as attainment or attainment/unclassifiable for all ozone NAAQS. *See* 40 CFR 81.334. The 2018–2020 regional design value for the 2015 ozone standard is 0.067 ppm.

4. $PM_{2.5}$ NAAQS [23]

Over the course of several years, EPA has reviewed and revised the $PM_{2.5}$ NAAQS several times. On July 18, 1997 (62 FR 38652), EPA established an annual $PM_{2.5}$ NAAQS of 15.0 $\mu g/m^3$, and on January 5, 2005 (70 FR 943), designated Mecklenburg County as unclassifiable/attainment for the 1997 annual $PM_{2.5}$ NAAQS. On September 21, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS of 15.0 $\mu g/m^3$ but revised the 24-hour $PM_{2.5}$ NAAQS from 65 $\mu g/m^3$ to 35 $\mu g/m^3$. On November 13, 2009, EPA designated Mecklenburg County as unclassifiable/attainment for the 24-hour $PM_{2.5}$ NAAQS. *See* 74 FR 58688. On August 24, 2016, EPA took final action to revoke the 1997 annual $PM_{2.5}$ NAAQS for areas designated attainment or in maintenance for the standard. *See* 81 FR 58010.

On December 14, 2012, EPA strengthened the annual primary $PM_{2.5}$ NAAQS from 15.0 $\mu g/m^3$ to 12.0 $\mu g/m^3$. *See* 78 FR 3086. EPA designated Mecklenburg County as unclassifiable/attainment for the 2012 annual $PM_{2.5}$ NAAQS. *See* 80 FR 2206 (January 15, 2015). The regional design value for 2018–2020 for the 2012 $PM_{2.5}$ annual standard is 8.9 $\mu g/m^3$, and the 2018–2020 regional design value for the 2006 $PM_{2.5}$ 24-hour standard is 17 $\mu g/m^3$.[24]

C. Summary of Proposed Conclusions

EPA proposes to find that removal of the transportation facilities rules from the Mecklenburg LIP would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act, because, as discussed above, transportation facilities rules are no longer federally required, Mecklenburg County issues few transportation facility permits, the issued permits do not require emissions controls, and the relevant NAAQS are not threatened.

III. Incorporation by Reference

In this document, EPA is proposing to amend regulatory text that includes incorporation by reference. EPA is proposing to remove the following MCAPCO rules in Article 2.0000—Air Pollution Control Regulations and Procedures, Section 2.0800—*Transportation Facilities:* Rules 2.0801—*Purpose and Scope;* 2.0802—*Definitions;* 2.0803—*Highway Projects;* and 2.0804—*Airport Facilities* from the Mecklenburg County portion of the North Carolina SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made and will continue to make the SIP generally available at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the removal of the transportation facilities rules from the Mecklenburg LIP because the removal is consistent with the CAA and the North Carolina regulatory portion of the SIP.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations.

[21] As part of that action, EPA also approved the State's maintenance plan for the 1997 8-hour ozone NAAQS. The transportation facilities rules were not part of that maintenance plan.

[22] As part of that action, EPA also approved the State's maintenance plan for the 2008 8-hour ozone NAAQS. The transportation facilities rules were not part of that maintenance plan.

[23] *See* footnote 18 of this Notice of Proposed Rulemaking.

[24] Based on the science and technology associated with on-road motor vehicles, EPA would not expect any change (increase or decrease) in PM emissions resulting from the removal of the transportation facilities rules from the Mecklenburg LIP. Furthermore, EPA would not expect any increase in emissions of $PM_{2.5}$ as a result of the precursors (*i.e.,* nitrogen oxides, SO_2, ammonia and VOC). PM formation in the Southeast (including North Carolina) is dominated by sulfates and, as discussed in footnote 17, the amount of SO_2 emitted from on-road vehicles is low.

See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. This proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: October 21, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

[FR Doc. 2021–23348 Filed 10–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0620; FRL–9188–01–R9]

Air Plan Approval; California; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from surface cleaning and degreasing operations, and from batch loaded vapor degreasing operations. We are proposing to approve changes to SIP-approved local rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before November 29, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0620 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Robert Schwartz or Doris Lo, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3959 or by email at *lo.doris@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rule revisions?
II. The EPA's Evaluation and Action
A. How is the EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. The EPA's Recommendations To Further Improve the Rules
D. Public Comment and Proposed Action
III. Incorporation by Reference
IV. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Revised and adopted	Submitted
VCAPCD	74.6	Surface Cleaning and Degreasing	11/10/2020	07/26/2021
VCAPCD	74.6.1	Batch Loaded Vapor Degreasers	11/10/2020	07/26/2021

On September 25, 2021, the EPA determined that the submittal for VCAPCD Rule 74.6 and Rule 74.6.1 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved earlier versions of Rule 74.6 and Rule 74.6.1 into the SIP on October 25, 2005.[1] The VCAPCD adopted revisions to the SIP-approved versions on November 10, 2020, and CARB submitted them to us on July 26, 2021. If we take final action to approve the November 10, 2020 versions of Rule 74.6 and Rule 74.6.1, these versions will replace the previously approved versions of these rules in the SIP.

C. What is the purpose of the submitted rule revisions?

Emissions of VOCs contribute to the production of ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. The District revised Rule 74.6 to contain more stringent solvent cleaning VOC limits, remove an inappropriate exemption for sources covered by a National Emission Standards for Hazardous Air Pollutants (NESHAP) standard, and to add several housekeeping updates. Rule 74.6.1 was revised to include more stringent requirements for alternative cleaning systems, recordkeeping, and test methods; to remove an inappropriate exemption for sources covered by a NESHAP standard, and to add several housekeeping updates. The EPA's technical support document (TSD) has more information about these rules.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require reasonably available control technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The VCAPCD regulates an ozone nonattainment area classified as a Serious nonattainment area for the 2008 and 2015 8-hour ozone national ambient air quality standards (40 CFR 81.305). Therefore, these rules must implement RACT.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''Control of Volatile Organic Emissions from Solvent Metal Cleaning,'' EPA–450/2–77–022, November 1977.
5. ''Control Techniques Guidelines for Industrial Cleaning Solvents,'' EPA–453/R–06–001, September 2006.

B. Do the rules meet the evaluation criteria?

These rules meet CAA requirements and are consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. The District revised Rule 74.6 to contain more stringent solvent cleaning VOC limits and to remove an inappropriate exemption for sources covered by a NESHAP standard. Rule 74.6.1 was revised to include more stringent requirements for alternative cleaning systems, recordkeeping, and test methods, and to remove an inappropriate exemption for sources covered by a NESHAP standard. The TSD has more information on our evaluation.

C. The EPA's Recommendations To Further Improve the Rules

We recommend that the District revise Rule 74.6 to contain consistent record retention requirements of at least five years in all applicable provisions of the rule. The TSD includes additional recommendations for the next time the local agency modifies the rules.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules because they fulfill all relevant requirements. We will accept comments from the public on this proposal until November 29, 2021.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the VCAPCD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the persons identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

[1] 70 FR 61561.

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 23, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2021–23538 Filed 10–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA–HQ–OPPT–2021–0598; FRL–6015.6–01–OCSPP]

RIN 2070–AK95

Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Phenol, Isopropylated Phosphate (3:1); Further Compliance Date Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the regulations applicable to phenol, isopropylated phosphate (3:1) (PIP (3:1)) promulgated under the Toxic Substances Control Act (TSCA). Specifically, EPA is proposing to extend the compliance date applicable to the processing and distribution in commerce of certain PIP (3:1)-containing articles, and the PIP (3:1) used to make those articles until October 31, 2024, along with the associated recordkeeping requirements for manufacturers, processors, and distributors of PIP (3:1)-containing articles. EPA is also announcing its intention to commence a new rulemaking effort on PIP (3:1) and four other persistent, bioaccumulative, and toxic (PBT) chemicals that have been regulated under TSCA section 6(h). EPA is anticipating issuing a proposal to this end in 2023.

DATES: Comments must be received on or before December 27, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0598, using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting 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 Docket Center (EPA/DC) and Reading Room are 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 services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Cindy Wheeler, Existing Chemicals Risk Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0484; email address: *TSCA-PBT-rules@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (including import), process, distribute in commerce, or use phenol, isopropylated phosphate (3:1) (PIP (3:1)), or PIP (3:1)-containing articles, especially plastic articles that are components of electronics or electrical articles. 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:

• Petroleum Refineries (NAICS Code 324110);

• All Other Basic Organic Chemical Manufacturing (NAICS Code 325199);

• Plastics Material and Resin Manufacturing (NAICS Code 325211);

• All Other Miscellaneous Chemical Product and Preparation Manufacturing (NAICS Code 325998);

• Machinery Manufacturing (NAICS Code 333);

• Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (NAICS Code 333415);

• Other Communications Equipment Manufacturing (NAICS Code 334290);

• Computer and Electronic Product Manufacturing (NAICS Code 334);

• Small Electrical Appliance Manufacturing (NAICS Code 335210);

• Major Household Appliance Manufacturing (NAICS Code 335220);

• Motor and Generator Manufacturing (NAICS Code 335312);

• Switchgear and Switchboard Apparatus Manufacturing (NAICS Code 335313);

• Relay and Industrial Control Manufacturing (NAICS Code 335314);

- Other Communication and Energy Wire Manufacturing (NAICS Code 335929);
- Current-carrying Wiring Device Manufacturing (NAICS Code 335931);
- Transportation Equipment Manufacturing (NAICS Code 336);
- Musical Instrument Manufacturing (NAICS Code 339992);
- All Other Miscellaneous Manufacturing (NAICS Code 339999);
- Other Chemical and Allied Products Merchant Wholesalers (NAICS Code 424690);
- Motor Vehicle and Parts Dealers (NAICS Code 441);
- All Other Home Furnishings Stores (NAICS Code 442299);
- Electronics and Appliance Stores (NAICS Code 443);
- Building Material and Garden Equipment and Supplies Dealers (NAICS Code 444);
- Research and Development in the Physical, Engineering, and Life Sciences (NAICS Code 541710).

B. What is the Agency's authority for taking this action?

Section 6(h) of TSCA, 15 U.S.C. 2605(h), directs EPA to take expedited action on certain persistent, bioaccumulative, and toxic (PBT) chemical substances. For chemical substances that meet the statutory criteria, EPA is directed to issue final rules that address the risks of injury to health or the environment that the Administrator determines are present and to reduce exposure to the substance(s) to the extent practicable. In response to this directive, EPA identified PIP (3:1) as meeting the TSCA section 6(h) criteria and issued a final rule for PIP (3:1) on January 6, 2021 (Ref. 1).

With the obligation to promulgate these rules, the Agency also has the authority to amend them if circumstances change, including in relation to the receipt of new information and in relation to compliance deadlines established under TSCA section 6(d). It is well settled that EPA has inherent authority to reconsider, revise, or repeal past decisions to the extent permitted by law so long as the Agency provides a reasoned explanation. See *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009). Here, as explained further in Unit I.D., based on information submitted by regulated entities, the Agency proposes that revised compliance dates are necessary to address comments that the original compliance dates were not practicable and did not provide adequate transition time because they would have caused extensive harm to the economy and public due to unavailability of critical goods and equipment.

C. What action is the Agency taking?

The January 2021 final rule for PIP (3:1) prohibits the processing and distribution of PIP (3:1), PIP (3:1)-containing products, and PIP (3:1)-containing articles, with specified exclusions; prohibits or restricts the release of PIP (3:1) to water during manufacturing, processing, distribution, and commercial use; and requires persons manufacturing, processing, and distributing in commerce PIP (3:1) and products containing PIP (3:1) to notify their customers of these prohibitions and restrictions and to keep records. Several different compliance dates were established, the first of which was 60 days after publication, or March 8, 2021, after which processing and distribution of PIP (3:1), PIP (3:1)-containing products, and PIP (3:1)-containing articles were prohibited unless an alternative compliance date or exclusion was otherwise provided. A recently issued final rule extended the compliance date applicable to the processing and distribution in commerce of certain PIP (3:1)-containing articles, and the PIP (3:1) used to make those articles, from March 8, 2021 to March 8, 2022, along with the associated recordkeeping requirements (Ref. 2).

EPA is proposing to amend the regulations at 40 CFR 751.407(a)(2) to further extend the phased-in prohibition, established in the September 2021 final rule, for the processing and distributing in commerce of PIP (3:1) for use in certain articles, and for the processing and distributing in commerce of certain PIP (3:1)-containing articles, from March 8, 2022 to October 31, 2024. This proposal would also extend the compliance date for the recordkeeping requirements for manufacturers, processors, and distributors of PIP (3:1)-containing articles from March 8, 2022, to October 31, 2024. EPA is seeking public comment on the compliance deadline. Articles covered by the phased-in prohibition include any article not otherwise covered by an alternative compliance deadline or exclusion described in 40 CFR 751.407(a)(2)(ii) or (b).

EPA is also announcing its intention to commence a new rulemaking effort on PIP (3:1) and the other four chemicals that have been regulated under TSCA section 6(h), which are 2,4,6-tris(tert-butyl)phenol (2,4,6-TTBP), decabromodiphenyl ether (decaBDE), pentachlorothiophenol (PCTP), and hexachlorobutadiene (HCBD) (Refs. 3, 4, 5, and 6). EPA is anticipating issuing a proposal to this end in 2023. EPA is reviewing the provisions of all five of the final rules issued under TSCA section 6(h), evaluating the other applicable provisions of amended TSCA, and determining how the Executive Orders and other Administration priorities (Refs. 7, 8, 9, 10, and 11) could be addressed, along with the additional information that has been provided by stakeholders in response to the March 2021 notification and request for comments. More information on this rulemaking can be found in Unit III.C.

D. Why is the Agency taking this action?

EPA is issuing this proposal to further address the hardships inadvertently created by the January 2021 final rule on PIP (3:1) (Ref. 1) due to uses and supply chain challenges that were not communicated to EPA until after the rule was published. Shortly after the final rule was published in January 2021, many stakeholders, including, for example, the electronics and electrical manufacturing sector and their customers, raised significant concerns about their ability to meet the March 8, 2021, compliance date for PIP (3:1)-containing articles (Ref. 12). These stakeholders requested an extension of the compliance dates in order to clear the existing articles through the supply chain, find and certify an alternative chemical, and produce or import new articles that do not contain PIP (3:1). In the **Federal Register** of March 16, 2021 (Ref. 13), EPA requested additional comment on this specific issue, as well as on other aspects of all the TSCA section 6(h) final rules in general (Refs. 1, 3, 4, 5, and 6). According to the comments received in response to the March 2021 notification and request for comments, a wide range of key consumer and commercial goods are affected by the prohibitions in the PIP (3:1) final rule such as cellular telephones, laptop computers, and other electronic devices and industrial and commercial equipment used in various sectors including transportation, life sciences, and semiconductor production (Ref 14). This proposal follows a final rule that published in the **Federal Register** of September 17, 2021, that extended the compliance date applicable to the processing and distribution in commerce of certain PIP (3:1)-containing articles, and the PIP (3:1) used to make those articles, until March 8, 2022, along with the associated recordkeeping requirements for manufacturers, processors, and distributors of PIP (3:1)-containing

articles (Ref. 2). That final rule provided a necessary short-term extension to avoid immediate and significant disruption in the supply chains for important articles, to provide the public with regulatory certainty in the near term, and to allow EPA additional time to further evaluate the need to again extend the compliance deadlines for PIP (3:1). EPA responded to the comments received on the March 2021 notification that were relevant to the compliance deadline extension and related issues as part of the recent final rule (Ref. 2). EPA will respond to comments from the March 2021 notification not already addressed in the September 2021 final rule either as part of this rulemaking or as part of the subsequent rulemaking on the five PBTs. EPA is requesting comment on a further extension of the compliance dates beyond March 8, 2022 for the processing and distribution of certain PIP (3:1)-containing articles, and the PIP (3:1) used to make those articles. This proposed extension of the compliance dates until October 31, 2024, is based on the detailed information provided by several industry commenters.

E. What are the incremental economic impacts?

EPA evaluated the potential incremental economic impacts and determined that these changes would reduce the existing burden of this action. The quantified effect of this compliance date extension reflects the difference between the incremental cost and benefits of the final rule as it was originally promulgated and the incremental cost and benefits of this proposed rule with the compliance date in place. This was estimated as the difference between the cost and benefits of the final rule after a compliance extension of March 8, 2022, and the cost and benefits of this proposed rule with an October 31, 2024, compliance date. Quantified costs for substitution and recordkeeping were estimated to be incurred later, assuming they will be incurred when the proposed compliance date extension expires. In summary, extending the compliance date from March 8, 2022 to October 31, 2024 for PIP (3:1)-containing articles would result in an estimated annualized cost savings of $1.8 million (from $24.1 to $22.3 million) at a 3 percent discount rate or $2.4 million (from $23.4 to $21.0 million) at a 7 percent discount rate over a 25-year time horizon. While the Agency has no data to quantify this, qualitative costs savings may include providing more time for manufacturers and retailers to sell articles prior to the prohibition deadline rather than being forced to dispose of them, thereby avoiding loss of revenue from those products. In addition to these cost savings, reformulation (which can include research and development, laboratory testing, and re-labeling) will be facilitated once an acceptable substitute is certified given that companies will have more time to gather information regarding the steps involved in the reformulation process. Cost reductions for reformulation are not certain, however, since the time required to identify viable substitutes can be complex and unpredictable. The level of these cost savings is dependent on complexity of achieving needed efficacy, length of time needed for testing and quality control, and the current status of development of alternatives, which may vary greatly by sector and end use product. Lastly, the compliance date extension may provide additional time for information gathering through the supply chain to alleviate the necessity for chemical testing of certain articles. Although the benefits of the final rule were not quantified, the extension would also postpone decreases in potential releases and exposures to PIP (3:1). Due to discounting, in a manner similar to costs, this postponement would lead to lower potential benefits. On balance, this proposed further extension of the compliance dates is appropriate to prevent the disruptive consequences of implementing the prohibition on March 8, 2022 without a further compliance extension. The economic consequences (such as loss of supply) could be severe, given the apparent ubiquity of the chemical in commerce. Thus, EPA is proposing to determine that the cost savings and avoidance of disruption to industry outweigh the delayed realization of benefits that may accrue from reduced exposure.

F. 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 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. Background

A. The January 2021 Final Rule

A final rule for PIP (3:1) was published in the **Federal Register** on January 6, 2021 (Ref. 1). EPA determined in the final rule that PIP (3:1) met the TSCA section 6(h)(1)(A) criteria for expedited action. In addition, EPA determined, in accordance with TSCA section 6(h)(1)(B), that exposure to PIP (3:1) was likely under the conditions of use to the general population, to a potentially exposed or susceptible subpopulation, or the environment. The PIP (3:1) final rule prohibits processing and distribution in commerce of PIP (3:1), and products or articles containing the chemical substance, for all uses, except for the following different compliance dates or exclusions:

- Use in photographic printing articles after January 1, 2022;
- Use in aviation hydraulic fluid in hydraulic systems and use in specialty hydraulic fluids for military applications;
- Use in lubricants and greases;
- Use in new and replacement parts for the aerospace and automotive industries;
- Use as an intermediate in the manufacture of cyanoacrylate glue;
- Use in specialized engine air filters for locomotive and marine applications;
- Use in sealants and adhesives after January 6, 2025; and
- Recycling of plastic that contained PIP (3:1) before the plastic was recycled, and the articles and products made from such recycled plastic, provided no new PIP (3:1) is added during the recycling or production process.

In addition, the final rule requires manufacturers, processors, and distributors of PIP (3:1) and products containing PIP (3:1) to notify their customers of these restrictions. Finally, the rule prohibits releases to water from the remaining manufacturing, processing, and distribution in commerce activities, and requires commercial users of PIP (3:1) and PIP (3:1)-containing products to follow existing regulations and best practices to prevent releases to water during use.

Also defined at 40 CFR 751.403 for the purposes of 40 CFR part 751, subpart E, which includes the PIP (3:1) final rule, are the terms ''article'' and

''product'' (Ref. 3). ''Article'' is defined as a manufactured item: (1) Which is formed to a specific shape or design during manufacture, (2) Which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) Which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design. For example, laptop computers are articles, as are the internal components such as chips, wiring, and cooling fans. ''Product'' is defined as the chemical substance, a mixture containing the chemical substance, or any object that contains the chemical substance or mixture containing the chemical substance that is not an article. For example, hydraulic fluids and motor oils are products.

B. The March 2021 Notification and the No Action Assurance

Shortly after the publication of the January 2021 final rule, a wide variety of stakeholders from various sectors, including the electronics and electrical manufacturing community and their customers, started raising concerns about the March 8, 2021, compliance date in that final rule for the prohibition on the processing and distributing in commerce of PIP (3:1) for use in articles and PIP (3:1)-containing articles (Ref. 12). These stakeholders contended that they needed significantly more time to identify whether and where PIP (3:1) might be present in articles in their supply chains, find and certify alternative chemicals, and produce or import new articles that do not contain PIP (3:1). Despite EPA's extensive outreach, most stakeholders contacting EPA after the rule was finalized did not comment on the proposal or otherwise engage with the agency on the PIP (3:1) rulemaking, and do not appear to have previously surveyed their supply chains to determine if PIP (3:1) was being used. Several indicated that they did not understand that articles can be regulated under TSCA, and that, because PIP (3:1) is not regulated by other authorities, including those of other countries or under international agreements, there was a lack of awareness relative to its presence in the supply chain (Ref. 14). Absent engagement and timely or specific input from these stakeholders that could be used as a basis for granting further extensions or exemptions from the proposed prohibition, in the final rule EPA believed that PIP (3:1) was not widely present in articles outside the aerospace and automotive sectors. While some commenters on the 2019 proposed rule indicated that PIP (3:1) may be present in articles, their comments were very general and did not identify specific uses or specific concerns with the March 8, 2021, compliance date.

Based on the concerns raised by stakeholders shortly after publication of the final rule, EPA issued a No Action Assurance (NAA) on March 8, 2021, in an effort to ensure that the supply chains of these important articles were not interrupted while the agency collected the information needed to best inform subsequent regulatory efforts (Ref. 15). The NAA only described how the agency will exercise its enforcement discretion, the NAA did not change the March 8, 2021, compliance date.

Shortly after the NAA was issued, EPA published in the ''Proposed Rules'' section of the **Federal Register** of March 16, 2021, a notification and request for comments on the five final PBT rules in general and, more specifically, on the compliance date issues with respect to PIP (3:1)-containing articles that had been raised by stakeholders. The **Federal Register** document described in particular the issues raised by industry stakeholders regarding the March 8, 2021, compliance date, including the types of articles affected, such as those used in a wide variety of electronics, ranging from cellular telephones, to robotics used to manufacture semiconductors, to equipment used to move COVID–19 vaccines and keep them at the appropriate temperature. The document further outlined the complexity of international supply chains described by industry stakeholders and how, according to those stakeholders, that complexity creates challenges for identifying and finding alternatives to PIP (3:1) in complex supply chains. In the document, EPA asked commenters to specifically describe the following regarding PIP (3:1)-containing articles:

- The articles that would need an alternative compliance date;
- The basis for such an alternative compliance date, taking into consideration the reasons supporting alternative compliance dates in the final rule already issued, such as the January 1, 2022, date for photographic printing articles and the January 6, 2025, date for adhesives and sealants, with supporting documentation; and
- The additional time needed for specific articles to clear channels of trade.

EPA received a total of 122 comments in response to the March 2021 notification and request for comments; 78 of these were from industry stakeholders, most of whom were concerned about compliance for PIP (3:1)-containing articles (Ref 14). Stakeholders concerned about PIP (3:1)-containing articles reiterated that they needed much more time, up to 15 years (Ref. 16), in order to identify where PIP (3:1) might be present in their supply chains, find and certify alternatives, and produce or import new articles that do not contain PIP (3:1). More information on the comments received can be found in the September 2021 final rule (Ref. 2), which is further discussed in Unit. II.C.

C. The September 2021 Final Rule

Based on the comments received in response to the March 2021 notification and request for comments, EPA issued a final rule extending the compliance dates applicable to the processing and distribution in commerce of certain PIP (3:1)-containing articles, and the PIP (3:1) used to make those articles, until March 8, 2022, along with the associated recordkeeping requirements for manufacturers, processors, and distributors of PIP (3:1)-containing articles. While most commenters on the March 2021 notification and request for comments requested a longer compliance date extension, EPA determined that a short-term extension was necessary to ensure that the supply chains for these important articles continue uninterrupted in the near term while allowing EPA to conduct notice and comment rulemaking to provide an opportunity for comments in response to this proposal on a longer-term compliance date extension generally.

D. Comments Received in Response to the March 2021 Notification

This Unit describes the comments received specifically on the issue of compliance dates for the prohibition on the processing and distribution in commerce of PIP (3:1)-containing articles, and the PIP (3:1) used to make those articles, as well as on the associated recordkeeping requirements. Comments received on other aspects of the January 2021 PIP (3:1) final rule, as well as on the final rules for the other four PBT chemicals, are outside of the scope of this rulemaking and will be addressed in a future rulemaking effort as described in Unit III.C.

1. Comments on articles that contain, or potentially contain, PIP (3:1). During the public comment period for the March 2021 notification and request for comments, industry commenters identified a wide range of articles that

may contain PIP (3:1). PIP (3:1) is generally used as a flame retardant and plasticizer in plastic articles. Articles which have been identified or are being investigated for the presence of PIP (3:1) include polyvinyl chloride (PVC) tubes, harnesses, cables, covers, sleeves, and casings, which include AC power cords and USB cables for consumer and commercial articles such as laptops, televisions, and gaming consoles. According to the electrical manufacturing industry, a representative sample of articles made possible by the qualities unique to PIP (3:1) include medical devices, capacitors, inverters, generators, transformers, semiconductor wafers, computers, and electrical appliances (Ref. 17). Manufacturers of construction, agriculture, forestry, mining, and utility equipment have identified PIP (3:1) in fire prevention systems, engine emission control systems, electronics, wiring harnesses, hydraulic hoses, switches, fabrics, PVC articles, resin in fiberglass articles, paints, elastomers, foam, resistors, splitters, articles that are alarm components, automatic tire inflation equipment, and wire sleeving (Ref. 18). According to another commenter, in construction, agriculture, forestry, mining, and utility equipment, PIP (3:1) is frequently found in wire harnesses, starters, water pumps, motor gears, pre-wired motors, ground cables, and compressors (Ref. 19). The semiconductor manufacturing industry has identified the use of PIP (3:1) in semiconductor-related manufacturing equipment (as well as microelectromechanical-related, solar-related, and LED-related manufacturing equipment) and semiconductor fabrication facilities' support equipment and infrastructure, such as laboratory, substrate and device (*e.g.,* die) preparation, and assembly and test operations, including advanced packaging (Ref. 16) as well as articles that are internal components of high-tech robotics and manufacturing equipment. Additionally, the chemical has been identified in articles that are components in scanning electron microscopes utilized in research, national laboratories, and academia (Ref. 20).

EPA generally agrees with these commenters that PIP (3:1) is used in a variety of articles, especially in plastic articles that are components of electronics or electrical articles. Further, at the time the January 2021 final rule was issued, EPA did not understand the extent to which PIP (3:1) is used in articles beyond those articles specifically addressed in that final rule, which are photographic printing articles, new and replacement parts for aerospace and motor vehicles, specialized locomotive and marine engine air filters, and recycled plastics. EPA notes that this proposed rule would not affect the compliance dates established for these specific articles in the January 2021 final rule. EPA outlined its understanding on the use of PIP (3:1) in articles in responding to public comments on the January 2021 final rule, ''[t]here is little evidence to suggest that PIP (3:1) is present in articles which may be available to consumers, and outside of activities excluded from the prohibition, little evidence to suggest it is necessary or present in commercial and industrial articles as well'' (Ref. 30).

2. *Comments on the challenges associated with determining whether articles contain PIP (3:1).* These commenters also described in some detail the challenges associated with determining whether a particular article contains PIP (3:1), especially for complex goods that contain thousands of individual parts. Commenters noted that a manufacturer of a complex good could have upwards of 5,000 suppliers for potentially 100,000 or more component articles across all product lines (Ref. 21). These commenters also noted that manufacturers do not receive a list of every chemical within each part or component article that ultimately goes into a finished electronic article because ingredient lists are highly proprietary and confidential. Rather, companies provide functionality, performance, safety and quality specifications of a part or component article to their supply chain, including specifications regarding chemical restrictions. According to these commenters, suppliers are provided lists of restricted chemicals on at least an annual basis, or more frequently if there is a triggering event, such as a new government restriction. Suppliers are notified of the lead time for the restriction of the chemical and any testing that may be required, which information they communicate to their own suppliers.

According to these commenters (Ref. 21), the task of determining whether PIP (3:1) is used in a component article in a finished electronic good is further complicated by the many article manufacturers being unable to identify or confirm the PIP (3:1) content of articles, such as supplied parts, components or commercial and consumer goods, without laboratory testing. Laboratory testing can run up to $5,000 per product and take up to one (1) month. As a result, companies must rely on material declarations by suppliers as a more practicable and reliable approach to determine the usage of PIP (3:1) within an article.

Other commenters echo these concerns. Comments from the heating, ventilation, air conditioning, and refrigeration (HVACR) industry note that manufacturers are currently parsing through tens of thousands of stock-keeping units (SKUs), each having hundreds of associated component articles and spare parts (Ref. 22). They contend that their suppliers have generally not been forthright about the presence of PIP (3:1) in their component articles and parts, even after receiving notification that the use of PIP (3:1) in component articles must be disclosed. According to these commenters, some suppliers continue to claim that they will not disclose the chemical makeup of component articles as the composition is confidential intellectual property. In response, some of the larger manufacturers have started testing component articles to compensate for this lack of transparency, but testing is time-consuming and costly and most smaller businesses do not have the resources to undertake testing.

The semiconductor industry and the testing and measurement industry noted that their industries differ from the consumer electronics industry and the automotive industry, in that their industries are high-mix, low-volume industries, meaning that manufacturer portfolios are typically comprised of a large number of unique goods with relatively low unit sales (Refs. 16 and 23). Their equipment is primarily built to order and sold directly to professional and industrial customers by the manufacturers (Ref. 23). The semiconductor industry typically places only 600 to 6,000 units of semiconductor manufacturing and related equipment into U.S. commerce each year and it is not uncommon for small groups of model units to be customized to an end user's particular needs (Ref. 16). According to this commenter, this is in stark contrast to most consumer goods, in which individual similar model units are placed into U.S. commerce in much greater number, and to the automotive and aerospace sectors, in which goods are manufactured in lower quantities but which are quite similar from model unit to model unit (Ref. 16). The semiconductor industry further noted that their sector's ability to obtain material composition data from across their supply chain is limited due to three factors: (1) The length and complexity of the supply chain; (2) the preponderance of suppliers located

outside of the U.S.; and (3) the tens of thousands of parts incorporated into each article eventually manufactured or distributed in commerce within the U.S.

EPA generally recognizes the challenges described by these commenters in determining whether and where PIP (3:1) is present in articles in their supply chains and how long it may take to clear those PIP (3:1)-containing articles through the channels of trade. As to comments relating to testing, as most commenters note, there are a number of alternative steps to testing that an importer or a domestic manufacturer can take to ensure that an article does not contain PIP (3:1). The customer can include a specification in their purchase contracts with suppliers that articles be made without PIP (3:1). The customer can also request that their suppliers provide them with a written statement or certification that the purchased or supplied goods are made without PIP (3:1). Of course, testing is always an option, but EPA recognizes that this may be a more expensive option.

3. *Comments on compliance date considerations for PIP (3:1)-containing articles*. Nearly all of the industry commenters responding to EPA's March 2021 request for comments stated that they needed several years to phase PIP (3:1) out of their articles (Ref. 14). Many commenters contended that they needed much longer, up to fifteen years (Refs. 16 and 20) assuming that it is even feasible to do so. Only two commenters, representing individual companies, indicated that they would need less than three years (Refs. 24 and 25). Commenters identified a number of steps that would be needed in order to complete a phase-out of PIP (3:1) in articles. These steps include: (1) Identifying whether and where PIP (3:1) is present; (2) identifying and testing substitutes; (3) re-certifying (as needed) the replacement article; and (4) distributing the replacement article throughout the supply chain. Some commenters provided detailed timelines for the steps needed to replace PIP (3:1).

For example, the consumer electronics industry noted that, while companies had begun to survey their suppliers as soon as the final rule was published, because of the large number of parts and suppliers involved for most manufacturers, they anticipated that completing the survey would take between six and twelve months (Ref. 21). They also noted that, because PIP (3:1) is not regulated in other international markets, there is a general lack of awareness regarding the chemical throughout the supply chain and the industry expects the surveys to take closer to twelve months than six.

According to the consumer electronics industry commenters, once PIP (3:1) is identified in a particular part by a particular supplier, the supplier must identify and investigate alternatives to PIP (3:1) that can meet regulatory requirements and manufacturer requirements with respect to functionality, performance, safety and quality (Ref. 21). Given that PIP (3:1) is typically used in electronic component articles to meet safety standards related to flammability, a component article that includes a PIP (3:1) alternative will have to be certified to the applicable safety standard (Ref. 21). Common safety standards that apply to consumer electronics, according to the commenters, include Underwriters Laboratory UL94, entitled ''Tests for Flammability of Plastic Material for Part in Devices and Applications,'' and UL498, entitled ''Attachment Plugs and Receptacles.'' The timeline for retesting and recertification of replacement component articles is determined by the certification organization, and consumer electronics manufacturers estimate that testing could take anywhere from 3 to 24 months (Ref. 21).

These commenters detail the next steps in replacing a PIP (3:1)-containing component article (Ref. 21). Once the manufacturer of the finished consumer electronics good receives the replacement component article, the manufacturer will conduct its own internal quality assessments. The manufacturer will conduct an initial assessment on whether the component article works, has the correct performance characteristics, and maintains brand integrity. Once these basic parameters have been evaluated, the manufacturer will assemble the component article into a consumer electronics good and conduct an overall quality assessment, which may include smoke and ignition testing, current leakage testing, and temperature testing, among other things (Ref. 21). At that point, the reworked good is sent for third-party certification. If the substituted component article is considered critical by the certification body, full retesting and recertification of the good may be necessary. Industry commenters anticipate that full retesting and recertification will be required, given the use of PIP (3:1) from a fire safety perspective and the fact that the types of component articles where PIP (3:1) is used play critical roles in the goods. Manufacturers anticipate that this recertification step will take anywhere from six to thirty months (Ref. 21). Finally, according to these commenters, a minimum of one year is needed to move the newly remanufactured goods throughout the supply chain. This commenter further contended that a chemical phase out in response to a restriction in the European Union under the Restriction on Hazardous Substances (RoHS) 2, a product-level compliance program for electrical and electronic equipment, is typically effective four years from the date of notice by the European Union (Ref. 21).

The heavy equipment sector provided similarly detailed descriptions of the length of time needed to replace PIP (3:1)-containing component articles (Ref. 18). These commenters stated that their design cycles are typically seven years from start to finish, and that this would likely be the amount of time needed to identify whether and to what extent PIP (3:1) exists in the supply chain, confirm the function of PIP (3:1) for the end-use application, identify alternatives, re-design for the alternative rather than PIP (3:1), test the replacement component article for safety, regulatory, and quality requirements, and re-introduce the good into the market (Ref. 18). According to this commenter, the testing requirements often take the longest time to complete during a redesign because heavy-duty industrial equipment operates in demanding and severe operating conditions over a long product life cycle. Such equipment is reportedly subject to various fire safety and flammability regulatory requirements set by the National Highway Traffic Safety Administration (Flammability Test for Motor Vehicle Interiors, 49 CFR 571.302), the Occupational Safety and Health Administration (Fire Protection and Prevention, 29 CFR 1926.24 and 1926.151), the Mine Safety and Health Administration (various fire prevention provisions, including 30 CFR part 35 and 30 CFR 75.1100, 75.1911, and 77.1100), and the Federal Railroad Administration (49 CFR parts 216, 223, 229, 231, 232, 238). Additionally, according to this commenter, engine emission sensors designed for off-road equipment to comply with the Clean Air Act currently rely on PIP (3:1) to survive the high-temperature environment in the engine compartment (Ref. 18).

A unique problem reported by this commenter and several others in the heavy equipment sector is that their supply chains often overlap with much larger industries, such as the automotive and aerospace sectors (Refs. 18, 19, 26, 27, and 28). A recent survey by one commenter found that 61% of the surveyed suppliers in the heavy

equipment sector also provided parts and materials to the automotive industry (Ref. 18). According to this commenter, despite the significant overlap in suppliers, there are key differences in the product design lifecycles and volumes between the industries. Heavy-duty, industrial professional use equipment is decidedly lower volume with a higher diversity of goods than those found in the consumer automotive market. As the automotive sector is currently excluded from the January 2021 PIP (3:1) final rule, the current regulations allow suppliers to provide automotive parts that contain PIP (3:1) to their automotive manufacturers. With the higher variability of goods and lower volume nature of the heavy-duty, industrial equipment sector, commenters assert that the manufacturers of this non-automotive equipment will need to utilize custom made parts which, if available, could cost between two and ten times the normal price of the automotive parts that they would ordinarily use (Ref. 28).

In contrast to the industry commenters, who all stated that the March 8, 2021, compliance date for PIP (3:1)-containing articles was not practicable, a comment submitted by three environmental public interest groups in response to EPA's March 2021 request for comments stated that industry had been given sufficient notice of EPA's intent to regulate PIP (3:1) in articles and did not believe that EPA should excuse their failure to comment in a timely manner (Ref. 29). This commenter further noted that any exclusions or extended compliance dates should be considered under the stringent criteria of TSCA section 6(g), which requires EPA to determine one of the following: (1) That the condition of use is a critical or essential use with no feasible safer alternatives; or (2) that compliance with a requirement would significantly disrupt the national economy, national security, or critical infrastructure; or (3) that the specific condition of use provides a substantial benefit to health, the environment, or public safety.

EPA generally agrees with the industry commenters on the conceptual steps that may be needed to phase PIP (3:1) out of articles in their supply chains. Industry must first determine where PIP (3:1) is used, identify alternatives to PIP (3:1), and then design, test, and recertify, as necessary, the new articles made without PIP (3:1). Those new articles must then be distributed throughout the supply chain. However, EPA observes that these steps need not always be undertaken sequentially. For example, it is not necessary to identify every single model of smartphone that uses a power cord that contains PIP (3:1) before work begins to identify and test alternatives to PIP (3:1) in power cords for smartphones.

Some commenters provided detailed estimates of the time needed to take these steps while others did not. For example, comments from the consumer technology sector gave estimates for completing each one of these steps, with the overall timeline ranging from 2.25 years to 6.5 years (Ref. 21). Estimated timelines provided by commenters in response to the March 2021 notification and request for comments ranged from 2.25 years to 15 years or more (Refs. 21 and 16). Given the varying estimates, and the lack of detail accompanying some of those estimates, EPA is proposing to further extend the compliance dates until October 31, 2024 consistent with the lower end of the estimates provided. This will avoid significant disruption in the supply chains for important articles and will provide the public with regulatory certainty while industry collects and submits additional information to inform whether a further compliance date extension may be necessary for certain industry sectors. EPA will consider any additional information of this kind in the context of the broader rulemaking described in more detail in Unit III.C.

EPA disagrees with the commenter who contended that any compliance date extension should be evaluated under TSCA section 6(g). As noted in response to similar comments on the 2019 proposed rule, ''TSCA section 6(h)(4) directs EPA to issue regulations that reduce exposure to PBT chemicals 'to the extent practicable,' not to regulate beyond the point of practicability and then issue [section 6(g)] exemptions that would limit the scope of those regulations'' (Ref. 30, at p. 44). EPA views this compliance date extension as consistent with this standard, and as discussed in Unit III, with the requirements of TSCA section 6(d) to ensure that the compliance dates are ''as soon as practicable'' and provide a ''reasonable transition period,'' because this action is necessary to avoid significant disruption in the supply chains for important articles, such as cellular telephones and the HVACR equipment used to cool people, buildings, and to transport and store COVID–19 vaccines and keep them at the appropriate temperature, not as an excuse for a failure to comment earlier in this rulemaking process.

III. Provisions of This Proposed Rule

A. Establishing a Revised Compliance Date

1. TSCA section 6(d) compliance dates and section 6(h) rules. TSCA section 6(d) includes a number of provisions relating to establishment of effective or compliance dates applicable to those rules. Specifically, TSCA section 6(d)(1)(A) directs EPA to specify a date on which the TSCA section 6(a) rule is to take effect that is ''as soon as practicable.'' TSCA section 6(d)(1)(B) requires EPA to specify mandatory compliance dates for each requirement of a rule promulgated under TSCA section 6(a), which must be as soon as practicable but no later than five years after promulgation except as provided in subsections (C) and (D) or in the case of a use exempted under TSCA section 6(g). TSCA section 6(d)(1)(C) states that EPA must specify mandatory compliance dates for the start of ban or phase-out requirements under a TSCA section 6(a) rule, which must be as soon as practicable but no later than five years after promulgation, except in the case of a use exempted under TSCA section 6(g); and subsection (D) requires EPA to specify mandatory compliance dates for full implementation of ban or phase-out requirements, which must be as soon as practicable. Additionally, TSCA section 6(d)(1)(E) directs EPA to provide for a reasonable transition period.

As noted in the preamble to the January 2021 final rule, the term ''practicable'' as used in the phrase ''to the extent practicable'' in TSCA section 6(h) are undefined, the phrases ''as soon as practicable'' and ''reasonable transition period'' as used in TSCA section 6(d)(1) are also undefined, and the legislative history on each provision is limited. Given the ambiguity in the statute, for purposes of the final rule under TSCA section 6(h), EPA presumed a 60-day compliance date was ''as soon as practicable'' where EPA determined a prohibition or restriction was practicable, unless there was support for a lengthier period of time on the basis of reasonably available information, such as information submitted in comments on the Exposure and Use Assessment or on the proposed rule, or in stakeholder dialogues. At the time, EPA believed that such a presumption would ensure that the compliance schedule is ''as soon as practicable,'' particularly in the context of the TSCA section 6(h) rules for chemicals identified as persistent, bioaccumulative and toxic, and given that the expedited timeframe for issuing a TSCA section 6(h) proposed rule did

not allow time for collection and assessment of new information separate from the comment opportunities during the development of and in response to the proposed rule. EPA noted that this approach also allows for submission of information from the sources most likely to have the information that would impact an EPA determination on whether or how best to adjust the compliance deadline to ensure that the final compliance deadline chosen is both ''as soon as practicable'' and provides a ''reasonable transition period.''

Despite significant outreach efforts, EPA did not receive timely or specific input from certain stakeholders during any public comment periods prior to issuance of the January 2021 final rule regarding the presence of PIP (3:1) in myriad articles. Absent this input, in the January 2021 final rule EPA determined that PIP (3:1) was not widely present in articles outside the aerospace and automotive sectors and that the presumption that a 60-day compliance date was practicable was appropriate. The comments received in response to EPA's March 2021 notification and request for comments, and the communications received before that document published in the **Federal Register**, presented new information demonstrating that a 60-day compliance date was not practicable and did not provide a reasonable transition period for the full implementation of a ban or phase-out for many industries (Ref. 14).

B. Proposed Further Compliance Date Extension

As a result of the comments received in response to EPA's March 2021 notification and request for comments, as well as on information provided during stakeholder meetings since the publication of the January 2021 final rule on PIP (3:1), EPA is proposing that the compliance date for PIP (3:1) and PIP (3:1)-containing articles, but not PIP (3:1)-containing products, should be further extended. EPA is proposing to extend the deadline adopted in the September 2021 final rule from March 8, 2022, to October 31, 2024. EPA has primarily based this proposal on the low end of the timelines provided by commenters and the specific, detailed timeline laid out by the consumer electronics sector (Ref. 21). Only two commenters, representing individual companies, stated that they needed less than this amount of time to phase out PIP (3:1) from their articles (Refs. 24 and 25). Many commenters suggested longer timelines, ranging from four to seven to fifteen years or more, although most did not provide sufficient detail to support these timelines. Once the use of PIP (3:1) has been identified in a specific article, the supplier can work with its supply chain to investigate and identify alternatives to the use of PIP (3:1) (Ref. 21). Most commenters indicated that the investigation of substitutes would have to wait until the specific uses are identified (Ref. 18). Commenters also stated that there may be considerable time and expense involved in recertifying commercial and consumer goods to applicable government requirements and industry consensus standards (Ref. 21). EPA is seeking public comment on the compliance deadline in this proposal, including information on the costs and benefits of the proposed compliance date extension, as well as information on exposures arising from PIP (3:1) in articles to improve EPA's understanding of the impacts of any future rulemaking.

EPA is also considering the opportunity stakeholders will have to provide additional information to support any needed further compliance date extensions for consideration in the subsequent rulemaking activity discussed in Unit III.D. In particular, EPA believes that stakeholders will continue to increase their understanding regarding the presence of PIP (3:1) in articles and potential substitutes for PIP (3:1). EPA anticipates that it will also have more information on PIP (3:1) uses and substitutes, allowing EPA to better describe the kinds of information EPA will use in determining whether further compliance date extensions are warranted or whether compliance dates should be applied to activities currently excluded from the January 2021 final rule.

While the consumer electronics sector and some industry commenters provided detailed information on the steps required to replace PIP (3:1) in their supply chains, along with reasonable estimates of the time needed to complete each of those steps, most did not. As outlined in the March 2021 notification and request for comments, EPA asked for information on:

- The specific articles that need an alternative compliance date;
- The basis for the alternative compliance date, taking into consideration the reasons supporting alternative deadlines in the January 2021 final rule, such as the January 1, 2022, date for photographic printing articles and the January 6, 2025, date for adhesives and sealants, with supporting documentation; and
- The additional time needed for specific articles to clear channels of trade.

EPA understands that many industry sectors are still attempting to determine exactly where PIP (3:1) is present in their supply chains. Nevertheless, to the extent that any industry sector believes that it needs a compliance date beyond October 31, 2024, EPA invites comments providing specific information and documentation supporting a further compliance date extension. EPA will evaluate requests for extensions beyond the October 2024 date by evaluating the level of detail and documentation provided by the commenters on:

- The specific uses of PIP (3:1) in articles throughout their supply chains;
- Concrete steps taken to identify, test, and qualify substitutes for those uses, including details on the substitutes tested and the specific certifications that would require updating;
- Estimates of the time required to identify, test, and qualify substitutes with supporting documentation; and
- Documentation of the specific need for replacement parts, which may include the documented service life of the equipment and specific identification of any applicable regulatory requirements for the assurance of replacement parts.

EPA also requests comment on whether these are the appropriate types of information for use in evaluating compliance date extensions, and whether there are other considerations that should apply.

Finally, while PIP (3:1) for use in articles described in 40 CFR 751.407(a)(ii) or (b) will continue to have recordkeeping requirements, EPA proposes to extend the recordkeeping compliance date in 40 CFR 751.407(d) for certain PIP (3:1)-containing articles, until October 31, 2024. Because industry is still in the process of identifying whether and where PIP (3:1) is present in many of the articles in their supply chains, the statement of compliance required in 40 CFR 751.407(d)(2) will not aid EPA in monitoring compliance with the regulation.

C. Future Rulemaking Activity on PBTs under TSCA section 6(h)

EPA intends to commence a new rulemaking effort on PIP (3:1) and the other four chemical substances regulated under TSCA section 6(h) and anticipates issuing a proposal in 2023. As discussed in EPA's March 2021 notification and request for comments, the Agency is reviewing the provisions of all five of the final rules issued under TSCA section 6(h), evaluating the other applicable provisions of amended

TSCA, and determining how recent Executive Orders and other Administration priorities (Refs. 7, 8, 9, 10, and 11) could be addressed, along with the additional information provided by stakeholders. As part of this process, EPA will address comments received in response to the March 2021 notification and request for comments that are not addressed by the September 2021 final rule extending PIP (3:1) compliance dates and will consider whether additional exposure reductions are practicable for all five of the PBT chemicals. In addition, over the next year, EPA anticipates that many of the industries currently trying to determine whether PIP (3:1) is present in their articles will acquire additional detailed information on the presence of PIP (3:1) in articles and will have begun to identify potential substitutes for those uses. At the time that this broader proposal is issued, to the extent that any industry sector still believes that they will not be able to comply with the PIP (3:1) compliance dates established in this rulemaking, EPA plans to invite that industry to provide specific detailed comments and documentation along the lines discussed in Unit III.B. EPA also expects to solicit comment and information on exposures arising from PIP (3:1) in articles to inform EPA's understanding of the impacts of any future rulemaking.

As part of the future proposed rulemaking, EPA also intends to thoroughly review the justifications underlying the exclusions in the January 2021 PIP (3:1) final rule and the other final rules under TSCA section 6(h) to determine whether to adopt new compliance dates for those activities currently excluded from the January 2021 final rules or to further extend compliance dates that have already been extended, consistent with the statutory directive to reduce exposure to the extent practicable.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Phenol, Isopropylated Phosphate (3:1) (PIP (3:1)); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rule. **Federal Register** (86 FR 894, January 6, 2021) (FRL–10018–88).
2. EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Phenol, Isopropylated Phosphate (3:1); Compliance Date Extension. **Federal Register** (86 FR 51823, September 17, 2021) (FRL–6015.5–03–OCSPP).
3. EPA. 2,4,6-Tris(tert-butyl)phenol (2,4,6-TTBP); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rule. **Federal Register** (86 FR 866, January 6, 2021) (FRL–10018–90).
4. EPA. Decabromodiphenyl Ether (DecaBDE); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rule. **Federal Register** (86 FR 880, January 6, 2021) (FRL–10018–87).
5. EPA. Pentachlorothiophenol (PCTP); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rule. **Federal Register** (86 FR 911, January 6, 2021) (FRL–10018–89).
6. EPA. Hexachlorobutadiene (HCBD); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rule. **Federal Register** (86 FR 922, January 6, 2021) (FRL–10018–91).
7. Executive Order 13985. Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. **Federal Register** (86 FR 7009, January 25, 2021).
8. Executive Order 13990. Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. **Federal Register** (86 FR 7037, of January 25, 2021).
9. Executive Order 14008. Tackling the Climate Crisis at Home and Abroad. **Federal Register** (86 FR 7619, February 1, 2021).
10. Presidential Memorandum. Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking. **Federal Register** (86 FR 86 FR 8845, February 10, 2021).
11. Fact Sheet: List of Agency Actions for Review. January 21, 2021. *https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/.*
12. Letter from the Consumer Technology Association (CTA) and the Information Technology Industry Council (ITI) to EPA on March 15, 2021. EPA–HQ–OPPT–2021–0202–0015.
13. EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Request for Comments. **Federal Register** (86 FR 14398, March 16, 2021) (FRL–10021–08).
14. Comments submitted to EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h). Docket ID EPA–HQ–OPPT–2021–0202–0001.
15. EPA. No Action Assurance Regarding Prohibition of Processing and Distribution of Phenol Isopropylated Phosphate (3:1), PIP (3:1) for Use in Articles, and PIP (3:1)-containing Articles under 40 CFR 751.407(a)(1). March 8, 2021. *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/public-comment-period-pbt-rules-and-no-action-assurance.*
16. Comment submitted by SEMI and the Semiconductor Equipment Association of Japan (SEAJ) to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0121.
17. Comment submitted by National Electrical Manufacturers Association (NEMA) to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0117.
18. Comment submitted by the Association of Equipment Manufacturers (AEM) to EPA on May 13, 2021. EPA–HQ–OPPT–2021–0202–0053.
19. Comment submitted by CNH Industrial to EPA on May 14, 2021. EPA–HQ–OPPT–2021–0202–0065.
20. Comment submitted by Hitachi High-Tech America Inc. to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0093.
21. Comment submitted by the Consumer Technology Association (CTA) and the Information Technology Industry Council (ITI) to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0148.
22. Comment submitted by the Air-Conditioning, Heating and Refrigeration Institute (AHRI) to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0143.
23. Comment submitted by the Test & Measure Coalition (T&M) to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0122.
24. Comment submitted by Roland DGA Corporation to EPA on May 17, 2021. HQ–OPPT–2021–0202–0129.
25. Comment submitted by Beveridge & Diamond, P.C. to EPA on May 14, 2021. EPA–HQ–OPPT–2021–0202–0069.
26. Comment submitted by LBX Company, LLC to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0082.
27. Comment submitted by Clark Equipment Company to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0095.
28. Comment submitted by Outdoor Power Equipment Institute (OPEI) to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0125.
29. Comment submitted by Safer Chemicals Healthy Families (SCHF) et al. to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0096.
30. EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals under TSCA Section 6(h); Response to Public Comments. December 2020. EPA–HQ–OPPT–2019–0080–0647.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.epa.gov/lawsregulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action under Executive Order 12866 (58 FR 51735, October 4, 1993) and was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB review have been reflected in the docket for this action.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection activities or burden subject to OMB review and approval under the PRA, 44 U.S.C. 3501 *et seq.* However, this action defers the costs associated with paperwork and recordkeeping burden for an existing information collection because the delayed compliance date alters the time horizon of the collection's analysis. Burden is defined in 5 CFR 1320.3(b). OMB has previously approved the information collection activities contained in the existing regulations and associated burden under OMB Control No. 2070–0213 (EPA ICR No. 2599.02). An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities, and the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves regulatory burden. This action would extend the compliance date for a prohibition on the processing and distributing in commerce of PIP (3:1) for use in certain articles and the processing and distributing in commerce of certain PIP (3:1)-containing articles, along with the associated recordkeeping requirements, from March 8, 2022, to October 31, 2024. EPA has therefore concluded that this action would relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because 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. Thus, Executive Order 13175 does not apply to this action.

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

This action is not a ''covered regulatory action'' under Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not an economically significant regulatory action as defined by Executive Order 12866.

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

This is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

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

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). As discussed in Unit II., this action is necessary to avoid widespread disruptions in the supply chains for a wide variety of essential goods and would not otherwise materially alter the final rule as published.

List of Subjects in 40 CFR Part 751

Environmental protection, Chemicals, Export notification, Hazardous substances, Import certification, Reporting and recordkeeping.

Michael S. Regan,

Administrator.

Therefore, for the reasons stated in the preamble, EPA proposes to amend 40 CFR part 751 as follows:

PART 751—REGULATION OF CERTAIN CHEMICAL SUBSTANCES AND MIXTURES UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

■ 1. The authority citation for part 751 continues to read as follows:

Authority: 15 U.S.C. 2605, 15 U.S.C. 2625(l)(4).

§ 751.407 [Amended]

■ 2. Amend § 751.407 in paragraphs (a)(2)(iii) and (d)(4) by removing ''March 8, 2022'' and adding ''October 31, 2024'' in its place.

[FR Doc. 2021–23337 Filed 10–27–21; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 86, No. 206
Thursday, October 28, 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

Agricultural Marketing Service

[Document No. AMS–ST–21–0082]

Plant Variety Protection Board Meeting on December 14, 2021

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the Agricultural Marketing Service (AMS) is announcing a meeting of the Plant Variety Protection Board (Board). The meeting is being held to discuss a variety of topics including, but not limited to, regulation updates, subcommittee activities, and program activities. The meeting is open to the public. This notice sets forth the schedule and location for the meeting.

DATES: Tuesday, December 14, 2021, 12:00 p.m.–3:00 p.m.

ADDRESSES: The meeting will be conducted through teleconference.

FOR FURTHER INFORMATION CONTACT: Jeffery Haynes, Commissioner, Plant Variety Protection Office, USDA, AMS, Science and Technology Program; Telephone: (202) 720–1066; or Email: *Jeffery.Haynes@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 10(a) of the FACA (5 U.S.C., Appendix 2), this notice informs the public that the Plant Variety Protection Office (PVPO) is sponsoring a meeting of the Board on December 6, 2021. The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) provides legal protection in the form of intellectual property rights to developers of new varieties of plants. A certificate of Plant Variety Protection is awarded to an owner of a crop variety after an examination shows that it is new, distinct from other varieties, genetically uniform and stable through successive generations. The term of protection is 20 years for most crops and 25 years for trees and vines. The PVPA also provides for a statutory Board (7 U.S.C. 2327). The Board is composed of 14 individuals who are experts in various areas of development and represent the seed industry sector, academia and government. The duties of the Board are to: (1) Advise the Secretary concerning the adoption of rules and regulations to facilitate the proper administration of the FACA; (2) provide advisory counsel to the Secretary on appeals concerning decisions on applications by the PVP Office and on requests for emergency public-interest compulsory licenses; and (3) advise the Secretary on any other matters under the Regulations and Rules of Practice and on all questions under Section 44 of the FACA, ''Public Interest in Wide Usage'' (7 U.S.C. 2404).

Meeting Agenda: The purpose of the meeting will be to discuss the PVPO 2021 and 2022 program activities, the electronic application system, and the working group update. The Board plans to discuss program activities that encourage the development of new plant varieties. The meeting will be open to the public. Those wishing to participate are encouraged to pre-register by November 29, 2021, by contacting Jeffery Haynes, Commissioner, at Telephone: (202) 720–1066; or Email: *Jeffery.Haynes@usda.gov.*

Meeting Accommodation: The meeting at USDA will provide reasonable accommodation to individuals with disabilities where appropriate. If you need reasonable accommodation to participate in this public meeting, please notify Jeffery Haynes at: Telephone: (202) 720–1066; or Email: *Jeffery.Haynes@usda.gov*.

Determinations for reasonable accommodation will be made on a case-by-case basis. Minutes of the meeting will be available for public review 30 days following the meeting on the internet at *http://www.ams.usda.gov/PVPO.*

Dated: October 25, 2021.

Cikena Reid,

USDA Committee Management Officer, White House Liaison Office, Office of the Secretary.

[FR Doc. 2021–23462 Filed 10–27–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; 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 November 29, 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 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 person are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of the Chief Financial Officer

Title: Request to Change FEHB Enrollment or to Receive Plan Brochures for Spouse Equity/Temporary Continuation of Coverage Enrollees/Direct Pay Annuitants (DPRS 2809).

OMB Control Number: 0505–0024.

Summary of Collection: Title 5, U.S. Code, chapter 89, sections 8905 and

8905a specifies the opportunities and conditions under which a retiree, survivor annuitant, separated employee, former spouse or former dependent child of a retiree, employee, or separated employee is eligible to change enrollment in the Federal Employees Health Benefits (FEHB) Program. DPRS–2809 is completed by the enrollee to make an open season enrollment change.

Need and Use of the Information: The DPRS–2809 is administered by the U.S. Department of Agriculture's National Finance Center (NFC) for use by separated employees or former spouses and former dependent children of active or separated employees. NFC determines whether all conditions permitting change in enrollment are met and implements the enrollment change. NFC also informs the FEHB carriers of the action. If this information were not collected, NFC could not comply with the provisions of title 5, U.S. Code, chapter 89.

Description of Respondents: Individuals.

Number of Respondents: 45,000.

Frequency of Responses: Reporting: Other (One time).

Total Burden Hours: 33,750.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–23513 Filed 10–27–21; 8:45 am]

BILLING CODE 3410–KS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Notice of Court Decision Not in Harmony With Final Results of Administrative Review of the Antidumping Duty Order and Notice of Amended Final Results of Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 19, 2021, the U.S. Court of International Trade (the CIT) issued its final judgment in *Husteel Co., Ltd.* v. *United States,* Consol. Court no. 19–00107, sustaining the Department of Commerce (Commerce)'s second remand results pertaining to the administrative review of the antidumping duty (AD) order on circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea). Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin assigned to Husteel Co., Ltd., Hyundai Steel Company, and the non-examined companies (SeAH Steel Corporation and NEXTEEL Co., Ltd.).

DATES: Applicable October 29, 2021.

FOR FURTHER INFORMATION CONTACT: Theodore Pearson, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2631.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2019, Commerce published its *Final Results* in the 2016–2017 AD administrative review of CWP from Korea.[1] Commerce determined in the *Final Results* that a particular market situation (PMS) existed in Korea with regard to the respondents' purchases of hot-rolled coil, the primary input for the production of subject merchandise and, accordingly, we made an adjustment to the cost of production for the purposes calculating normal value when based upon home market sales and for the purposes of the sales-below-cost test.[2] Husteel Co., Ltd., Hyundai Steel Company, SeAH Steel Corporation, and NEXTEEL Co., Ltd. appealed Commerce's *Final Results.* On October 19, 2020, the CIT remanded the *Final Results* to Commerce, holding that Commerce does not have statutory authority to address a PMS when determining normal value using home market sales by adjusting the cost of production for purposes of the sales-below-cost test.[3]

In its First Remand Redetermination, issued in December 2020, to address the PMS, rather than basing normal value on home market sales, Commerce based normal value on constructed value and continued to make PMS adjustments to calculate the respondents' costs when calculating constructed value.[4] The CIT remanded for a second time, after granting Commerce's request for a partial voluntary remand to reconsider its approach of basing normal value on constructed value and making certain PMS adjustments to address the PMS.[5]

In its Second Remand Redetermination, issued in June 2021, Commerce, under protest, determined normal value once again using home market sales, removed the PMS adjustments it applied in both the *Final Results* and the First Remand Redetermination, and recalculated the dumping margins.[6] The CIT sustained Commerce's Second Remand Redetermination.[7]

Timken Notice

In its decision in *Timken,*[8] as clarified by *Diamond Sawblades,*[9] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's October 19, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Husteel Co., Ltd., Hyundai Steel Company, and the non-examined companies (SeAH Steel Corporation and NEXTEEL Co., Ltd.) as follows:

[1] *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 84 FR 26401 (June 6, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See Final Results* IDM at Comment 1.

[3] *See Husteel Co., Ltd.* v. *United States,* 476 F. Supp. 3d 1363 (CIT 2020) (*Husteel I*).

[4] *See* Final Results of Redetermination Pursuant to Court Order *Husteel Co., Ltd., et al.* v. *United States,* Court No. 19–00107, Slip Op. 20–147 (CIT October 19, 2020), dated December 17, 2020 (First Remand Redetermination).

[5] *See Husteel Co., Ltd.* v. *United States,* 517 F. Supp. 3d 1342, 1348 (CIT 2021) (*Husteel II*). Commerce requested a partial voluntary remand in light of the Court's decision in *Saha Thai II. See Saha Thai Steel Pipe Pub. Co. Ltd.* v. *United States,* 487 F. Supp. 3d 1323 (CIT 2020) (*Saha Thai II*). In that case, the CIT found that ''Commerce's exclusion of home market sales due to distortions in the cost of production is not authorized by statute,'' and found that ''Commerce had not met the precondition of calculating constructed value when it made a particular market situation determination based on distorted cost of production.'' *Saha Thai II,* 487 F. Supp. 3d at 1331–34. The methodology that the Court rejected in *Saha Thai II* was the same methodology Commerce had applied in the First Remand Redetermination.

[6] *See* Final Results of Redetermination Pursuant to Court Order *Husteel Co., Ltd., et al.* v. *United States,* Court No. 19–00107, Slip Op. 21–51 (CIT May 3, 2021), dated June 22, 2021 (Second Remand Redetermination).

[7] *See Husteel Co., Ltd.* v. *United States,* Consol. Court No. 19–00107, Slip Op. 21–147 (CIT October 19, 2021) (*Husteel III*).

[8] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[9] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (Diamond Sawblades).

Company	Weighted average dumping margin (percent)
Husteel Co., Ltd	6.44
Hyundai Steel Company	4.82
Non-Examined Companies (SeAH Steel Corporation and NEXTEEL Co., Ltd.)	5.63

Amended Cash Deposit Rates

Because Husteel Co., Ltd., Hyundai Steel Company, and the non-examined companies (SeAH Steel Corporation and NEXTEEL Co., Ltd.) have a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review,[10] we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: Were produced and/or exported by Husteel Co., Ltd., Hyundai Steel Company or Hyundai Steel (Pipe Division), NEXTEEL Co., Ltd., or SeAH Steel Corporation, and were entered, or withdrawn from warehouse, for consumption during the period November 1, 2016, through October 31, 2017. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by Husteel Co., Ltd., Hyundai Steel Company, and the non-examined companies (SeAH Steel Corporation and NEXTEEL Co., Ltd.) in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where an import-specific *ad valorem* assessment rate is zero or *de minimis,*[11] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

[10] *See, e.g., Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 53631 (September 28, 2021).

[11] *See* 19 CFR 351.106(c)(2).

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(b), and 777(i)(1) of the Act.

Dated: October 22, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–23465 Filed 10–27–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB539]

Workshop on the Management Strategy Evaluation for Atlantic Bluefin Tuna

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

ACTION: Notice of workshop.

SUMMARY: NMFS is holding a public workshop via webinar for the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) and interested stakeholders to discuss the progress of development of the Management Strategy Evaluation for Atlantic bluefin tuna.

DATES: A virtual workshop that is open to the public will be held on November 4, 2021, from 2 p.m. to 4 p.m. EDT.

ADDRESSES: Please register to attend the workshop at: *https://forms.gle/9tkjiYw5VMvGAsjZ7.* Registration will close on November 3, 2021, at 5 p.m. EDT. Instructions for accessing the virtual workshop will be emailed to registered participants.

FOR FURTHER INFORMATION CONTACT: Rachel O'Malley, Office of International Affairs and Seafood Inspection, (301) 427–8373 or at *Rachel.O'Malley@noaa.gov*.

SUPPLEMENTARY INFORMATION: Management strategy evaluation (MSE) is a process that allows fishery managers and stakeholders (*e.g.,* industry, scientists, and non-governmental organizations) to assess how well different strategies achieve specified management objectives for a fishery. ICCAT has been engaged in developing an MSE for bluefin tuna for several years. NMFS, and the United States more broadly, participates in this MSE development process and has been engaging stakeholders and considering their input throughout the process through various means, including consultation with the Advisory Committee to the U.S. Section to ICCAT. The United States also participates in the development of the bluefin tuna MSE through active participation by U.S. scientists in ICCAT's Standing Committee on Research and Statistics (SCRS).

The November 4 workshop is intended to update stakeholders on the MSE approach being developed by ICCAT, including an update on preliminary candidate management procedures that will help to illustrate management tradeoffs for Atlantic bluefin tuna. The workshop will primarily be informational and educational. No binding decisions or formal, consensus-based recommendations will be made. While discussions at the workshop will help to inform U.S. scientists who are participating in work of the SCRS, recommendations directly affecting the development of the U.S. position relative to the bluefin tuna MSE will occur through established means, including consultation with the Advisory Committee. This workshop is intended to complement, not replace, existing opportunities for U.S. stakeholder input.

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: October 25, 2021.

Alexa Cole,

Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2021–23506 Filed 10–25–21; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Partner Probabilistic Snowfall Messaging Survey

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on

proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before December 27, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–xxxx in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Peter Rogers, Warning Coordination Meteorologist, National Weather Service Sioux Falls Weather Forecast Office, 26 Weather Lane, Sioux Falls, SD 57104, 605–330–4247, *peter.rogers@noaa.gov* or Dr. Julie Demuth, Project Scientist, National Center for Atmospheric Research, 3450 Mitchell Lane, Boulder, CO 80301, 303–497–8112, *jdemuth@ucar.edu*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for a new collection of information.

For decades, the National Weather Service (NWS) has provided deterministic (*i.e.,* single-value) snowfall forecasts or snowfall uncertainty forecasts with set, narrow ranges (*i.e.,* 2–4, 4–6 inches). More recent advancements in model ensembles have allowed for the calculation of probabilistic snowfall information. This forecast information can be messaged in a number of ways, for example, as the probability a location will receive some amount of snowfall, or as the probability the snowfall will be within a certain range. While statistically more accurate, it is unknown if probabilistic snowfall forecasts are understood or helpful to the end user in their decision making process.

The NWS and National Center for Atmospheric Research will work together to conduct a survey across the NWS Central Region to determine different core partners' needs, preferences, understanding, and usefulness regarding probabilistic snow forecasts. Core partners of interest for this effort are emergency managers, school officials, and transportation officials. The survey will be hosted as a web-based survey through QuestionPro and will be electronically distributed to core partners by local NWS forecast offices across the Central Region in early 2022.

Results from this survey will be used to determine how probabilistic snowfall information will be used in future NWS products and services with the ultimate goal of providing information in a way that improves core partners' ability to make informed decisions for the protection of life and property.

II. Method of Collection

We will program and field the survey as web-based, using QuestionPro. All NWS Weather Forecast Offices (WFOs) in the Central Region will be invited to send the survey via email to their emergency management, transportation, and school partners. A short invitation script will be provided to all WFO Warning Coordination Meteorologists to send the survey. The survey will remain open for three weeks, and we will ask WCMs to send one reminder halfway through that period (*i.e.,* after 10 days).

III. Data

OMB Control Number: 0648–XXXX.

Form Number(s): None.

Type of Review: Regular submission [new information collection].

Affected Public: Local (city or county), state, tribal, federal, and college/university emergency managers, local school principals, superintendents, transportation directors, and maintenance officials, and city, regional, or state transportation officials.

Estimated Number of Respondents: 300.

Estimated Time per Response: 10–12 minutes.

Estimated Total Annual Burden Hours: 60 hours.

Estimated Total Annual Cost to Public: None.

Respondent's Obligation: Voluntary.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–23512 Filed 10–27–21; 8:45 am]

BILLING CODE 3510–KE–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection, Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is announcing an opportunity for public comments on the proposed extension of a collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on rules relating to review of National Futures Association decisions in disciplinary, membership denial, registration, and member responsibility actions.

DATES: Comments must be submitted on or before December 27, 2021.

ADDRESSES: You may submit comments, identified by ''OMB Control No. 3038–0043'' by any of the following methods:

- The Agency's website, at *https://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher J. Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa Chiang, Senior Assistant General Counsel, Office of General Counsel, Commodity Futures Trading Commission, (202) 418–5578; email: *mchiang@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. 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.[1]

Title: Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions (OMB Control No. 3038–0043). This is a request for extension of a currently approved information collection.

Abstract: 17 CFR part 171 rules require a registered futures association to provide fair and orderly procedures for membership and disciplinary actions. The Commission's review of decisions of registered futures associations in disciplinary, membership denial, registration, and member responsibility actions is governed by Section 17(h)(2) of the Commodity Exchange Act, 7 U.S.C. 21(h)(2). The rules establish procedures and standards for Commission review of such actions, and the reporting requirements included in the procedural rules are either directly required by Section 17 of the Commodity Exchange Act or are necessary to the type of appellate review role Congress intended the Commission to undertake when it adopted that provision.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The estimated annual respondent burden for this collection is set forth below.

Respondents/Affected Entities: Individuals or entities filing appeals from disciplinary and membership decisions by National Futures Association.

Estimated number of respondents per year: 1.

Estimated average burden hour(s) per response: 1 hour.[3]

Estimated number of annual responses per respondent: 3.

Estimated total annual burden on respondent(s): 3 hours.

Frequency of collection: On occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: October 22, 2021.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2021–23442 Filed 10–27–21; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before November 29, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the

[1] The OMB control numbers for the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981).

[2] 17 CFR 145.9.

[3] This estimate includes the time needed to transmit decisions of disciplinary, membership denial, registration, and member responsibility actions to the Commission for review.

information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–3033, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

• *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street,NW, Washington, DC 20581.

• *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Melissa Chiang, Senior Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, (202) 418–5578; email: *mchiang@cftc.gov,* and refer to OMB Control No. 3038–3033.

SUPPLEMENTARY INFORMATION:

■ *Title:* Notification of Pending Legal Proceedings Pursuant to 17 CFR 1.60 (OMB Control Number 3038–0033). This is a request for extension of a currently approved information collection.

Abstract: Rule 1.60 of the Commission's Part 1 regulations requires every designated contract market (''DCM'') and futures commission merchant (''FCM'') to submit to the Commodity Futures Trading Commission (''Commission'') certain specified information concerning pending legal proceedings to which the DCM or FCM is a party or to which its property is subject. Rule 37.2 of the same part makes the requirement of 1.60 applicable to swap execution facilities (''SEFs''). This renewal updates the total requested burden based on available reported data.

The Commission initially estimated that approximately 1,800 entities would be affected by this rule. The Commission originally estimated that 97 entities would be affected by this rule. That number was based on the number of active registrants, including 61 FCMs,16 DCMs, and 20 SEFs.

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. On August 23, 2021, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 86 FR 47087 (''60-Day Notice'') The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The respondent burden for this collection is estimated to average 0.25 hours per response, once annually. This estimate includes providing the Commission with notice and copies of specified legal documents.

Estimated Number of Respondents: 97.

Estimated Average Burden Hours per Respondent: 0.25.

Estimated Total Annual Burden Hours: 24.25.

Frequency of Collection: As needed.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: October 22, 2021.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2021–23443 Filed 10–27–21; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before November 29, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0007, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

• *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

• *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should

[1] 17 CFR 145.9.

include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Jacob Chachkin, Associate Chief Counsel, Market Participants Division, Commodity Futures Trading Commission, (202) 418–5496; email: *jchachkin@cftc.gov,* and refer to OMB Control No. 3038–0007.

SUPPLEMENTARY INFORMATION:

Title: Regulation of Domestic Exchange-Traded Options (OMB Control No. 3038–0007). This is a request for extension of a currently approved information collection.

Abstract: The rules require futures commission merchants (FCMs) and introducing brokers (IBs): (1) To provide their customers with standard risk disclosure statements concerning the risk of trading commodity interests; and (2) to retain all promotional material and the source of authority for information contained therein. The purpose of these rules is to ensure that customers are advised of the risks of trading commodity interests and to avoid fraud and misrepresentation. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue. The disclosure and recordkeeping requirements are necessary to monitor and to verify compliance by FCMs and IBs with their obligations concerning disclosure and promotional material.

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. On August 18, 2021, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 86 FR 46227 (''60-Day Notice'') The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission estimates the burden of this collection of information as follows:

Estimated Number of Annual Respondents: 1,112.

Estimated Average Annual Burden Hours per Respondent: 34.2.

Estimated Total Annual Burden Hours: 38,030.4.

Frequency of Collection: Occasional.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: October 22, 2021.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2021–23441 Filed 10–27–21; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Friday, October 29, 2021; 10 a.m.

PLACE: This meeting will be conducted by remote means.

STATUS: Commission Meeting—Closed to the Public.

MATTER TO BE CONSIDERED: Briefing Matter.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504–7479 (Office) or 240–863–8938 (cell).

Dated: October 25, 2021.

Alberta E. Mills,

Secretary.

[FR Doc. 2021–23551 Filed 10–26–21; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Decision for the Juniper Butte Range Land Withdrawal Extension, Mountain Home Air Force Base, Idaho

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of Decision.

SUMMARY: The Air Force is publishing this notice of decision on the continuing Air Force need for Juniper Butte Range, Idaho Land Withdrawal and Extension for 25 Years.

ADDRESSES: Ms. Sheri Robertson 366 FW/PA, 366 Gunfighter Avenue, Suite 310, Mountain Home AFB 83648, (208) 828–2299; *sheri.robertson@us.af.mil.*

SUPPLEMENTARY INFORMATION: The Air Force is publishing this final notice to inform state agencies and the public of the decision that there is a continuing need for Juniper Butte Range Land Withdrawal and of the extension for 25 years. In accordance with Public Law 105–261, Section 2915, this 25-year extension of the 1998 withdrawal will occur without a new authorization by Congress after notification to Congress and the Secretary of the Interior and a **Federal Register** and local newspaper publication of that notification and an accompanying 60-day comment period. Comments should be sent to the address provided above, and will be forwarded to the Secretaries of the Air Force and Interior.

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2021–23460 Filed 10–27–21; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1006–002.

Applicants: DATC Path 15, LLC.

Description: Compliance filing: Compliance Filing 2021 to be effective 6/13/2020.

Filed Date: 10/22/21.

Accession Number: 20211022–5162.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER21–1006–002.

Applicants: El Paso Electric Company.

Description: Tariff Amendment: Service Agreement No. 347, Nonconforming LGIA with Hecate to be effective 1/7/2021.

Filed Date: 10/22/21.

Accession Number: 20211022–5078.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER21–1007–002.

Applicants: El Paso Electric Company.

Description: Tariff Amendment: Service Agreement No. 348,

Nonconforming LGIA with Hecate 2 to be effective 1/7/2021.

Filed Date: 10/22/21.

Accession Number: 20211022–5081.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER21–2496–001.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2021–10–21 NAESB Amended Filing to Original Compliance Filing to be effective 12/31/9998.

Filed Date: 10/21/21.

Accession Number: 20211021–5145.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER21–2514–001.

Applicants: Public Service Company of New Mexico.

Description: Compliance filing: Amendment to PNM's Order No. 676–I Compliance Filing to be effective 12/31/9998.

Filed Date: 10/22/21.

Accession Number: 20211022–5169.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER21–2523–001.

Applicants: Gulf Power Company.

Description: Compliance filing: Supplement to Order No. 676–I Compliance Filing to be effective 12/31/9998.

Filed Date: 10/22/21.

Accession Number: 20211022–5092.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER21–2524–001.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance filing to ER21–2524–000 re: Order 676–1 in RM05–5–027 to be effective 12/31/9998.

Filed Date: 10/22/21.

Accession Number: 20211022–5100.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER21–2525–001.

Applicants: Alabama Power Company.

Description: Compliance filing: OATT Attachment O Order No. 676–I Compliance Filing Supplement to be effective 12/31/9998.

Filed Date: 10/22/21.

Accession Number: 20211022–5120.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER21–2529–001.

Applicants: ISO New England Inc., Eversource Energy Service Company (as agent), Green Mountain Power Corporation, New England Power Company, Vermont Transco LLC.

Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: PTO AC; Amended Revisions to Schedule 20A and 21 to Comply with Order No. 676–I to be effective 12/31/9998.

Filed Date: 10/22/21.

Accession Number: 20211022–5032.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER21–2592–001.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: CXA La Paloma Deficiency Response (SA 420) to be effective 8/3/2021.

Filed Date: 10/22/21.

Accession Number: 20211022–5064.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER21–941–001.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: ISO–NE & NEPOOL; Revisions to Sch 24 to Comply with Order No. 676–I in ER21–941 to be effective 12/31/9998.

Filed Date: 10/22/21.

Accession Number: 20211022–5059.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER22–174–000.

Applicants: Andro Hydro, LLC.

Description: Petition for Limited Waiver of Andro Hydro LLC.

Filed Date: 10/20/21.

Accession Number: 20211020–5181.

Comment Date: 5 p.m. ET 11/10/21.

Docket Numbers: ER22–178–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3704R1 Union Electric/Evergy Missouri West/MISO Int Agr to be effective 12/21/2021.

Filed Date: 10/22/21.

Accession Number: 20211022–5005.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER22–179–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: Administrative Revisions to Attachment K—Transmission Planning Process to be effective 1/1/2022.

Filed Date: 10/22/21.

Accession Number: 20211022–5022.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER22–180–000.

Applicants: NorthWestern Corporation.

Description: Tariff Amendment: Cancellation of RS 327—NorthernGrid Funding Agreement Planning Cycle 2020–2021 to be effective 12/31/2021.

Filed Date: 10/22/21.

Accession Number: 20211022–5026.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER22–181–000.

Applicants: Dry Lake Solar Holdings LLC.

Description: Tariff Amendment: Notice of Cancellation of Market-Based Rate Tariff to be effective 12/22/2021.

Filed Date: 10/22/21.

Accession Number: 20211022–5027.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER22–182–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6213; Queue No. AF1–147 to be effective 9/27/2021.

Filed Date: 10/22/21.

Accession Number: 20211022–5047.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER22–183–000.

Applicants: San Diego Gas & Electric Company.

Description: TO5 Formula Depreciation Rate Change For Common Plant and Electric General Plant of San Diego Gas & Electric Company.

Filed Date: 10/22/21.

Accession Number: 20211022–5048.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER22–184–000.

Applicants: Duke Energy Progress, LLC.

Description: § 205(d) Rate Filing: DEP—Updated Nuclear Decommissioning Expense RS No. 381 to be effective 7/1/2021.

Filed Date: 10/22/21.

Accession Number: 20211022–5068.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER22–186–000.

Applicants: Middletown Coke Company, LLC.

Description: Baseline eTariff Filing: Reactive tariff baseline filing to be effective 11/1/2021.

Filed Date: 10/22/21.

Accession Number: 20211022–5123.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER22–187–000.

Applicants: Smoky Mountain Transmission LLC.

Description: Request for Waivers and Blanket Authorization of Smoky Mountain Transmission LLC.

Filed Date: 10/22/21.

Accession Number: 20211022–5126.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER22–188–000.

Applicants: Indra Power Business CT, LLC.

Description: Baseline eTariff Filing: Tariffs and Agreements to be effective 12/21/2021.

Filed Date: 10/22/21.

Accession Number: 20211022–5127.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER22–189–000.

Applicants: Consolidated Edison Company of New York, Inc., New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Consolidated Edison Company of New York, Inc. submits tariff filing per

35.13(a)(2)(iii: Joint Section 205 filing of TPIA among NYISO, ConEdison and Transco SA No. 2654 to be effective 10/8/2021.

Filed Date: 10/22/21.

Accession Number: 20211022–5128.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER22–190–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2021–10–22 Joint Owned Unit Pilot Agreement to be effective 12/22/2021.

Filed Date: 10/22/21.

Accession Number: 20211022–5131.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER22–191–000.

Applicants: Tidal Energy Marketing (U.S.) L.L.C.

Description: Baseline eTariff Filing: Application for MBR Authorization to be effective 12/22/2021.

Filed Date: 10/22/21.

Accession Number: 20211022–5144.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER22–192–000.

Applicants: Evolugen Trading and Marketing LP.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 12/22/2021.

Filed Date: 10/22/21.

Accession Number: 20211022–5158.

Comment Date: 5 p.m. ET 11/12/21.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES22–14–000.

Applicants: LS Power Grid California, LLC.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of LS Power Grid California, LLC.

Filed Date: 10/21/21.

Accession Number: 20211021–5164.

Comment Date: 5 p.m. ET 11/12/21.

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: October 22, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–23480 Filed 10–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–27–000]

North Baja Pipeline, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed North Baja XPress Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the North Baja XPress Project (Project), proposed by North Baja Pipeline, LLC (North Baja) in the above-referenced docket. North Baja requests authorization to modify an existing compressor station in La Paz County, Arizona, as well as install additional flow measurement facilities and piping modifications at two existing meter stations in La Paz County, Arizona and Imperial County, California, respectively. North Baja states that the purpose of the Project is enable the transport of 495,000 dekatherms per day of natural gas to the United States/Mexico border for its shipper, Sempra LNG international, LLC.

The final EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act. The final EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding.

The final EIS responds to comments that were received on the Commission's September 8, 2020 Environmental Assessment (EA) and July 9, 2021 draft EIS [1] and discloses downstream greenhouse gas emissions for the Project. With the exception of climate change impacts, FERC staff concludes that approval of the proposed Project, with the mitigation measures recommended in the EIS, would not result in significant environmental impacts. FERC staff continues to be unable to determine significance with regards to climate change impacts.

The U.S. Department of the Interior Bureau of Land Management (BLM) participated as a cooperating agency in the preparation of the EA and the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the National Environmental Policy Act analysis. The BLM may adopt and use the EA and EIS to consider the issuance of a right-of-way grant for the use of a temporary workspace requested by North Baja on BLM-administered public lands adjacent to the Ogilby Meter Station in Imperial County, California.

The final EIS incorporates the above-referenced EA, which addressed the potential environmental effects of the construction and operation of the following Project facilities:

- One new 31,900-horsepower compressor unit and restaging of two existing 7,700-horsepower compressor units at North Baja's existing Ehrenberg Compressor Station in La Paz County, Arizona; and
- flow measurement facilities and piping modifications at North Baja's existing El Paso and Ogilby Meter Stations in La Paz County, Arizona and Imperial County, California, respectively.

The Commission mailed a copy of the *Notice of Availability of the Final Environmental Impact Statement for the Proposed North Baja XPress Project* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. The final EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the final EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*) select ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.* CP20–27–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

[1] The Project's EA is available on eLibrary under accession no. 20200908–3009, and the draft EIS is available under accession no. 20210709–3005.

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the *eLibrary* link. 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 that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: October 22, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–23482 Filed 10–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2883–000]

Aquenergy Systems, LLC; Notice of Authorization for Continued Project Operation

On May 30, 2018, Aquenergy Systems, LLC, licensee for the Fries Hydroelectric Project No.2883, filed an Application for a New Major License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Fries Hydroelectric Project is located on the New River in the Town of Fries, Grayson County, Virginia.

The license for Project No. 2883 was issued for a period ending May 31, 2020. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2883 is issued to Aquenergy Systems, LLC for a period effective June 1, 2020 through May 31, 2021 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 31, 2021, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Aquenergy Systems, LLC is authorized to continue operation of the Fries Hydroelectric Project, until such time as the Commission acts on its application for a new major license.

Dated: October 19, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–23486 Filed 10–27–21; 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:

Filings Instituting Proceedings

Docket Number: PR22–2–000.

Applicants: Southern California Gas Company.

Description: Submits tariff filing per 284.123(b),(e)+(g): Offshore_Delivery_Service_Rate_Revision_October_2021 to be effective 10/1/2021 under PR22–2 Filing.

Filed Date: 10/22/2021.

Accession Number: 20211022–5000.

Comments Due: 5 p.m. ET 11/12/21.

284.123(g) Protests Due: 5 p.m. ET 12/21/21.

Docket Numbers: RP22–67–000.

Applicants: Texas Eastern Transmission, LP.

Description: Compliance filing: TETLP OFO October 2021 Penalty Disbursement Report to be effective N/A.

Filed Date: 10/20/21.

Accession Number: 20211020–5105.

Comment Date: 5 p.m. ET 11/1/21.

Docket Numbers: RP22–68–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10.21.21 Negotiated Rates—Castleton Commodities Merchant Trading H–4010–89 to be effective 11/1/2021.

Filed Date: 10/21/21.

Accession Number: 20211021–5025.

Comment Date: 5 p.m. ET 11/2/21.

Docket Numbers: RP22–69–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10.21.21 Negotiated Rates—Castleton Commodities Merchant Trading R–4010–30 to be effective 11/1/2021.

Filed Date: 10/21/21.

Accession Number: 20211021–5026.

Comment Date: 5 p.m. ET 11/2/21.

Docket Numbers: RP22–70–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10.21.21 Negotiated Rates—Freepoint Commodities LLC R–7250–39 to be effective 11/1/2021.

Filed Date: 10/21/21.

Accession Number: 20211021–5027.

Comment Date: 5 p.m. ET 11/2/21.

Docket Numbers: RP22–71–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10.21.21 Negotiated Rates—Freepoint Commodities LLC R–7250–40 to be effective 11/1/2021.

Filed Date: 10/21/21.

Accession Number: 20211021–5028.

Comment Date: 5 p.m. ET 11/2/21.

Docket Numbers: RP22–72–000.

Applicants: Egan Hub Storage, LLC.

Description: Compliance filing: Egan Hub Order 587–Z (Docket No. RM96–1–042) Compliance Filing to be effective 6/1/2022.

Filed Date: 10/21/21.

Accession Number: 20211021–5032.

Comment Date: 5 p.m. ET 11/2/21.

Docket Numbers: RP22–73–000.

Applicants: Bobcat Gas Storage.

Description: Compliance filing: BGS Order 587–Z (Docket No. RM96–1–042) Compliance Filing to be effective 6/1/2022.

Filed Date: 10/21/21.

Accession Number: 20211021–5039.

Comment Date: 5 p.m. ET 11/2/21.

Docket Numbers: RP22–74–000.

Applicants: Steckman Ridge, LP.

Description: Compliance filing: SR Order 587–Z (Docket No. RM96–1–042) Compliance Filing to be effective 6/1/2022.

Filed Date: 10/21/21.

Accession Number: 20211021–5052.

Comment Date: 5 p.m. ET 11/2/21.

Docket Numbers: RP22–75–000.

Applicants: Black Hills Shoshone Pipeline, LLC.

Description: Compliance filing: NAESB Compliance Filing—Order No. 587–Z to be effective 11/1/2021.

Filed Date: 10/21/21.

Accession Number: 20211021–5078.

Comment Date: 5 p.m. ET 11/2/21.

Docket Numbers: RP22–76–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: Compliance filing: AGT Order 587–Z (Docket RM96–1–042) Compliance Filing to be effective 6/1/2022.

Filed Date: 10/22/21.

Accession Number: 20211022–5079.

Comment Date: 5 p.m. ET 11/3/21.

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.

Filings in Existing Proceedings

Docket Numbers: RP22–77–000.

Applicants: Big Sandy Pipeline, LLC.

Description: Compliance filing: Big Sandy Order 587–Z (Docket RM96–1–042) Compliance Filing to be effective 6/1/2022.

Filed Date: 10/22/21.

Accession Number: 20211022–5083.

Comment Date: 5 p.m. ET 11/3/21.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 22, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–23479 Filed 10–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. Ic21–34–000]

Commission Information Collection Activities (Ferc–500 and Ferc–505); Consolidated Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collections, FERC–500 (Application for License/Relicense for Water Projects with More than 10 Megawatt (MW) Capacity); and FERC–505 (Application for Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determinations).

DATES: Comments on the collections of information are due December 27, 2021.

ADDRESSES: You may provide your comments (identified by Docket No. IC21–34–000) on FERC–500 and/or FERC–505 by one of the following methods:

- *Electronic Filing: http://www.ferc.gov (preferred method)* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov*. For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov*.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* or by telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION: *Titles:* FERC–500 (Application for License/Relicense for Water Projects with More than 10 Megawatt (MW) Capacity) and FERC–505 (Application for Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination).

OMB Control Nos.: 1902–0058 (FERC–500) and 1902–0115 (FERC–505).

Type of Request: Extension of currently approved information collections.

Abstract: Part I of the Federal Power Act (FPA) [1] authorizes the Commission to grant hydropower licenses and exemptions to citizens of the United States, or to any corporation organized under the laws of United States or any State thereof, or to any State or municipality. Holders of such licenses and exemptions construct, operate, and maintain dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction. This jurisdiction stems from Congressional authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States.

FERC–500 and FERC–505 comprise applications and other information collection activities implemented under numerous regulations. Some of the regulations are relevant to both FERC–500 and FERC–505, and others are relevant only to FERC–500 or FERC–505. Effective October 4, 2021,[2]

[1] 16 U.S.C. 791a–823g.

[2] Before October 4, 2021, FERC–500 applied only to projects with an installed capacity of more than 5 MW. On August 5, 2021, the Commission published a final rule that affected the paperwork burdens of FERC–500 by changing the regulatory threshold for certain licensing requirements from 5 MW to 10 MW. As a result, the regulatory threshold for FERC–500 is now projects with an installed capacity of more than 10 MW. *See* Final Rule, Docket RM20–21–000, 86 FR 42710 (Aug. 5, 2021).

information collection activities within FERC–500 are for projects with an installed capacity of more than 10 MW. Information collection activities within FERC–505 are for other smaller projects. The applicability and required contents of each activity are listed at the pairs of regulations listed in the following table:

Title	18 CFR cites	FERC–500	FERC–505
Application for License for Major [3] Unconstructed Project and Major Modified Project	4.40 and 4.41	Yes	Yes
Application for License for Major Project—Existing Dam	4.50 and 4.51	Yes	Yes
Application for License for Minor [4] Water Power Projects and Major Water Power Projects More Than 10 Megawatts.	4.60 and 4.61	No	Yes
Application for License for Transmission Line Only	4.70 and 4.71	Yes	Yes
Exemption of Small Conduit Hydroelectric Facilities	4.90 and 4.92	No	Yes
Exemption of Small Hydroelectric Power Projects of 10 Megawatts or Less	4.101 and 4.107	No	Yes
Application for Amendment of License	4.200 and 4.201	Yes	Yes
Notice of Intent to Construct Qualifying Conduit Hydropower Facilities	4.400 and 4.401	No	Yes
Application Under the Integrated Licensing Process	5.1 and 5.18	No	Yes

Each of the ''contents'' regulations listed above requires information that assists the Commission in identifying the respondent and the type of proposed project. In addition, certain types of applications must include all [5] or some [6] of the following exhibits:

- Exhibit A is a description of the project.
- Exhibit B is a statement of project operation and resource utilization.
- Exhibit C is a proposed construction schedule for the project.
- Exhibit D is a statement of project costs and financing.
- Exhibit E is an environmental report.
- Exhibit F consists of general design drawings of the principal project works described under Exhibit A and supporting information used as the basis of design.
- Exhibit G is a map of the project.

No exhibits are required in a Notice of Intent to Construct Qualifying Conduit Hydropower Facilities under 18 CFR 4.401. However, the Notice of Intent must include:

- Statements that the proposed project will use the hydroelectric potential of a non-federally owned conduit and that the proposed facility has not been licensed or exempted from the licensing requirements and Part I of the FPA;
- A description of the proposed facility;
- Project drawings;
- If applicable, the preliminary permit number for the proposed facility; and
- Verification in accordance with 18 CFR 4.401(g).

In addition to the reporting requirements described above, FERC–500 and FERC–505 also contain requirements for those entities who ultimately receive a FERC license or exemption. Both information collections include an activity related to recreation signage (18 CFR 8.1 and 8.2), which is used to inform the public of appropriate uses at the project. FERC–500 includes an annual conveyance report (18 CFR 141.15), which must be submitted only if a conveyance of easements or rights-of-way across project lands, or a lease of project lands, has occurred in the previous year.

Types of Respondents: Entities requesting Licenses, Relicenses, Exemptions, or Qualifying Conduit Facility Determinations, and certain entities in receipt of Commission Licenses and Exemptions.

Estimate of Annual Burden: For FERC–500, the Commission estimates 487 responses, 320,962 hours, and $27,923,694 annually. For FERC–505, the Commission estimates 324 responses, 24,555 hours, and $2,136,285 annually. These burdens are itemized in detail in the following table:

Type of response A.	Number of respondents and responses [7] B.	Average burden & cost [8] per response C.	Average annual burden hours & total annual cost (Column B × Column C) D.
FERC–500, Application for License/Relicense for Water Projects with Greater than 10 MW Capacity [9].	9	35,602.55 hrs.; $3,097,421.85	320,422.95 hrs.; $27,876,796.65.
FERC–500, Request for Authorization to Use Expedited Licensing Process.	5	40 hrs.; $3,480	200 hrs.; $17,400.
FERC–500, Annual Conveyance Reports	41	3 hrs.; $261	123 hrs.; $10,701
FERC–500, Recreation Posting	432	0.5 hr.; $43.50	216 hrs.; $18,792.
Subtotals for FERC–500	487	N/A	320,961.95 hrs.; $27,923,689.65.
FERC–505, for Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determinations.	32	756.59 hrs.; $65,823.33	24,210.88 hrs.; $2,106,346.56.
FERC–505, Request for Authorization to Use Expedited Licensing Process.	5	40 hrs.; $3,480	200 hrs.; $17,400.
FERC–505, Recreation Posting	287	0.5 hr.; $43.50	143.5 hrs.; $12,484.50.
Sub-Totals for FERC–505	324	N/A	24,554.38 hrs.; $2,136,231.06.

[3] As defined at 18 CFR 4.30(b)(14) through 4.30(b)(16), a ''major'' project has a total installed generating capacity of more than 1.5 MW.

[4] As defined at 18 CFR 4.30(b)(17), a ''minor'' project has a total installed generating capacity of 1.5 MW or less.

[5] The following regulations require Exhibits A through G: 18 CFR 4.41, 4.51, 4.61, and 4.71.

[6] The following regulations do not require Exhibits B, C, and D: 18 CFR 4.92 and 4.107. The regulations at 18 CFR 4.201 and 5.18 pertain to several types of applications and projects. The exhibits required by those regulations vary, depending on the type of application.

Type of response	Number of respondents and responses [7]	Average burden & cost [8] per response	Average annual burden hours & total annual cost (Column B × Column C)
A.	B.	C.	D.
Totals	811	N/A	345,516.33 hrs.; $30,068,620.71.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 22, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–23481 Filed 10–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9821–107]

Ampersand Ogdensburg Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Extension of License Term.

b. *Project No:* 9821–107.

c. *Date Filed:* May 26, 2021.

d. *Applicant:* Ampersand Ogdensburg Hydro, LLC.

e. *Name of Project:* Ogdensburg Hydroelectric Project.

f. *Location:* The project is located on the Oswegatchie River in St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Jason Huang, Ampersand Ogdensburg, LLC., 717 Atlantic Avenue, Suite 1A, Boston, MA 02111, (617) 933–7200.

i. *FERC Contact:* Ashish Desai, (202) 502–8370, *Ashish.Desai@ferc.gov*.

j. *Deadline for Filing Comments, Motions to Intervene, and Protests:* November 18, 2021.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–9821–107. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Ampersand Ogdensburg Hydro, LLC., licensee for the Ogdensburg Project No. 9821, filed a request with the Commission for 36-month extension of the 40-year license for the project, currently expiring on May 31, 2027. The licensee requests the extension to allow additional time to begin relicensing the project, as it has several other projects currently in the relicensing process.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address,

[7] There is one response per respondent for each activity in this information collection.

[8] Commission staff estimates that the average industry hour4ly cost for this information collection is approximated by the current FERC 2021 average hourly costs for wages and benefits, *i.e.,* $87.00/hour.

[9] The previously reported 33 responses associated with Comprehensive Plans were incorrect and not consistent in how we have approached the number of respondents for this Information Collection. As a result, the total number of hours associated with the Comprehensive Plans requirement was moved to the total number of hours associated with the application process. The Commission does not break down pieces of this process (as it is all considered one application) and so this edit was made for consistency across the information collection.

and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: October 19, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–23487 Filed 10–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–187–000]

Smoky Mountain Transmission LLC; Supplemental Notice That Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Smoky Mountain Transmission LLC's filing includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 12, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 22, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–23483 Filed 10–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–94–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Regional Energy Access Expansion Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Regional Energy Access Expansion Project (Project) involving construction and operation of facilities by Transcontinental Gas Pipe Line Company, LLC (Transco) in Bucks, Chester, Delaware, Luzerne, Monroe, Northampton, Wyoming, and York Counties, Pennsylvania; and Burlington, Camden, Gloucester, Hunterdon, Mercer, Somerset, and Warren Counties, New Jersey; and Baltimore County, Maryland. The Commission will use this EIS in its decision-making process to determine whether the project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the *Schedule for Environmental Review* section of this notice.

As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' By notice issued on July 24, 2020, in Docket No. PF20–3–000, the Commission opened a scoping period during Transco's pre-filing process; and staff intends to prepare an EIS that will address the concerns raised during that scoping period as well as comments received in response to this notice. Therefore, the Commission requests comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on November 19, 2021. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

As mentioned above, the Commission previously opened a scoping period which expired on August 24, 2020. All substantive written and oral comments provided during scoping will be addressed in the EIS. Therefore, if you submitted comments on this Project to the Commission during the previous scoping process, you do not need to file those comments again.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation

would be determined by a judge in accordance with state law. The Commission does not grant, exercise, or oversee the exercise of eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Transco provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21–94–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project, the Project Purpose and Need, and Expected Impacts

Transco plans to construct and operate approximately 36.1 miles of pipeline loop [1] and one new compressor station, as well as modify existing compressor stations and facilities in Pennsylvania and New Jersey. The Project would provide about 829 million standard cubic feet of natural gas per day to multiple delivery points along Transco's existing system in Pennsylvania, New Jersey, and Maryland. According to Transco, its Project would provide its customers with enhanced access to Marcellus and Utica Shale natural gas supplies.

The Project would consist of the following facilities:

- Installation of 22.3 miles of 30-inch-diameter pipeline loop in Luzerne County, Pennsylvania (Regional Energy Lateral);
- installation of 13.8 miles of 42-inch-diameter pipeline loop in Monroe County, Pennsylvania (Effort Loop);
- installation of the new electric-motor driven Compressor Station 201 (9,000 horsepower [hp]) in Gloucester County, New Jersey);
- installation of two gas turbine driven compressor units (31,800 hp) at existing Compressor Station 505 in Somerset County, New Jersey to accommodate the replacement of 16,000 hp from eight existing compressors and increase the certificated station compression by 15,800 hp;
- installation of two gas turbine compressor units (63,742 hp) and modifications to three existing compressors at existing Compressor Station 515 in Luzerne County, Pennsylvania to accommodate the replacement of 17,000 hp from five existing compressors and increase the certificated station compression by 46,742 hp;
- modifications at existing compressor stations, meter stations, interconnects, and ancillary facilities in Pennsylvania, New Jersey, and Maryland; and
- installation of ancillary facilities such as mainline valves, communication facilities, and pig [2] launchers and receivers.

The general location of the Project facilities is shown in appendix 1.[3]

Based on the environmental information provided by Transco, construction of the proposed facilities would disturb about 807.7 acres of land for the aboveground facilities and the pipeline. Following construction, Transco would maintain about 231.2 acres for operation of the Project facilities; the remaining acreage would be restored and revert to former uses.

Based on an initial review of Transco's proposal and public comments, Commission staff have identified several expected impacts that deserve attention in the EIS. The Project would impact 83 waterbodies, 17.4 acres of wetland, and greenhouse gas emissions.

The NEPA Process and the EIS

The EIS issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use and visual impacts;
- socioeconomics and environmental justice;
- air quality and noise;
- reliability and safety; and
- cumulative impacts.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The EIS will present Commission staff's independent analysis of the issues. The U.S. Army Corps of Engineers, Baltimore and Philadelphia Districts and the U.S. Environmental Protection Agency are cooperating

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[3] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary.'' For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

agencies in the preparation of the EIS.[4] Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary [5] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

Alternatives Under Consideration

The EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.[6] Alternatives currently under consideration include:

- The no-action alternative, meaning the Project is not implemented;
- use of other existing and proposed pipeline systems; and
- alternative locations to construct the Project facilities.

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed action or segments of the proposed action. Please focus your comments on reasonable alternatives (including alternative facility sites and pipeline routes) that meet the Project objectives, are technically and economically feasible, and avoid or lessen environmental impact.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission initiated section 106 consultation for the Project in the notice issued on July 24, 2020, with the applicable State Historic Preservation Offices, and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the Project's potential effects on historic properties.[7] This notice is a continuation of section 106 consultation for the Project. The Project EIS will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Schedule for Environmental Review

On April 9, 2021, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the Project. This notice identifies the Commission staff's planned schedule for completion of the final EIS for the Project, which is based on an issuance of the draft EIS in February of 2022.

Issuance of Notice of Availability of the final EIS—July 29, 2022

90-day Federal Authorization Decision Deadline—October 27, 2022

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Permits and Authorizations

The table below lists the anticipated permits and authorizations for the Project required under federal law. This list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to this Project. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

ENVIRONMENTAL PERMITS, APPROVALS, AND CONSULTATIONS

Permitting/approval agency	Permit, approval, or consultation
Federal	
Federal Energy Regulatory Commission	Certificate of Public Convenience and Necessity.
U.S. Army Corps of Engineers	Department of the Army permit under section 404 of the Clean Water Act (CWA).
U.S. Fish & Wildlife Service	Endangered Species Act, section 7 Consultation. Fish and Wildlife Coordination Act Consultation. Migratory Bird Treaty Act Consultation. Bald and Golden Eagle Protection Act Consultation.
Interstate Agencies	
Susquehanna River Basin Commission, Water Withdrawal Permit Consumptive Use Authorization.	Susquehanna River Basin Commission.
Pennsylvania State Agencies	
Pennsylvania Department of Environmental Protection (PADEP), Regional Bureaus of Waterways Engineering and Wetlands.	CWA 401 Water Quality Certification. Chapter 105 Water Obstruction and Encroachment Permit—Pennsylvania Programmatic General Permit (PASGP–5). Chapter 102 Erosion and Sediment Control Plan Review and Permit (ESCGP–3) for Construction Activities.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40 Code of Federal Regulations (CFR), Section 1501.8. (2021).

[5] For instructions on connecting to eLibrary, refer to the last page of this notice.

[6] 40 CFR 1508.1(z).

[7] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

ENVIRONMENTAL PERMITS, APPROVALS, AND CONSULTATIONS—Continued

Permitting/approval agency	Permit, approval, or consultation
PADEP Bureau of Clean Water	CWA section 402 National Pollution Discharge Elimination System—Individual Permit for Hydrostatic Test Water Discharge Permit/Approval.
PADEP Bureau of Air Quality	Air Quality Plan Approval (Minor Modification).
Pennsylvania Fish and Boat Commission	Consultation (rare aquatic and amphibian species). Aid to Navigation Plans (if required). Stream Blasting Permit (if required).
Pennsylvania Department of Conservation and Natural Resources	Consultation (rare plant species).
Pennsylvania Game Commission	Consultation (rare mammalian and avian species).
Pennsylvania Historical and Museum Commission, State Historic Preservation Office.	Section 106, National Historic Preservation Act Consultation.
New Jersey State Agencies	
New Jersey Department of Environmental Protection (NJDEP), Division of Land Resource Protection.	Freshwater Wetlands Letter of Interpretation. Flood Hazard Area Verification Applicability. Flood Hazard Area Applicability Determination for certain Flood Hazard Area Permits by Rule.
NJDEP Division of Water Quality, Bureau of Nonpoint Pollution Control	General Permit for Construction Activity, Storm Water (5G3).
NJDEP Division of Fish and Wildlife, Endangered and Nongame Species Program.	Consultation for rare, threatened, and endangered species.
NJDEP Division of Parks and Forestry Natural Heritage Program	Consultation for rare, threatened, and endangered species.
NJDEP Division of Fish and Wildlife, Bureau of Freshwater Fisheries	Consultation for state freshwater fish habitat.
NJDEP Historic Preservation Office	Section 106, National Historic Preservation Act Consultation.
NJDEP Division of Water Quality, Bureau of Surface Water Permitting	Short-term De Minimis Discharge Permit (B7).
NJDEP Division of Water Supply and Geoscience, Bureau of Water Allocation and Well Permitting.	Short Term Water Use Permit-by-Rule (BWA–003)/Short Term Water Use Report (BWA–004). Short-Term Water Use Permit-by-rule (BWA–003)—for hydrostatic testing activities.
NJDEP Division of Air Quality—Bureau of Stationary Sources	Preconstruction Permit to Construct and Operate (Minor Source). Modification to Existing Title V Operating Permit.
Maryland Agencies	
Maryland Department of Natural Resources	Consultation for rare, threatened, and endangered species.
Maryland Department of Planning, Maryland Historical Trust	Section 106, National Historic Preservation Act Consultation.
Baltimore County	Grading Permit/Soil Erosion Control Plan Approval.

Environmental Mailing List

This notice is being sent to the Commission's current environmental mailing list for the Project, which includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP21–94–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

Or

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the Project is 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. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP21–94). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: October 19, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–23485 Filed 10–27–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0489; FRL–9207–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Air Emissions Reporting Requirements (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Air Emissions Reporting Requirements (EPA ICR Number 2170.08, OMB Control Number 2060–0580) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2021. Public comments were previously requested via the **Federal Register** on May 7, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before November 29, 2021.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2004–0489, online using *www.regulations.gov* (our preferred method) or by mail to EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Marc Houyoux, Air Quality Assessment Division, Office of Air Quality Planning and Standards, (C339–02), Environmental Protection Agency, 109 TW Alexander Drive, RTP, NC 27711; telephone number: (919) 541–3649; email address: *houyoux.marc@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The EPA promulgated the Air Emissions Reporting Requirements (AERR) (40 CFR part 51, subpart A) to coordinate emissions inventory reporting requirements with existing requirements of the Clean Air Act and 1990 Amendments. Under this reporting, 54 state and territorial air quality agencies, including the District of Columbia, as well as an estimated 31 local and tribal air quality agencies, must submit emissions data every 3 years for all point, non-point, and some non-road mobile sources of volatile organic compounds, oxides of nitrogen, carbon monoxide, sulfur dioxide, particulate matter less than or equal to 10 micrometers in diameter, particulate matter less than or equal to 2.5 micrometers in diameter, ammonia, and lead. These agencies must also submit emissions model input data every 3 years for on-road mobile and non-road mobile equipment, except for California, which must submit emissions for these data categories of the same pollutants listed above. In addition, the air quality agencies must submit annually emission data for point sources with the potential to emit at greater than specified levels of those pollutants.

Fewer agencies are required to report during these interim years because of higher emissions thresholds, with an estimated 54 states/territories and 23 local and tribal agencies required to report. The average numbers of annual respondents over a 3-year period are 54 states/territories and 26 local and tribal agencies. The EPA needs the data collected from the emission reporting to compile and provide to the public a national inventory of air pollutant emissions. A comprehensive inventory updated at regular intervals is essential to allow the EPA to fulfill its mandate to monitor and plan for the attainment and maintenance of the national ambient air quality standards established for criteria pollutants.

The number and frequency of data collection and submittal is expected to remain the same for 2022–2024.

Form Numbers: None.

Respondents/affected entities: State, territorial, and local government air quality managements programs. Tribal governments are not affected unless they have sought and obtained treatment as state status under the Tribal Authority Rule and on that basis, are authorized to implement and enforce the AERR rule.

Respondent's obligation to respond: Mandatory under 23 U.S.C. 101; 42 U.S.C 7401–7671q, and the authority of the AERR. This information is mandatory and, as specified, cannot be treated as confidential by the EPA.

Estimated annual average number of respondents: 80 (total).

Frequency of response: Annual.

Total estimated burden: 49,502 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $4,783,367 (per year), includes $255,000 annualized capital or operation & maintenance costs.

Changes in the estimates: There is an increase of 2,254 hours and $30,000 in the total estimated respondent burden compared with the ICR previously approved by OMB. The increase does not reflect a change in burden for each respondent, but rather reflects the latest counts of local agencies that report their emissions.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–23502 Filed 10–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2021–0762; FRL– 9153–01–OLEM]

Strategy To Reduce Lead Exposures and Disparities in U.S. Communities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is seeking public comment on its draft Strategy to Reduce Lead Exposures and Disparities in U.S. Communities. The EPA has developed

this lead strategy to further reduce lead exposures in communities, and particularly those with environmental justice concerns.

DATES: Comments must be submitted on or before January 26, 2022.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2021–0762 to:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this action. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Stiven Foster, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Mail Code: 5103T, Washington, DC 20460; telephone number: (202) 566–1911; email address: *foster.stiven@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2021–0762 at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Proprietary Business Information (PBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about PBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

II. Background

The EPA has developed the Strategy to Reduce Lead Exposures and Disparities in U.S. Communities (Lead Strategy) to further reduce lead exposures in communities, and particularly those with environmental justice concerns. Adverse effects on intellect, ability to pay attention, and academic achievement have been linked to very low levels of lead in children's blood. The EPA will focus on eliminating the disparities in blood lead levels by taking targeted actions informed by scientific information to prevent exposures that could lead to lifelong impacts on social and economic achievement. The EPA is seeking public comment on this draft strategy. Following the public comment period, the EPA will revise and implement the Lead Strategy.

The EPA will work with other federal agencies and engage states, tribes, territories, and local partners throughout Lead Strategy implementation to target technical and financial resources to address priorities. The EPA will prioritize implementation of actions in the Lead Strategy based on their effectiveness in eliminating exposures to vulnerable communities and available resources. To do this, the EPA will apply best practices, via program evaluation and other evidence-building approaches to assess the impacts of key local-scale programs.

Dated: October 21, 2021.

Barry Breen,

Principal Deputy Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2021–23421 Filed 10–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2011–0465; FRL–9205–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Water Quality Standards Regulation (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Water Quality Standards Regulation (EPA ICR Number 0988.15, OMB Control Number 2040–0049), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2021. Public comments were previously requested via the **Federal Register** on March 24, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before November 29, 2021.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OW–2011–0465, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Menchu Martinez, Office of Water, Office of Science and Technology, Standards and Health Protection Division (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–1218; email address: *martinez.menchu-c@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that EPA would be collecting, are available in the public docket for this ICR (Docket ID No. EPA–HQ–OW–2011–0465). The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Water quality standards (WQS) under the Clean Water Act (CWA) are provisions of state,[1] tribal,[2] or federal law which consist of designated uses for waters of the United States, water quality criteria to protect those uses, and antidegradation requirements. WQS are established to protect public health or welfare, protect and enhance the quality of water, and serve the purposes of the CWA. Such standards serve the dual purposes of establishing the water quality goals for water bodies and serving as a regulatory basis for establishing water quality-based treatment controls and strategies beyond technology-based treatment required by CWA sections 301 and 306. The WQS regulation, consisting of 40 CFR part 131, establishes the framework for states and authorized tribes to adopt standards, and for EPA to review and approve or disapprove them.

This ICR renews the WQS Regulation ICR, OMB Control Number 2040–0049. This ICR is for information collections needed to implement the WQS regulation, required to obtain or retain benefits (*e.g.,* relaxed regulatory requirements) under the WQS regulation, and requested on a voluntary basis to gather technical program information. This ICR also renews collection of WQS information by dischargers in the Great Lakes watershed required to obtain or retain certain benefits pursuant to the Water Quality Guidance of the Great Lakes System, 40 CFR part 132.

Form Numbers: None.

Respondents/affected entities: 50 states, the District of Columbia, the five territories, authorized tribes with EPA-approved WQS, additional tribes seeking authority to administer WQS, and dischargers located in the Great Lakes watershed.

Respondent's obligation to respond: Some collections in this ICR are mandatory, some are required to obtain or retain benefits pursuant to the WQS Regulation, and some are voluntary.

Estimated number of respondents: 342.

Frequency of response: Variable (once every three years, on occasion or as necessary, or only once) depending on the type of information collected.

Total estimated burden: 480,242 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $22,160,992 per year, including $21,897,472 of labor costs and $263,520 of annualized operation and maintenance costs per year. There are no capital costs.

Changes in the estimates: This renewal reflects a decrease of 27,645 hours in the total estimated respondent burden compared to the total burden currently approved by OMB for this ICR. The decrease reflects EPA adjustments, primarily removal of the burden for a collection confirmed to be inactive, partially offset by increased burden associated with additional respondents (*e.g.,* two additional tribes with EPA-approved WQS and a small increase in the number of dischargers to the Great Lakes system).

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–23503 Filed 10–27–21; 8:45 am]

BILLING CODE 6560–50–P

[1] ''States'' in EPA's WQS Regulation and in this document includes the 50 states, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[2] ''Tribes'' in this document refers to federally recognized tribes and ''authorized tribes'' refers to those federally recognized tribes with authority to administer a CWA WQS program.

EXPORT-IMPORT BANK

[Public Notice 2021–3035]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Banks of the United States (EXIM), 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 collection, as required by the Paperwork Reduction Act of 1995. This collection of information is necessary to determine eligibility of the applicant for EXIM assistance. The Application for Short-Term Multi-Buyer Export Credit Insurance Policy will be used to determine the eligibility of the applicant and the transaction for Export-Import Bank assistance under its insurance program. Export-Import Bank customers will be able to submit this form on paper or electronically.

DATES: Comments must be received on or before November 29, 2021 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 10–02) or by email *tara.pender@exim.gov,* or by mail to Tara Pender, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC. The application tool can be reviewed at: *http://www.exim.gov/sites/default/files/pub/pending/eib92-50.pdf.*

FOR FURTHER INFORMATION CONTACT: To request additional information, please Tara Pender. 202–565–3655.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–50 Application for Short-Term Multi-Buyer Export Credit Insurance Policy.

OMB Number: 3048–0023.

Type of Review: Update & Renewal.

Need and Use: The Application for Short-Term Multi-Buyer Export Credit Insurance Policy will be used to determine the eligibility of the applicant

and the transaction for Export-Import Bank assistance under its insurance program.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 285.

Estimated Time per Respondent: 0.5 hours.

Annual Burden Hours: 143.

Frequency of Reporting of Use: As needed.

Government Reviewing Time per Year:

Reviewing Time per Year: 285 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $12,113 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $14,535.

Bassam Doughman,

IT Specialist.

[FR Doc. 2021–23469 Filed 10–27–21; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2021–3033]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), 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 collection, as required by the Paperwork Reduction Act of 1995. This collection of information is necessary to determine eligibility of the applicant for EXIM assistance.

DATES: Comments must be received on or before November 29, 2021, to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 92–36) or by email *tara.pender@exim.gov,* or by mail to Tara Pender, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571. The application tool can be reviewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib92-36.pdf.*

FOR FURTHER INFORMATION CONTACT: To request additional information, please Tara Pender. 202–565–3655.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–36 Application for Issuing Bank Credit Limit (IBCL) Under Lender or Exporter-Held Policies.

OMB Number: 3048–0016.

Type of Review: Update & Renewal.

Need and Use: This form is used by an insured exporter or lender (or broker acting on its behalf) in order to obtain approval for coverage of the repayment risk of an overseas bank. The information received allows EXIM staff to make a determination of the creditworthiness of the foreign bank and the underlying export sale for EXIM assistance under its programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 600.

Estimated Time per Respondent: 1.2 hours.

Annual Burden Hours: 720 hours.

Frequency of Reporting of Use: As needed.

Government Expenses:

Reviewing Time per Year: 600 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $25,500 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $30,600.

Bassam Doughman,

IT Specialist.

[FR Doc. 2021–23461 Filed 10–27–21; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2021–3034]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Banks of the United States (EXIM), 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 collection, as required by the Paperwork Reduction Act of 1995. This collection of information is necessary to determine eligibility of the applicant for EXIM assistance.

DATES: Comments must be received on or before November 29, 2021 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 10–02) or by email *tara.pender@exim.gov,* or by mail to Tara Pender, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC. The application tool can be reviewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib10_02.pdf.*

FOR FURTHER INFORMATION CONTACT: To request additional information, please Tara Pender. 202–565–3655.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 10–02 Application for Short-Term Express Credit Insurance Policy.

OMB Number: 3048–0031.

Type of Review: Update & Renewal.

Need and Use: This form is used by an exporter (or broker acting on its behalf) in order to obtain approval for coverage of the repayment risk of export sales. The information received allows EXIM staff to make a determination of the eligibility of the applicant and the creditworthiness of one of the applicant's foreign buyers for EXIM assistance under its programs.

This is the application form for use by small U.S. businesses with limited export experience. Companies that are eligible to use the Express policy will need to answer approximately 20 questions and sign an acknowledgement of the certifications that appear on the reverse of the application form. This program does not provide discretionary credit authority to the U.S. exporter, and therefore the financial and credit information needs are minimized.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 500.

Estimated Time per Respondent: 0.25 hours.

Annual Burden Hours: 125 hours.

Frequency of Reporting of Use: Once per year.

Government Expenses:

Reviewing Time per Year: 1,000 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $42,500 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $ 51,000.

Bassam Doughman,

IT Specialist.

[FR Doc. 2021–23466 Filed 10–27–21; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2021–3038]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Banks of the United States (EXIM), 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 collection, as required by the Paperwork Reduction Act of 1995. This collection of information is necessary to determine eligibility of the underlying export transaction for EXIM insurance coverage.

DATES: Comments must be received on or before November 29, 2021 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 10–02) or by email *tara.pender@exim.gov,* or by mail to Tara Pender, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC. The application tool can be reviewed at: *https://www.exim.gov/sites/default/files/forms/eib92-41.pdf*.

FOR FURTHER INFORMATION CONTACT: To request additional information, please Tara Pender. 202–565–3655.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–41 Application for Financial Institution Short-Term, Single-Buyer Insurance.

OMB Number: 3048–0019.

Type of Review: Update & Renewal.

Need and Use: The Application for Financial Institution Short-term Single-Buyer Insurance form will be used by financial institution applicants to provide EXIM with the information necessary to determine if the subject transaction is eligible for EXIM insurance coverage.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 215.

Estimated Time per Respondent: 1.6 hours.

Annual Burden Hours: 344.

Frequency of Reporting of Use: Annual.

Government Expenses:

Reviewing Time per Year: 1,290 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $54,825 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $70,176.

Bassam Doughman,

IT Specialist.

[FR Doc. 2021–23476 Filed 10–27–21; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2021–3039]

Agency Information Collection Activities: Comment Request; EIB 84–01 Application for Export Working Capital Guarantee

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM Bank), 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 collection, as required by the Paperwork Reduction Act of 1995.

DATES: Comments must be received on or before November 29, 2021 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 10–02) or by email *tara.pender@exim.gov,* or by mail to Tara Pender, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC. The application tool can be reviewed at: *https://www.exim.gov/sites/default/files/forms/eib84-01.pdf*.

FOR FURTHER INFORMATION CONTACT: To request additional information, please Tara Pender. 202–565–3655.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 84–01 Application for Export Working Capital Guarantee.

OMB Number: 3048–0013.

Type of Review: Update & Renewal.

Need and Use: This form provides EXIM Bank staff with the information necessary to determine if the application and transaction is eligible for EXIM Bank assistance under their export working capital guarantee program.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

EXIM Bank

Annual Number of Respondents: 200.

Estimated Time per Respondent: 2 hours.

Annual Burden Hours: 400 hours.

Frequency of Reporting of Use: Annually.

Government Expenses

EXIM Bank

Reviewing time per year: 300 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $12,750.00 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $15,300.00.

Bassam Doughman,

IT Project Manager.

[FR Doc. 2021–23484 Filed 10–27–21; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice 2021–3036]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a 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 collection, as required by the Paperwork Reduction Act of 1995. The purpose of this collection is to gather information necessary to make a determination of eligibility of a transaction for EXIM assistance under its medium-term guarantee and insurance program.

DATES: Comments should be received on or before November 29, 2021 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 10–02) or by email *tara.pender@exim.gov,* or by mail to Tara Pender, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC. The application tool can be reviewed at: *http://www.exim.gov/sites/default/files/pub/pending/eib03-02_0.pdf*.

FOR FURTHER INFORMATION CONTACT: To request additional information, please Tara Pender. 202–565–3655.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 03–02 Application for Medium Term Insurance or Guarantee.

OMB Number: 3048–0014.

Type of Review: Update & Renewal.

Need and Use: The purpose of this collection is to gather information necessary to make a determination of eligibility of a transaction for EXIM assistance under its medium-term guarantee and insurance program.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 400.

Estimated Time per Respondent: 2 hours.

Annual Burden Hours: 800 hours.

Frequency of Reporting or Use: As needed.

Government Expenses:

Reviewing Time per Year: 700 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $29,750 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $35,700.

Bassam Doughman,

IT Specialist.

[FR Doc. 2021–23471 Filed 10–27–21; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2021–3037]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a 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 collection, as required by the Paperwork Reduction Act of 1995. The Application for Exporter Short Term Single Buyer Insurance form will be used by entities involved in the export of U.S. goods and services, to provide EXIM with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements. Export-Import Bank customers will be able to submit this form on paper or electronically.

DATES: Comments must be received on or before November 29, 2021 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 10–02) or by email *tara.pender@exim.gov,* or by mail to Tara Pender, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC. The application tool can be reviewed at: *https://ww.exim.gov/pub/pending/EIB92-64.pdf.*

FOR FURTHER INFORMATION CONTACT: To request additional information, please Tara Pender. 202–565–3655.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–64 Application for Exporter Short Term Single Buyer Insurance.

OMB Number: 3048–0018.

Type of Review: Update & Renewal.

Need and Use: The information requested enables the applicant to provide EXIM with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 310.

Estimated Time per Respondent: 1.5 hours.

Annual Burden Hours: 465 hours.

Frequency of Reporting of Use: As needed.

Government Costs:

Reviewing Time per Year: 465 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $19,762.5 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $23,715.

Bassam Doughman,

IT Specialist.

[FR Doc. 2021–23475 Filed 10–27–21; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to implement the Treasury Securities and Agency Debt and Mortgage-Backed Securities Reporting Requirements (FR 2956; OMB No. 7100–NEW). The Board has adopted an implementation timeline with the first reporting under this collection beginning on September 1, 2022.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Implementation of the Following Information Collection

Report title: Treasury Securities and Agency Debt and Mortgage-Backed Securities Reporting Requirements.

Agency form number: FR 2956.

OMB control number: 100–NEW.

Frequency: Daily.

Respondents: Depository institutions that meet the reporting thresholds and daily transact in trading of marketable U.S. Treasury securities and the trading of the debt and mortgage-backed securities (MBS) issued by agencies.

Estimated number of respondents: Treasury securities, 10; Agency debt and MBS, 12.

Estimated average hours per response: 3.

Estimated annual burden hours: 16,500.

General description of report: The FR 2956 will collect detailed data on depository institutions' daily transactions of marketable U.S. Treasury securities and of the debt and MBS issued by U.S. federal government agencies including government-sponsored enterprises (agencies). The report will have two parts: Part 1 will collect data on transactions in U.S. Treasury securities, and Part 2 will collect transactions in debt and MBS issued by agencies. Depository institutions subject to reporting under the FR 2956 collection will be required to report all the transaction details, information, and fields as described in the applicable Trade Reporting and Compliance Engine (TRACE) technical documentation, FAQs, and guides located at *https://www.finra.org/filing-reporting/trace.* This information will include, but is not limited to, the Committee on Uniform Securities Identification Procedures (CUSIP) number or similar identifier, the transaction size (volume), price of the transaction, date of trade execution, time of execution, and date of

settlement. The Board is adopting an implementation timeline for first reporting under this collection of September 1, 2022.

Reporting transactions will be event-generated and estimated to occur daily. Depository institutions will be required to assess annually whether they meet the reporting criteria. If a depository institution meets the event-generated threshold to report based on the average of its daily transactions from October 1 of the previous year through September 30, the depository institution will be required to begin to report the implemented FR 2956 effective January 1 of the following year and continue reporting such transactions throughout that calendar year.[1] If a depository institution that reports on the implemented FR 2956 falls below the threshold based on the average of its daily transactions from October 1 of the previous year through September 30, the depository institution will be required to continue to report through December 31 of that year but will not be required to report for the next calendar year.

Every national bank, state member bank, state non-member bank, savings association, or U.S. branch and agency of a foreign bank filing a Notice of Government Securities Broker or Government Dealer Activities Form (Form G–FIN; OMB No. 7100–0224) with average daily transaction volumes of over $100 million for U.S. Treasury securities, or over $50 million for agency-issued debt and MBS, during the prior fiscal year will be subject to the proposed reporting requirements. Depository institutions subject to the reporting requirements of the adopted FR 2956 will electronically report transactions through the Board's data collection provider, the Financial Industry Regulatory Authority (FINRA), utilizing its Trade Reporting and Compliance Engine (TRACE).

Legal authorization and confidentiality: The FR 2956 is authorized by sections 2A and 11 of the Federal Reserve Act (FRA). Section 2A of the FRA requires that the Board and the Federal Open Market Committee (FOMC) maintain long-run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates.[2] Section 11 of the FRA authorizes the Board to require reports from depository institutions as it may deem necessary and authorizes the Board to prescribe reports of liabilities and assets from insured depository institutions to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates.[3]

The obligation to respond to the FR 2956 is mandatory. The information collected through the FR 2956 may generally be considered confidential under exemption 4 of the Freedom of Information Act as confidential commercial or financial information that is both customarily and actually treated as private.[4]

Current actions: On January 21, 2021, the Board published a notice in the **Federal Register** (86 FR 6329) requesting public comment for 60 days on the implementation of the Treasury Securities and Agency Debt and Mortgage-Backed Securities Reporting Requirements. The comment period for this notice expired on March 22, 2021.

Detailed Discussion of Public Comments

The Board received two public comments on the proposed FR 2956. One commenter raised a few technical questions regarding Market Participant Identity (MPID) as applied to reporting depository institutions under this information collection. To provide greater clarity, the Board anticipates FINRA will assign MPIDs to depository institutions subject to TRACE reporting and include these MPIDs in the Participant Master, which is available to all TRACE reporting participants. Depository institutions that are required to report and have a non-FINRA-member subscriber MPID(s) (for contra use only) will be reassigned a reporting MPID, which will be communicated to the corresponding covered alternative trading system(s) (ATS). Depository institutions that operate an ATS and are required to report will receive a reporting MPID for the ATS distinct from that of a trading desk. Depository institutions that are not required to report and are ATS subscribers will continue to be identified in ATS trade reports using their current MPIDs.

One commenter also questioned whether depository institutions would be eligible to enter into Uniform Service Agreements with broker-dealers and other depository institutions. The Board notes that depository institutions would be required to enter into the Participation Agreement, as do FINRA members, to use the TRACE system. In addition, depository institutions may enter into, and provide to FINRA, a Uniform Services Agreement executed with another depository institution or broker-dealer.

In addition, the Board received two comments on the scope and applicability of the reporting requirement. As explained in the ''General description of report'' section of this notice, only a depository institution that files a Notice of Government Securities Broker or Government Dealer Activities Form (Form G–FIN; OMB No. 7100–0224) with average daily transaction volumes of over $100 million for U.S. Treasury debt, or over $50 million for agency-issued debt and MBS, during the prior fiscal year will be subject to the proposed reporting requirements. Consistent with TRACE reporting by FINRA members and the intent of this collection, reporting institutions will be required to report all Treasury transactions that they are party to, regardless of whether the institution is acting in a dealer capacity or whether activity was with clients inside or outside the United States. The reporting requirements will include all departments or divisions of a reporting institution.

The Board received a comment requesting clarification on the supervisory and enforcement authority of the collection. As explained in the ''Legal authorization and confidentiality'' section of this notice, section 11 of the Federal Reserve Act authorizes the Board to require reports from depository institutions. This collection is being adopted under that authority and nothing in the proposed information collection alters or modifies the supervisory and enforcement authority of the Federal banking agencies over the depository institutions that are subject to the reporting. The Board is using FINRA as its data collection provider and utilizing its TRACE platform.

The Board received a comment requesting clarification about the dissemination of Treasury trades as a result of this proposed information collection. The statement about inclusion of depository institution data in TRACE data products available to market participants referred to existing real time and aggregate data products and not the creation of new ones.

[1] For the initial reporting under FR 2956 beginning on September 1, 2022, depository institutions should assess their transactions from October 1, 2020, through September 30, 2021, to determine whether they will be required to report.

[2] 12 U.S.C. 225a. Treasury Securities, agency debt, and MBS are an important channel of monetary policy transmission. The information to be collected by the FR 2956 is not available from other sources, and collecting these transaction data will help the Board and FOMC better monitor and interpret fluctuations in supply and demand as well as interest rate movements in these key credit aggregates.

[3] 12 U.S.C. 248(a).

[4] 5 U.S.C. 552(b)(4).

The Board also received comments on the implementation timeline and, in particular, how coordinating with FINRA on its own proposed changes would be beneficial. Commenters noted the importance of enough lead time prior to reporting to allow for systems to be implemented or updated as needed. The Board understands the balance between minimizing compliance burdens on depository institutions as well as the critical need to gain insight into this segment of the Treasury securities and agency-issued debt and MBS markets. As a result, the Board intends to provide appropriate lead time to permit depository institutions the necessary time to prepare before the initial reporting under this collection will be required. In addition, the Board anticipates that any modifications adopted by FINRA and incorporated in the Board's reporting requirement in the future will also provide ample lead time to prepare to comply with any proposed modifications. In response to these comments, the Board is adopting an implementation timeline for first reporting under this collection of September 1, 2022.

Board of Governors of the Federal Reserve System, October 21, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Nutrition as Prevention for Improved Cancer Outcomes

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Nutrition as Prevention for Improved Cancer Outcomes,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before November 29, 2021.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Nutrition as Prevention for Improved Cancer Outcomes.* AHRQ is conducting this technical brief pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Nutrition as Prevention for Improved Cancer Outcomes,* including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/improved-cancer-outcomes/protocol.*

This is to notify the public that the EPC Program would find the following information on *Nutrition as Prevention for Improved Cancer Outcomes* helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

KQ 1: In adults diagnosed with cancer who have or are at risk for cancer-associated malnutrition, what is the effect of nutritional interventions *prior to* cancer treatment in preventing negative treatment outcomes such as effects on dose tolerance, hospital utilizations, adverse events and survival?

a. Do the effects of nutritional interventions on preventing the negative outcomes associated with cancer treatment vary by cancer type, treatment type (chemotherapy, radiation, surgery) and stage of disease?

b. Do the effects of nutritional interventions vary across the lifespan (*e.g.,* adults aged ≥65 years vs. <65 years)?

c. KQ1c: Compared to adults without muscle wasting, do nutritional interventions prevent the negative outcomes associated with cancer

treatment in adults with muscle wasting?

d. KQ1d: Do the effects of nutritional interventions on preventing the negative outcomes associated with cancer treatment vary across special populations (*e.g.,* individuals with multiple comorbid conditions)?

KQ 2: In adults diagnosed with cancer who have or are at risk for cancer-associated malnutrition, what is the effect of nutritional interventions *during* cancer treatment in preventing negative treatment outcomes such as effects on dose tolerance, hospital utilizations, adverse events and survival?

a. Do the effects of nutritional interventions on preventing the negative outcomes associated with cancer treatment vary by cancer type, treatment type (chemotherapy, radiation, surgery) and stage of disease?

b. Do the effects of nutritional interventions vary across the lifespan (*e.g.,* adults aged ≥65 years vs. <65 years)?

c. Compared to adults without muscle wasting, do nutritional interventions prevent the negative outcomes associated with cancer treatment in adults with muscle wasting?

d. Do the effects of nutritional interventions on preventing the negative outcomes associated with cancer treatment vary across special populations (*e.g.,* individuals with multiple comorbid conditions)?

KQ 3: In adults diagnosed with cancer who have or are at risk for cancer-associated malnutrition, what is the effect of nutritional interventions *prior to* or *during* cancer treatment on associated symptoms such as fatigue, nausea and vomiting, appetite, physical and functional status (*e.g.,* frailty), and quality of life?

a. Do the effects of nutritional interventions on symptoms associated with cancer treatment vary by cancer type, treatment type (chemotherapy, radiation, surgery) and stage of disease?

b. Do the effects of nutritional interventions vary across the lifespan (*e.g.,* adults aged ≥65 years vs. <65 years)?

c. Compared to adults without muscle wasting, do nutritional interventions differentially effect symptoms associated with cancer treatment in adults with muscle wasting?

d. Do the effects of nutritional interventions on symptoms associated with cancer treatment vary across special populations (*e.g.,* individuals with multiple comorbid conditions)?

KQ 4: In adults with cancer who are overweight or obese, what is the effect of nutritional interventions intended for weight loss *prior to* or *during* cancer treatment in preventing negative treatment outcomes such as effects on dose, hospital utilizations, adverse events and survival?

Contextual Question (CQ)

CQ 1: What evidence is available on the cost-effectiveness of nutritional interventions for preventing negative outcomes associated with cancer treatment?

PICOTS (POPULATION, INTERVENTION, COMPARATOR, OUTCOME, TIMING, SETTING)

PICOTS	KQ1: pre-treatment nutritional interventions (PNIs)	KQ2: nutritional interventions during treatment (NIDTs)	KQ3: pre- or during treatment nutritional interventions (NIs) and patient-centered outcomes	KQ4: weight loss in overweight/obese adults with cancer
Population	Adults diagnosed with cancer at or after age 18 who have or are at risk for cancer-associated malnutrition. Subgroups: • Cancer and treatment characteristics (cancer type, treatment type (systemic therapy, radiation, surgery), stage of disease). • Adults ≥65y vs younger. • Muscle wasting (*e.g.,* sarcopenia, cachexia, pre-cachexia) vs. no muscle wasting. • Special populations (individuals with multiple co-morbid conditions).			Overweight (BMI 25–<30)/obese (BMI ≥30) adults ≥18y of age diagnosed with cancer.
Interventions	Nutritional interventions under the supervision of a nutrition professional (*e.g.,* dietician, nutritionist, or other licensed clinicians). • Diet or nutrition therapy (via oral or enteral (*e.g.,* nasogastric, gastrostomy, jejunostomy) feeding. ○ Special diets (*e.g.,* fasting (intermittent or short-term), calorie restriction, ketogenic, Mediterranean diet, high calorie, high protein). ○ Supplements. • Total parenteral therapy. • Nutritional counseling. • Combined nutritional interventions (*e.g.,* nutritional counseling with nutrition therapy).			Nutritional Interventions intended for weight loss (includes both PNIs and NIDTs).
Comparators	Standard of care vs PNIs or PNIs vs PNIs.	Standard of care vs NIDTs, NIDT vs NIDT or PNIs vs. NIDTs.	Standard of care vs PNIs or NIDTs, NIDTs vs. NIDTs, PNIs vs. PNIs, PNIs vs NIDTs.	Standard of care vs PNIs or NIDTs, NIDTs vs. NIDTs, PNIs vs. PNIs, PNIs vs NIDTs.
Outcomes	Intermediate Outcomes BMI, Body composition, Weight (loss, gain). Final Outcomes. Cancer treatment tolerance: treatment interruptions, reductions, or delays. Hospital utilizations: ER visits, Admissions, Length of stay. Adverse events. • Chemotherapy/radiation therapy limiting toxicity. • Post-op complication. • NI-related AEs. • Unintended harms. Survival. Nutritional status. Malnutrition (underweight, wasting, overweight).		Fatigue, nausea and vomiting, appetite, physical/functional status (*e.g.,* frailty). Quality of life	Intermediate Outcomes. BMI, Body composition, Weight (loss, gain). Final Outcomes. Cancer treatment tolerance: treatment interruptions, reductions, or delays. Hospital utilizations: ER visits. Admissions, Length of stay. Adverse events. • Chemotherapy/radiation therapy limiting toxicity. • Post-op complication. • NI-related AEs. • Unintended harms. Survival. Nutritional Status. Malnutrition (underweight, wasting, overweight).

PICOTS (POPULATION, INTERVENTION, COMPARATOR, OUTCOME, TIMING, SETTING)—Continued

PICOTS	KQ1: pre-treatment nutritional interventions (PNIs)	KQ2: nutritional interventions during treatment (NIDTs)	KQ3: pre- or during treatment nutritional interventions (NIs) and patient-centered outcomes	KQ4: weight loss in overweight/obese adults with cancer
Timing	Nutritional interventions delivered pre- cancer treatment (KQ1, KQ3, KQ4) and during cancer treatment (KQ2, KQ3, KQ4).			
Setting	Outpatient Oncology Care, Ambulatory Care, Cancer Treatment Centers, inpatient, home-based, hospice, telemedicine.			

Abbreviations: KQ = key question; BMI = body mass index; ER = emergency room; PICOTS = population, intervention, comparator, outcomes, timing, setting; RCT = randomized controlled trial; NRCT = non-randomized controlled trial.

Dated: October 22, 2021.

Marquita Cullom,

Associate Director.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Temporary Extension and Modification of Framework for Conditional Sailing Order (CSO) for Cruise Ships Operating or Intending To Operate in U.S. Waters

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), a component of the Department of Health and Human Services (HHS), announces a temporary extension and modification of the Framework for Conditional Sailing Order (CSO).

DATES: This action is effective November 1, 2021, at 12:01 a.m. EDT upon the expiration of the current Order.

FOR FURTHER INFORMATION CONTACT: Jennifer Buigut, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H16–4, Atlanta, GA 30329. Phone: 404–498–1600. Email: *dgmqpolicyoffice@cdc.gov.*

SUPPLEMENTARY INFORMATION: This Order temporarily extends and modifies the Framework for Conditional Sailing Order (CSO). This Order only applies to cruise ship operators in U.S. jurisdictions where foreign-flagged ships port or travel on international itineraries and state and local health departments do not routinely exercise public health jurisdiction nor maintain maritime public health programs that conduct surveillance, inspections, investigations, and management for communicable diseases with potential for significant morbidity and mortality onboard foreign-flagged ships. These specific jurisdictions are listed below in the Order.

This Order additionally applies to foreign-flagged cruise ships operating outside of U.S. waters if the cruise ship operator intends for the ship to return to operating in international, interstate, or intrastate waterways, subject to the jurisdiction of the United States during the period that this Order is in effect.

As per the Preliminary Injunction Order, entered by the U.S. District Court for the Middle District of Florida on June 18, 2021, as of July 23, 2021, the CSO and accompanying measures, such as technical instructions, are nonbinding recommendations for cruise ships arriving in, located within, or departing from a port in Florida. Accordingly, this Order shall not apply to this subset of ships while this Preliminary Injunction Order remains in effect (or in the event the Preliminary Injunction becomes permanent). However, CDC will continue to operate the CSO as a voluntary program for such ships should they choose to follow the CSO measures on a voluntary basis.

A copy of the Order is provided below and a copy of the signed order can be found at *https://www.cdc.gov/quarantine/cruise/index.html.*

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)

Order Under Sections 361 & 365 of the Public Health Service Act (42 U.S.C. 264, 268) and 42 Code of Federal Regulations Part 70 (Interstate) and Part 71 (Foreign)

Temporary Extension & Modification of Framework for Conditional Sailing Order (CSO)

Executive Summary

The Centers for Disease Control and Prevention is temporarily extending the Framework for Conditional Sailing Order (CSO) issued on October 30, 2020. Since the issuance of the CSO, cruise lines, with CDC assistance, have resumed passenger operations and successfully developed and implemented health and safety protocols to manage COVID–19 that have averted overwhelming onboard medical facilities and burdening shoreside hospital resources. However, considering the continued spread of the Delta variant, emergence of other COVID–19 variants of concern, breakthrough cases among the fully vaccinated, and possible additional surges of cases and deaths, CDC has determined a temporary extension of the CSO is necessary for foreign-flagged cruise ships operating on international itineraries. After the expiration of this temporary extension, CDC intends to transition to a voluntary program, in coordination with interested cruise ship operators and other stakeholders, to assist the cruise ship industry to detect, mitigate, and control the spread of COVID–19 onboard cruise ships.

This Order shall remain in effect until the earliest of (1) the expiration of the Secretary of Health and Human Services' declaration that COVID–19 constitutes a public health emergency; (2) the CDC Director rescinds or modifies the Order based on specific public health or other considerations; or (3) January 15, 2022 at 12:01 a.m. (EST).

Previous Orders and Incorporation by Reference

The findings and other evidence relied upon in issuing the CSO are incorporated herein by reference. Any ambiguity between the October 30, 2020 Order, as further modified and extended by the current Order, shall be resolved in favor of the current Order.

Applicability

This temporary renewal and modification of the CSO shall apply only to the subset of carriers [1] described below and hereinafter referred to as ''cruise ships'':

All commercial, non-cargo,[2] foreign-flagged,[3] passenger-carrying vessels operating

[1] Carrier is defined by 42 CFR 71.1 to mean, ''a ship, aircraft, train, road vehicle, or other means of transport, including military.''

[2] Given the substantial risk of person-to-person transmission of COVID–19, as opposed to transmission via indirect contact, this Order is currently limited to passenger, non-cargo vessels.

[3] This Order modifies the CSO so that it is applicable only to foreign-flagged vessels that per 46 U.S.C. 55103 may not travel between U.S. ports

in U.S. waters with the capacity [4] to carry 250 [5] or more individuals (passengers and crew), and with an itinerary anticipating an overnight stay onboard or a twenty-four (24) hour stay onboard for either passengers or crew.[6]

This Order shall additionally apply to foreign-flagged cruise ships operating outside of U.S. waters if the cruise ship operator intends for the ship to return to operating in international, interstate, or intrastate waterways, subject to the jurisdiction of the United States during the period that this Order is in effect.

As explained further in this Order, based on the CDC Director's determination of inadequate local control under 42 CFR 70.2,[7] this Order shall only apply to cruise ship operators in U.S. jurisdictions where foreign-flagged ships port or travel on international itineraries and state and local health departments do not routinely exercise public health jurisdiction nor maintain maritime public health programs that conduct surveillance, inspections, investigations, and management for communicable diseases with potential for significant morbidity and mortality [8] onboard foreign-flagged ships.[9]

As per the Preliminary Injunction Order, entered by the U.S. District Court for the Middle District of Florida on June 18, 2021, as of July 23, 2021, the CSO and accompanying measures, such as technical instructions, are nonbinding recommendations for cruise ships arriving in, located within, or departing from a port in Florida. Accordingly, this Order shall not apply to this subset of ships while this Preliminary Injunction Order remains in effect (or in the event the Preliminary Injunction becomes permanent). However, CDC will continue to operate the CSO as a voluntary program for such ships should they choose to follow the CSO measures on a voluntary basis.

Statement of Intent

This Order shall be interpreted and implemented in a manner as to achieve the following paramount objectives:

- Preserving human life;
- Preserving the health and safety of cruise ship crew members, port personnel, and communities;
- Preventing the further introduction, transmission, and spread of COVID–19 into and throughout the United States;
- Preserving the public health and other critical resources of Federal, State, and local governments;
- Preserving hospital, healthcare, and emergency response resources within the United States; and
- Maintaining the safety of shipping and harbor conditions.

Summary of CSO Extension Compared to Previous CSO

This temporary extension of the CSO leaves major provisions of the previous CSO unchanged with only minor modifications to incorporate changes in technical instructions made based on discussions and feedback from cruise ship operators and announced through ''Dear Colleague'' communications to industry partners. Accordingly, CDC does not view this temporary extension as imposing any new burdens or obligations on cruise ship operators when compared to the previous CSO. As further explained in this extension, the most significant change is to narrow the applicability of the CSO to ''foreign-flagged'' cruise ships operating in U.S. jurisdictions that do not routinely exercise public health jurisdiction nor maintain maritime public health programs that conduct surveillance, inspections, investigations, and management for communicable diseases with potential for significant morbidity and mortality onboard foreign-flagged ships.

Currently, there is only one cruise ship operator under the CSO that is not foreign-flagged and operates its ships exclusively in interstate waterways subject to the jurisdiction of the United States. Unlike ocean-going foreign-flagged vessels, in the event of an outbreak, interstate vessels typically operate in such a manner that, should an outbreak occur, passengers and crew can be quickly brought by ambulance to local hospitals without requiring airlifts or evacuations at sea that significantly burden U.S. Coast Guard or potentially overwhelm public health resources.[10] Interstate vessels also operate under the jurisdiction of the Food and Drug Administration's (FDA) Interstate Travel Program and are subject to additional federal oversight under the provisions of 21 CFR 1240, 1250. Accordingly, CDC believes that narrowing the application of the CSO in this manner does not jeopardize the public's health. Furthermore, should this cruise ship operator choose to do so, it may continue to follow the CSO on a voluntary basis.

CDC provides the following chart to further explain how key substantive

without including a stop at a foreign port in their itinerary. Because foreign-flagged vessels typically operate on international itineraries far from U.S. shores, outbreaks on such vessels are more likely to require emergency medical evacuations while at sea and thus burden U.S. Coast Guard and other emergency medical response resources. Furthermore, stopping in a foreign port increases the risk of introducing a COVID–19 variant of concern into the United States. [International Travel During COVID–19 | CDC].

[4] A ship's capacity shall be determined based on the number of persons listed in the U.S. Coast Guard Certificate of Compliance issued in accordance with 46 CFR 2.01–6 and that was in effect on October 30, 2020.

[5] CDC continues to define cruise ships as those with a capacity to carry 250 or more passengers and crew based on substantial epidemiologic evidence related to congregate settings and mass gatherings. While evidence shows that outbreaks can occur in small settings such as nursing homes, as the numbers of passengers and crew on board a ship increase, certain recommended mitigation efforts such as social distancing become more difficult to implement. Considering the demonstrated rapid spread of COVID–19, the application of this framework to cruise ships carrying 250 or more passengers and crew remains prudent and warranted.

[6] This Order shall not apply to vessels operated by a U.S. Federal or State government agency. Nor shall it apply to vessels being operated solely for purposes of the provision of essential services, such as the provision of medical care, emergency response, activities related to public health and welfare, or government services, such as food, water, and electricity.

[7] Because this Order applies only to foreign-flagged vessels that per 46 U.S.C. 55103 may not travel between U.S. ports without including a stop at a foreign port in their itinerary, 42 CFR 71.31(b), 71.32(b), constitute sufficient legal authority to support this Order. However, 42 CFR 70.2 provides additional legal authority and support to the extent that it is needed for the reasons explained in this Order.

[8] In addition to quarantinable communicable diseases as defined under 42 CFR 70.1 and 71.1, communicable diseases with potential for significant morbidity and mortality include diseases that spread from person to person, such as respiratory diseases (*e.g.,* varicella, mumps, pertussis, meningococcal disease) and norovirus, and those that arise from contaminated food, potable water, or recreational water (*e.g., Salmonella, Escherichia coli, Cryptosporidium*), or the environment, such as Legionnaires' disease.

[9] These jurisdictions include the following U.S. states: Alabama, Alaska, California, Delaware, Florida, Georgia, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, and Washington State. These jurisdictions also include the following U.S. territories: American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. CDC is not currently aware of any states or U.S. territories operating a maritime public health program that would displace the CSO.

[10] Another cruise ship operator has one U.S.-flagged cruise ship that operates solely between Hawaiian Islands. Similar to interstate vessels, the ship can quickly make port and bring passengers and crew by ambulance to local hospitals without requiring airlifts or evacuations at sea that significantly burden U.S. Coast Guard or potentially overwhelm public health resources. While foreign-flagged cruise ships operating on the Great Lakes may, depending on their itineraries, be able to return to port more quickly than ocean-going vessels, based on their international itineraries they would not fall under FDA's Interstate Travel Program. Furthermore, as discussed elsewhere, state and local health departments are engaged in other COVID–19 response efforts. Accordingly, excluding foreign-flagged vessels operating international itineraries on the Great Lakes from the application of this Order would create a regulatory gap.

provisions of this temporary extension operate compared to the previous CSO:

CSO sections	Modifications
Acronyms, Initialisms, and Definitions	• Definition of cruise ships narrowed by adding ''foreign-flagged''.
Purpose and Scope	• Unchanged.
General Prohibition on a Cruise Ship Operator Commencing or Continuing Passenger Operations without a COVID–19 Conditional Sailing Certificate.	• Unchanged.
Requirements for COVID–19 Response Plan for Cruise Ship Operators Operating or Intending to Operate Cruise Ships in U.S. Waters.	• Previously referred to as ''No Sail Order (NSO) Response Plans''. • No changes for operators with previously approved plans.
Requirements for COVID–19 Testing Capabilities and Reporting for Cruise Ship Operators Operating or Intending to Operate Cruise Ships in U.S. Waters.	• No new requirements: cruise ship operators completed requirements as part of previous CSO ''Phase 1'' crew testing. • Modified to incorporate current Technical Instructions for Crew.
Agreement with Port and Local Health Authorities	• Modified to incorporate current Port Agreement Technical Instructions.
Minimum Standards for Simulated Voyages Prior to Issuance of COVID–19 Conditional Sailing Certificate.	• Removed language referring to cruise ship operator protocols as ''unproven and untested''. • Modified to incorporate current Technical Instructions for Simulated Voyages.
Procedures in Lieu of Conducting a Simulated Voyage for Cruise Ship Operators Transitioning to Voyages with Less Than 95% of Passengers Fully Vaccinated.	• New provision aimed at reducing potential industry burden for certain operators. • Based on ''Dear Cruise Industry Colleagues'' email sent on September 21, 2021. Webpage updates pending.
Modified Simulated Voyage Requirements in Lieu of a Full Simulated Voyage for Cruise Ship Operators Repositioning to U.S. Waters and Intending to Operate with Less than 95% of Passengers Fully Vaccinated.	• New provision aimed at reducing potential industry burden for certain operators. • Based on ''Dear Cruise Industry Colleagues'' email sent on September 21, 2021. Webpage updates pending.
Applying for a COVID–19 Conditional Sailing Certificate	• Shortened CDC's time to respond to an application from 60 days to 5 days based on ''Dear Cruise Industry Colleagues'' letter of April 28, 2021. • Removed requirement for an attestation under 18 U.S.C. 1001 in line with intent to operate future program on a voluntary basis. • Removed requirement to submit a copy of the USCG Certificate of Inspection.
Review of an Application for a COVID–19 Conditional Sailing Certificate.	• Removed requirement to submit proof of inspection by any other agency.
Amendment or Modification of COVID–19 Conditional Sailing Certificate Unchanged from original CSO.	• Unchanged.
Minimum Standards for Restricted Passenger Voyages as a Condition of Obtaining and Retaining a COVID–19 Conditional Sailing Certificate.	• Removed requirement to include any CDC travel advisory, warning, or recommendation relating to cruise travel in marketing material. • Removed requirement to limit voyage to 7 days. • Removed requirement for monitored observation period of passengers prior to embarking.
Minimum Standards for Management of Passengers and Crew from COVID–19-affected Cruise Ships for Restricted Passenger Voyages.	• Modified to state that voyage may be ended and further action taken if a ship meets ''red ship criteria'' under Technical Instructions for Crew. • Removed previous requirement that cruise ship operator must immediately end voyage, cancel future voyages, and return to port if COVID–19 identified onboard.
Denials, Suspension, Revocation, and Reinstatement of a Cruise Ship Operator's COVID–19 Conditional Sailing Certificate.	• Unchanged.
Administrative review	• Unchanged.

Acronyms, Initialisms, and Definitions

(a): The acronyms and initialisms below will have the following meaning:

ARI means Acute Respiratory Illness defined as the presence of cough, sore throat, or runny nose (rhinorrhea) in the absence of fever and in the absence of a non-infectious diagnosis (*e.g.,* allergies) as determined by the ship's medical provider, or as defined by CDC in technical instructions.

CLI means COVID–19-like Illness.

CDC means U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, or an authorized representative acting on its behalf.

EDC means Enhanced Data Collection.

ILI means influenza-like illness defined as fever (≥100.4 °F [38 °C]) plus either cough or sore throat or as defined by CDC in technical instructions.

(b): The terms below will have the following meaning:

Controlled Free Pratique has the same meaning as under 42 CFR 71.1.

COVID–19 means the disease caused by the coronavirus SARS–CoV–2.

COVID–19-like Illness means ARI, ILI, pneumonia, or other signs or symptoms of COVID-like illness as defined by CDC in technical instructions.

Crew or Crew member means any individual serving on board a cruise ship who is assigned to perform regular duties or tasks on behalf of a cruise ship operator in exchange for compensation.

Cruise ship means any commercial, non-cargo, foreign-flagged, passenger-carrying vessel operating in U.S. waters with the capacity to carry 250 or more individuals (passengers and crew), and with an itinerary anticipating an overnight stay onboard or a twenty-four (24) hour stay onboard for either passengers or crew.

Cruise ship operator means the master of the vessel (cruise ship) and any other crew member responsible for cruise ship operations and navigation, as well as any person or entity (including a

corporate entity) that authorizes or directs the use of a cruise ship (*e.g.,* as owner, lessee, or otherwise). A cruise ship operator may also include the cruise ship captain or the cruise line to which the cruise ship belongs, and the officers and directors of the cruise line.

Director means the Director of the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, or an authorized representative.

Isolation means measures taken by a cruise ship operator to ensure the onboard or onshore separation of passengers or crew displaying signs or symptoms of COVID–19, or who have tested positive for SARS–CoV–2, from other passengers or crew who do not display such signs or symptoms or have not tested positive for SARS–CoV–2.

Laboratory Testing or Laboratory Test Results means testing performed in a laboratory certified as meeting the standards of the Clinical Laboratory Improvement Amendments (CLIA) of 1988 (42 U.S.C. 263a) and 42 CFR 493 or CLIA-waived point-of-care testing or the results of such testing. Testing must be performed using tests that are approved, cleared, or authorized for emergency use by the U.S. Food and Drug Administration (FDA) as specified by CDC in technical instructions or orders.

Operate or Operating in U.S. waters means any action by a cruise ship operator to bring or cause a cruise ship to be brought into or transit in or between any waterways (*e.g.,* shifting berths, moving to anchor, discharging waste, making port, or embarking or disembarking passengers or crew) subject to the jurisdiction of the United States.

Passenger means any individual being transported or offered transport on board a cruise ship who is not a crew member, excluding U.S. government personnel.

Passenger operations means any action by a cruise ship operator to cause passengers to embark or disembark a cruise ship.

Person means any individual or partnership, firm, company, corporation, association, organization, or other legal entity.

Physical distancing means maintaining a distance of at least 6 feet, or such other distance as specified by CDC in technical instructions, between one individual and another individual, not gathering in groups, and avoiding crowded places and mass gatherings.

Quarantine means measures taken by a cruise ship operator to ensure the onboard or onshore separation and restriction of movement of passengers or crew who were potentially exposed to a person with COVID–19 while that person was considered infectious.

Responsible officials mean the Chief Executive Officer (or equivalent) of the operating cruise company and all parent companies, the Chief Compliance Officer (or equivalent) of the operating cruise company and all parent companies, and the highest-ranking Medical Officer of the operating cruise company and all parent companies.

Simulated voyage means a trial voyage designed and implemented in so far as possible to replicate real world onboard conditions of cruising with measures in place to mitigate the risk of COVID–19.

U.S. waters means any international, interstate, or intrastate waterways that are subject to the jurisdiction of the United States.

Background

Successful Resumption of Passenger Operations in Collaboration With Cruise Industry Partners

While cruising will never be a zero-risk activity for spread of COVID–19, CDC has successfully worked with cruise ship operators to manage this risk and allow cruise ship operators to resume passenger operations in a way that mitigates the risk to crew members, passengers, port personnel, and communities. On October 30, 2020, CDC issued the CSO, which resumes cruise ship passenger operations in U.S. waters through a phased approach. There are four phases to the CSO:

- Mass crew testing and acquiring onboard laboratory testing equipment (Phase 1),
- Preparing for simulated and revenue voyages (*e.g.,* identifying locations through port agreements to provide for the quarantine or isolation, respectively, of exposed and ill passengers) (Phase 2A) and simulated voyages to test onboard health and safety protocols (Phase 2B),
- Applying for a COVID–19 Conditional Sailing Certificate (Phase 3); and
- Restricted passenger revenue voyages with public health precautions (Phase 4).

Cruise ship operators that choose to sail with 95% vaccinated crew and 95% vaccinated passengers do not have to conduct a simulated voyage prior to applying for a COVID–19 Conditional Sailing Certificate. Cruise ships that have been operating restricted passenger voyages with 95% vaccinated crew and 95% vaccinated passengers may also transition to voyages with less than 95% vaccinated passengers by conducting modified simulated voyage procedures in lieu of a full simulated voyage. Similarly, cruise ships that have been conducting passenger operations in non-U.S. jurisdictions and intend to operate in U.S. waters with less than 95% vaccinated passengers after repositioning to the U.S. may apply for a COVID–19 Conditional Sailing Certificate after conducting modified simulated voyage procedures instead of a full simulated voyage.

As of October 21, 2021, out of the 83 ships covered by the CSO, all have acquired the onboard laboratory testing equipment required by the CSO.[11] As of October 21, 2021, cruise ship operators representing 16 brands—American Queen Steamboat Company, Bahamas Paradise Cruise Line, Carnival Cruise Line, Celebrity Cruises, Crystal Cruises, Disney Cruise Line, Holland America Line, MSC Cruises, Norwegian Cruise Line, Oceania Cruises, Princess Cruises, Regent Seven Seas Cruises, Royal Caribbean International, Silversea Cruises, Ltd, Viking Cruises, and Virgin Voyages—have submitted port agreements to CDC's Maritime Unit. Additionally, CDC's Maritime Unit has been in discussions with cruise ship operators representing 2 additional brands—Azamara and ResidenSea—with specific plans to operate ships under the CSO. These port agreements collectively cover 17 primary ports of call: Cape Liberty Cruise Port (New Jersey), Port of Baltimore, Port of Boston, Port Canaveral, Port Everglades, Port of Galveston, Port of Long Beach, Port of Los Angeles, Port of Miami, Port of New Orleans, Port of New York (Manhattan), Port of Palm Beach, Port of San Diego, Port of San Francisco, Port of San Juan, Port of Seattle, and Port Tampa Bay.[12] [13] CDC's Maritime Unit has approved port agreements for all 83 vessels covered by the CSO. Forty-eight vessels have been approved for more than one port.

[11] The CSO does not require cruise ships to build onboard laboratories. Rather, cruise ship operators must procure an onboard testing unit about the size of a desktop printer that easily fits within their existing medical centers. This equipment allows cruise ship operators to more easily test for the virus that causes COVID–19, can be operated with rudimentary training, and does not require a professional laboratorian. Moreover, cruise ships' pre-existing medical centers typically already have different types of laboratory testing equipment on board for diagnosing illness.

[12] This list represents primary ports of call (*i.e.,* home ports) and does not include secondary ports of call, such as those in Alaska.

[13] Primary ports of call approved for American Queen Steamboat Company are not included in this list because their ships are U.S.-flagged and do not travel internationally. Therefore, their ships will no longer be covered under the definition of ''cruise ship'' in the temporary extension of the CSO.

As of October 21, 2021, CDC's Maritime Unit has received and granted 18 requests from cruise ship operators to conduct simulated voyages under the CSO. As of October 21, 2021, CDC Maritime Unit inspectors have conducted 16 onboard inspections and investigations of 15 ships, including a second inspection on a ship that transitioned from a simulated voyage to a restricted passenger voyage. These inspections ranged from one-day inspections while the ship was in port, to inspections that lasted several days while the ship was underway. Because cruise ship operators are restarting operations mostly on ships that have not carried passengers in U.S. waters since March 2020, and with new crew implementing new health and safety protocols, there may be shortfalls in training or in fully implementing protocols. However, cruise ship operators have worked closely with CDC Maritime Unit inspectors to identify and quickly remedy any observed lapses in training or protocols.

Since the issuance of the CSO in October 2020, CDC has worked collaboratively with cruise lines to ensure a safer restart of passenger operations. As of October 21, 2021, CDC's Maritime Unit has received and granted COVID–19 Conditional Sailing Certificates to conduct revenue passenger voyages to 53 ships operating under the CSO. During numerous regularly scheduled discussions, cruise industry representatives have expressed their desire to rebuild passenger confidence and prove COVID–19 can be successfully managed on board cruise ships sailing in U.S. waters. Despite the best efforts of cruise ship operators to provide a safer and healthier environment for crew and passengers, public health concerns relating to the ongoing pandemic, emergence of variants of concerns such as the Delta variant, and breakthrough infections in fully vaccinated persons highlight the need to temporarily extend the CSO, particularly as we see high levels of transmission in the United States and globally, including in countries with high rates of vaccination, such as the United Kingdom and Israel.[14] [15]

Current State of COVID–19 Pandemic

As of October 21, 2021, there have been almost 241 million cases of COVID–19 globally, resulting in over 4,900,000 deaths.[16] Over 45 million cases have been identified in the United States, with new cases reported daily, and over 730,000 deaths attributed to the disease.[17] Forecasting teams predict numbers of deaths, hospitalizations, and cases using different types of data (*e.g.,* COVID–19 data, demographic data, mobility data), methods, and estimates of the impacts of interventions (*e.g.,* physical distancing, use of face masks). A renewed surge in cases in the United States began in early July 2021; case counts rose from 19,000 cases per day on July 1, 2021 to over 150,000 cases per day on August 31, 2021. During the pandemic, cases have tended to surge in waves with 4 waves as of October 2021.[18] Therefore, additional surges of cases and deaths could be expected to occur. Similar to seasonal epidemics of influenza and other respiratory viruses, surges in cases, hospitalizations, and deaths from COVID–19 could also be expected to occur in winter as more people spend time indoors due to inclement weather.

The virus that causes COVID–19 spreads very easily and sustainably between people, particularly those who are in close contact with one another (within about 6 feet, but occasionally over longer distances). COVID–19 spreads when an infected person breathes out droplets and very small particles that contain the virus. These droplets and particles can be breathed in by other people or land on their eyes, noses, or mouth. Individuals without symptoms can also spread the virus. Among adults, the risk for severe illness from COVID–19 increases with age, with older adults at highest risk. Severe illness means that persons with COVID–19 may require hospitalization, intensive care, or a ventilator to help them breathe, and may be fatal. People of any age with certain underlying medical conditions (*e.g.,* cancer, obesity, serious heart conditions, diabetes) are at increased risk for severe illness from COVID–19.[19]

Emergence of Variants

Variants of SARS–CoV–2, the virus that causes COVID–19, are expected to continue to emerge. Some will emerge and disappear, and others will emerge and continue to spread and may replace previous variants.[20] While it is known and expected that viruses constantly change through mutation leading to the emergence of new variants, the Delta variant is particularly concerning because it causes more infections and spreads faster than earlier forms of SARS–CoV–2.[21] It has rapidly become the predominant strain in the United States, estimated to account for 99.7% of U.S. cases [22] and has been reported in 193 places [23] worldwide as of October 20, 2021.

Recent studies have also demonstrated that some fully vaccinated people exposed to the Delta variant can become infected, and those persons can be contagious and spread the illness to others, although their infectious period appears to be shorter compared to people who are not fully vaccinated.[24] [25] [26] Delta has been shown to result in higher viral loads in infected people, and spreads twice as easily from one person to another, compared to earlier strains. The ultimate concern is the emergence of a ''variant of high consequence'' that undermines existing public health defenses by substantially decreasing the effectiveness of available testing, treatments, and vaccines against severe or deadly disease.[27] While such a variant of high consequence has not yet been identified, so long as new variants of SARS–CoV–2 continue to emerge and circulate, the potential for such a variant to arise remains a possibility.

Availability of Vaccines and Delta Variant

COVID–19 vaccines are now widely available in the United States, and vaccination is currently recommended for all people 12 years of age and older. As of October 21, 2021, over 189 million people in the United States (66.9% of

[14] *https://covid19.who.int/region/euro/country/gb.*

[15] *https://covid19.who.int/region/euro/country/il.*.

[16] *https://covid19.who.int/.*

[17] *https://covid.cdc.gov/covid-data-tracker/#datatracker-home.*

[18] *https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/mathematical-modeling.html.*

[19] *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html.*

[20] *https://www.cdc.gov/coronavirus/2019-ncov/variants/variant-info.html#Concern.*

[21] Li B, Deng A, Li K, et al. Viral Infection and Transmission in a Large Well-Traced Outbreak Caused by the Delta SARS–CoV–2 Variant. medRxiv. 2021 Jul 12; *https://doi.org/10.1101/2021.07.07.21260122.*

[22] *https://covid.cdc.gov/covid-data-tracker/#variant-proportions.*

[23] *https://covid.cdc.gov/covid-data-tracker/#global-variant-report-map.*

[24] Brown CM, Vostok J, Johnson H, et al. Outbreak of SARS–CoV–2 Infections, Including COVID–19 Vaccine Breakthrough Infections, Associated with Large Public Gatherings—Barnstable County, Massachusetts, July 2021. MMWR Morb Mortal Wkly Rep 2021;70:1059–1062. DOI: *http://dx.doi.org/10.15585/mmwr.mm7031e2.*

[25] Dougherty K, Mannell M, Naqvi O, Matson D, Stone J. SARS–CoV–2 B.1.617.2 (Delta) Variant COVID–19 Outbreak Associated with a Gymnastics Facility—Oklahoma, April–May 2021. MMWR Morb Mortal Wkly Rep 2021;70:1004–1007. DOI: *http://dx.doi.org/10.15585/mmwr.mm7028e2.*

[26] CDC: Delta Variant: What We Know about the Science.

[27] SARS–CoV–2 Variant Classifications and Definitions, Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/variants/variant-info.html#Concern* (last updated September 23, 2021).

the population 12 years or older) have been fully vaccinated and over 219 million people in the United States (77.4% of the population 12 years or older) have received at least one dose.[28]

The three COVID–19 vaccines approved or authorized in the United States are highly effective at preventing severe disease and death from COVID–19, including against the Delta variant.[29] [30] But some fully vaccinated people will still become infected (breakthrough infection) and experience illness. While vaccination has shown to lower the risk of severe COVID–19 cases or death, people who are vaccinated and become infected with the Delta variant may still transmit the virus to others, although vaccinated people appear to be infectious for a shorter period.[31] [32] [33] [34] This evidence coupled with people getting vaccinated at a slower rate in the United States, and the extreme transmissibility of the Delta variant has resulted in rapidly rising numbers of COVID–19 cases, primarily and disproportionately affecting those not fully vaccinated.

Justification for Temporary Extension of CSO

Despite the best efforts of cruise ship operators to provide a safer and healthier environment for crew and passengers, including operating ships with high percentages of vaccinated persons onboard, outbreaks of COVID–19 have continued to occur, many involving breakthrough infections in fully vaccinated persons. Between June 7–30, 2021, a cruise ship operator identified 21 laboratory-confirmed COVID–19 cases onboard one of its ships, with the majority of cases among fully vaccinated persons. CDC's Maritime Unit assisted the cruise ship operator with the investigation to prevent further spread of the virus on board. In addition, the Maritime Unit collaborated with CDC's COVID–19 Laboratory Task Force to have specimens from this outbreak genetically sequenced to identify if a variant of concern was the cause. Results showed that the outbreak was in fact, due to the highly transmissible Delta variant.

As cruise ship operators continue to embark new crew in anticipation of more passenger revenue voyages in the U.S., cases of COVID–19 among crew have been reported, highlighting the continued need for public health management of cases to mitigate this risk. The resumption of passenger voyages in the U.S. has led to the introduction and sustained transmission of COVID–19 among cruise ships, despite high vaccination rates among both crew and passengers. With an increase in traveler volume, cruise ships have experienced increased numbers of COVID–19 cases among passengers and crew. Between June 26–October 21, 2021, 1,359 laboratory confirmed cases of COVID–19 were reported to CDC by cruise ships following the CSO.[35]

Several large outbreaks on cruise ships are highlighted below.

- On July 24, 2021, one symptomatic passenger who tested positive for COVID–19 on a cruise ship (Cruise Ship A) was epidemiologically linked to 20 additional laboratory-confirmed cases of COVID–19 over two voyages, including 2 passengers and 18 crew. The COVID–19 vaccination rate on this ship ranged between 99.8–100% for crew and 96.4–97.5% for passengers.
- Between July 24–August 28, a cruise ship (Cruise Ship B) reported 58 laboratory-confirmed COVID–19 cases among passengers and crew. The COVID–19 vaccination rate on this ship ranged between 96.8–97.7% for passengers and averaged 100% for crew.
- Between July 29–31, 2021, three symptomatic passengers tested positive for COVID–19 on a cruise ship (Cruise Ship C). Contact tracing and testing identified an additional 12 laboratory-confirmed cases of COVID–19, including 10 passengers and 2 crew. This was a highly vaccinated ship with 100% of crew and an average of 97% of passenger fully vaccinated.
- Between July 26–August 6, a cruise ship (Cruise Ship D) reported 7 laboratory-confirmed COVID–19 cases among passengers and crew. The COVID–19 vaccination rate on this ship was 100% for crew and ranged between 96.8–97.7% for passengers.
- Between August 19–September 7, a cruise ship (Cruise Ship E) reported 105 laboratory-confirmed COVID–19 cases among passengers and crew on a total of four consecutive voyages. This was a highly vaccinated ship with 100% of crew and an average of 97% of passenger fully vaccinated at the time on the voyage(s).
- Between August 21–September 7, a cruise ship (Cruise Ship F) reported a total of 112 laboratory-confirmed COVID–19 cases among passengers and crew on four consecutive voyages despite the ships' 100% vaccination rate for persons onboard.

While high vaccination rates onboard these cruise ships likely explain why onboard medical center resources have not been overwhelmed, the number of hospitalizations and medical evacuations due to COVID–19 or CLI have increased since passenger operations resumed. Between June 26–October 21, 2021, 49 hospitalizations and 38 medical evacuations for COVID–19 or CLI were reported to CDC.

Despite the implementation of strict protocols by cruise ship operators to prevent the introduction of COVID–19 from passengers, ensuring passengers are uninfected at embarkation has proven difficult. There have been several instances of passengers' being symptomatic on the day of embarkation and denying symptoms to the cruise line, or passengers' being symptomatic for several days on board the ship before reporting their symptoms to the medical center. These situations have led to complex contact tracing investigations, due to the large number of contacts exposed between presumed onset of infectiousness and when infection was identified and the passenger isolated.

For example, a passenger on a cruise ship (Cruise Ship F), who was fully vaccinated and had tested negative for COVID–19 three days before boarding, boarded the ship while symptomatic for COVID–19, but denied having symptoms. The passenger died three days after boarding for reasons related to COVID–19. This led to CDC and the cruise line taking the following public health actions:

- Contact tracing to identify exposed persons, which included interviews of passengers and crew, review of security footage, and analysis of wearable

[28] *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-total-admin-rate-total.*

[29] Bernal JL, Andrews N, Gower C, et al. Effectiveness of Covid–19 Vaccines against the B.1.617.2 (Delta) Variant. N Engl J Med. 2021 Jul 21;doi:10.1056/NEJMoa2108891external icon.

[30] Thompson MG, Burgess JL, Naleway AL, Tyner H, Yoon SK, Meece J, et al. Prevention and Attenuation of Covid–19 with the BNT162b2 and mRNA–1273 Vaccines. N Engl J Med. 2021;385(4):320–9.

[31] Mlcochova P, Kemp S, Dhar S, et al. SARS–CoV–2 B.1.617.2 Delta Variant Emergence and Vaccine Breakthrough. Research Square Platform LLC. 2021 Jun 22; doi:10.21203/rs.3.rs-637724/v1external icon.

[32] Musser JM, Christensen PA, Olsen RJ. et al. Delta Variants of SARS–CoV–2 Cause Significantly Increased Vaccine Breakthrough COVID–19 Cases in Houston, Texas. medRxiv. 2021 Jul 22; *https://org/10.1101/2021.07.07.21260122.*

[33] Brown CM, Vostok J, Johnson H, et al. Outbreak of SARS–CoV–2 Infections, Including COVID–19 Vaccine Breakthrough Infections, Associated with Large Public Gatherings—Barnstable County, Massachusetts, July 2021. MMWR Morb Mortal Wkly Rep. ePub: 30 July 2021; *https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm.*

[34] Chia PY, Ong SWX, Chiew CJ, et al. Virological and serological kinetics of SARS–CoV–2 Delta variant vaccine-breakthrough infections: a multi-center cohort study. 2021;doi:*doi.org/10.1101/2021.07.28.21261295.*

[35] This number does not include newly embarking crew who tested positive for SARS–CoV–2 prior to or during their embarkation quarantine period, or passengers who tested positive for SARS–CoV–2 at embarkation and did not board the ship.

technology and other relevant location data;

- Notifications to close contacts to advise them to monitor for symptoms, and to federal, state, and local partners in two states;
- Screening testing to identify those who could have been infected;
- Isolation for close contacts who tested positive for COVID–19; and
- Quarantine for close contacts who tested negative for COVID–19 but could have still developed the illness during the incubation period.

Based on these time-sensitive and labor-intensive public health actions, the cruise line identified over 30 close contacts from one infected passenger.

Cruise ship voyages from the U.S. also include itineraries to countries that have low vaccination rates but are reopening to international tourism. These countries may have limited testing capabilities for their populations, which could restrict their ability to identify COVID–19, including variants of concern. Cruise ship travel to these countries risks potentially introducing additional variants of concern into the United States. Based on CDC's assessment of risk and issuance of Travel Health Notices for international destinations,[36] travelers may be at increased risk for getting and spreading COVID–19 variants in the following countries where cruise ships intend to sail, per published itineraries: Aruba, the Bahamas, Barbados, Bermuda, Belize, Bonaire, Curaçao, Haiti, Honduras, Jamaica, Mexico, Saint Kitts and Nevis, Sint Maarten, and Turks and Caicos Islands.[37] Accordingly, based on these risks and information available to CDC, the CSO continues to represent the best way of protecting the public's health by mitigating COVID–19 transmission onboard cruise ships and into the United States.

Findings and Immediate Action

The ongoing COVID–19 pandemic, emergence of variants of concerns, including the Delta variant, breakthrough infections in fully vaccinated persons, and possible surges of additional cases, hospitalizations, and deaths in the U.S. and in countries to which cruise ships travel support the CSO's temporary extension to mitigate the risk of further COVID–19 introduction, transmission, and spread both onboard cruise ships and into U.S. communities.

Finding of Inadequate Local Control Under 42 CFR 70.2

The cruise ships subject to this Order are all foreign-flagged and operate on international itineraries. State and local health departments consider public health on cruise ships as primarily subject to federal jurisdiction and do not routinely exercise oversight or control over cruise ship operations nor maintain maritime public health programs, particularly when such cruise ships employ mostly foreign crews and operate in international waters subject to the jurisdiction of the United States. Many state and local health departments are also currently engaged in response activities relating to the COVID–19 pandemic, and do not have the time, money, or public health resources to dedicate staff and programs to maritime public health activities. Further, based on legal authority at 42 CFR 71.31(b), CDC is the only government entity that may impose public health conditions on cruise ships operating in international waters if those ships plan to return to operating in U.S. waters. Furthermore, U.S. Coast Guard, not state and local public health departments, is the only entity that routinely conducts emergency medical evacuations at sea, including for persons with COVID–19.

Accordingly, under 42 CFR 70.2, the Director determines that based on jurisdictional limitations and other factors, the measures taken by state and local public health authorities in U.S. jurisdictions where foreign-flagged cruise ships port or travel on international itineraries and do not routinely exercise public health jurisdiction nor maintain maritime public health programs that conduct surveillance, inspections, investigations, and management for diseases of public health concern on board cruise ships have been and are insufficient to prevent the spread of COVID–19 into and among U.S. states and territories.[38]

Statement of Good Cause Under the Administrative Procedure Act (''APA'')

COVID–19 cases, hospitalizations, and deaths continue to increase, especially in areas with higher levels of community transmission and lower vaccination coverage.[39] Furthermore, while pediatric cases and hospitalizations have decreased in recent weeks following a previous increase, cases and hospitalizations could surge again.[40] Based on the rapidly increasing cases and spread of the Delta variant and other variants of SARS–CoV–2, and to reduce introduction and spread of these and future SARS–CoV–2 variants into the United States, including a potential variant of high consequence, at a time when cruise ship travel has resumed, CDC must take quick and targeted action to further curtail the spread of Delta and other new virus variants into the United States.

The Director continues to find evidence to support a reasonable belief that cruise ships are or may be infected or contaminated with a quarantinable communicable disease.[41] This reasonable belief is based on information from epidemiologic and other data.[42] As a result, absent measures of the type specified in the

[36] How CDC Determines the Level for COVID–19 Travel Health Notices.

[37] COVID–19 in Aruba, COVID–19 in the Bahamas, COVID–19 in Barbados, COVID–19 in Belize, COVID–19 in Bermuda, COVID–19 in Bonaire, COVID–19 in Curaçao, COVID–19 in Haiti, COVID–19 in Honduras, COVID–19 in Jamaica, COVID–19 in Mexico, COVID–19 in Saint Kitts and Nevis, COVID–19 in Sint Maarten, COVID–19 in Trinidad and Tobago, *and* COVID–19 in the Turks and Caicos Islands.

[38] These jurisdictions include the following U.S. states: Alabama, Alaska, California, Delaware, Florida, Georgia, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, and Washington State. These jurisdictions also include the following U.S. territories: American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. CDC is not currently aware of any states or U.S. territories operating a maritime public health program that would displace the CSO.

[39] *https://covid.cdc.gov/covid-data-tracker/#datatracker-home.*

[40] *https://covid.cdc.gov/covid-data-tracker/#datatracker-home.*

[41] The list of federally quarantinable communicable diseases as defined by Executive Order includes severe acute respiratory syndromes, defined as diseases that are associated with fever and signs and symptoms of pneumonia or other respiratory illness, are capable of being transmitted from person to person, and that either are causing, or have the potential to cause, a pandemic, or, upon infection, are highly likely to cause mortality or serious morbidity if not properly controlled. This definition does not apply to influenza. See Executive Order 13295 (April 4, 2003), as amended by Executive Orders 13375 (April 1, 2005), 13674 (July 31, 2014), and 14047 (September 17, 2021). CDC has determined that COVID–19 meets the definition of a severe acute respiratory syndrome and therefore is a quarantinable communicable disease.

[42] Multiple studies have confirmed that COVID–19 transmission rates onboard cruise ships are higher than in other settings. Kordsmeyer, A.-C.; Mojtahedzadeh, N.; Heidrich, J.; Militzer, K.; von Münster, T.; Belz, L.; Jensen, H.-J.; Bakir, S.; Henning, E.; Heuser, J.; et al. *Systematic Review on Outbreaks of SARS–CoV–2 on Cruise, Navy and Cargo Ships.* Int. J. Environ. Res. Public Health 2021, 18, 5195. *https://doi.org/10.3390/ijerph18105195;* Rocklöv J, Sjödin H, Wilder-Smith A. *COVID–19 Outbreak on the Diamond Princess Cruise Ship: Estimating the Epidemic Potential and Effectiveness of Public Health Countermeasures.* J. Travel Med. 2020; 18;27(3): taaa030. *https://doi.org/10.1093/jtm/taaa030;* Payne DC, Smith-Jeffcoat SE, Nowak G, et al. *SARS–CoV–2 Infections and Serologic Responses from a Sample of U.S. Navy Service Members—USS Theodore Roosevelt,* April 2020. MMWR Morb Mortal Wkly Rep 2020;69:714–721. DOI: *http://dx.doi.org/10.15585/mmwr.mm6923e4.*

CSO, persons on board or seeking to board cruise ships may likely be or would likely become infected with or exposed to the virus that causes COVID–19 by virtue of being on board at a time when the virus, including the highly transmissible Delta variant, continues to circulate globally and in the U.S. Additionally, persons infected on cruise ships would be likely to transmit COVID–19 to U.S. communities by traveling interstate after disembarking a cruise ship.

This Order is not a rule within the meaning of the Administrative Procedure Act (''APA''), but rather an emergency action taken under the existing authority of 42 CFR 70.2, 71.31(b), and 71.32(b). If this Order qualifies as a rule under the APA, notice and comment and a delay in effective date are not required because good cause exists to dispense with prior public notice and the opportunity to further comment on this Order. Considering the public health emergency caused by COVID–19, including the Delta variant, based on, among other things, its potential for spread on board cruise ships and potential to cause breakthrough infections in vaccinated persons, it would be impracticable and contrary to the public's health, and by extension the public's interest, to delay the issuance and effective date of this Order. 5 U.S.C. 553(b)(B), (d)(3).

Similarly, if this Order qualifies as a rule per the definition in the APA, the Office of Information and Regulatory Affairs has determined that it would be a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, SBREFA), 5 U.S.C. 804(2), but there would not be a delay in its effective date under 5 U.S.C. 808(2) as the agency has invoked the good cause provision of the APA. As explained in this Order, during the pandemic, cases have tended to surge in waves with 4 waves as of October 2021.[43] Therefore, additional surges of cases and deaths can be expected. The winter season (November through January) has historically been the most active cruising season in the Caribbean and Central America, involving travel to countries currently listed by CDC as being under COVID–19 travel health notices where cruise ship travelers may be at increased risk for acquiring and subsequently introducing COVID–19 variants into the U.S. Additionally, cruise ship operators have informed CDC of their intended plans to increase the number of ships operating in U.S. waters this fall and winter. Accordingly, in light of the rapidly evolving public health situation and expected increase in winter cruising activity, pausing the operation and enforcement of the CSO to allow for a notice and comment period would be impracticable and contrary to the public interest.

While it was not feasible based on the rapidly evolving pandemic and emergence of variants of concern to seek full notice and comment through rulemaking, CDC solicited specific feedback from cruise ship operators and other partners relating to the measures in this temporary CSO extension. Unfortunately, CDC received low response rate to its solicitation (n=15). Almost three quarters of the respondents were cruise industry representatives (n=11) and the responses may have underrepresented non-cruise stakeholder partners (such as state and local health departments, seaport partners, and U.S. government interagency partners). Therefore, CDC acknowledges that further solicitation and feedback are warranted before existing elements of the CSO are maintained, modified, or rescinded as part of any future voluntary program.

Based on feedback received, the majority of respondents agreed on the importance of COVID–19 industry-wide standards including:

- Surveillance protocols,
- medical protocols, capabilities, and supplies for managing patients on board, and
- preventive measures & public health interventions (*e.g.,* mask use, physical distancing, cleaning and disinfection, infection prevention and control plans).

The majority of respondents also agreed on the importance of continued communication and close collaboration between CDC and cruise lines, including through regularly scheduled executive session calls between cruise lines, CDC, and interagency representatives to exchange information and share ideas; regularly scheduled technical assistance calls between CDC's Maritime Unit and cruise lines' public health personnel; and ad hoc outbreak assistance calls between CDC's Maritime Unit and cruise lines' medical and public health staff.

While most cruise industry respondents disagreed that port agreements were useful for the resumption of passenger operations, respondents were divided as to whether individual components of the port agreements (*e.g.,* medical care, housing, and vaccination) were important for future cruise operations. However, based on previous feedback from state and local health departments and seaport partners, CDC believes that emergency response planning is an important element of COVID–19 health and safety protocols that should be a part of future cruise ship operations. The exact elements of such emergency response planning would be the subject of further discussion and information sharing as part of any future voluntary program between CDC and the cruise ship industry.

Most cruise industry respondents also disagreed that CDC's Cruise Ship Color Status web page was useful for communicating information about COVID–19 on cruise ships in U.S. jurisdictions. However, CDC believes it is important to be transparent and continue to advise the public about COVID–19 conditions on board cruise ships so that passengers can make better informed decisions based on their preexisting medical conditions and risk of severe illness. How best to inform the public about COVID–19 conditions on board cruise ships would similarly be the subject of further discussion and information sharing as it relates to any future voluntary program.

The interest of cruise ship operators in participating in a future voluntary program to detect, mitigate, and control the spread of COVID–19 during future cruise ship operations is also difficult to gauge based on this limited initial feedback. Of the 11 cruise industry respondents, 4 indicated they would be interested in such a program and 7 indicated that they would not be. Based on written comments received to this question, some cruise ship operators expressed reticence to respond in the affirmative in the absence of additional details regarding the scope and parameters of such a voluntary program. Regardless, CDC wishes to stress that cruise ship participation in any future voluntary program would not be mandated; the scope and parameters of such a program would be subject to further discussion and information sharing; and cruise ship operators would be free to develop alternative pathways of detecting, mitigating, and controlling the spread of COVID–19 onboard cruise ships.

Accordingly, CDC will use the additional time provided by this temporary extension to better gauge interest in a voluntary program and continue to explore alternative pathways to detect, mitigate, and control the spread of COVID–19 onboard cruise ships. During this temporary extension period, CDC intends to solicit additional feedback from the cruise industry, state and local

[43] *https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/mathematical-modeling.html.*

health departments, seaport partners, and U.S. government interagency partners as may be needed to explore interest in and develop a voluntary program to assist the cruise ship industry to detect, mitigate, and control the spread of COVID–19 onboard cruise ships for those cruise ship operators who may wish to be involved in such a program.

Severability of Provisions

If any provision in this Order, or the application of any provision to any carriers, persons, or circumstances, shall be held invalid, the remainder of the provisions, or the application of such provisions to any carriers, persons, or circumstances other than those to which it is held invalid, shall remain valid and in effect.

Federal Preemption

In accordance with 42 U.S.C. 264(e), this Order shall supersede any provision under State law (including regulations and provisions established by political subdivisions of States), that conflict with an exercise of Federal authority, including instructions by U.S. Coast Guard or HHS/CDC personnel permitting ships to make port or disembark persons under stipulated conditions, under this Order.

Enforceability

This Order shall be enforceable through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 70.18, 71.2. While this Order may be enforced and CDC reserves the right to enforce in appropriate circumstances through criminal penalties, CDC does not intend to rely primarily on these criminal penalties but instead anticipates continued widespread voluntary compliance from cruise ship operators as well as support from U.S. Coast Guard.

Therefore, in accordance with sections 361 and 365 of the Public Health Service Act (42 U.S.C. 264, 268) and 42 CFR 70.2, 71.31(b), 71.32(b), for all cruise ships as defined in this Order for the period described below, it is *ordered*:

Framework for Conditional Sailing Order

Purpose and Scope

(a) *Purpose.* The purpose of this framework is to prevent the further introduction, transmission, and spread of COVID–19 into and throughout the United States via cruise ships. These requirements are in addition to other requirements in regulations or actions taken by HHS/CDC to prevent the introduction, transmission, and spread of communicable diseases under 42 U.S.C. 264 and 42 CFR part 70 and 42 CFR part 71.

(b) *Scope.* This framework applies to any person operating or intending to operate a foreign-flagged cruise ship in U.S. waters and to any person operating a foreign-flagged cruise ship outside of U.S. waters if the cruise ship operator intends for the ship to return to operating in U.S. waters while this Order remains in effect.

(1) Upon request, cruise ship operators must make their properties and records available for inspection to allow CDC to ascertain compliance with this framework. Such properties and records include but are not limited to vessels, facilities, vehicles, equipment, communications, manifests, list of passengers, and employee and passenger health records.

(2) CDC may enforce any of the provisions of this framework through additional orders published in the **Federal Register** and issue additional technical instructions as needed.

(3) Nothing in this framework supersedes or preempts enforcement of emergency response requirements imposed by statutes or other regulations.

General Prohibition on a Cruise Ship Operator Commencing or Continuing Passenger Operations Without a COVID–19 Conditional Sailing Certificate

(a) A cruise ship operator subject to this Order must meet the requirements of this framework as a condition of obtaining or retaining controlled free pratique for operating a cruise ship in U.S. waters or if the cruise ship operator is operating a cruise ship outside of U.S. waters and intends for the ship to return to operating in U.S. waters while this Order remains in effect. These requirements must additionally be met as a condition of obtaining or retaining controlled free pratique for conducting a simulated voyage or applying for a COVID–19 Conditional Sailing Certificate.

(b) A cruise ship operator shall not commence or continue any passenger operations in U.S. waters without a COVID–19 Conditional Sailing Certificate issued by CDC that meets the requirements in this framework for each cruise ship that the cruise ship operator intends to operate with passengers in U.S. waters.

(c) A cruise ship operator shall not violate the terms or conditions of a COVID–19 Conditional Sailing Certificate issued pursuant to this framework.

(d) As a condition of obtaining or retaining a COVID–19 Conditional Sailing Certificate, the cruise ship operator must be in compliance with CDC's standards for mitigating the risk of COVID–19 onboard the cruise ship as set forth in this framework and in CDC technical instructions or orders.

Requirements for COVID–19 Response Plan for Cruise Ship Operators Operating or Intending To Operate Cruise Ships in U.S. Waters [44]

(a) Cruise ships operating or intending to operate in U.S. waters must have a COVID–19 response plan that includes the following components:

(1) Terminology and use of definitions that align with how CDC uses and defines the following terms: ''confirmed COVID–19,'' ''COVID–19-like illness,'' ''close contact,'' ''fully vaccinated for COVID–19,'' and ''isolation'' and ''quarantine'' (including timeframes for isolation and quarantine).

(2) Protocols for on board surveillance of passengers and crew with COVID–19 and COVID–19-like-illness.

(3) Protocols for training all crew on COVID–19 prevention, mitigation, and response activities.

(4) Protocols for on board isolation and quarantine, including how to increase capacity in case of an outbreak.

(5) Protocols for COVID–19 testing that aligns with CDC technical instructions.

(6) Protocols for onboard medical staffing—including number and type of staff—and equipment in sufficient quantity to provide a hospital level of care (*e.g.,* ventilators, face masks, personal protective equipment) for the infected without the immediate need to rely on shoreside hospitalization.

(7) Procedures for disembarkation of passengers who test positive for COVID–19.

(b) The cruise ship operator has observed and will continue to observe all elements of its COVID–19 response plan including following the most current CDC recommendations and guidance for any public health actions related to COVID–19.

[44] COVID–19 response plans were formerly referred to as ''No Sail Order'' response plans. Cruise ship operators that previously submitted a signed ''Acknowledgment of No Sail Order Response Plan Completeness and Accuracy'' to CDC have fulfilled the requirements of this section and do not need to re-submit a COVID–19 response plan.

Requirements for COVID–19 Testing Capabilities and Reporting for Cruise Ship Operators Operating or Intending To Operate Cruise Ships in U.S. Waters [45]

(a) Cruise ships operating or intending to operate in U.S. waters must have onboard testing capabilities as directed by CDC in technical instructions or orders to test all symptomatic crew and passengers for COVID–19 and their close contacts. These capabilities include having onboard rapid nucleic acid amplification test (NAAT) point-of-care equipment that meets the requirements specified by CDC in technical instructions or orders.[46] This testing instrument must be authorized by FDA for use in a CLIA-waived setting, have been evaluated on the FDA reference panel for SARS–CoV–2,[47] allow for specimen-to-instrument transfer in a way that minimizes the risk of contamination, and possess a limit of detection (LoD) value ≤18,000 NDU/ml.

(b) Cruise ships operating in U.S. waters must continue to submit the EDC form as specified in CDC technical instructions or orders. Cruise ship operators with ships that have not been in U.S. waters during the period of the CSO and who wish to operate those ships in U.S. waters during the period that this framework remains in effect, must additionally submit the EDC form during (at a minimum) the 14 days preceding those ships' expected arrival in U.S. waters and continue to submit the EDC form after the ships' entering U.S. waters or, alternatively, arrange for such appropriate shoreside or ship-based testing of passengers and crew as directed by CDC with subsequent submission of the EDC form after the ships' arrival.

(c) The cruise ship operator has arranged for and submitted and will continue to arrange for and submit such COVID–19 test results as may be required by CDC for every crew member on board ships operating in U.S. waters and/or operating outside of U.S. waters if the cruise ship operator intends for the ship to return to operating in U.S. waters at any time while this Order remains in effect. Routine COVID–19 screening testing of all crew must be conducted at such other intervals as required by CDC in technical instructions or orders. CDC may conduct oversight of specimen collection, testing, and laboratory procedures, as necessary.

(d) CDC may issue additional requirements through technical instructions or orders relating to a cruise ship operator's processes and procedures for protection of crew.

Agreement With Port and Local Health Authorities [48]

(a) As a condition of obtaining or retaining controlled free pratique for conducting a simulated voyage or obtaining and retaining a COVID–19 Conditional Sailing Certificate, a cruise ship operator must document the approval of all U.S. port and local health authorities where the ship intends to dock or make port during a simulated voyage or a restricted passenger voyage. Such written approval must include the following:

(1) A medical care agreement between the cruise ship operator and health care entities, addressing evacuation to onshore hospitals for passengers and crew in need of care, in accordance with CDC technical instructions and orders.[49]

(2) A housing agreement between the cruise ship operator and one or more shoreside facilities for isolation and quarantine of COVID–19 cases and close contacts, respectively, identified from the day of embarkation through disembarkation for each voyage, in accordance with CDC technical instructions and orders.

(3) A port agreement between the cruise ship operator and port authority that takes into consideration the public health response resources of the jurisdiction in the event of a COVID–19 outbreak, a plan and timeline for vaccination of cruise ship crew prior to resuming passenger operations, and vaccination strategies to maximally protect passengers and crew from introduction, amplification, and spread of COVID–19 in the maritime environment and in land-based communities.

(b) In lieu of documenting the approval of all local health authorities of jurisdiction, the cruise ship operator may instead submit to CDC a signed statement from a local health authority, on the health authority's official letterhead, indicating that the health authority has declined to participate in deliberations and/or sign the port agreement, *i.e.,* a ''Statement of Non-Participation.''

(c) In documenting the approval of all U.S. port and local health authorities where the ship intends to dock or make port during simulated voyages or restricted passenger voyages, the cruise ship operator may enter into a multi-port agreement (as opposed to a single port agreement) provided that all relevant port and local health authorities (including the state health authorities) are signatories to the agreement.

Minimum Standards for Simulated Voyages Prior to Issuance of COVID–19 Conditional Sailing Certificate

(a) As a condition of applying for a COVID–19 Conditional Sailing Certificate, a cruise ship operator must have successfully conducted a simulated voyage demonstrating the cruise ship operator's ability to mitigate the risks of COVID–19 onboard its cruise ship. A simulated voyage must meet the following requirements: [50]

(1) The cruise ship operator must inform volunteer passengers in writing that they are participating in a simulation of health and safety protocols for purposes of simulating a cruise ship voyage.

(2) All volunteer passengers must be at least twelve years old or older. The cruise ship operator must also obtain from all volunteer passengers a written certification from a healthcare provider that the volunteer passenger has no pre-existing medical conditions that would place that individual at high risk for COVID–19 as determined through CDC guidance. CDC may issue additional requirements through technical instructions or orders relating to a cruise ship operator's obligation to screen for volunteer passengers who may be at high risk for COVID–19.

(3) The cruise ship operator must conduct any simulation on a consensual basis. The cruise ship operator must document the informed consent of all adult participants in writing. If any minors are to participate in the simulation then the informed consent of a parent or guardian, and the written assent of the minor must also be documented in writing. All persons younger than eighteen years old must be fully vaccinated against COVID–19 as a

[45] This section does not impose new requirements on cruise ship operators but merely restates requirements that cruise ship operators previously fulfilled during Phase 1 of the CSO. These requirements were previously published under the section ''Requirements for Protection of Crew for Cruise Ship Operators Operating or Intending to Operate Cruise Ships in U.S. Waters.''

[46] Technical Instructions for Mitigation of COVID–19 Among Cruise Ship Crew | Quarantine | CDC.

[47] For tests that do not have the FDA reference panel available, tests will be accepted using sensitivity data ≥95% from clinical samples as indicated in the manufacturer's instructions for use.

[48] Cruise ship operators that previously submitted and had their port and local health agreements accepted by CDC are not required to take any further action under this section if such agreements continue to remain in effect.

[49] *https://www.cdc.gov/quarantine/cruise/instructions-local-agreements.html.*

[50] *https://www.cdc.gov/quarantine/cruise/ti-simulated-voyages-cso.html.*

condition of participation on a simulated voyage.

(4) The cruise ship operator must design and conduct a simulated voyage insofar as practicable to test the efficacy of the cruise ship operator's ability to mitigate the risks of COVID–19 onboard its cruise ship.

(5) The cruise ship operator must conduct laboratory testing of volunteer passengers, as directed in CDC technical instructions or orders, prior to embarking volunteer passengers on a simulated voyage.

(6) A simulated voyage must include the following simulated activities:

(i) Embarkation and disembarkation procedures, including terminal check-in,

(ii) on board activities, including at dining and entertainment venues,

(iii) private island shore excursions, if any are planned during restricted passenger voyages,

(iv) evacuation procedures,

(v) transfer of symptomatic passengers or crew, or those who test positive for SARS–CoV–2, from cabins to isolation rooms,

(vi) quarantine of all remaining passengers and non-essential crew, and

(vii) other activities as may be listed in CDC technical instructions and orders.

(7) The cruise ship operator must meet standards for hand hygiene, facemasks, and physical distancing for passengers and crew, as well as ship sanitation, as may be required by CDC technical instructions or orders.

(8) The cruise ship operator must modify meal service and entertainment venues to facilitate physical distancing during the simulated voyage.

(9) The cruise ship operator must conduct laboratory testing of all passengers and crew on the day of embarkation and the day of disembarkation as required by CDC technical instructions or orders. Laboratory test results must be available prior to passengers embarking and prior to passengers and crew departing for their final destinations after disembarking the ship. Crew and passengers must also be laboratory tested again post-disembarkation as required by CDC technical instructions or orders. Based on public health considerations, CDC may also require additional laboratory testing of passengers and crew and reporting of results, including during a voyage, as required by CDC technical instructions or orders.

(10) The cruise ship operator must immediately conduct laboratory testing of any passengers and crew who report illness consistent with COVID–19 during the simulated voyage with rapid point-of-care results as required by CDC technical instructions or orders. Identified close contacts of cases must also be laboratory tested with rapid point-of-care results.

(11) CDC may require the cruise ship operator to immediately end the simulated voyage and take other action to protect the health and safety of volunteer passengers and crew if during the simulation a threshold of COVID–19 cases, as determined by CDC in technical instructions, is met or exceeded.[51]

(12) The cruise ship operator must document any deficiencies in its health and safety protocols through an ''after-action'' report and address how the cruise ship operator intends to address those deficiencies prior to applying for a COVID–19 Conditional Sailing Certificate. This after-action report must also include test results for any volunteer passengers or crew on the simulated voyage. The after-action report must be submitted to the CDC as soon as practicable at the end of the simulation and as part of the cruise ship operator's application for a COVID–19 Conditional Sailing Certificate.

(13) Based on CDC's review of the after-action report and/or cruise ship operator's application for a COVID–19 Conditional Sailing Certificate, CDC may require that the cruise ship operator modify its practices or procedures prior to the issuance of the COVID–19 Conditional Sailing Certificate.

(b) Prior to conducting a simulated voyage in accordance with this section, the cruise ship operator must provide written notice and request CDC's approval to conduct the simulation. Such written notice must be provided prior to the simulation and specify the time, location, contact information for all individuals or parties involved, and protocols or practices to be simulated. This written notice must be submitted at least 5 business days prior to the date on which the cruise ship operator proposes to conduct the simulation.

(c) A cruise ship operator shall not apply for approval to conduct a simulated voyage until all of CDC's requirements relating to onboard laboratory capacity and screening testing of crew in U.S. waters have been satisfied. The cruise ship operator's responsible officials must sign the application for permission to conduct a simulation and certify that all of CDC's requirements relating to onboard point-of-care laboratory capabilities and screening testing of crew onboard cruise ships in U.S. waters have been satisfied.

(d) CDC will respond to the written notice and request for approval to conduct a simulation in writing in a timely manner. CDC may deny the request to conduct a simulation if the cruise ship operator is not in compliance with any provision of this framework, technical instructions, or orders, or if in CDC's determination the simulation does not provide adequate safeguards to minimize the risk of COVID–19 for all participants.

(e) CDC may conduct such oversight and inspection of simulated voyages as it deems necessary in its discretion, including through in-person or remote means allowing for visual observation.

(f) CDC may issue additional requirements through technical instructions or orders relating to a cruise ship operator's processes and procedures for conducting and evaluating a simulated voyage prior to applying for a COVID–19 Conditional Sailing Certificate.

(g) In lieu of conducting a simulated voyage, cruise ship operator responsible officials, at their discretion, may sign and submit to CDC an acknowledgement that 95% of crew (excluding any newly embarking crew in quarantine) are fully vaccinated and submit to CDC a clear and specific vaccination plan and timeline to limit cruise ship sailings to 95% of passengers who have been verified by the cruise ship operator as fully vaccinated prior to sailing.

(h) In lieu of conducting a simulated voyage under this paragraph, cruise ship operators, at their discretion, may choose to follow the procedures for modified simulated voyages if transitioning to voyages with less than 95% of passengers fully vaccinated or if operating cruise ships outside of U.S. waters and intending to operate with less than 95% of passengers fully vaccinated after repositioning to U.S. waters.

Procedures in Lieu of Conducting a Simulated Voyage for Cruise Ship Operators Transitioning to Voyages With Less Than 95% of Passengers Fully Vaccinated

(a) Cruise ships that have been operating restricted passenger voyages

[51] During simulated passenger voyages, this threshold is currently met when 1.5% of COVID–19 cases is detected in passengers or 1.0% of COVID–19 cases is detected in crew. This threshold may be modified based on lessons learned from simulated voyages or restricted passenger voyages, the evolution of the pandemic, or other factors. If a simulated voyage is ended early to protect health and safety, CDC will consult with the cruise ship operator regarding any deficiencies to be noted in the operator's action-action report and how such deficiencies are to be corrected prior to approving an application for a COVID–19 Conditional Sailing Certificate.

under an acknowledgement by the cruise ship operator's responsible officials that they will only operate with 95% of crew (excluding any newly embarking crew in quarantine) and 95% of passengers who are fully vaccinated may, at their discretion, transition to operating restricted passenger voyages with less than 95% of passengers fully vaccinated without first conducting a simulated voyage if the following are met:

(1) The ship must maintain a percentage of fully vaccinated crew that is greater than or equal to 95%.

(2) The ship must have operated on restricted passenger voyages under an acknowledgement by the cruise ship operator's responsible officials that they will only operate with 95% of crew (excluding any newly embarking crew in quarantine) and 95% of passengers who are fully vaccinated for at least 60 days.

(3) At least 14 days prior to the transition to voyages with less than 95% of passengers fully vaccinated, the cruise ship operator must submit the following to CDC:

(i) Protocols for how dining and entertainment venues, and recreational activities including buffets, seated dining, bars (including between bartenders and patrons), theaters, other performance venues, casinos, arcade room, spa services, fitness classes/gymnasiums, muster drills, and other areas where passengers congregate will be modified to incorporate mask use, physical distancing, and other public health measures as outlined in CDC technical instructions.[52]

(ii) Plans for training crew on new procedures for mask use, physical distancing, and other public health measures as outlined in CDC technical instructions.

(iii) Protocols for increasing the number of isolation and quarantine cabins and on-board support staff (*e.g.,* administrative personnel, testing personnel, contact tracers, medical personnel) as determined by the cruise ship operator and as needed in the event of an outbreak.

(iv) Procedures for how crew will identify and distinguish between passengers who are fully vaccinated and passengers who are not fully vaccinated.

(v) Procedures for notifying passengers who booked a 95% passenger vaccinated cruise that their cruise will no longer operate as a 95% passenger vaccinated cruise.

(vi) The cruise ship operator must submit photographs or videos, no later than 7 days after commencing the first voyage with less than 95% of passengers fully vaccinated, showing compliance with indoor mask use and physical distancing, such as signage in elevators, dining table arrangements, and blocking out seats/bar stools.

Modified Simulated Voyage Requirements in Lieu of a Full Simulated Voyage for Cruise Ship Operators Repositioning to U.S. Waters and Intending To Operate With Less Than 95% of Passengers Fully Vaccinated

(a) Cruise ship operators that have been conducting passenger operations outside of U.S. waters and intend to operate cruise ships with less than 95% of passengers fully vaccinated after repositioning to U.S. waters may, at their discretion, follow the procedures in this paragraph for conducting a modified simulated voyage instead of conducting a full simulated voyage if the following are met:

(1) The ship must maintain a percentage of fully vaccinated crew that is greater than or equal to 95%.

(2) The ship must have operated with passengers outside of U.S. waters for at least 60 days before entering U.S. waters.

(3) The cruise ship operator must conduct at least one simulation of embarkation screening and testing at the port terminal it intends to use in the U.S.—to include the number of passengers not fully vaccinated expected on the first voyage—unless the ship will be operating at the terminal already in use by the same cruise line/brand for passenger operations.

(4) At least 14 days prior to entering U.S. waters, the cruise ship operator must submit the following to CDC:

(i) Protocols for how dining and entertainment venues, and recreational activities, including buffets, seated dining, bars (including between bartenders and patrons), theaters, other performance venues, casinos, arcade room, spa services, fitness classes/gymnasiums, muster drills, and other areas where passengers congregate will incorporate mask use, physical distancing, and other public health measures as outlined in technical instructions.

(ii) Plans for training crew on procedures for mask use, physical distancing, and other public health measures as outlined in CDC technical instructions.

(iii) Protocols for increasing the number of isolation and quarantine cabins and on-board support staff (*e.g.,* administrative personnel, testing personnel, contact tracers, medical personnel) as determined by the cruise ship operator and as needed in the event an outbreak.

(iv) Procedures for how crew will identify and distinguish between passengers who are fully vaccinated and passengers who are not fully vaccinated.

(v) Procedures for notifying passengers who booked a 95% vaccinated cruise that their cruise will no longer operate as a 95% vaccinated cruise, if applicable.

(vi) An after-action report explaining lessons learned from sailing outside of U.S. waters and from the simulated embarkation screening and testing (if such a simulation was conducted).

(vii) The cruise ship operator must submit photographs or videos, no later than 7 days after commencing the first voyage with less than 95% of passengers fully vaccinated, showing compliance with indoor mask use and physical distancing, such as signage in elevators, dining table arrangements, and blocking out seats/bar stools.

Applying for a COVID–19 Conditional Sailing Certificate[53]

(a) A cruise ship operator must submit the following to CDC at least 5 business days prior to the date on which the cruise ship operator proposes to commence restricted passenger operations:

(1) A completed CDC registration/application form that includes the signatures of the cruise ship operator's responsible officials.

(2) The name, titles, and contact information for the cruise ship operator's responsible officials.

(3) A completed statement of intent stating the name, carrying capacity for passengers and crew, itinerary, ports of call, length of voyage, and expected onboard or shoreside activities, for the cruise ship that the cruise ship operator intends to have certified for restricted passenger operations.

(4) A certification statement signed by the responsible officials acknowledging that the cruise ship operator has complied and remains in compliance with CDC's requirements for a COVID–19 Response Plan and EDC reporting prior to applying for a COVID–19 Conditional Sailing Certificate.

(5) A certification statement signed by the responsible officials acknowledging that the cruise ship operator has adopted health and safety protocols that meet CDC's standards for mitigating the risk of COVID–19 among passengers and

[52] COVID–19 Operations Manual for Simulated and Restricted Voyages under the Framework for Conditional Sailing Order | Quarantine | CDC.

[53] Cruise ship operators who have previously submitted and received a COVID–19 Conditional Sailing Certificate are not required to take any further action under this section.

crew onboard the cruise ship that will be commencing restricted passenger operations and will modify these protocols as needed to protect the public's health as required by CDC technical instructions or orders.

(6) A certification statement signed by the responsible officials acknowledging that the cruise ship operator has sufficient medical and point-of-care laboratory capabilities and staff on board the cruise ship that will be commencing restricted passenger operations to manage severe COVID–19 cases and outbreaks in exigent circumstances as required by CDC technical instructions or orders.

(7) A certification statement signed by the responsible officials acknowledging that the cruise ship operator is in compliance with the other requirements contained in this framework for mitigating the risk of COVID–19 on board cruise ships and agrees to continue to comply with these requirements.

Review of an Application for a COVID–19 Conditional Sailing Certificate

(a) Upon receiving the documentation required by this framework, CDC will review the application for completeness. Based on CDC's determination as to whether the cruise ship operator has met CDC's standards for mitigating the risk of COVID–19 onboard the cruise ship for which the operator intends to commence restricted passenger operations, it shall grant or deny the application. If CDC requires additional information to ascertain whether the cruise ship operator has met CDC's standards for mitigating the risk of COVID–19 on board cruise ships, or if it determines the application to be incomplete, it may hold the application in abeyance, or in its discretion provisionally grant the application, pending the submission of such additional information as required by CDC to make such a determination. Applications that are denied may be administratively appealed as described in this framework.

(b) CDC may limit the terms or conditions of a cruise ship operator's COVID–19 Conditional Sailing Certificate in regard to passenger or crew capacity, itinerary, ports of call, length of voyage, onboard or shoreside activities, or in regard to any other passenger, crew, or cruise ship operations, as needed to the health and safety of passengers and crew or the public's health.

(c) As a condition of obtaining or retaining a COVID–19 Conditional Sailing Certificate, the cruise ship operator must upon request make its properties and records available for inspection to allow CDC to ascertain compliance with this framework. Such properties and records include but are not limited to vessels, facilities, vehicles, equipment, communications, manifests, list of passengers, and employee and passenger health records. The cruise ship operator must also make any crew member or other personnel involved in the operation of a cruise ship available for interview by CDC.

(d) As a condition of obtaining or retaining a COVID–19 Conditional Sailing Certificate, cruise ship operators must establish mechanisms to ensure compliance, including reporting mechanisms to notify CDC and U.S. Coast Guard in writing within 24 hours of the occurrence of any deviations, whether intentional, or as a result of error or omission, and take corrective steps to rectify those deviations.

(e) As a condition of obtaining or retaining a COVID–19 Conditional Sailing Certificate, cruise ship operators must comply with the requirements of this framework. These requirements apply to any cruise ship operating in U.S. waters and to cruise ships operating outside of U.S. waters if the cruise ship operator intends for the ship to return to operating in U.S. waters at any time while Order remains in effect.

Amendment or Modification of COVID–19 Conditional Sailing Certificate

(a) A cruise ship operator may seek to amend or modify a COVID–19 Conditional Sailing Certificate issued under this framework by submitting such amendment or modification to CDC for review and a determination in accordance with this section.

(b) CDC will review the cruise ship operator's request to amend or modify a COVID–19 Conditional Sailing Certificate and either grant or deny the request in writing. If CDC requires additional information to ascertain whether the cruise ship operator's proposed amendment or modification meets CDC's standards for mitigating the risk of COVID–19 on board cruise ships, or if it determines the request to be incomplete, it may hold the request in abeyance, or in its discretion provisionally grant the application, pending the submission of such additional information as required by CDC to make such a determination.

(c) CDC may require any cruise ship operator to amend or modify a COVID–19 Conditional Sailing Certificate based on public health considerations specific to the cruise ship, cruise ship operator, or affecting the health or safety of cruise travel as a whole.

(d) Denials of requests to amend or modify a COVID–19 Conditional Sailing Certificate are subject to administrative review as described in this framework.

Minimum Standards for Restricted Passenger Voyages as a Condition of Obtaining and Retaining a COVID–19 Conditional Sailing Certificate

(a) As a condition of obtaining and retaining a COVID–19 Conditional Sailing Certificate, a cruise ship operator must meet the following minimum standards:

(1) The cruise ship operator must screen passengers and crew before they embark for signs and symptoms or known exposure to COVID–19 and deny boarding to anyone who is suspected of having COVID–19 or is an identified contact of a confirmed or suspected case, in accordance with CDC technical instructions or orders.[54] [55]

(2) The cruise ship operator must conduct laboratory testing of all passengers and crew on the day of embarkation and the day of disembarkation in accordance with CDC technical instructions or orders. Laboratory test results must be available prior to passengers embarking and prior to passengers and crew departing for their final destinations after disembarking the ship.

(3) The cruise ship operator must immediately conduct laboratory testing of any passengers and crew who report illness consistent with COVID–19 during the voyage with rapid point-of-care results as required by CDC technical instructions or orders. Identified close contacts of cases must also be laboratory tested with rapid point-of-care results.

(4) The cruise ship operator must report syndromic surveillance and all laboratory test results using CDC's EDC form as required by CDC technical instructions or orders.

(5) The cruise ship operator must meet standards for hand hygiene, face masks, and physical distancing for passengers and crew, as well as ship sanitation, as required by CDC technical instructions or orders.

(6) The cruise ship operator must modify meal service and entertainment venues to facilitate physical distancing as required by CDC technical instructions or orders.

(b) In light of public health considerations and based on evidence gained through review and evaluation of

[54] COVID–19 Operations Manual for Simulated and Restricted Voyages under the Framework for Conditional Sailing Order | Quarantine | CDC.

[55] Technical Instructions for Mitigation of COVID–19 Among Cruise Ship Crew | Quarantine | CDC.

cruise operators' practices and procedures, including through simulated voyages, CDC may require the following:

(1) Post-day of disembarkation laboratory testing of passengers and crew.

(2) Additional laboratory testing of passengers and crew and reporting of results during a voyage.

(c) CDC may issue additional technical instructions or orders regarding health and safety standards for restricted passenger voyages.

Minimum Standards for Management of Passengers and Crew From COVID–19-Affected Cruise Ships for Restricted Passenger Voyages

(a) Based on COVID–19 being detected in passengers or crew, as determined through CDC technical instructions or orders, a cruise ship operator must immediately take the following actions:

(1) Conduct such notifications of passengers, crew members, and other government entities as CDC may require.

(2) Immediately isolate any sick or infected passengers and crew in single occupancy cabins with private bathrooms and quarantine all remaining passengers and non-essential crew.

(3) Disembark and evacuate passengers and crew only in such a manner as prescribed in the cruise ship operator's preexisting port and local health authority agreements.

(4) Arrange to disembark and transport passengers and crew using noncommercial transportation or other transportation in accordance with CDC's technical instructions and orders.

(5) Instruct disembarking passengers and crew to stay home and continue to practice physical distancing after reaching their final destination as per CDC technical instructions or orders.

(6) Inform ship pilots, ground transportation, aircraft operators, and other agencies with relevant jurisdiction that COVID–19 has been detected in passengers or crew and confirm that the operators have plans in place to notify and protect the health and safety of their staff (*e.g.,* drivers, air crews).

(7) If the ship meets the red ship criteria,[56] immediately end the restricted passenger voyage, cancel future restricted passenger voyages until directed by CDC that such voyages may resume, and return the ship to the U.S. port of embarkation.

(b) CDC may issue additional technical instructions or orders regarding what measures cruise ship operators must take in the event that a threshold of COVID–19 cases is detected in passengers or crew.

Denials, Suspension, Revocation, and Reinstatement of a Cruise Ship Operator's COVID–19 Conditional Sailing Certificate

(a) CDC may deny an application for a COVID–19 Conditional Sailing Certificate, or revoke, or suspend a COVID–19 Conditional Sailing Certificate if:

(1) The cruise ship operator is not in compliance with CDC's standards for mitigating the risk of COVID–19 on board cruise ships; or

(2) the cruise ship operator is not in compliance with the terms of its COVID–19 Conditional Sailing Certificate; or

(3) necessary to protect human health or safety based on public health considerations specific to the particular cruise ship operator, cruise ship, or affecting cruise travel as a whole.

(b) CDC may reinstate a suspended or revoked COVID–19 Conditional Sailing Certificate after:

(1) Inspecting the cruise ship operator's properties and records, including, but are not limited to, its vessels, facilities, vehicles, equipment, communications, manifests, list of passengers, and employee and passenger health records;

(2) conferring with the cruise ship operator, responsible officials, or other persons under the cruise ship operator's employ; and

(3) receiving information and written assurances from the cruise ship operator and/or its responsible officials that any deficiencies have been rectified and actions taken to ensure future compliance.

Administrative Review

(a) A cruise ship operator may appeal a denial of its application for a COVID–19 Conditional Sailing Certificate or a revocation or suspension of its COVID–19 Conditional Sailing Certificate based on specific factors particular to that operator.

(b) The cruise ship operator's appeal must be in writing, state the factual basis for the appeal, and be submitted to the CDC Director within 30 calendar days of the decision.

(c) The CDC Director's decision will be issued in writing and will constitute final agency action. Prior to deciding upon an appeal, the Director may further investigate the reasons for the denial, revocation, or suspension, including by conferring with the cruise ship operator, responsible officials, or other persons under the cruise ship operator's employ.

This Order enters into effect on November 1, 2021 at 12:01 a.m. (EDT) upon the expiration of the current Order. While this temporary extension retains current requirements in place and does not impose any new obligations or burdens, CDC is committed to working with cruise ship operators who have requested a minimum of 14 days' advance notice to inform their passenger clientele, adjust itineraries as needed, and extend existing contractual arrangements and memorandums of understanding with port, housing, and medical providers.

This Order shall remain in effect until the earliest of (1) the expiration of the Secretary of Health and Human Services' declaration that COVID–19 constitutes a public health emergency; (2) the CDC Director rescinds or modifies the order based on specific public health or other considerations; or (3) January 15, 2022 at 12:01 a.m. (EST).

Authority

The authority for these orders is Sections 361 and 365 of the Public Health Service Act (42 U.S.C. 264, 268) and 42 CFR 70.2, 71.31(b), 71.32(b).

Dated: October 25, 2021.

Sherri Berger,

Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2021–23573 Filed 10–26–21; 11:15 am]

BILLING CODE 4163–18–P

[56] A ship will be considered as meeting red ship criteria if the ship has sustained transmission of COVID–19 or CLI, or potential for COVID–19 cases to overwhelm on board medical center resources. CDC may adjust these criteria based on lessons learned from simulated voyages or restricted passenger voyages, the evolution of the pandemic, or other factors.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2010–N–0190; FDA–2012–N–0197; FDA–2014–N–1414; and FDA–2014–N–0913]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food

and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *http://www.reginfo.gov/public/do/PRAMain.* 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.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Infant Formula Requirements	0910–0256	5/31/2024
Shortages Data Collection	0910–0491	6/30/2024
Guidance on Labeling for Natural Rubber Latex Condoms	0910–0633	6/30/2024
Section 513(g) Requests for Information	0910–0705	6/30/2024

Dated: October 22, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–23504 Filed 10–27–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0973]

Revocation of Authorization of Emergency Use of an In Vitro Diagnostic Device for Detection and/or Diagnosis of COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorization (EUA) (the Authorization) issued to Life Technologies Corporation (a part of Thermo Fisher Scientific, Inc.) (Thermo Fisher) for the TaqPath COVID–19 MS2 Combo Kit 2.0. FDA revoked this Authorization on September 27, 2021, under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The revocation, which includes an explanation of the reasons for revocation, is reprinted in this document.

DATES: The Authorization for the TaqPath COVID–19 MS2 Combo Kit 2.0 is revoked as of September 27, 2021.

ADDRESSES: Submit written requests for a single copy of the revocation to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the revocation may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocation.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 240–402–8155 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On August 2, 2021, FDA issued an EUA to Thermo Fisher for the TaqPath COVID–19 MS2 Combo Kit 2.0, subject to the terms of the Authorization. Notice of the issuance of the Authorization is published elsewhere in this issue of the **Federal Register**, as required by section 564(h)(1) of the FD&C Act. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. EUA Revocation Request

On September 22, 2021, Thermo Fisher requested the revocation of, and on September 27, 2021, FDA revoked the Authorization for, the TaqPath COVID–19 MS2 Combo Kit 2.0. Because Thermo Fisher has notified FDA that it is longer commercially supporting the TaqPath COVID–19 MS2 Combo Kit 2.0 and requested FDA revoke the Authorization, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocation are available on the internet at *https://www.regulations.gov/.*

IV. The Revocation

Having concluded that the criteria for revocation of the Authorization under section 564(g) of the FD&C Act are met, FDA has revoked the EUA for the TaqPath COVID–19 MS2 Combo Kit 2.0. The revocation in its entirety follows and provides an explanation of the reasons for revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

U.S. FOOD & DRUG ADMINISTRATION

September 27, 2021

Ashley Vu
Regulatory Affairs Manager
Thermo Fisher Scientific, Inc.
5781 Van Allen Way
Carlsbad, CA 92008
Re: Revocation of EUA210447

Dear Ms. Vu:

This letter is in response to Thermo Fisher Scientific, Inc.'s request on behalf of Life Technologies Corporation (a part of Thermo Fisher Scientific, Inc.) dated September 22, 2021, that the U.S. Food and Drug Administration (FDA) revoke the Emergency Use Authorization (EUA210447) for the TaqPath COVID-19 MS2 Combo Kit 2.0 issued on August 2, 2021. Thermo Fisher Scientific, Inc. indicated that it has decided to not commercially support the TaqPath COVID-19 MS2 Combo Kit 2.0 at this time "due to the current public clinical needs being met by our other EUA assays that are available and on market."

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Thermo Fisher Scientific, Inc. has notified FDA that it is longer commercially supporting the TaqPath COVID-19 MS2 Combo Kit 2.0 and requests FDA revoke the authorization, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA210447 for the TaqPath COVID-19 MS2 Combo Kit 2.0, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the TaqPath COVID-19 MS2 Combo Kit 2.0 is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

RADM Denise M. Hinton
Chief Scientist
Food and Drug Administration

Dated: October 22, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–23500 Filed 10–27–21; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–1050]

Agency Information Collection Activities; Proposed Collection; Comment Request; Targeted Mechanism of Action Presentations in Prescription Drug Promotion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice

solicits comments on a proposed study entitled ''Targeted Mechanism of Action Presentations in Prescription Drug Promotion.''

DATES: Submit either electronic or written comments on the collection of information by December 27, 2021.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 27, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 27, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–N–1050 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Targeted Mechanism of Action Presentations in Prescription Drug Promotion.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10 a.m.–12 p.m., 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

For copies of the questionnaire: Office of Prescription Drug Promotion (OPDP) Research Team, *DTCResearch@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Targeted Mechanism of Action Presentations in Prescription Drug Promotion

OMB Control Number 0910—NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

The Office of Prescription Drug Promotion's (OPDP) mission is to

protect the public health by helping to ensure that prescription drug promotion is truthful, balanced, and accurately communicated. OPDP's research program provides scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health. Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that are most central to our mission. Our research focuses in particular on three main topic areas: Advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features, we assess how elements such as graphics, format, and disease and product characteristics impact the communication and understanding of prescription drug risks and benefits. Focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience, and our focus on research quality aims at maximizing the quality of research data through analytical methodology development and investigation of sampling and response issues. This study will inform the first two topic areas, advertising features and target populations.

Because we recognize the strength of data and the confidence in the robust nature of the findings are improved through the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other scientific sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our home page, which can be found at: *https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/office-prescription-drug-promotion-opdp-research.* The website includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office.

In 2014, OPDP conducted focus groups designed to provide insights on how consumers and healthcare providers (HCP), including physicians, nurse practitioners, and physician assistants, interpret the term ''targeted'' in prescription drug promotional materials. Although diverse views were voiced, there appeared to be some tendency toward the impression that products with promotional materials using this term would be safer and more effective than other similar treatments. OPDP is also now conducting a nationally representative survey regarding the ways in which consumers and primary care physicians (PCPs) interpret terms and phrases commonly used in prescription drug promotional materials, including assessment of impressions of the terms ''targeted'' and ''targeted mechanism of action'' (targeted MoA) (May 10, 2021, 86 FR 24867). Building upon this line of research, the proposed study will investigate the influence of targeted MoA claims, graphics, and disclosures that provide context about a drug's targeted MoA, utilizing an experimental design with both consumer and HCP samples. The experimental approach described here is intended to complement and augment the prior research by facilitating assessment of causality. Specifically, the proposed study will explore how varied targeted MoA presentations affect consumer and HCP understanding of the MoA of a drug, perception of drug benefits and risks, attention to risk information, and interest in the drug.

Table 1 depicts the study design. Participants will be randomly assigned to 1 of 12 experimental conditions in which the presence versus absence of: (1) A targeted MoA claim, (2) a graphic depicting a targeted MoA, and (3) a disclosure that provides context about the targeted MoA of the drug are varied in a branded website for a fictitious prescription drug indicated to treat bladder cancer and cancers of the urinary tract (renal pelvis, ureter, or urethra) that have spread or cannot be removed by surgery. We selected cancer as the medical condition for study given the prevalence of targeted MoA presentations in promotional materials for prescription drugs indicated to treat various forms of cancer. Notably, there will be three variations related to the targeted MoA graphic: (1) No graphic, (2) an inaccurate graphic (graphic 1) showing only the effect of the drug on cancerous cells but not on healthy cells, and (3) an accurate graphic (graphic 2) that will show the effect of the drug on both cancerous and healthy cells. The design will be replicated in both the consumer and HCP samples with stimuli specifically created for each audience. Draft stimuli were informed by, but not identical to, actual targeted MoA presentations from a marketplace evaluation conducted under FDA guidance. Draft stimuli were also informed by an FDA subject matter expert's review. Following exposure to the stimuli, the participants will complete a questionnaire designed to assess relevant outcome measures. A copy of the questionnaire is available upon request. All aspects of this study will be completed online. Participation is estimated to take approximately 20 minutes, excluding the screener's time.

TABLE 1—STUDY DESIGN

Sample	Disclosure	Targeted MoA claim	Targeted MoA graphic [1]		
			Present (graphic 1—inaccurate)	Present (graphic 2—accurate)	Absent
HCP	Present	Present	■	■	■
		Absent	■	■	■
	Absent	Present	■	■	■
		Absent	■	■	■
Consumer	Present	Present	■	■	■
		Absent	■	■	■
	Absent	Present	■	■	■
		Absent	■	■	■

[1] Each ■ symbol represents an experimental condition.

For the HCP sample, we will recruit oncologists, PCPs with oncology experience, and nurse practitioners and physician assistants who specialize in oncology. We will also recruit a general population sample of adult volunteers 18 years or older for the consumer sample. A general population, rather than a diagnosed consumer sample, was

selected because of concerns about being able to recruit a sufficient number of participants for this particular study if we selected a cancer-specific sample.

We will ask consumers to consider a hypothetical scenario in which they have recently been diagnosed with cancer and are actively looking for available treatments. HCPs will be asked to consider a scenario in which they are actively looking for available treatments for a patient who has been diagnosed with cancer. We will also ask consumers if they have ever been diagnosed with cancer. HCP participants will be drawn from online HCP panels and general population consumer participants will be drawn from online consumer panels. Informed by power analyses, we will recruit a sample of 540 HCPs and 540 consumers for the main study.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents [2]	Number of responses per respondent	Total annual responses	Average burden per response [3]	Total hours
Pretest					
General population: Pretest screener completes (assumes 75% eligible)	528	1	528	0.08 (5 minutes)	42.2
General population: Number of completes, pretest	396	1	396	0.33 (20 minutes)	130.7
HCP: Pretest screener completes (assumes 60% eligible)	660	1	660	0.08 (5 minutes)	52.8
HCP: Number of completes, pretest	396	1	396	0.33 (20 minutes)	130.7
Main Study					
General population: Number of main study screener completes (assumes 75% eligible)	792	1	792	0.08 (5 minutes)	63.4
General population: Number of completes, main study	594	1	594	0.33 (20 minutes)	196.0
HCP: Number of main study screener completes (assumes 60% eligible)	990	1	990	0.08 (5 minutes)	79.2
HCP: Number of completes, main study	594	1	594	0.33 (20 minutes)	196.0
Total					891

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] As with most online and mail surveys, it is always possible that some participants are in the process of completing the survey when the target number is reached and that those surveys will be completed and received before the survey is closed out. To account for this, we have estimated approximately 10 percent overage for both samples in the study.
[3] Burden estimates of less than 1 hour are expressed as a fraction of an hour in decimal format.

Dated: October 22, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–23507 Filed 10–27–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1584]

Authorization of Emergency Use of Certain Medical Devices During COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of Emergency Use Authorizations (EUAs) (the Authorizations) for certain medical devices related to the Coronavirus Disease 2019 (COVID–19) public health emergency. FDA has issued the Authorizations listed in this document under the Federal Food, Drug, and Cosmetic Act (FD&C Act). These Authorizations contain, among other things, conditions on the emergency use of the authorized products. The Authorizations follow the February 4, 2020, determination by the Secretary of Health and Human Services (HHS) that there is a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad, and that involves the virus that causes COVID–19, and the subsequent declarations on February 4, 2020, March 2, 2020, and March 24, 2020, that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of the virus that causes COVID–19, personal respiratory protective devices, and medical devices, including alternative products used as medical devices, respectively, subject to the terms of any authorization issued under the FD&C Act. These Authorizations, which include an explanation of the reasons for issuance, are listed in this document, and can be accessed on FDA's website from the links indicated.

DATES: These Authorizations are effective on their date of issuance.

ADDRESSES: Submit written requests for single copies of an EUA to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorization may be sent.

See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb-3) allows FDA to strengthen the public health protections against biological, chemical, radiological, or nuclear agent or agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help ensure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by a biological, chemical, radiological, or nuclear agent or agents when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces, including personnel operating under the authority of title 10 or title 50 of the U.S. Code, of attack with (A) a biological, chemical, radiological, or nuclear agent or agents; or (B) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces; [1] (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Under section 564(h)(1) of the FD&C Act, revisions to an authorization shall be made available on the internet website of FDA. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under section 505, 510(k), 512, or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b, or 360e) or section 351 of the PHS Act (42 U.S.C. 262), or conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA [2] concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that (A) the product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; (4) in the case of a determination described in section 564(b)(1)(B)(ii), that the request for emergency use is made by the Secretary of Defense; and (5) that such other criteria as may be prescribed by regulation are satisfied. No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act.

II. Electronic Access

An electronic version of this document and the full text of the Authorizations are available on the internet and can be accessed from *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

III. The Authorizations

Having concluded that the criteria for the issuance of the following Authorizations under section 564(c) of the FD&C Act are met, FDA has authorized the emergency use of the following products for diagnosing, treating, or preventing COVID–19 subject to the terms of each Authorization. The Authorizations in their entirety, including any authorized fact sheets and other written materials, can be accessed from the FDA web page entitled ''Emergency Use Authorization,'' available at *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.* The lists that follow include Authorizations issued from June 1, 2021, through September 10, 2021, and we have included explanations of the reasons for their issuance, as required by section 564(h)(1) of the FD&C Act. In addition, the EUAs that

[1] In the case of a determination by the Secretary of Defense, the Secretary of HHS shall determine within 45 calendar days of such determination, whether to make a declaration under section 564(b)(1) of the FD&C Act, and, if appropriate, shall promptly make such a declaration.

[2] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

have been reissued can be accessed from FDA's web page: *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

FDA is hereby announcing the following Authorizations for molecular diagnostic and antigen tests for COVID–19, excluding multianalyte tests: [3]

- OraSure Technologies, Inc.'s InteliSwab COVID–19 Rapid Test Pro, issued June 4, 2021;
- OraSure Technologies, Inc's InteliSwab COVID–19 Rapid Test, issued June 4, 2021;
- OraSure Technologies, Inc's InteliSwab COVID–19 Rapid Test Rx, issued June 4, 2021;
- Roche Molecular Systems' cobas SARS–CoV–2 Nucleic acid test for use on the cobas LIAT System (cobas SARS–CoV–2), issued June 17, 2021;
- WREN Laboratories LLC's WREN Laboratories COVID–19 PCR Test DTC, issued June 17, 2021;
- BioGX, Inc.'s BioGX *Xfree* COVID–19 Direct RT–PCR, issued June 29, 2021;
- Ellume Limited's Ellume.lab COVID Antigen Test, issued July 8, 2021;
- Thermo Fisher Scientific Inc's TaqPath COVID–19 RNase P Combo Kit 2.0, issued July 8, 2021;
- GenBody Inc.'s GenBody COVID–19 Ag, issued July 13, 2021;
- PHASE Scientific International, Ltd.'s INDICAID COVID–19 Rapid Antigen Test, issued July 28, 2021;
- Life Technologies Corporation's (a part of Thermo Fisher Scientific, Inc.) TaqPath COVID–19 Fast PCR Combo Kit 2.0, issued July 30, 2021;
- Access Bio, Inc.'s *CareStart* COVID–19 Antigen Home Test, issued August 2, 2021;
- Life Technologies Corporation's (a part of Thermo Fisher Scientific, Inc.) TaqPath COVID–19 MS2 Combo Kit 2.0, issued August 2, 2021;
- QIAGEN GmbH's QIAreach SARS–CoV–2 Antigen Test, issued August 5, 2021;
- Cleveland Clinic Robert J. Tomsich Pathology and Laboratory Medicine Institute's SelfCheck COVID–19 TaqPath Multiplex PCR, issued August 9, 2021;
- STS Lab Holdco's Amazon Multi-Target SARS–CoV–2 Real-Time RT–PCR DTC Test (''Amazon Multi-Target DTC Test''), issued August 11, 2021;
- STS Lab Holdco's Amazon Multi-Target SARS–CoV–2 Real-Time RT–PCR Test (''Amazon Multi-Target Test''), issued August 11, 2021;
- The Mount Sinai Hospital, Center for Clinical Laboratories' Mount Sinai SARS–CoV–2 Assay, issued August 23, 2021;
- Becton, Dickinson and Company's BD Veritor At-Home COVID–19 Test, issued August 24, 2021;
- Empire City Laboratories' ECL COVID TEST SYSTEM, issued August 25, 2021;
- Empire City Laboratories' ECL COVID TEST SYSTEM–1, issued August 25, 2021; and
- Yale School of Public Health, Department of Epidemiology of Microbial Diseases' SalivaDirect for use with DTC Kits, issued August 27, 2021.

FDA is hereby announcing the following Authorizations for serology tests: [4]

- Diabetomics, Inc.'s CovAb SARS–CoV–2 Ab Test, issued June 4, 2021;
- Siemens Healthcare Diagnostics Inc.'s ADVIA Centaur SARS–CoV–2 IgG (sCOVG), issued June 17, 2021;
- Access Bio, Inc.'s *CareStart* EZ COVID–19 IgM/IgG, issued June 24, 2021;
- Bio-Rad Laboratories' BioPlex 2200 SARS–CoV–2 IgG, issued July 1, 2021;
- Ortho-Clinical Diagnostics, Inc.'s VITROS Immunodiagnostic Products Anti-SARS–CoV–2 IgG Quantitative Reagent Pack used in combination with the VITROS Immunodiagnostic Products Anti- SARS–CoV–2 IgG Quantitative Calibrator, issued July 9, 2021; [5]
- Ortho-Clinical Diagnostics, Inc.'s VITROS Immunodiagnostic Products Anti-SARS–CoV–2 Total N Reagent Pack used in combination with the VITROS Immunodiagnostic Products Anti-SARS–CoV–2 Total N Antibody Calibrators, issued July 22, 2021; [6]
- LumiraDx UK Ltd.'s LumiraDx SARS–CoV–2 Ab Test, issued August 2, 2021; and
- InBios International, Inc.'s SCoV–2 *Detect* IgG Rapid Test, issued August 24, 2021.

FDA is hereby announcing the following Authorizations for multianalyte in vitro diagnostics:

- Exact Sciences Laboratories' COVID–Flu Multiplex Assay, issued July 1, 2021 [7] and
- Cepheid's Xpert Xpress CoV–2/Flu/RSV *plus,* issued September 10, 2021.[8]

FDA is hereby announcing the following Authorizations for other medical devices:

[3] As set forth in the EUAs for these products, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the products may be effective in diagnosing COVID–19, and that the known and potential benefits of the products, when used for diagnosing COVID–19, outweigh the known and potential risks of such products; and (3) there is no adequate, approved, and available alternative to the emergency use of the products.

[4] As set forth in the EUAs for these products, unless otherwise noted in this document, FDA has concluded that: (1) SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the products may be effective in diagnosing recent or prior infection with SARS–CoV–2 by identifying individuals with an adaptive immune response to the virus that causes COVID–19, and that the known and potential benefits of the products when used for such use, outweigh the known and potential risks of the products; and (3) there is no adequate, approved, and available alternative to the emergency use of the products.

[5] As set forth in this EUA, FDA has concluded that: (1) SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the product may be effective in diagnosing recent or prior infection with SARS–CoV–2 by aiding in identifying individuals with an adaptive immune response to the virus that causes COVID–19, and that the known and potential benefits of the product when used for such use, outweigh the known and potential risks of the product; and (3) there is no adequate, approved, and available alternative to the emergency use of the product.

[6] As set forth in this EUA, FDA has concluded that: (1) SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the product may be effective in diagnosing recent or prior infection with SARS–CoV–2 by aiding in identifying individuals with an adaptive immune response to the virus that causes COVID–19, and that the known and potential benefits of the product when used for such use, outweigh the known and potential risks of the product; and (3) there is no adequate, approved, and available alternative to the emergency use of the product.

[7] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the COVID–Flu Multiplex Assay may be effective in diagnosing COVID–19 through the simultaneous detection and differentiation of SARS–CoV–2, influenza A virus, and/or influenza B virus nucleic acids and that the known and potential benefits of the COVID–Flu Multiplex Assay when used for diagnosing COVID–19, outweigh the known and potential risks of the COVID–Flu Multiplex Assay; and (3) there is no adequate, approved, and available alternative to the emergency use of the COVID–Flu Multiplex Assay.

[8] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the Xpert Xpress CoV–2/Flu/RSV *plus* may be effective in diagnosing COVID–19 through the simultaneous detection and differentiation of nucleic acid from SARS–CoV–2 virus, influenza A, influenza B and respiratory syncytial virus (RSV) and that the known and potential benefits of the Xpert Xpress CoV–2/Flu/RSV *plus* when used for diagnosing COVID–19, outweigh the known and potential risks of the Xpert Xpress CoV–2/Flu/RSV *plus;* and (3) there is no adequate, approved, and available alternative to the emergency use of the Xpert Xpress CoV–2/Flu/RSV *plus.*

- WREN Laboratories LLC's WREN Laboratories COVID–19 Saliva Test Collection Kit DTC, issued June 17, 2021; [9]
- Tidal Medical Technologies LLC's InSee incentive spirometer accessory, issued June 30, 2021; [10]
- Everlywell, Inc.'s Everlywell COVID–19 & Flu Test Home Collection Kit, issued July 1, 2021; [11]
- Becton, Dickinson and Company's BD Vacutainer Plus Citrate Plasma Tubes (UK Manufacturing Site), issued July 22, 2021; [12]
- Kwokman Diagnostics, LLC's Kwokman Diagnostics COVID–19 Home Collection Kit, issued August 13, 2021; [13] and
- Yale School of Public Health, Department of Epidemiology of Microbial Diseases' SalivaDirect DTC Saliva Collection Kit, issued August 27, 2021.[14]

Dated: October 22, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–23501 Filed 10–27–21; 8:45 am]

BILLING CODE 4164–01–P

[9] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the WREN Laboratories COVID–19 Saliva Test Collection Kit DTC may be effective in diagnosing COVID–19 by serving as an appropriate means to collect and transport human specimens so that an authorized laboratory can detect SARS–CoV–2 RNA from the self-collected human specimen, and that the known and potential benefits of the WREN Laboratories COVID–19 Saliva Test Collection Kit DTC when used for such use, outweigh the known and potential risks of the WREN Laboratories COVID–19 Saliva Test Collection Kit DTC; and (3) there is no adequate, approved, and available alternative to the emergency use of the WREN Laboratories COVID–19 Saliva Test Collection Kit DTC.

[10] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the InSee COVID–19 may be effective in treating respiratory conditions in patients with COVID–19 in hospital settings by quantitatively tracking patient usage of Vyaire Medical's AirLife incentive spirometer, and that the known and potential benefits of the InSee when used for treating COVID–19, outweigh the known and potential risks of InSee; and (3) there is no adequate, approved, and available alternative to the emergency use of the InSee for treating COVID–19 for such use.

[11] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the Everlywell COVID–19 & Flu Test Home Collection Kit may be effective in diagnosing COVID–19, by serving as an appropriate means to collect and transport human specimens so that an authorized laboratory can detect SARS–CoV–2 influenza A and/or influenza B nucleic acids from the home collected human specimen and that the known and potential benefits of the Everlywell COVID–19 & Flu Test Home Collection Kit when used for diagnosing COVID–19, outweigh the known and potential risks of the Everlywell COVID–19 & Flu Test Home Collection Kit; and (3) there is no adequate, approved, and available alternative to the emergency use of the Everlywell COVID–19 & Flu Test Home Collection Kit.

[12] FDA is using the term ''UK Manufacturing Site'' to differentiate the authorized version from the FDA-cleared version of these products that are also manufactured by Becton, Dickinson and Company. As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the BD Vacutainer Plus Citrate Plasma Tubes (UK Manufacturing Site) may be effective in aiding in the identification and treatment of coagulopathy in patients, including patients with known or suspected COVID–19, by collecting, transporting, and storing blood specimens for coagulation testing, and that the known and potential benefits of the BD Vacutainer Plus Citrate Plasma Tubes (UK Manufacturing Site) when used for such use, outweigh the known and potential risks of the BD Vacutainer Plus Citrate Plasma Tubes (UK Manufacturing Site); and (3) there is no adequate, approved, and available alternative to the emergency use of the BD Vacutainer Plus Citrate Plasma Tubes (UK Manufacturing Site).

[13] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the Kwokman Diagnostics COVID–19 Home Collection Kit may be effective in diagnosing COVID–19, by serving as an appropriate means to collect and transport human specimens so that an authorized laboratory can detect SARS–CoV–2 RNA from the home-collected human specimen, and that the known and potential benefits of the Kwokman Diagnostics COVID–19 Home Collection Kit when used for such use, outweigh the known and potential risks of the Kwokman Diagnostics COVID–19 Home Collection Kit; and (3) there is no adequate, approved, and available alternative to the emergency use of the Kwokman Diagnostics COVID–19 Home Collection Kit.

[14] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the SalivaDirect DTC Saliva Collection Kit may be effective in diagnosing COVID–19, by serving as an appropriate means to collect and transport human specimens so that an authorized laboratory can detect SARS–CoV–2 RNA from the self-collected human specimen, and that the known and potential benefits of the SalivaDirect DTC Saliva Collection Kit when used for such use, outweigh the known and potential risks of the SalivaDirect DTC Saliva Collection Kit; and (3) there is no adequate, approved, and available alternative to the emergency use of the SalivaDirect DTC Saliva Collection Kit.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Updated HRSA-Supported Women's Preventive Services Guidelines: Contraception and Screening for HIV Infection

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice seeks comments on two updated draft recommendations for (1) providing contraception and (2) screening for human immunodeficiency virus (HIV) infection, as part of the HRSA-supported Women's Preventive Services Guidelines (Guidelines). These updated draft recommendations have been developed through a national cooperative agreement, the Women's Preventive Services Initiative (WPSI), by the American College of Obstetricians and Gynecologists (ACOG). Under applicable law, non-grandfathered group health plans and health insurance issuers offering non-grandfathered group and individual health insurance coverage must include coverage, without cost sharing, for certain preventive services, including those provided for in the HRSA-supported Women's Preventive Services Guidelines (Guidelines). The Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury have previously issued regulations, which describe how group health plans and health insurance issuers apply the coverage requirements, including the use of reasonable medical management. (*See* 26 CFR 54.9815–2713, 29 CFR 2590.715–2713, and 45 CFR 147.130).

DATES: Members of the public are invited to provide written comments no later than November 29, 2021. All comments received on or before this date will be reviewed and considered by the WPSI Multidisciplinary Steering Committee.

ADDRESSES: Members of the public interested in providing comments on the draft recommendation statements can do so by accessing the initiative's web page at *https://www.womenspreventivehealth.org/.*

FOR FURTHER INFORMATION CONTACT: Kimberly Sherman, HRSA, Maternal and Child Health Bureau, telephone (301) 443–8283, email: *wellwomancare@hrsa.gov.*

SUPPLEMENTARY INFORMATION: As provided for in section 1001(5) of the

Patient Protection and Affordable Care Act, Public Law 111–148, which added section 2713 to the Public Health Service Act, 42 U.S.C. 300gg–13, HRSA established the Guidelines in 2011 based on a study and recommendations by the Institute of Medicine, now known as the National Academy of Medicine, developed under a contract with the Department of Health and Human Services. Since then, there have been advancements in science and gaps identified in these guidelines, including a greater emphasis on practice-based clinical considerations. In March 2016, HRSA awarded a 5-year cooperative agreement to the ACOG to convene a coalition representing clinicians, academics, and consumer-focused health professional organizations to conduct a rigorous review of current scientific evidence and make recommendations to HRSA regarding updates to the existing Guidelines. HRSA awarded ACOG the cooperative agreement to improve adult women's health across the lifespan by engaging a coalition of health professional organizations to review evidence and recommend updates to the HRSA-supported Guidelines. HRSA would then decide whether to support, in whole or in part, the recommended updates to the Guidelines. Under the cooperative agreement, ACOG formed WPSI, consisting of an Advisory Panel and two expert committees, the Multidisciplinary Steering Committee (MSC) and the Dissemination and Implementation Steering Committee (DISC), which are comprised of a broad coalition of organizational representatives who are experts in disease prevention and women's health issues. Through oversight by the Advisory Panel, MSC and DISC support the development and implementation of the Guidelines through the review of existing evidence and recommendation development. Specifically, the MSC examines the evidence to develop new and update existing recommendations for women's preventive services. DISC takes the HRSA-approved recommendations, developed by the MSC, and works to disseminate the recommendations through the development of implementation tools and resources for both patients and practitioners to support the adoption and utilization of the recommendations.

In March 2021, HRSA awarded a subsequent cooperative agreement to ACOG to further review and recommend updates to the Guidelines. Under this cooperative agreement, beginning on March 1, 2021, ACOG engaged in a process to consider and review new information. Following recommendations by ACOG, HRSA will decide whether to support, in whole or in part, its recommended updates to the guidelines.

Under the cooperative agreement, ACOG will base its recommended updates to the Guidelines on review and synthesis of existing clinical guidelines and new scientific evidence, following the National Academy of Medicine standards for establishing foundations for and rating strengths of recommendations, articulation of recommendations, as well as external reviews. Additionally, ACOG will incorporate processes to assure opportunity for public comment, including participation by patients and consumers, in the development of the updated Guideline recommendations.

This notice solicits comments from the public on draft recommendations for providing contraception and screening for HIV infection. The updated draft recommendations are provided below. WPSI will consider and, as necessary, incorporate public comment. HRSA will then decide whether to support, in whole or in part, the recommended updates to the guidelines.

Contraception

ACOG, through the WPSI/MSC, made updates to the clinical recommendation statement to clarify the terminology from contraceptive methods to contraceptives. The Committee has also removed the term ''female-controlled contraceptives'' to allow women to purchase male condoms for pregnancy prevention. Lastly, the Committee has further defined the existing components of contraceptive follow-up care to include the management and evaluation of and changes to—including the removal, continuation, and discontinuation of—the contraceptive.

''The Women's Preventive Services Initiative recommends adolescent and adult women have access to the full range of contraceptives and contraceptive care to prevent unintended pregnancies and improve health outcomes. Contraceptive care includes screening, counseling, education, and provision of contraceptives (including in the immediate postpartum period). Contraceptive care also includes follow-up care (*e.g.,* management and evaluation of and changes to, including, removal, continuation, discontinuation of, the contraceptive method).

The Women's Preventive Services Initiative recommends the full range of U.S. Food and Drug Administration (FDA) approved contraceptives, effective family planning practices, and sterilization procedures be available as part of contraceptive care.

The full range of contraceptive methods currently identified by FDA include: (1) Sterilization surgery for women, (2) implantable rods, (3) copper intrauterine devices, (4) intrauterine devices with progestin (all durations and doses), (5) injectable contraceptives, (6) oral contraceptives (combined pill), (7) oral contraceptives (progestin only), (8) oral contraceptives (extended or continuous use), (9) the contraceptive patch, (10) vaginal contraceptive rings, (11) diaphragms, (12) contraceptive sponges, (13) cervical caps, (14) condoms, (15) spermicides, (16) emergency contraception (levonorgestrel); and (17) emergency contraception (ulipristal acetate); additional methods as identified by the FDA.''

Screening for HIV Infection

ACOG, through the WPSI/MSC, has recommended minor updates to the screening for HIV infection recommendation statement to specify that screening should begin at age 15 and older, and that earlier detection should be based on a review of patient risk factors.

''The Women's Preventive Services Initiative recommends all women, ages 15 and older, receive a screening test for HIV at least once during their lifetime. Earlier or additional screening should be based on risk, and re-screening annually or more often may be appropriate beginning at age 13 for adolescents and women with an increased risk of HIV infection.

The Women's Preventive Services Initiative recommends risk assessment and prevention education for human immunodeficiency virus (HIV) infection beginning at age 13 and continuing at least annually throughout the lifespan as determined by risk. A screening test for HIV is recommended for all pregnant women upon initiation of prenatal care with rescreening during pregnancy based on risk factors. Rapid HIV testing is recommended for pregnant women who present in labor with an undocumented HIV status.''

Members of the public can view each complete updated draft recommendation statement by accessing the initiative's web page at *https://www.womenspreventivehealth.org/.*

Diana Espinosa,

Acting Administrator.

[FR Doc. 2021–23498 Filed 10–27–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Research Education Program Advancing the Careers of a Diverse Research Workforce (R25 Clinical Trial Not Allowed).

Date: November 19, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31, Rockville, MD 20892 (Virtual Meeting).

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31, Rockville, MD 20892–9834, (240) 669–5060, *james.snyder@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 25, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–23508 Filed 10–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Retinopathies and Other Eye Diseases.

Date: November 19, 2021.

Time: 10:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alessandra C. Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm. 5205 MSC7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics in Aging: Diet, Immune Response, Juvenile Protective Factors, Cognition, Dementia, and Outcomes on Aging.

Date: November 29, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samuel C. Edwards, Ph.D., Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 25, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–23509 Filed 10–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0742]

National Merchant Marine Personnel Advisory Committee Meeting

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The National Merchant Marine Personnel Advisory Committee (Committee) and its Working Groups will meet in Piney Point, MD, to discuss issues relating to personnel in the United States Merchant Marine including the training, qualifications, certification, documentation, and fitness of mariners.

DATES:

Meetings: The National Merchant Marine Personnel Advisory Committee and its Working Groups are scheduled to meet on Tuesday, November 16, 2021, from 8:30 a.m. until 4:30 p.m., Wednesday, November 17, 2021, from 8:30 a.m. until 4:30 p.m., and the full Committee is scheduled to meet on Thursday, November 18, 2021, from 9:00 a.m. until 4:30 p.m. These meetings may adjourn early if the Committee has completed its business.

Comments and supporting documentation: To ensure your comments are received by Committee members before the meetings, submit your written comments no later than November 4, 2021.

ADDRESSES: The meeting will be held at the Harry Lundeberg School of Seamanship at 45353 Saint Georges Avenue Piney Point, MD 20674; additional information can be found at: *https://www.seafarers.org/training-and-careers/jobs/the-seafarers-harry-lundeberg-school-of-seamanship/*.

Pre-registration Information: Pre-registration is required for in-person access to the meeting, but is not required for anyone attending via teleconference. In-person attendance to the meeting will be limited to the first 49 registrants, with priority for members of the Committee and Coast Guard support staff. If you are not a member of the Committee and do not represent the Coast Guard, you must request in-person attendance by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. You will receive a response noting if you are able to attend in-person or if the in-person attendance roster is full. Additionally, the N–MERPAC mailing list will receive a notification when the in-person attendance roster is full.

Attendees at the meeting will be required to follow COVID–19 safety guidelines promulgated by the Centers for Disease Control and Prevention (CDC), which may include the need to wear masks and by completing Certification of Vaccination Form OMB Control No. 3206–0277, or providing proof of vaccination. This form can be accessed at: *CertificationVaccinationPRAv7.pdf* (*menlosecurity.com*). You may be asked to show this form when entering the facility. Please maintain this form during your visit. Masks will be provided for attendees. CDC guidance on COVID protocols can be found here:

https://www.cdc.gov/coronavirus/2019-ncov/communication/guidance.html.

Teleconference lines and live virtual document sharing will be available for the full meeting and for all sessions of the work groups. After November 4, 2021, this teleconference information will be available on the agendas published to the FACA Homeport website and will be emailed to everyone on the N–MERPAC mailing list. You may also request this information by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, after November 4, 2021.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Instructions: You are free to submit comments at any time, including orally at the meeting, but if you want Committee members to review your comment before the meeting, please submit your comments no later than November 4, 2021. We are particularly interested in comments on the issues in the ''Agenda'' section below. We encourage you to submit comments through the Federal eRulemaking portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the words ''Department of Homeland Security'' and the docket number USCG–2021–0742. Comments received will be posted without alteration at *https://www.regulations.gov,* including any personal information provided. You may wish to view the Privacy and Security Notice available on the homepage of *https://www.regulations.gov,* and DHS's eRulemaking System of Records notice (85FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comment, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions.

FOR FURTHER INFORMATION CONTACT: Mrs. Megan Johns Henry, Alternate Designated Federal Officer of the National Merchant Marine Personnel Advisory Committee, telephone (202) 372–1255, or email *megan.c.johns@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act* (5 U.S.C. Appendix). The National Merchant Marine Advisory Committee is authorized by section 601 of the *Frank LoBiondo Act of 2018* and is codified in 46 U.S.C. 15103, and makes recommendations to the Secretary of Homeland Security through the Commandant, U.S. Coast Guard on matters relating to personnel in the United States Merchant Marine including the training, qualifications, certification, documentation, and fitness of mariners.

Agenda

The National Merchant Marine Advisory Committee will meet on Tuesday, November 16, 2021, Wednesday, November 17, 2021, and Thursday, November 18, 2021 to review, discuss, deliberate and formulate recommendations, as appropriate on the following topics:

Day 1

The agenda for the November 16, 2021, meeting is as follows:

(1) The full Committee will meet briefly to discuss the Working Groups' business/task statements, which are listed under paragraph (5)(a)–(i) under Day 3 below.

(2) The full Committee will then meet to discuss and work on Task Statement 21–X9, Sexual Harassment and Sexual Assault—Prevention and Culture Change in the Merchant Marine.

(3) The following Working Groups will then separately address the following task statements which are available for viewing at *https://homeport.uscg.mil/missions/federal-advisory-committees/national-merchant-marine-personnel-advisory-committee-(nmerpac);*

(a) Task Statement 21–X4, STCW Convention and STCW Code Review;

(b) Task Statement 21–X7, Non-Operating Individuals.

(c) Task Statement 21–X8, Remote Operator of Maritime Autonomous Surface Ships.

(4) Reports of Working Groups. At the end of the day, the Chair of each Working Group will report to the full Committee on what was accomplished in their meetings. The full Committee will not take action on this date and a full report will be given on Day 3 of the meeting. Any official action taken as a result of these Working Group meetings will be taken on Day 3 of the meeting.

(5) Adjournment of meeting.

Day 2

The agenda for the November 17, 2021, meeting is as follows:

(1) The full Committee will meet briefly to discuss the Working Groups' business/task statements, which are listed in paragraph (5)(a)–(h) under Day 3 below.

(2) Working Groups will separately address the following task statements which are available for viewing at *https://homeport.uscg.mil/missions/federal-advisory-committees/national-merchant-marine-personnel-advisory-committee-(nmerpac)*;

(a) Task Statement 21–X4, STCW Convention and STCW Code Review;

(b) Task Statement 21–X7, Non-Operating Individuals;

(c) Task Statement 21–X8, Remote Operator of Maritime Autonomous Surface Ships.

(3) Reports of Working Groups. At the end of the day, the Chair of each Working Group will report to the full Committee on what was accomplished in their meetings. The full Committee will not take action on this date and a full report will be given on day three of the meeting. Any official action taken as a result of these Working Group meetings will be taken on day three of the meeting.

(4) Adjournment of meeting.

Day 3

The agenda for the November 18, 2021 full Committee meeting is as follows:

(1) Introduction.

(2) Announcements from Designated Federal Officer.

(3) Roll call, introduction, and swearing-in of newly appointed Committee members; determination of a quorum.

(4) Election of Chair and Vice Chair by Committee members.

(5) Presentation of tasks.

(a) Task Statement 21–X1, Review of IMO Model Courses;

(b) Task Statement 21–X2, Communications Between Industry and Mariner Credentialing Program;

(c) Task Statement 21–X3, Military Education, Training, and Assessment for STCW and National MMC Endorsements;

(d) Task Statement 21–X4, STCW Convention and STCW Code Review;

(e) Task Statement 21–X5, Job Task Analysis Review;

(f) Task Statement 21–X6, Sea Service for MMC Endorsements;

(g) Task Statement 21–X7, Non-Operating Individuals;

(h) Task Statement 21–X8, Remote Operator of Maritime Autonomous Surface Ships;

(i) Task Statement 21–X9, Sexual Harassment and Sexual Assault-Prevention and Culture Change in the Merchant Marine.

(6) Presentations from the Mariner Credentialing Program:

(a) Office of Merchant Mariner Credentialing Update;

(b) National Maritime Center Update;

(7) Presentations from the Work Group Chairs. The Committee will review the information presented on each issue, deliberate on any recommendations presented by the Working Groups, approve/formulate recommendations, and close any completed tasks. Official action on these recommendations may be taken on this date.

(a) Task Statement 21–X4, STCW Convention and STCW Code Review;

(b) Task Statement 21–X7, Non-Operating Individuals;

(c) Task Statement 21–X8, Remote Operator of Maritime Autonomous Surface Ships.

(8) Public comment period.

(9) Closing remarks/plans for next meeting.

(10) Adjournment of meeting.

A copy of all meeting documentation will be available at: *https://homeport.uscg.mil/missions/federal-advisory-committees/national-merchant-marine-personnel-advisory-committee-(nmerpac)* by November 4, 2021. Alternatively, you may contact the individual noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public comments or questions will be taken throughout the meeting as the Committee discusses the issues and prior to deliberations and voting. There will also be a public comment period at the end of the meeting. Speakers are requested to limit their comments to 2 minutes. Please note that the public comment period will end following the last call for comments. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above, to register as a speaker.

Dated: October 22, 2021.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2021–23448 Filed 10–27–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0024]

Request for Information on the National Flood Insurance Program Floodplain Management Standards for Land Management and Use, and an Assessment of the Program's Impact on Threatened and Endangered Species and Their Habitats; Public Meetings

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Announcement of public meetings.

SUMMARY: The Federal Emergency Management Agency (FEMA) will hold two public meetings remotely via web conference to solicit feedback on the agency's request for information on the National Flood Insurance Program's (NFIP) Floodplain Management Standards for Land Management and Use, and an Assessment of the Program's Impact on Threatened and Endangered Species and Their Habitat, published October 12, 2021. The request for information seeks input from the public on the floodplain management standards that communities should adopt to result in safer, stronger, and more resilient communities. Additionally, the request for information seeks input on how the NFIP can better promote protection of and minimize any adverse impact to threatened and endangered species, and their habitats.

DATES: Written comments on the request for information published at 86 FR 56713 (October 12, 2021) may be submitted until 11:59 p.m. Eastern Time (ET) on December 13, 2021.

FEMA will hold meetings on Thursday, November 4, 2021, from 2:30 to 4:00 p.m. ET, and Monday, November 15, from 3:30 to 5:00 p.m. ET. Depending on the number of speakers, the meetings may end before the time indicated, following the last call for comments.

ADDRESSES: The public meetings will be held via web conference. Members of the public may register to attend a meeting online at the following link: *https://www.fema.gov/event/public-comment-period-national-flood-insurance-programs-minimum-floodplain-management.*

If you would like to speak at a meeting, please indicate that on the registration form. If there is time remaining in a meeting after all registered speakers have finished, FEMA will invite comments from others in attendance.

Reasonable accommodations are available for people with disabilities. To request a reasonable accommodation, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below as soon as possible. Last minute requests will be accepted but may not be possible to fulfill.

Written comments on the request for information must be submitted via the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for FEMA–2021–0024–0001 and follow the instructions for submitting comments.

All written comments received, including any personal information provided, may be posted without alteration at *https://www.regulations.gov.* All comments on the request for information made during the meetings will be posted to the rulemaking docket on *https://www.regulations.gov.*

For access to the docket and to read comments received by FEMA, go to *https://www.regulations.gov* and search for Docket ID FEMA–2021–0024.

FOR FURTHER INFORMATION CONTACT: Rachel Sears, Supervisory Emergency Management Specialist, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, *fema-regulations@fema.dhs.gov,* 202–646–4105.

SUPPLEMENTARY INFORMATION: On October 12, 2021, FEMA published a Request for Information (RFI) on the National Flood Insurance Program's (NFIP) Floodplain Management Standards for Land Management and Use, and an Assessment of the Program's Impact on Threatened and Endangered Species and Their Habitats.[1] This RFI asks for public input on the floodplain management standards that communities should adopt to result in safer, stronger, and more resilient communities. It also seeks input on how the NFIP can better promote protection of and minimize any adverse impact to threatened and endangered species, and their habitats.

In support of FEMA's role in setting the NFIP floodplain management standards for land management and use and the agency's desire to strengthen the NFIP's protection of threatened and endangered species and their habitat, the agency is seeking input from the public on the floodplain management standards that communities should

[1] 86 FR 56713.

adopt to result in safer, stronger, and more resilient communities and also to promote protection of listed species and their critical habitats. Specifically, FEMA is seeking input through a series of questions in the RFI on opportunities for the agency to improve the minimum floodplain management standards for land management and use which better align the NFIP with the current understanding of flood risk and flood risk reduction approaches. Current FEMA floodplain management standards for flood-prone area regulations have not been revised since they were implemented in 1976. The agency is considering revision to these regulations based on its current understanding of flood risk and flood risk reduction approaches and is now taking a thorough review of the floodplain management standards, along with prior published studies and reports, to determine how these standards can best meet FEMA and stakeholder needs.[2]

FEMA also plans to re-evaluate the implementation of the NFIP under the Endangered Species Act at the national level to complete a revised Biological Evaluation [3] re-examining how NFIP actions influence land development decisions; the potential for such actions to have adverse effects on listed species and critical habitats; and to identify program changes to mitigate adverse effects to avoid jeopardy to listed species and/or critical habitats. Public feedback will help FEMA with this process.

The purpose of this request for information is to seek feedback on the agency's request for information on the National Flood Insurance Program's (NFIP) Floodplain Management Standards for Land Management and Use, and an Assessment of the Program's Impact on Threatened and Endangered Species and Their Habitat published October 12, 2021. Individuals cannot apply for FEMA assistance by submitting a comment in the **Federal Register** or at these public meetings. If you are an individual who has been impacted by a disaster and you are seeking assistance from FEMA, please visit *https://www.fema.gov/assistance/individual* or call the FEMA Helpline (1–800–621–3362/TTY (800) 462–7585) to apply or receive information on a pending request.

FEMA will hold public meetings to ensure all interested parties have sufficient opportunity to provide comments on FEMA programs. As the RFI seeks information regarding a series of questions, the public may wish to review the RFI in advance of these meetings. FEMA will carefully consider all relevant comments received during the meetings, and during the rest of the RFI's comment period. All comments or remarks provided on the request for information during the meeting will be recorded and posted to the rulemaking docket on *https://www.regulations.gov*.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–23440 Filed 10–27–21; 8:45 am]

BILLING CODE 9111–47–P

[2] *See* generally ''National Flood Insurance Program: Evaluation Studies'' found at *http://www.fema.gov/flood-insurance/rules-legislation/2006-evaluation* (last accessed July 8, 2021) and ''Building Codes Save: A Nationwide Study of Loss Prevention'' found at *http://www.fema.gov/emergency-managers/risk-management/building-science/building-codes-save-study* (last accessed July 8, 2021) among others.

[3] Agencies may submit to the Services, an evaluation on the likely effects of an action, if listed species or critical habitat are likely to be affected by Agency action.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L19900000.PO0000.LLWO320.20X; OMB Control No. 1004–0025]

Agency Information Collection Activities; Mineral Surveys, Mineral Patent Applications, Adverse Claims, Protests, and Contests

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 27, 2021.

ADDRESSES: Send your written comments on this Information Collection Request (ICR) by mail to Darrin King, Information Collection Clearance Officer, U.S. Department of the Interior, Bureau of Land Management, Attention PRA Office, 440 W 200 S #500, Salt Lake City, UT 84101; or by email to *BLM_HQ_PRA_Comments@blm.gov.* Please reference Office of Management and Budget (OMB) Control Number 1004–0025 in the subject line of your comments. Please note that due to COVID–19, the electronic submission of comments is recommended.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elaine Guenaga by email at *eguenaga@blm.gov,* or by telephone at 775–276–0287. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. The BLM may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies 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 especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this Notice are a matter of public record. 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 General Mining Law (30 U.S.C. 29, 30, and 39) authorizes a holder of an unpatented claim for hardrock minerals to apply for fee title (patent) to the federal land (as well as minerals) embraced in the claim. Division G, Title I of the Consolidated Appropriations Act, 2021 (H.R. 133), annual appropriation bill for the Department of the Interior, has prevented the BLM from processing mineral patent applications unless the applications were grandfathered under the initial legislation. While grandfathered applications are rare at present, the approval to collect the information continues to be necessary because of the possibility that the moratorium will be lifted and applicable regulations that contain the information are still part of the Code of Federal Regulations.

There are no proposed program or other policy changes requested. The BLM will be adjusting the non-hour cost burden from $255,375 to $256,425, an increase of $1,050. The adjustment results from updating costs estimates.

OMB control number 1004–0025 is scheduled to expire on February 28, 2022. This request is for OMB to renew this OMB control number for an additional three (3) years.

Title of Collection: Mineral Surveys, Mineral Patent Applications, Adverse Claims, Protests, and Contests (43 CFR parts 3860 and 3870).

OMB Control Number: 1004–0025.

Form Numbers: 3860–2 and 3860–5.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Owners of unpatented mining claims and mill sites upon the public lands, and of reserved mineral lands of the United States, National Forests, and National Parks.

Total Estimated Number of Annual Respondents: 1.

Total Estimated Number of Annual Responses: 10.

Estimated Completion Time per Response: Varies from 1–100 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 559.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: $256,425.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, 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 PRA of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin A. King,

Information Collection Clearance Officer.

[FR Doc. 2021–23511 Filed 10–27–21; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[212L1109AF.LLUTG00000.L12200000.DU0000.LXSSJ0730000]

Notice of Intent To Amend the Moab, Price, and Vernal Resource Management Plans and Prepare Environmental Assessments To Comply With the 2019 Dingell Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, the Bureau of Land Management (BLM) intends to prepare up to six Environmental Assessments (EA) to amend the Resource Management Plans (RMP) for the Moab Field Office, Price Field Office, and Vernal Field Office, which were approved in 2008. By this notice, the BLM is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This Notice of Intent (NOI) initiates the public scoping process for up to six amendments and associated EAs affecting three RMPs and 10 Areas of Critical Environmental Concern (ACEC). The BLM requests comments concerning the scope of the analysis, planning criteria, potential alternatives, and identification of relevant information, studies, and analyses. All comments must be received in writing by November 29, 2021. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media outlets and the BLM websites at *http://go.usa.gov/xV7yu* and *https://www.blm.gov/programs/planning-and-nepa/plans-in-development/utah/green-river-dingell-act.* In order to be included in the analyses, all comments must be received prior to the close of the 30-day scoping period as described above or within 15 days after the last public scoping meeting, whichever is later. The BLM may later hold individual project scoping periods for each of the six amendments before the publication of the Draft RMP amendments/EAs for public comment, to be announced through the above websites.

ADDRESSES: Written comments may be sent to the BLM Green River District, 170 South 500 East, Vernal, Utah 84078. Comments may also be sent via email to *blm_ut_vernal_comments@blm.gov* or the ePlanning project specific websites. Documents pertinent to this project may be examined during regular business hours upon request using the email listed below.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the mailing list, contact Amber Koski, Planning and Environmental Coordinator, BLM Green River District, 170 South 500 East, Vernal, Utah 84078; email *blm_ut_vernal_comments@blm.gov;* telephone (435) 781–4465. Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, seven days a week. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: This action will ensure consistency with Public Law 116–9, the John D. Dingell, Jr. Conservation, Management, and Recreation Act's (Dingell Act), designation of Jurassic National Monument, John Wesley Powell National Conservation Area, McCoy Flats Trail System, three Green River Wild and Recreational River segments, San Rafael Swell Recreation Area and 14 surrounding Wilderness Area designations, and release of areas in Emery County from wilderness study and three adjacent Wilderness Area designations.

Purpose and Need for the Proposed Action

This document provides notice that the BLM Utah Moab Field Office, Price Field Office, and Vernal Field Office plan to prepare up to six amendments for each field office's associated RMPs to ensure compliance with applicable laws, policies, and regulations. The Dingell Act requires the BLM to develop either a comprehensive management plan (Jurassic National Monument) or a management plan (John Wesley Powell National Conservation Area, McCoy Flats Trail System, and San Rafael Swell Recreation Area) for the long-term protection and management of these areas. Similarly, Public Law 99–590, the Wild and Scenic Rivers Act Amendment of 1986 (WSR Act), requires the BLM to develop a management plan to provide for protection of the designated river

values; therefore, an RMP amendment is being prepared for these designations. BLM RMPs are land use plans that establish goals and objectives to guide future land and resource management actions implemented by the BLM. Subsequent site-specific planning will occur to identify goals and objectives to develop on the ground management actions.

The approved RMP amendments will each contain an appendix that combines the land use planning decisions for the approved RMP amendment with any needed implementation guidance. This appendix will serve as the management plan required by the Dingell Act and the WSR Act. The RMP amendments will recognize valid existing rights. This notice also serves as a 30-day public scoping period for possible modification of existing ACEC boundaries within management plan areas for the Jurassic National Monument, San Rafael Swell Recreation Area and 14 surrounding Wilderness Areas, and release of areas in Emery County from wilderness study and three adjacent Wilderness Area designations pursuant to the Dingell Act. Following are the sections of the Dingell Act pertaining to the planned RMP amendments and how they relate to existing plan decisions:

RMP amendment 1: Section 1252 of the Dingell Act designates Jurassic National Monument (JNM) on 850 acres of public land in Emery County, Utah, also known as the Cleveland Lloyd Dinosaur Quarry (CLDQ). The Dingell Act specifies that the purpose of the JNM is to ''conserve, interpret, and enhance for the benefit of present and future generations the paleontological, scientific, educational, and recreational resources of the area subject to valid existing rights[.]'' The Price Field Office RMP currently manages the CLDQ under several special designations including a Special Recreation Management Area (SRMA), a National Natural Landmark, and the CLDQ ACEC. The CLDQ represents the densest collection of bones of *Allosaurus fragilis,* a large meat-eating dinosaur, and special management attention had been required to protect known and unknown paleontological resources located within the existing ACEC. This RMP amendment will reflect the Dingell Act's withdrawal of the Monument from public land laws, mining laws, mineral leasing laws, geothermal leasing laws, and mineral material laws in order to conserve, protect, and enhance the resources and values of the Monument. In addition, the RMP amendment may consider modifying the boundaries of the CLDQ ACEC and SRMA, and may update the Price Field Office RMP goals, objectives, and/or management actions for fire and drought, livestock grazing, paleontological resources, recreation resources, transportation, and/or other resources to ensure consistency with the purposes of the Dingell Act designation and BLM policy.

RMP amendment 2: Section 1118 of the Dingell Act designates the John Wesley Powell (JWP) National Conservation Area (NCA) on 29,868 acres of public land in Uintah County, Utah. The Dingell Act specifies that the purpose of the JWP NCA is to ''conserve, protect, and enhance for the benefit of present and future generations the nationally significant historic, cultural, natural, scientific, scenic, recreational, archaeological, educational, and wildlife resources'' of the NCA. The Vernal Field Office RMP currently describes management of the JWP NCA as the Diamond Mountain BLM Natural Area. The JWP NCA lies within a big game migration corridor, and current management is focused on conservation of habitat, wildlife, and access to backcountry recreation opportunities. This RMP amendment will reflect the Dingell Act's withdrawal of the NCA from public land laws, mining laws, mineral leasing laws, geothermal leasing laws, and mineral materials laws in order to conserve, protect, and enhance the resources of the JWP NCA. In addition, the RMP amendment may update the Vernal Field Office RMP goals, objectives, and/or management actions for abandoned mine lands, cultural resources, fire and fuels management, forage, livestock and grazing management, non-WSA (Wilderness Study Area) lands with wilderness characteristics, paleontological resources, rangeland improvements, recreation resources (*i.e.,* special recreation management areas and trail maintenance and development), riparian resources, soil and water resources, special status species, travel management (*i.e.,* roads and trails), vegetation, visual resource management, wildlife and fisheries, woodlands and forest resources, and/or other resources to ensure consistency with the purposes of the Dingell Act designation and BLM policy.

RMP amendment 3: Section 1115 of the Dingell Act designates the McCoy Flats Trail System (Trail System) on public land located near Vernal City in Uintah County, Utah. The Dingell Act specifies that the purpose for the Trail System is to provide new non-motorized mountain bike routes and trail construction to increase recreational opportunities within the area. The Trail System area is currently managed as public lands open to multiple use under the Vernal Field Office RMP, including but not limited to dispersed camping and mineral and right-of-way development. This RMP amendment will establish a boundary for the trail system and may update the Vernal Field Office RMP goals, objectives, and/or management actions for forage, lands and realty management, livestock and grazing management, minerals and energy resources (*i.e.,* leasable minerals, locatable minerals, saleable minerals, and mineral materials), rangeland improvements, recreation resources (*i.e.,* special recreation management areas and trail maintenance and development), special status species, travel management (*i.e.,* roads and trails), vegetation, visual resource management, wildlife and fisheries, and/or other resources to ensure consistency with the purposes of the Dingell Act designation and BLM policy.

RMP amendment 4: Section 1241 of the Dingell Act designates a 63-mile segment of the Green River, through Emery County, Utah, as a Wild and Scenic River. The Dingell Act specifies that the purpose of the Green River Wild and Scenic River is to manage the 5.3-mile segment from the boundary of the Uintah and Ouray Reservation south to the Nefertiti boat ramp as a wild river; the 8.5-mile segment from the Nefertiti boat ramp south to the Swasey's boat ramp as a recreational river; and the 49.2-mile segment from Bull Bottom, south to the county line between Emery and Wayne Counties, as a scenic river. The Moab Field Office and Price Field Office RMPs currently describe management of the area as suitable for wild, recreational, and scenic river management. This RMP amendment will reflect the Wild and Scenic River Act's withdrawal of the designated segments from public land laws, mining laws, mineral leasing laws, geothermal leasing laws, and mineral material laws in order to provide for the protection of the river values. In addition, the RMP amendment will establish the final boundary for the river segments, and may update the Moab Field Office and Price Field Office RMP goals, objectives, and/or management actions for soil, water, riparian, vegetation, cultural resources, paleontological resources, visual resources management, special status species, fish and wildlife, fuels management, fire and drought, livestock grazing, recreation and off-highway vehicles, special designations (*i.e.,* WSAs and wild and scenic rivers), transportation, and/or other resources to ensure consistency with the purposes of

the Dingell Act designation and BLM policy.

RMP amendment 5: Sections 1221 and 1222 of the Dingell Act designate the San Rafael Swell Recreation Area (Recreation Area), a unit encompassing approximately 217,000 acres of public land in Emery County, Utah. The Dingell Act specifies that the purpose for the Recreation Area is ''to provide for the protection, conservation, and enhancement of the recreational, cultural, natural, scenic, wildlife, ecological, historical, and educational resource values'' of the location. The Dingell Act Section 1231 designated the following Wilderness Areas surrounding the San Rafael Swell Recreation Area: Big Wild Horse Mesa, Cold Wash, Devil's Canyon, Eagle Canyon, Horse Valley, Little Ocean Draw, Little Wild Horse Canyon, Lower Last Chance, Mexican Mountain, Middle Wild Horse Mesa, Muddy Creek, Red's Canyon, San Rafael Reef, and Sid's Mountain. Under the Price Field Office RMP, the Recreation Area and surrounding Wilderness Areas currently include several special designations including eight ACECs (listed below) and the San Rafael SRMA. The Recreation Area also includes public land open to multiple use, including but not limited to dispersed camping and mineral and right-of-way development. This RMP amendment will reflect the Dingell Act's withdrawal of the Recreation Area and Wilderness Areas from public land laws, mining laws, mineral leasing laws, geothermal leasing laws, and mineral material laws for the protection of the wilderness character of the land. In addition, the RMP amendment may consider modifying or removing the boundaries of the San Rafael SRMA and the following ACECs: Uranium Mining Districts (Hidden Splendor, Lucky Strike, and Little Susan Mine), Heritage Sites (Copper Globe, Hunt Cabin, Smith Cabin, Shepherd's End, Swasey's Cabin, and Temple Mountain), Rock Art Sites (Cottonwood Canyon, Pictographs, and Wild Horse), Seger's Hole, San Rafael Reef, I–70 Scenic Corridor, San Rafael Canyon, and Muddy Creek. Finally, the RMP amendment may update the Price Field Office RMP goals, objectives, and/or management actions for soil, water, riparian, vegetation, cultural resources, paleontological resources, visual resources management, special status species, fish and wildlife, fuels management, fire and drought, forestry and woodland products, livestock grazing, non-WSA lands with wilderness characteristics, recreation and off-highway vehicles, special designations (*i.e.,* WSAs and national trails and backways), transportation, and/or other resources to ensure consistency with the purposes of the Dingell Act designations, the Dingell Act WSA release, and BLM policy. For the released WSAs outside of the Recreation Area and the Wilderness Areas, the RMP amendment may also update the Price Field Office RMP goals, objectives, and/or management actions for lands and realty, mineral and energy resources, locatable minerals, saleable minerals, and mineral materials.

RMP amendment 6: Section 1231 of the Dingell Act designated the following Wilderness Areas adjacent to the Green River: Desolation Canyon, Labyrinth Canyon, and Turtle Canyon. Section 1234 releases 4,400 acres of existing wilderness study areas near the Turtle Canyon Wilderness, and releases 2,200 acres of existing wilderness study areas near Desolation Canyon. This RMP amendment will reflect the Dingell Act's withdrawal of the Wilderness Areas from public land laws, mining laws, mineral leasing laws, geothermal leasing laws, and mineral material laws for the protection of the wilderness character of the land. The Price Field Office RMP currently manages the area as WSA and the Bowknot ACEC. The RMP amendment may update the Price Field Office RMP goals, objectives, and/or management actions for soil, water, riparian, vegetation, cultural resources, paleontological resources, visual resources management, special status species, fish and wildlife, fuels management, fire and drought, forestry and woodland products, livestock grazing, non-WSA lands with wilderness characteristics, recreation and off- highway vehicles, special designations (*i.e.,* WSAs and national trails and backways), transportation, and/or other resources, and may consider modifying or removing the Bowknot ACEC to ensure consistency with the purposes of the Dingell Act designations, the Dingell Act WSA release, and BLM policy. For the released WSAs, the RMP amendment may also update the Price Field Office RMP goals, objectives, and/or management actions for lands and realty, mineral and energy resources, locatable minerals, saleable minerals, and mineral materials.

Preliminary Proposed Actions and Alternatives

No Action Alternative

Under the No Action Alternative, management of the designated areas would continue to follow the decisions of the existing Moab Field Office, Price Field Office, and Vernal Field Office RMPs. Under this alternative, the outcomes for the designations in the Dingell Act would likely not be achieved.

Proposed Action

The BLM will review current RMP outcomes and modify goals and objectives to meet outcomes described in the Dingell Act. The BLM will develop legal descriptions and refinements as needed to boundaries established by the Dingell Act and modify or remove any unnecessary land use designations established under the current RMPs. The BLM will modify, add, or remove current RMP allowable uses to meet the outcomes described in the Dingell Act and reduce resource conflicts. The BLM will modify or remove current RMP management actions and develop new actions to meet the outcomes described in the Dingell Act.

Summary of Expected Impacts

The BLM will develop a list of specific issues for which an interdisciplinary team will analyze the impacts of each RMP amendment. Generally, issues will focus on the difference between the Dingell Act's designations, including desired outcomes and existing or absent RMP direction. These differences will likely center around recreation use, visual resource management, motorized and non-motorized travel, mineral development, etc. Specific issues will be discussed during public involvement for each amendment.

Anticipated Permits and Authorizations

No permits or authorizations are anticipated to be required under any alternative.

Schedule for the Decision-Making Process

This NOI announces a public scoping period for all six RMP amendments and the need for potential changes to existing ACECs to conform with the Dingell Act. The BLM may also hold future individual project scoping periods before the publication of Draft RMP amendments/EAs for public comment.

Public Scoping Process

This NOI initiates the public scoping process which guides development of the RMP amendments and EAs. The BLM requests that the public submit electronically or in writing any information, alternatives, or concerns relevant to one or more of the RMP amendments that the BLM should consider during the planning process.

Comments may be submitted in writing to the BLM at any public scoping meeting, or they may be submitted to the BLM using one of the methods listed in the **ADDRESSES** section above. Interested parties may submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later. The BLM will use the NEPA scoping process to fulfill the public involvement process under section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3) and the public involvement requirements of the Dingell Act. The date(s) and location(s) for any public scoping meetings will be announced at least 15 days in advance though local media outlets, and on the BLM's project website(s) at *http://go.usa.gov/xV7yu* and *https://www.blm.gov/programs/planning-and-nepa/plans-in-development/utah/green-river-dingell-act.*

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.

The BLM will consult with American Indian Tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

Federal, State, and local agencies, along with Tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating are invited to participate in the scoping process and, if eligible, may request, or be requested by the BLM, to participate in development of the EAs as cooperating agencies.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the BLM. Therefore, comments should be provided prior to the close of the comment period and be clearly articulated.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered.

Request for Identification of Potential Alternatives, Information, and Analysis Relevant to the Proposed Action

The BLM invites public comments identifying alternatives, relevant data and information, planning criteria, and issues for analyses pertaining to each RMP amendment.

Planning criteria are the standards, rules, and other factors developed by managers and interdisciplinary team members for use in forming judgements about decision making, analysis, and data collection during the planning process. The BLM has identified some preliminary planning criteria to guide development of the RMP amendments, to avoid unnecessary data collection and analysis, and to ensure the RMP amendments are tailored to the issues. These criteria may be modified and/or other criteria may be identified during the public scoping process. The following preliminary specific planning criteria will help guide the planning process.

Criteria 1: The BLM will observe the principles of multiple use and sustained yield.

Criteria 2: The BLM will use a systematic interdisciplinary approach to integrate physical, biological, economic, and other sciences.

Criteria 3: The BLM will prioritize the designation and protection of ACECs.

Criteria 4: The BLM will use the best available data regarding natural resources.

Criteria 5: The BLM will consider the present and potential uses of public lands and where existing RMP decisions are valid, those decisions will remain unchanged.

Criteria 6: The BLM will consider the relative scarcity of values and availability of alternative means and sites for recognizing those values.

Criteria 7: The BLM will weigh the long-term benefits against short-term benefits.

Criteria 8: The BLM will comply with Tribal, Federal, and State pollution laws, standards, and implementation plans.

Criteria 9: The BLM will seek coordination and consistency with other government programs, plans, and policies.

Lead and Cooperating Agencies

The Council on Environmental Quality regulations provide for and describe both lead and cooperating agency status and emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. Jurisdiction by law means the other agency has authority to approve, veto, or finance all or part of the proposal. In addition, any other Federal agency which has special expertise with respect to an identified issue may participate as a cooperating agency. Special expertise means ''. . . statutory responsibility, agency mission, or related program experience'' (40 CFR 1508.26). When the BLM is a lead agency, another agency may request the BLM designate it as a cooperating or joint lead agency. Any State, Tribal, or local agency with jurisdiction by law or special expertise may, by agreement, be a cooperating agency. The BLM has extended cooperating agency status to the following agencies for one or more of the RMP amendments: Ute Indian Tribe; U.S. Bureau of Indian Affairs—Uintah and Ouray Agency; U.S. Fish and Wildlife Service—Utah Field Office; U.S. Fish and Wildlife Service—Jones Hole Fish Hatchery; U.S. Geological Survey; National Park Service—Canyonlands National Park; National Park Service—Dinosaur National Monument; National Park Service—Glen Canyon National Recreation Area; National Park Service—National Natural Landmark Office; Utah Division of Forestry, Fire, and State Lands; Utah Division of Oil, Gas, and Mining; Utah Division of Parks and Recreation; Utah Public Lands Policy Coordinating Office; Utah School and Institutional Trust Lands Administration; Daggett County, UT, Emery County, UT; Grand County, UT; Uintah County, UT; Ballard City, UT; Castle Dale City, UT; Cleveland Town, UT; Duchesne City, UT; Elmo Town, UT; Green River City, UT; Huntington City, UT; Moab City, UT; Naples City, UT; Roosevelt City, UT; and Vernal City, UT.

Decision Maker

The Decision Maker for the RMP amendments is the Bureau of Land Management Utah State Director.

Nature of Decision To Be Made

The decisions resulting from these RMP amendments will specify land management consistent with Public Law 116–9, also known as the Dingell Act.

(Authority: 43 CFR 1610.2, 43 CFR 1610.5–5, and 40 CFR 1506.6)

Gregory Sheehan,

Bureau of Land Management, State Director, Utah.

[FR Doc. 2021–23464 Filed 10–27–21; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORM06000–L630000000.DF00000–21X.HAG21–0052]

Notice of Proposed Restrictions on Public Lands in Jackson County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed restrictions.

SUMMARY: The Bureau of Land Management (BLM) proposes to restrict recreational target shooting for 2 years on certain public lands administered by the Ashland Field Office.

DATES: Interested parties may submit written comments regarding the proposed restriction until December 27, 2021.

ADDRESSES: Interested parties may submit comments regarding the proposed restriction by any of the following methods:

BLM National Environmental Policy Act (NEPA) Website: https://eplanning.blm.gov/eplanning-ui/project/123432/510.

Email: BLM_OR_AFO_Anderson_Butte_SP@blm.gov.

Mail: BLM, Medford District Office, Attention: Tye Morgan, 3040 Biddle Road, Medford, Oregon 97526.

FOR FURTHER INFORMATION CONTACT: Lauren Brown, Ashland Field Office Manager; telephone: (541) 618–2232; email: *lpbrown@blm.gov;* Tye Morgan, Planner and Environmental Specialist; telephone: (541) 618–2229; email: *tamorgan@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM Ashland Field Office proposes to restrict recreational target shooting on public lands at 11 sites totaling 50 acres in the Anderson Butte area for 2 years to address public safety issues.

In compliance with the John D. Dingell, Jr. Conservation, Management, and Recreation Act (Dingell Act; 16 U.S.C. 7913(a)(1)) and 43 CFR 8364.1, notice is hereby given that the BLM proposes to implement this 2-year restriction on recreational target shooting on 11 identified sites (approximately 50 acres) in Jackson County. These proposed restrictions are necessary to ensure public safety. These recreational target shooting restrictions were proposed and analyzed in conformance with NEPA under the 2021 Anderson Butte Safety Project Environmental Assessment. The BLM solicited and incorporated public comment during the NEPA process.

The Anderson Butte area has a long history of local community residents enjoying public lands for a wide variety of uses, including hiking, horseback riding, hunting, riding off-highway vehicles, and recreational target shooting. As the Rogue Valley's population has continued to increase, so has the recreational use of the Anderson Butte area, as well as an increase in home construction in close proximity to the public lands that lie within it. These increasing pressures have resulted in a number of public safety issues and recreational user conflicts from public land visitors participating in a variety of recreational target shooting activities. There have been reported instances of these activities resulting in bullets hitting nearby private residences and other private property and bullets passing over hikers' heads while they are on designated BLM trails.

Under the Dingell Act, the BLM is required to consider public comments when temporary closures are proposed that would affect recreational target shooting on public lands. This notice announces the beginning of the 60-day comment period for the proposed temporary restriction of approximately 50 acres of public lands to recreational target shooting. Following the public comment period, the BLM will issue a final decision that will include a summary of comments received and will respond in a reasonable manner to substantive comments. The final decision will also explain how significant issues were resolved and will be made available on the project website at: *https://eplanning.blm.gov/eplanning-ui/project/123432/510.*

The BLM will be monitoring recreation uses and site conditions during the closure period to determine if target shooting restrictions resolve safety issues. The findings will help guide long-term solutions to these land management challenges.

Before including your address, phone number, email address, or other personal identifying information in any comment, be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, the BLM cannot guarantee that we will be able to do so.

The legal description of the affected public lands:

TABLE 1—CENTER POINT OF RESTRICTION SITE LOCATIONS, 250′ BUFFER FROM CENTER

Site No.	Latitude, longitude	Township, range, section, and subsection
1	42°13′50.92″ N, 122°55′32.47″ W	T38S, R2W, Sec. 27, SW¼.
2	42°13′05.97″ N, 122°55′42.47″ W	T38S, R2W, Sec. 34, SW¼.
3	42°12′22.14″ N, 122°55′59.83″ W	T39S, R2W, Sec. 3, SW¼.
4	42°13′02.40″ N, 122°54′26.51″ W	T38S, R2W, Sec. 35, SW¼.
5	42°12′31.66″ N, 122°54′10.50″ W	T39S, R2W, Sec. 2, NE¼.
6	42°12′29.14″ N, 122°54′23.39″ W	T39S, R2W, Sec. 2, NW¼.
7	42°12′08.84″ N, 122°54′56.21″ W	T39S, R2W, Sec. 3, SE¼.
8	42°11′42.75″ N, 122°53′15.56″ W	T39S, R2W, Sec. 12, NW¼.
9	42°11′43.92″ N, 122°53′27.04″ W	T39S, R2W, Sec. 12, NW¼.
10	42°10′41.22″ N, 122°55′47.82″ W	T39S, R2W, Sec. 15, SW¼.
11	42°11′16.57″ N, 122°56′33.62″ W	T39S, R2W, Sec. 9, SE¼.

More details on the proposed closure, including maps, are available on the project website located at: *https://eplanning.blm.gov/eplanning-ui/project/123432/510.* A copy of this notice and map of the restricted areas will be posted at least 30 days in advance of the effective date of the restriction at the main entry points to each of these sites, at the Medford District Office, 3040 Biddle Road, Medford, OR, 97526, and on the project website.

The BLM provides notice under 43 CFR 8364.1 that, unless the BLM

advises differently through the final decision and a subsequent **Federal Register** notice, the public lands listed earlier will be closed to recreational shooting for 2 years, starting on December 27, 2021. Therefore, the restriction authorized in the final decision would be enforced by the BLM under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 8364.1 within the closure area for each site.

Any person who violates restrictions authorized in a final decision may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of State law.

(Authority: 43 CFR 8364.1 and 16 U.S.C. 7913)

Lauren P. Brown,

Ashland Field Office Manager.

[FR Doc. 2021–23495 Filed 10–27–21; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–32707; PPWOCRADN0–PCU00RP16.R50000]

Native American Graves Protection and Repatriation Review Committee Notice of Public Meetings

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: The National Park Service is hereby giving notice that the Native American Graves Protection and Repatriation Review Committee (Committee) will hold two virtual meetings as indicated below.

DATES: The Committee will meet via virtual conference November 12, 2021, and November 23, 2021, from 2:00 p.m. until approximately 6:00 p.m. (Eastern). All meetings are open to the public.

ADDRESSES: Information on joining the virtual conference by internet or phone will be available on the National NAGPRA Program website at *https://www.nps.gov/orgs/1335/events.htm.*

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, Designated Federal Officer, National Native American Graves Protection and Repatriation Act (NAGPRA) Program (2253), National Park Service, telephone (202) 354–2201, or email *nagpra_info@nps.gov*.

SUPPLEMENTARY INFORMATION: The Committee was established in section 8 of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). Information about NAGPRA, the Committee, and Committee meetings is available on the National NAGPRA Program website at *https://www.nps.gov/orgs/1335/events.htm.*

The Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum, and recommending specific actions for developing a process for disposition of such human remains; consulting with Indian Tribes and Native Hawaiian organizations and museums on matters affecting such tribes or organizations lying within the scope of work of the Committee; consulting with the Secretary of the Interior on the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items.

The agenda for each meeting may include a report from the National NAGPRA Program; the discussion of the Review Committee Report to Congress; subcommittee reports and discussion; and other topics related to the Committee's responsibilities under section 8 of NAGPRA. In addition, the agenda may include, if requested, recommendations to the Secretary of the Interior on agreed-upon dispositions of Native American human remains or findings of fact. The meetings will be open to the public and there will be time for public comments. Written comments may be sent to Melanie O'Brien (see **FOR FURTHER INFORMATION CONTACT**.) All comments received will be provided to the Committee.

Public Disclosure of Comments: Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 5 U.S.C. Appendix 2; 25 U.S.C. 3006)

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2021–23468 Filed 10–27–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0032881; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University (ACF) has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the ACF. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the ACF at the address in this notice by November 29, 2021.

FOR FURTHER INFORMATION CONTACT: Sandra Konzak, NAGPRA Coordinator, Anthropological Studies Center, Sonoma State University, 1801 East Cotati Avenue, Building 29, Rohnert Park, CA 94928 telephone (707) 664–2895, email *Sandra.konzak@sonoma.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of

the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University (ACF), Rohnert Park, CA. The human remains were removed from Marin County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by ACF professional staff in consultation with representatives of the Federated Indians of Graton Rancheria, California.

History and Description of the Remains

In 1964 and 1965, human remains representing, at minimum, one individual were removed from site CA–MRN–489 in Marin County, CA, by Agnes Gerkin. The site is in an intertidal zone. Gerkin removed the human remains from the surface of the site during low tide. She donated the CA–MRN–489 collection to Sonoma State University in 1975, where it has been housed at the ACF under the accession number 75–29.

In July of 2016, while researching the collection, Tsim Schnieder (University of California, Santa Cruz) identified the presence of human remains. His finding was confirmed by ACF Osteological Specialist Michael Stoyka in August of 2016. At least one individual of indeterminate sex is represented. No known individual was identified. No associated funerary objects are present.

Officials of the ACF consulted with representatives of the Federated Indians of Graton Rancheria, California. The representatives of Federated Indians of Graton Rancheria, California requested repatriation of all items within the collection since an association between specific items and human remains could not be ruled out due to the nature of the tidal site and the method of collection.

Obsidian hydration readings from artifacts removed from CA–MRN–489 range between 125- and 1,200-years BP. While the presence of Stockton serrated points in the collection suggests a range in the Lower Emergent Period (1,500–500 years ago) (Rosenthal, Sutton and White 2007:158), the collection also contains glass trade beads, which were widely distributed starting in the 18th century (Arkush 1993:623–624). The site is within the traditional territory of the Coast Miwok.

Determinations Made by the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University

Officials of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Federated Indians of Graton Rancheria, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Sandra Konzak, NAGPRA Coordinator, Anthropological Studies Center, Sonoma State University, 1801 East Cotati Avenue, Building 29, Rohnert Park, CA 94928 telephone (707) 664–2895, email *Sandra.konzak@sonoma.edu,* by November 29, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Federated Indians of Graton Rancheria, California may proceed.

The Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University is responsible for notifying the Federated Indians of Graton Rancheria, California that this notice has been published.

Dated: October 14, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–23489 Filed 10–27–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0032882; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Michigan State University, East Lansing, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Michigan State University has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Michigan State University. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Michigan State University at the address in this notice by November 29, 2021.

FOR FURTHER INFORMATION CONTACT: Judith Stoddart, Associate Provost for University Collections and Arts Initiatives, Michigan State University, 466 W. Circle Drive, East Lansing, MI 48824–1044, telephone (517) 432–2524, email *stoddart@msu.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Michigan State University, East Lansing, MI. The human remains and associated funerary objects were removed from the Marquette Avenue Viaduct Site (20BY387) in Bay City, Bay County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Michigan State University professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan;

Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan [previously listed as Huron Potawatomi, Inc.]; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; and two non-federally recognized Indian groups, the Burt Lake Band of Ottawa and Chippewa Indians, and the Grand River Band of Ottawa Indians.

An invitation to consult was extended to the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little Shell Tribe of Chippewa Indians of Montana; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota.

Hereafter, all Indian Tribes and groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

In 1970, human remains representing, at minimum, three individuals were removed from the Marquette Avenue Viaduct Site (20BY387) in Bay City, Bay County, MI. Salvage excavations conducted at the Marquette Viaduct Locale of the Fletcher site (20BY28) under the direction of Associate Professor James Brown yielded the remains of two individuals (accession number 3675) together with 17 associated funerary objects (accession number 3675.8) in Burial 1, and the remains of a third individual (also accession number 3675) in Burial 2. After the excavations ended, in August/September of 1970, the human remains and associated funerary objects were brought to the Michigan State University Museum. The Viaduct Site was not given a unique site number until the 1980s.

The human remains removed from Burial 1 belong to two individuals of undetermined sex, whose ages are estimated to be older than 16.5 years and 15 years, respectively. The human remains removed from Burial 2 belong to an individual of unknown sex between 8 and 11 years old. No known individuals were identified. The 17 associated funerary objects (3675.8) are one antler tine point, one Lowes Flared base point, one lot of bone (unidentified animal), one Snyder's Point chert, one lot of Bayport flake, one lot of flakes, one graver, one grinding stone, two grinding stones, one metate, one lot of metate, one Middle Woodland style point, two grit-tempered sherds, one lot of grit-tempered sherds, and one lot of plain body grit-tempered sherds.

Determinations Made by Michigan State University

Officials of Michigan State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on biological evidence and lab records.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 17 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Saginaw Chippewa Indian Tribe of Michigan.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota.
- According to other authoritative government sources, the land from which the Native American human remains were removed is the aboriginal land of the Miami Tribe of Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and the Sac & Fox Tribe of the Mississippi in Iowa.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of

Michigan; Little Shell Tribe of Chippewa Indians of Montana; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Judith Stoddart, Associate Provost for University Collections and Arts Initiatives, Michigan State University, 466 W Circle Drive, East Lansing, MI 48824–1044, telephone (517) 432–2524, email *stoddart@msu.edu,* by November 29, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

Michigan State University is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: October 14, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–23490 Filed 10–27–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0032880; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Temple University Anthropology Laboratory and Museum, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Temple University Anthropology Laboratory and Museum has completed an inventory of human remains and an associated funerary object, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary object and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request to the Temple University Anthropology Laboratory and Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary object to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to the Temple University Anthropology Laboratory and Museum at the address in this notice by November 29, 2021.

FOR FURTHER INFORMATION CONTACT: Leslie Reeder-Myers, Temple University Anthropology Laboratory and Museum, 1115 Polett Walk, Gladfelter Hall Room 204, Philadelphia, PA 19122, telephone (215) 204–1418, email *leslie.reeder-myers@temple.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary object under the control of the Temple University Anthropology Laboratory and Museum, Philadelphia, PA. The human remains and associated funerary object were removed from Warren County, NJ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Temple University Anthropology Laboratory and Museum professional staff in consultation with representatives of the Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; and the Stockbridge-Munsee Community, Wisconsin (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In 1991, human remains representing, at minimum, one individual were removed from a burial on the Rapp Farm site in Warren County, NJ, by amateur archeologist Russ Davis. Davis discovered the human remains on a high bank on the southern side of the Pohatcong Creek, about 50 feet from its junction with the Delaware River, in the Delaware Valley. Davis contacted professional archeologist Michael Stewart at Temple University, who visited the site. The human remains were brought to Temple University's Anthropology Laboratory for examination by physical anthropologist Leonard Greenfield, after which they were returned to Davis. In 2021, Davis donated the human remains to the Temple Anthropology Laboratory. The human remains belong to a thirty-something adult of unknown sex. No known individual was identified. The one associated funerary object is an incised earthenware sherd.

The positioning of the human remains within the sedimentary context of the eroding riverbank indicates a date within the Late Woodland period (A.D. 900- 1600). The site's proximity to the Overpeck site, located about 5 miles away, on the west side of the Delaware River, indicates a cultural affiliation with Lenape descendants, the Delaware Tribes.

Geographic affiliation is consistent with the historically documented territory of the Delaware Tribes. Archeological evidence is consistent with documented use of the area by the Delaware Tribes. Historical evidence and expert opinion indicate shared group identity between the Delaware Tribes and the Rapp Farm site.

Determinations Made by the Temple University Anthropology Laboratory and Museum

Officials of the Temple University Anthropology Laboratory and Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice

represent the physical remains of one individual of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to Leslie Reeder-Myers, Temple University Anthropology Laboratory and Museum, 1115 Polett Walk, Gladfelter Hall Room 204, Philadelphia, PA 19122, telephone (215) 204–1418, email *leslie.reeder-myers@temple.edu,* by November 29, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary object to The Tribes may proceed.

The Temple University Anthropology Laboratory and Museum is responsible for notifying The Tribes that this notice has been published.

Dated: October 14, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–23488 Filed 10–27–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0032883; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Santa Barbara, Santa Barbara, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of California, Santa Barbara (U.C. Santa Barbara) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to U.C. Santa Barbara. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to U.C. Santa Barbara at the address in this notice by November 29, 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Kennett, University of California, Santa Barbara, CA 93106–3210, telephone (805) 893–3456, email *kennett@anth.ucsb.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of California, Santa Barbara, Santa Barbara, CA. The human remains and associated funerary objects were removed from Santa Barbara County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of California, Santa Barbara Repository for Archaeological and Ethnographic Collections professional staff in consultation with representatives of the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, as well as three non-federally recognized Indian groups, namely the Barbareño Band of Chumash Indians, the Barbareño/Ventureño Band of Mission Indians, and the Northern Chumash Tribe (hereafter referred to as ''The Consulted Tribe and Groups'').

History and Description of the Remains

In 1950, human remains representing, at minimum, 13 individuals were removed from site CA–SBA–205 in Santa Barbara County, CA (Accession 245). The site was excavated under the direction of Norman Gabel (U.C. Santa Barbara) and Donald W. Lathrap (U.C. Berkeley). In February 1979, the collection was received by U.C. Santa Barbara and assigned Accession 245. In June 2015, the County of Santa Barbara relinquished legal control of Accession 245 to U.C. Santa Barbara. The age of the human remains is unknown, but various materials from CA–SBA–205 date from approximately 4000 to 170 BP. The human remains represent one unaged male adult, three unaged female adults, five unaged adults of unknown sex, one 18-year-old male, two children, and one 12-month-old infant. No known individuals were identified. The five associated funerary objects are one pestle and four chipped stone flakes.

Sometime prior to 1983, human remains representing, at minimum, one individual were donated to U.C. Santa Barbara (Accession 248–6). Although the age and provenience of the human remains are unknown, based on the collecting history of U.C. Santa Barbara, the human remains most likely derive from a Chumash site in Santa Barbara County, CA. ''Burial 3'' is written on the sacrum. The human remains represent a single, mature/old adult male. No known individual was identified. The four associated funerary objects are four pieces of wood.

Sometime prior to 1983, human remains representing, at minimum, eight individuals were donated to U.C. Santa Barbara (Accession 248–23). The human remains were collected on Santa Rosa Island, possibly during construction in 1954, and were given to the Biological Sciences Department at U.C. Santa Barbara. In August of 1983, the human remains were donated to the Department of Anthropology. Although the age of the human remains is unknown, based on the provenience information and on osteological analyses, the human remains are most likely Chumash. The human remains represent three adults and five children of unknown sex. No known individuals were identified. The two associated funerary objects are two abalone shells.

Determinations Made by the University of California, Santa Barbara

Officials of the University of California, Santa Barbara have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of 22 individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the 11 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects, and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Douglas Kennett, University of California, Santa Barbara, CA 93106–3210, telephone (805) 893–3456, email *kennett@anth.ucsb.edu,* by November 29, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Santa Ynez Band of Chumash Indians of the Santa Ynez Reservation, California may proceed.

The University of California, Santa Barbara is responsible for notifying The Consulted Tribe and Groups that this notice has been published.

Dated: October 14, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–23491 Filed 10–27–21; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1282]

Certain Tunable Lenses and Products Containing the Same; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 27, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of Holochip Corporation of Torrance, California. Supplements were filed on October 7, 2021 and October 21, 2021. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain tunable lenses and products containing the same by reason of infringement of certain claims of U.S. Patent No. 8,064,142 (''the '142 patent''); U.S. Patent No. 8,605,361 (''the '361 patent''); U.S. Patent No. 8,665,527 (''the '527 patent''), and U.S. Patent No. 9,442,225 (''the '225 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained 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 at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 22, 2021, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 25, 28–31, 34, 35, 42–48, 50, 52, 55, 58–63, 68, 73, 77, 78, 115–117 of the '142 patent; claims 1, 2, 4, 5, 9, 12, 15–19 of the '361 patent; claims 1–17, 19–21, 23–30, 32–34, and 36 of the '527 patent; and claims 1–14 and 16 of the '225 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''fluid-based lenses with variable focal lengths, components thereof, and products containing the same'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Holochip Corporation, 4030 Spencer Street, Suite 102, Torrance, CA 90503

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Optotune AG, Bernstrasse 388, CH–8953 Dietikon, Switzerland

Edmund Optics, Inc., 101 E Gloucester Pike, Barrington, NJ 08007

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations is not participating as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this

notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 22, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–23447 Filed 10–27–21; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following extensions of currently approved information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Comments should be received on or before November 29, 2021 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Dawn Wolfgang at (703) 548–2279, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0138.

Title: Community Development Revolving Loan Fund—Loan and Grant Programs, 12 CFR part 705.

Abstract: NCUA's Community Development Revolving Loan Fund (CDRLF or Fund) was established by Congress (Pub. L. 96–123, November 20, 1979) to stimulate economic development in low-income communities. Part 705 was adopted by the Board under section 130 of the Federal Credit Union Act (12 U.S.C. 1772c–1), which implements the Community Development Credit Union Revolving Loan Fund Transfer Act (Pub. L. 99–609, 100 Stat. 3475 (Nov. 6. 1986)).

The Fund is used to support credit unions that serve low-income communities by providing loans and technical assistance grants to qualifying institutions. The programs are designed to increase income, ownership, and employment opportunities for low-income residents, and to stimulate economic growth. In addition, the programs provide assistance to improve the quality of services to the community and formulate more effective and efficient operations of credit unions. The information will allow NCUA to assess a credit union's capacity to repay the Funds and/or ensure that the funds are used as intended to benefit the institution and community it serves.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 760.

OMB Number: 3133–0183.

Title: Golden Parachute and Indemnification Payments, 12 CFR part 750.

Abstract: This rule prohibits, in certain circumstances, a federally insured credit union (FICU) from making golden parachute and indemnification payments to an institution-affiliated party (IAP). Section 750.4 prescribed written concurrence of the appropriate state supervisory authority, if applicable; § 750.5 covers recordkeeping requirements of permissible indemnification payments, and § 750.6 requires requests by a troubled FICU to make a severance or golden parachute payment to an IAP, to be submitted in writing to NCUA. The information will be used by the NCUA to determine whether an exception to the general prohibition on golden parachute payments should be approved.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 19.

OMB Number: 3133–0184.

Title: Requirements for Insurance-Interest Rate Risk Policy.

Abstract: Section 741.3(b)(5) of NCUA's rules and regulations requires federally-insured credit unions with assets of more than $50 million to develop, as a prerequisites for insurability of its member deposits, a written interest rate risk management policy and a program to effectively implement the policy. The need for FICU to have a written policy to establish responsibilities and procedures for identifying, measuring, monitoring, controlling, and reporting, and establishing risk limits are essential components of safe and sound credit union operations and to ensure the security of the National Credit Union Share Insurance Fund (NCUSIF).

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 773.

OMB Number: 3133–0197.

Title: Safe Harbor; Treatment of Financial Assets Transferred in Connection with a Securitization or Participation.

Abstract: Section 709.9 clarifies the conditions for a safe harbor for securitization or participation and sets forth safe harbor protections for securitizations that do not comply with the new accounting standards for off balance sheet treatment by providing for expedited access to the financial assets that are securitized if they meet the conditions defined in the rule. The conditions contained in the rule will serve to protect the National Credit Union Share Insurance Fund (NCUSIF) and NCUA's interests as liquidating agent or conservator by aligning the conditions for the safe harbor with better and more sustainable lending practices by insured credit unions (FICUs).

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 514.

OMB Number: 3133–0198.

Title: Appeals Procedures, 12 CFR 746, subpart B.

Abstract: Part 746, subpart B, will govern most authorized appeals to the Board of adverse determinations made at program office levels under agency regulations that permit such an appeal. The procedures apply to federal credit unions (FCUs), federally insured, state-chartered credit unions (FISCUs), or certain institution affiliated parties (IAPs) such as officers or directors when appealing an adverse agency determination under one of the rules to which part 746, subpart B, would apply. The procedures are intended to result in greater efficiency, consistency, and better understanding of the way in which matters under covered regulations may be appealed to the Board.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 440.

OMB Number: 3133–0199.

Title: Capital Planning and Stress Testing, 12 CFR part 702, subpart E.

Abstract: To protect the National Credit Union Share Insurance Fund (NCUSIF) and the credit union system, the largest Federally Insured Credit Unions (FICUs) must have systems and processes to monitor and maintain their capital adequacy. The rule requires covered credit unions to develop and maintain a capital plan and submit this plan to NCUA by March 31 of each year. The rule applies to all FICUs that report $10 billion or more in assets on their March 31 Call Report.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 4,030.

Dated: October 25, 2021.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on October 22, 2021.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2021–23451 Filed 10–27–21; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Tribal Consultation Policy

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) is an independent federal agency whose funding helps to support cultural programs nationwide. Established in 1965, the NEA's budget appropriation in FY21 was $167.5 million, which is utilized in the form of project and partnership grants, special initiatives, and honorific fellowships to support arts learning, affirm and celebrate America's rich and diverse cultural heritage, and to extend and promote equal access to the arts in every community.

FOR FURTHER INFORMATION CONTACT: Clifford Murphy, Director of Folk & Traditional Arts, phone: 202–682–5726, or by email to *murphyc@arts.gov* or *NativeArts@arts.gov.*

SUPPLEMENTARY INFORMATION: In response to President Biden's January 26, 2021 Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships *(https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/),* the National Endowment for the Arts is pleased to share its Tribal Consultation Policy (*https://www.arts.gov/sites/default/files/Tribal%20Consultation%20Policy%20NEA%202021%20Final.pdf*).

The policy is in keeping with the NEA draft Plan of Action for Tribal Consultation *(https://www.arts.gov/sites/default/files/NEA-Tribal-Consultation-Plan-of-Action-4.26.21.pdf),* which was informed by a tribal consultation call on April 7, 2021, and was informed by ongoing agency engagement with Native artists, organizations, and cultural leaders. A draft consultation policy was formally reviewed in consultation with tribal leaders on August 10, 2021 (summary: *https://www.arts.gov/sites/default/files/NEA-August-2021-Tribal-Consultation-Summary-9.9.21.pdf*).

Dated: October 22, 2021.

Meghan Jugder,

Support Services Specialist, Office of Administrative Services & Contracts, National Endowment for the Arts.

[FR Doc. 2021–23430 Filed 10–27–21; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 9 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of September 10, 2019, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

American Rescue Plan Grants to Organizations (review of applications): This meeting will be closed. *Date and time:* November 17, 2021, 1:00 p.m. to 3:00 p.m.

American Rescue Plan Grants to Organizations (review of applications): This meeting will be closed. *Date and time:* November 17, 2021, 2:30 p.m. to 4:30 p.m.

American Rescue Plan Grants to Organizations (review of applications): This meeting will be closed. *Date and time:* November 17, 2021, 3:00 p.m. to 5:00 p.m.

American Rescue Plan Grants to Organizations (review of applications): This meeting will be closed. *Date and time:* November 17, 2021, 3:30 p.m. to 5:30 p.m.

American Rescue Plan Grants to Organizations (review of applications): This meeting will be closed. *Date and time:* November 18, 2021, 1:00 p.m. to 3:00 p.m.

American Rescue Plan Grants to Organizations (review of applications): This meeting will be closed. *Date and time:* November 18, 2021, 2:00 p.m. to 4:00 p.m.

American Rescue Plan Grants to Organizations (review of applications): This meeting will be closed. *Date and time:* November 18, 2021, 2:30 p.m. to 4:30 p.m.

American Rescue Plan Grants to Organizations (review of applications): This meeting will be closed. *Date and time:* November 18, 2021, 3:00 p.m. to 5:00 p.m.

American Rescue Plan Grants to Organizations (review of applications): This meeting will be closed. *Date and time:* November 18, 2021, 3:30 p.m. to 5:30 p.m.

Dated: October 25, 2021.

Sherry P. Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2021–23452 Filed 10–27–21; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–170; NRC–2021–0198]

Armed Forces Radiobiology Research Institute

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a request dated September 17, 2021, as supplemented by a letter dated October 7, 2021, from the Armed Forces Radiobiology Research Institute (AFRRI). The exemption allows specific applicants for an operator or senior operator license for the AFRRI Training, Research, Isotopes, General Atomics (TRIGA) reactor to manipulate the controls at a similar TRIGA reactor to satisfy certain training and testing requirements.

DATES: The exemption was issued on October 22, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0198 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0198. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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.* The exemption request dated September 17, 2021 and the supplemental letter dated October 7, 2021 are available in ADAMS under Accession Nos. ML21260A184 and ML21285A025, respectively.
- *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 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Cindy Montgomery, telephone: 301–415–3398, email: *Cindy.Montgomery@nrc.gov* and William Schuster, telephone: 301–415–1590, email: *William.Schuster@nrc.gov.* Both are staff of the Office of Nuclear Reactor Regulation at the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: October 25, 2021.

For the Nuclear Regulatory Commission.

Patrick G. Boyle,

Project Manager, Non-Power Production and Utilization Facility Licensing Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

Attachment—Exemption

Nuclear Regulatory Commission

Docket No. 50–170, Armed Forces Radiobiology Research Institute, Exemption

I. Background

The Armed Forces Radiobiology Research Institute (AFRRI, the licensee) holds the U.S. Nuclear Regulatory Commission (NRC, the Commission) Renewed Facility Operating License No. R–84 for the AFRRI Training, Research, Isotopes, General Atomics (TRIGA) reactor (the facility), which is a research reactor located in Montgomery County, Maryland. Under this license, the licensee is authorized to operate the facility up to a steady-state power level of 1.1 megawatts thermal with pulsing capability using reactivity insertions up to 2.45% Δk/k. The license is subject to the rules, regulations, and orders of the NRC.

II. Request/Action

By letter dated September 17, 2021, as supplemented by letter dated October 7, 2021, the licensee requested an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) 55.31, ''How to apply,'' paragraph (a)(5) and 10 CFR 55.45(b), ''Implementation—Administration.'' 10 CFR 55.31(a)(5) requires an applicant for an operator or senior operator license to provide evidence that the applicant, as a trainee, has successfully manipulated the controls of either the facility for which the license is sought or a plant-referenced simulator; 10 CFR 55.45(b) requires an operating test to be administered to an applicant for an operator or senior operator license in a facility walkthrough and in either the facility, a Commission-approved simulation facility, or a plant-referenced simulator. According to the licensee, these requirements cannot be met at the AFRRI TRIGA reactor because (1) the facility is in a shutdown state pending the NRC's review and approval of a license amendment request for an upgrade to the digital instrumentation and control system and, therefore, is not capable of control manipulations, (2) the facility does not have a Commission-approved simulation facility or a plant-referenced simulator, and (3) there are currently no licensed operators at the facility to supervise control manipulations by applicants for operator or senior operator licenses. Under these circumstances, applicants for operator or senior operator licenses at the facility cannot be trained or tested with respect to control manipulations as is required by 10 CFR 55.31(a)(5) and 10 CFR 55.45(b). In lieu of these requirements, the licensee seeks, via its exemption request, that four named applicants for an AFRRI operator or senior operator license be allowed to provide evidence that they, as trainees, have successfully manipulated the controls of the Idaho National Laboratory (INL) Neutron Radiography (NRAD) TRIGA reactor and be allowed to take the portion of the operating test requiring control manipulations at the INL NRAD TRIGA reactor.

III. Discussion

Pursuant to 10 CFR 55.11, ''Specific exemptions,'' the Commission may, upon application by an interested person, or upon its own initiative, grant exemptions from the requirements of 10 CFR part 55, ''Operators' Licenses,'' as it determines (1) are authorized by law, (2) will not endanger life or property, and (3) are otherwise in the public interest.

A. The Exemption Is Authorized by Law

Exemptions are authorized by law where they are not expressly prohibited by statute or regulation. A proposed exemption is implicitly authorized by law if it will not endanger life or property and is otherwise in the public interest and no other provisions in law prohibit, or otherwise restrict, its application. As discussed in this section of the NRC's evaluation of the exemption request, no provisions in law prohibit or restrict an exemption to the requirements concerning control manipulations for certain operator training and testing requirements; subsequent sections of this evaluation discuss that the exemption will not

endanger life or property and is otherwise in the public interest.

The regulations in 10 CFR part 55 implement Section 107 of the Atomic Energy Act of 1954, as amended (AEA), which sets requirements upon the Commission concerning operators' licenses and states, in part, that the Commission shall (1) prescribe uniform conditions for licensing individuals as operators of any of the various classes of utilization facilities licensed by the NRC and (2) determine the qualifications of such individuals. These requirements in the AEA do not expressly prohibit exemptions from 10 CFR 55.31(a)(5) and 10 CFR 55.45(b), which require that control manipulations related to operator training and testing be performed at the facility for which the operator license is sought, at a plant-referenced simulator, or at a Commission-approved simulation facility, as appropriate. Further, as explained below, the requested exemption would have little impact on the uniformity of operator licensing conditions or on the determination of operator qualifications.

In its exemption request, the licensee explained that the use of the INL NRAD TRIGA reactor would provide reactor physics and thermal hydraulic response characteristics sufficiently similar to those that would be provided at the AFRRI TRIGA reactor such that the use of the INL NRAD TRIGA reactor could stand in the place of the use of the AFRRI TRIGA reactor with respect to the required control manipulations for the training and testing of applicants for AFRRI operator licenses. Additionally, the INL NRAD TRIGA reactor uses similar digital instrumentation and controls, reactor control rod drive mechanisms, and TRIGA fuel assemblies as the AFRRI TRIGA reactor. Therefore, uniform conditions for operator licensing would be maintained by using the INL NRAD TRIGA reactor in place of the AFRRI TRIGA reactor to the extent proposed in the exemption request.

The licensee also explained that using the INL NRAD TRIGA reactor in place of the AFRRI TRIGA reactor to the extent proposed in the exemption request would not significantly change how the Commission determines the qualifications of operator applicants. Under the exemption, 10 CFR 55.31(a)(5) would continue to require the applicant to perform, at a minimum, five significant control manipulations that affect reactivity or power level and 10 CFR 55.45(b) would continue to require the administration of the operating test in a plant walkthrough that would continue to require the applicant to demonstrate an understanding of and the ability to perform the actions necessary to accomplish a representative sample from among items (1) through (13) in 10 CFR 55.45(a).

Accordingly, because the AFRRI TRIGA reactor and the INL NRAD TRIGA reactor have similar operating and technical characteristics with respect to control manipulations, an exemption from 10 CFR 55.31(a)(5) and 10 CFR 55.45(b) allowing the use of the INL NRAD TRIGA reactor in lieu of the AFRRI TRIGA reactor for control manipulations for the training and testing of specific applicants for AFRRI operator licenses would satisfy the applicable AEA requirements that the Commission prescribe uniform conditions for licensing individuals as operators and determine the qualifications of operators. Additionally, as discussed below, the exemption will not endanger life or property and is otherwise in the public interest. Therefore, the NRC finds that the requested exemption is authorized by law.

B. The Exemption Will Not Endanger Life or Property

Control manipulations at the INL NRAD TRIGA reactor would be sufficiently similar and would provide sufficiently similar reactor physics and thermal hydraulic response characteristics to those at the AFRRI TRIGA reactor such that the use of the INL NRAD TRIGA reactor could stand in the place of the use of the AFRRI TRIGA reactor with respect to the required control manipulations for the training and testing of the specified applicants for AFRRI operator licenses. Since its operating and technical characteristics are similar to those of the AFRRI TRIGA reactor, the use of the INL NRAD TRIGA reactor by these applicants would allow them to complete the required control manipulations for their training and complete the required evolutions that affect reactivity in 10 CFR 55.45(a)(1) through (13) for their testing. As part of the operator licensing application process, the facility licensee will certify that these applicants have completed the required training for the AFRRI TRIGA reactor. As part of the operator licensing testing process, the NRC examiners will ensure that these applicants are evaluated to ensure that they are fully capable of operating the AFRRI TRIGA reactor, while accounting for any differences between the AFRRI TRIGA reactor and the INL NRAD TRIGA reactor. Therefore, the NRC finds that the training and testing of the specified AFRRI applicants would satisfy the NRC's training and testing requirements. Accordingly, if ultimately licensed, these applicants would have learned to operate the AFRRI TRIGA reactor competently and safely and, thus, their licensing would be protective of life and property.

Furthermore, the training and testing of the specified AFRRI applicants at the INL NRAD reactor would, itself, be protective of life and property. In its exemption request, the licensee provided that the INL NRAD TRIGA reactor has been operational since 1977 with a facility safety analysis and design specifications that meet or exceed NRC requirements. Additionally, the specified AFRRI applicants would be under the instruction of U.S. Department of Energy qualified reactor operators and reactor supervisors for all of their control manipulations.

Lastly, the licensee has identified and will ensure that the specified AFRRI applicants are trained on the differences between the AFRRI TRIGA reactor and the INL NRAD TRIGA reactor.

Based on the above, the NRC finds that the requested exemption will not endanger life or property.

C. The Exemption Is Otherwise in the Public Interest

The Commission's values guide the NRC in maintaining certain principles of good regulation as it carries out regulatory activities in furtherance of its safety and security mission. These principles focus the NRC on ensuring safety and security while appropriately considering the interests of the NRC's stakeholders, including the public and licensees. These principles are Independence, Openness, Efficiency, Clarity, and Reliability. Independence relates to NRC decisions being based on objective, unbiased assessments of all information. Openness relates to the NRC conducting its regulatory activities publicly and candidly. Efficiency relates to the NRC ensuring that its regulatory activities are consistent with the degree of risk reduction they achieve; adopting the option, where several effective alternatives are available, that minimizes the use of resources; and making regulatory decisions without delay. Clarity relates to NRC positions being readily understood and easily applied. Reliability relates to established regulations being perceived to be reliable and not unjustifiably in a state of transition. The NRC's principles of good regulation can also provide guidance as to whether the granting of a particular exemption is otherwise in the public interest.

On balance, the NRC's principles of good regulation demonstrate that the granting of the requested exemption is otherwise in the public interest. As an initial matter, the exemption is necessary for the restart of the AFRRI TRIGA reactor. In its exemption request, the licensee provided that such restart is critical to national defense. The licensing of the specified applicants for AFRRI operator licenses would bring the facility into compliance with the staffing and surveillance requirements of its technical specifications and would facilitate the maintenance of its critical systems. Additionally, as clearly, openly, and independently determined above, the licensee's preferred method of training and testing these applicants with respect to control manipulations at the INL NRAD TRIGA reactor will not endanger life or property because the operating and technical characteristics of the INL NRAD TRIGA reactor are sufficiently similar to those of the AFRRI TRIGA reactor with respect to control manipulations. Therefore, it would be most efficient to approve the licensee's preferred method as opposed to requiring some equally effective alternative method. The requested exemption would also maintain unchanged the substantive requirements upon the specified AFRRI applicants with respect to training and testing. This would further reliability by allowing these applicants to complete their applications with the underlying requirements unchanged and by allowing the operating test to be conducted with the underlying requirements unchanged. Finally, the exemption would only apply to the training and testing of the four named applicants and would expire thereafter; therefore, the exemption is narrowly tailored to be efficient and to maintain the reliability of the AFRRI operator licensing program.

Based on the above, the NRC finds that the requested exemption is otherwise in the public interest.

D. Environmental Considerations

This exemption allows four named applicants for an AFRRI TRIGA reactor operator or senior operator license to perform their training and testing control manipulations required by 10 CFR 55.31(a)(5) and 10 CFR 55.45(b) at the INL NRAD TRIGA reactor instead of at the AFRRI TRIGA reactor.

For the following reasons, this exemption meets the eligibility criteria of 10 CFR 51.22(c)(25) for a categorical exclusion. There are no special or extraordinary circumstances present that would preclude reliance on this exclusion. The NRC determined, in accordance with 10 CFR 51.22(c)(25)(vi)(E), that the requirements from which the exemption is sought involve education, training, experience, qualification, requalification, or other employment suitability requirements. The NRC also determined that granting the requested exemption involves no significant hazards consideration because it does not authorize any physical changes to the facility or any of its safety systems or change any of the assumptions or limits used in the facility licensee's safety analyses or introduce any new failure modes; no significant change in the types or significant increase in the amounts of any effluents that may be released offsite because the exemption does not affect any effluent release limits as provided in the facility licensee's technical specifications or by 10 CFR part 20, ''Standards for Protection Against Radiation''; no significant increase in individual or cumulative public or occupational radiation exposure because the exemption does not affect limits on the release of any radioactive material or the limits provided in 10 CFR part 20 for radiation exposure to workers or members of the public; no significant construction impact because the exemption does not involve any changes to a construction permit; and no significant increase in the potential for or consequences from radiological accidents because the exemption does not alter any of the assumptions or limits in the facility licensee's safety analyses. In addition, the NRC determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. As such, there are no extraordinary circumstances present that would preclude reliance on this categorical exclusion. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with granting the requested exemption.

IV. Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 55.11, the exemption is authorized by law, will not endanger life or property, and is otherwise in the public interest. Therefore, effective immediately, the Commission hereby grants AFRRI an exemption from 10 CFR 55.31(a)(5) and 10 CFR 55.45(b) to allow the four applicants for an AFRRI TRIGA reactor operator or senior operator license, specified by name in the licensee's letter dated October 7, 2021, to provide evidence that they, as trainees, have successfully manipulated the controls of the INL NRAD TRIGA reactor and to be administered the portion of the operating test requiring control manipulations at the INL NRAD TRIGA reactor. This exemption expires when the training and initial testing of these new applicants is completed.

Dated: October 22, 2021.

For the Nuclear Regulatory Commission.

Mohamed Shams,

Director, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–23467 Filed 10–27–21; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Sunshine Act Meetings

DATE AND TIME: Tuesday, November 9, 2021, at 10:15 a.m.; and Wednesday, November 10, 2021, at 9 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW, in the Benjamin Franklin Room.

STATUS: Tuesday, November 9, 2021, at 10:15 a.m.—Closed; Wednesday, November 10, 2021, at 9 a.m.—Open.

MATTERS TO BE CONSIDERED:

Tuesday, November 9, 2021, at 10:15 a.m. (Closed)

1. Strategic Issues.
2. Financial and Operational Matters.
3. Compensation and Personnel Matters.
4. Administrative Items.

Wednesday, November 10, 2021, at 9 a.m. (Open)

1. Remarks of the Chairman of the Board of Governors.
2. Remarks of the Postmaster General and CEO.
3. Approval of Minutes of Previous Meetings.
4. Committee Reports.
5. Financial Matters, including FY2021 and Financial Statements, and Annual Report to Congress.
6. FY2022 Integrated Financial Plan and Financing Resolution.
7. FY2023 Congressional Reimbursement Request.
8. Quarterly Service Performance Report.
9. Approval of Tentative Agendas for February 2022 Meetings.
10. Board Leadership.

A public comment period will begin immediately following the adjournment of the open session on November 10, 2021. During the public comment period, which shall not exceed 60

minutes, members of the public may comment on any item or subject listed on the agenda for the open session above. Additionally, the public will be given the option to join the public comment session and participate via teleconference. Registration of speakers at the public comment period is required. Should you wish to participate via teleconference, you will be required to give your first and last name, a valid email address to send an invite and a phone number to reach you should a technical issue arise. Speakers may register online at *https://www.surveymonkey.com/r/BOG-11-10-2021.* No more than three minutes shall be allotted to each speaker. The time allotted to each speaker will be determined after registration closes. Registration for the public comment period, either in person or via teleconference, will end on November 8 at 5 p.m. ET. Participation in the public comment period is governed by 39 CFR 232.1(n).

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

[FR Doc. 2021–23654 Filed 10–26–21; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93405; File No. SR–BX–2021–047]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118 To Establish an Enhanced Market Quality Program

October 22, 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 October 12, 2021, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 7, Section 118 to establish an Enhanced Market Quality Program, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish an Enhanced Market Quality Program that is similar to a program that exists (with proposed amendments) on its sister exchange, Nasdaq PHLX, LLC.[3] The Enhanced Market Quality Program is intended to provide supplemental incentives to members that meet certain quality standards in acting as market makers for securities on the Exchange. It rewards members that make a significant contribution to market quality by providing liquidity at the national best bid and offer (''NBBO'') in a large number of securities for a significant portion of the day.

Specifically, the Exchange proposes to make a lump sum payment at the end of each month (a ''Fixed Payment'') to a member to the extent that the member, through one or more of its MPIDs, quotes at the NBBO for at least a threshold percentage of the time during Market Hours in an average number of securities per day during the month (satisfying the ''NBBO requirement''), as specified below.[4] On a daily basis, the Exchange will determine the number of securities in which each of a member's MPIDs satisfied the NBBO requirement. The Exchange will aggregate all of a member's MPIDs to determine the number of securities for purposes of the NBBO requirement.

The Exchange proposes to limit the applicability of the Program to the top 1,500 securities in each of Tapes A and B, as determined by their total value traded during the second month prior to the current month (*e.g.,* for October 2021, the measurement period for determining the list will be August 2021).[5] In doing so, the Exchange seeks to target the Program at securities in Tapes A and B that are most in demand among market participants and which trade extensively, so that an improvement in quoting in those securities would, in turn, stand improve the attractiveness of the Exchange to participants. The Exchange would divide the 1,500 securities into three equal groups (or ''Classes'') for each Tape, with the top 500 ranked securities placed in Class 3, the middle 500 ranked securities placed in Class 2, and the lowest ranked 500 securities placed in Class 1. The Exchange would assign Fixed Payment amounts to each of the three Classes in each Tape and in each of the five Tiers, with these amounts generally increasing from Class 1 to Class 3, and from Tiers 1–5. Generally speaking (with exceptions set forth in the schedules below), this proposed structure would provide the largest Fixed Payments to those members that meet the NBBO requirement in the greatest number of qualifying securities and those that trade most extensively, and the lowest incentives to those members that meet the NBBO requirement in the fewest number of qualifying securities and those that trade least extensively.

The Program will be open to all members. A member may but is not

[3] *See* Securities Exchange Act Release No. 34–92754 (August 25, 2021), 86 FR 48789 (August 31, 2021) (SR–Phlx–2021–47). The proposal reflects changes to this program that Nasdaq PHLX, LLC is proposing concurrently with this rule filing.

[4] For purposes of the Enhanced Market Quality Program, a member will be deemed to quote at the NBBO in a security if it quotes a displayed order of at least 100 shares in the security and prices the order at either the national best bid or the national best offer or both the national best bid and offer for the security. Additionally, for a particular Tape A security to count towards the threshold for qualifying for the Fixed Payment on a particular day, and receiving the Fixed Payment, a member has to quote such security at the NBBO for at least 30% of the time during Market Hours on that day. For a particular Tape B security to count towards the threshold for qualifying for the Fixed Payment on a particular day, and receiving the Fixed Payment, a member has to quote such security at the NBBO for at least 50% of the time during Market Hours on that day.

[5] The Exchange notes that a symbol that did not trade during the measurement month will not be eligible for inclusion in the list.

required to be, a registered market maker in any security; thus, the Program will not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker. Accordingly, the Program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO.

For securities in each of the three Classes, the Exchange will determine the amount of the Fixed Payment that it pays to a qualifying member as follows. First, the Exchange will determine the number of securities in each Class for which a member has met the NBBO requirement during the month. The Exchange will then determine whether the number of securities in a particular Class for which a member has satisfied the NBBO requirement during the month is sufficient to qualify it for a Tier, and if so, it will determine the highest Tier applicable to the member with respect to that Class of securities. Next, the Exchange will multiply the average daily number of its qualifying securities in the Class and Tier by the applicable amounts applicable to that Class and Tier, and [sic] the specified lump sum, if applicable.

Under the proposal, a member that qualifies for a Fixed Payment for securities in each of Tapes A and B and in multiple Classes within each Tape will receive Fixed Payments covering qualifying securities in both Tapes, and within each Tape, each of the applicable Classes, but within each Tape and Class, a member may only qualify for one Tier during a month.

The Exchange will pay the Fixed Payment in addition to other rebates or fees provided under Equity 7, Sections 118(a)–(f).

As of the outset of every month, the Exchange will reevaluate and, as applicable, update its lists of the securities that it places in each Class, and it will publish its updated lists on its website as of the outset of the month in which they will apply.

The Exchange proposes to set the Tiers, Classes, and the Fixed Payments as follows:

Tape A Securities

Tiers	Average daily number of securities quoted at the NBBO for at least 30% of the time during Market Hours during the month	Fixed payment for securities in Tape A in Class 1	Fixed payment for securities in Tape A in Class 2	Fixed payment for securities in Tape A in Class 3
1	0–24	$0 per qualified security per month.	$0 per qualified security per month.	$0 per qualified security per month.
2	25–49	$0 per qualified security per month.	$0 per qualified security per month.	$200 per qualified security over 24 per month.
3	50–149	$50 per qualified security per month [sic].	$200 per qualified security over 49 per month.	$5,000 + ($450 per qualified security over 49) per month.
4	150–249	$5,000 + ($100 per qualified security over 149) per month.	$20,000 + ($300 per qualified security over 149) per month.	$50,000 + ($600 per qualified security over 149) per month.
5	250 or greater	$15,000 + ($150 per qualified security over 249) per month.	$50,000 + ($350 per qualified security over 249) per month.	$50,000 + ($600 per qualified security over 149) per month.

Tape B Securities

Tiers	Average daily number of securities quoted at the NBBO for at least 50% of the time during Market Hours during the month	Fixed payment for securities in Tape B in Class 1	Fixed payment for securities in Tape B in Class 2	Fixed payment for securities in Tape B in Class 3
1	0–24	$0 per qualified security per month.	$0 per qualified security per month.	$0 per qualified security per month.
2	25–49	$0 per qualified security per month.	$0 per qualified security per month.	$100 per qualified security over 24 per month.
3	50–149	$0 per qualified security per month.	$25 per qualified security over 49 per month.	$2,500 + ($150 per qualified security over 49) per month.
4	150–249	$50 per qualified security over 149 per month.	$2,500 + ($50 per qualified security over 149) per month.	$17,500 + ($300 per qualified security over 149) per month.
5	250 or greater	$5,000 + ($75 per qualified security over 249) per month.	$7,500 + ($150 per qualified security over 249) per month.	$17,500 + ($300 per qualified security over 149) per month.

The following are examples of the operation of the proposed Enhanced Market Quality Program.

Example 1: A member quotes an average of 200 symbols a day in Tape A, Class 2 in excess of the 30% NBBO requirement to qualify for a Tier during the month. Under the proposal, the member would qualify for a Fixed Payment equal to the combination of Tier 4, Class 2. The Fixed Payment due to such member is calculated as follows: 51 (the number of symbols over 149) times $300, which equals $15,300, plus $20,000, for a total of $35,300 for the month.

Example 2: A member meets the NBBO requirements for an average of 200 symbols a day in Tape A, Class 2, 26 symbols a day in securities in Tape A, Class 3, and 51 securities in Tape B,

Class 2. In this scenario, the member would qualify for three Fixed Payments.

• First, for the 200 Tape A, Class 2 securities for which the member meets the NBBO requirement during the month, the member would receive a Fixed Payment equal to the combination of Tier 4, Class 2. The Fixed Payment due to such member is calculated as follows: 51 (the number of symbols over 149) times $300, which equals $15,300, plus $20,000, for a total of $35,300 for the month.

• Second, for the 26 Tape A, Class 3 securities for which the member meets the NBBO requirement during the month, the member would receive a Fixed Payment equal to the combination of Tier 2, Class 3. The Fixed Payment due to such member is calculated as follows: 2 (the number of symbols over 24) times $200, which equals $400 for the month.

• Third, for the 51 Tape B, Class 2 securities for which the member meets the NBBO requirement during the month, the member would receive a Fixed Payment equal to the combination of Tier 3, Class 2. The Fixed Payment due to such member is calculated as follows: 2 (the number of symbols over 49) times $25, which equals $50 for the month.

• The total of all Fixed Payments due to the member for the month will be $35,750 ($35,300 + $400 + $50).

Through the use of this incentive Program, the Exchange hopes to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the Program reflects an effort to use financial incentives to encourage a wider variety of members to make positive commitments to promote market quality. The Exchange believes that different members may respond to different incentives, and therefore the Enhanced Market Quality Program is designed to promote market quality through quoting activity. The Exchange recognizes that while generally market participants will provide quotes with the intention of trading, market makers and liquidity providers cannot control when counter parties choose to interact with those quotes and therefore the Exchange believes it is beneficial to the market to offer this incentive based on quoting activity directly.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [9] (''NetCoalition'') 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'. . . .'' [10]

The Exchange believes that the proposed Enhanced Market Quality Program is reasonable because it is similar to other incentive programs offered by the Exchange for displayed orders that provide liquidity, like the Qualified Market Maker Program set forth in Equity 7, Sections 118(f). The proposed Fixed Payment will provide an opportunity to members to receive an additional credit in return for certain levels of participation on the Exchange as measured by quoting at the NBBO for a significant portion of the day each month. The proposed Fixed Payment is set at a level that reflects the beneficial contributions of market participants that quote significantly at the NBBO in certain qualifying securities. The Exchange believes that it is reasonable to limit the universe of qualifying securities to a list of 1,500 symbols that traded most extensively on the Exchange in Tapes A and B during second month prior to the current month, and to vary the amount of Fixed Payments in relation to the relative extent to which symbols on that list trade, because improving the quality of quotes for more popular symbols will do more to enhance the attractiveness of the Exchange than will improving quote quality for thinly-traded symbols. Given that the Exchange has finite resources to allocate to incentive programs, it is reasonable to allocate those resources in a manner that is most likely to achieve its intended objectives. The Exchange notes that a competing exchange which operates a similar incentive program also targets its incentives to a select list of symbols.[11]

The Exchange believes that it is reasonable to limit applicability of the proposed Fixed Payments to securities in Tapes A and B, and to set the credits higher for the Tape A securities, insofar as the Exchange seeks to incentivize members to quote at the NBBO on the Exchange in such securities and improve the market therefor.

The Exchange believes that the proposed Fixed Payments set forth by the Enhanced Market Quality Program are an equitable allocation and are not unfairly discriminatory because the Exchange will offer the same Fixed Payment rates to all similarly situated members. Moreover, the proposed qualification criteria requires a member to quote significantly at the NBBO in securities that trade extensively, therefore contributing to market quality in a meaningful way on the Exchange. Any member may quote at the NBBO at the level required by the qualification criteria of the Enhanced Market Quality Program. The Exchange notes that it has a similar Qualified Market Maker Program in which members are required to quote at the NBBO more than a certain amount of time during regular

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[9] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[10] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[11] Securities Exchange Act Release No. 34–92150 (June 10, 2021), 86 FR 32090, 32091 n.9 (June 16, 2021) (''SR–MEMX–2021–07'') (''As proposed, the term 'DLI Target Securities' means a list of securities designated as such, the universe of which will be determined by the Exchange and published on the Exchange's website. The Exchange anticipates that the initial DLI Target Securities list will include between 275 and 300 securities. The DLI Target Securities list will always include at least 75 securities and may be periodically updated by the Exchange, provided that the Exchange will not remove a security from the DLI Target Securities list without at least 30 days' prior notice to Members as published on the Exchange's website (unless the security is no longer eligible for trading on the Exchange).''

market hours.[12] For these reasons, the Exchange believes that the proposed Enhanced Market Quality Program Fixed Payments and qualification criteria are an equitable allocation and are not unfairly discriminatory.

The Exchange also believes that it is equitable and not unfairly discriminatory to apply the Enhanced Market Quality Program only to Tape A and Tape B securities, and then only to the top 1,500 symbols in each Tape by total value traded during the second month prior to the current month, and to set the Fixed Payment rates higher for the Tape A securities than Tape B securities, because the Exchange has limited resources available to it for incentive programs and the Exchange believes that the most effective application of such limited resources is to improve the market quality for the most actively traded Tape A and Tape B securities, as proposed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed Program will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed Program will provide members with the opportunity to receive incentive payments if they improve the market by providing significant quoting at the NBBO in a large number of securities, while limiting the universe of such securities to those which the Exchange believes will do most to improve market quality.

In terms of intra-market 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 because the Program is open to all members on the same terms.

In sum, the proposed Program is designed to improve the quality of the Exchange for securities that are likely to attract the greatest trading interest; however, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2021–047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2021–047. 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–BX–2021–047 and should be submitted on or before November 18, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[12] *See* Qualified Market Maker Program, Equity 7, Section 118(f).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93406; File No. SR–Phlx–2021–64]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Equity 7, Section 3 To Modify the Enhanced Market Quality Program

October 22, 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 October 19, 2021, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's pricing schedule at Equity 7, Section 3, to modify the Enhanced Market Quality Program, as described further below. The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Equity 7, Section 3 to modify the Enhanced Market Quality Program, which the Exchange established earlier this year.[3]

The Existing Enhanced Market Quality Program

The Enhanced Market Quality Program, as it presently exists on the Exchange, provides supplemental incentives to member organizations that meet certain quality standards in acting as market makers for securities on the Exchange. It rewards member organizations that make a significant contribution to market quality by providing liquidity at the national best bid and offer (''NBBO'') in a large number of securities for a significant portion of the day.[4]

Specifically, the Exchange makes a lump sum payment at the end of each month (a ''Fixed Payment'') to a member organization to the extent that the member organization, through one or more of its MPIDs, quotes at the NBBO for at least a threshold percentage of the time during Market Hours in an average number of securities per day during the month, as specified below (satisfying the ''NBBO requirement'').

On a daily basis, the Exchange determines the number of securities in which each of a member organization's MPIDs satisfies the NBBO requirement. The Exchange aggregates all of a member organization's MPIDs to determine the number of securities for purposes of the NBBO requirement.

The Program is open to all member organizations. A member organization may, but is not required to be, a registered market maker in any security; thus, the Program does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker. Accordingly, the Program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO.

The Exchange determines the amount of the Fixed Payment that it pays to a qualifying member organization by multiplying the average daily number of its qualifying securities during the month within the range set forth in the highest qualifying Tier (rounded to the nearest whole number) by the applicable amounts set forth in the tables below and adding the specified lump sum, where applicable. For a particular Tape A security to count towards the threshold for qualifying for the Fixed Payment on a particular day, and receiving the Fixed Payment, a member organization has to quote such security at the NBBO for at least 30% of the time during Market Hours on that day. For a particular Tape B security to count towards the threshold for qualifying for the Fixed Payment on a particular day, and receiving the Fixed Payment, a member organization has to quote such security at the NBBO for at least 50% of the time during Market Hours on that day. A member organization that qualifies for the Fixed Payment for securities in each of Tapes A and B receive Fixed Payments covering qualifying securities in both Tapes, but within each Tape, a member organization may only qualify for one Tier during a month. The Exchange notes that it makes the Fixed Payment in addition to other rebates or fees provided under Equity 7, Sections 3 (a)–(c).

The existing schedules of Tiers and Fixed Payments are as follows:

TAPE A SECURITIES

Tiers	Average daily number of securities quoted at the NBBO for at least 30% of the time during Market Hours during the month	Fixed payment
1	0–199	$0 per qualified security per month.
2	200–299	$25 per qualified security over 199.
3	300–399	$2,500 + ($200 per qualified security over 299).
4	400–499	$22,500 + ($300 per qualified security over 399).
5	500 or greater	$52,500 + ($400 per qualified security over 499).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–92754 (August 25, 2021), 86 FR 48789 (August 31, 2021) (SR–Phlx–2021–47).

[4] For purposes of the Enhanced Market Quality Program, a member organization is deemed to quote at the NBBO in a security if it quotes a displayed order of at least 100 shares in the security and prices the order at either the national best bid or the national best offer or both the national best bid and offer for the security.

TAPE B SECURITIES

Tiers	Average daily number of securities quoted at the NBBO for at least 50% of the time during Market Hours during the month	Fixed payment
1	0–299	$0 per qualified security per month.
2	300–399	$100 per qualified security over 299.
3	400–499	$10,000 + ($200 per qualified security over 399).
4	500 or greater	$30,000 + ($300 per qualified security over 499).

In establishing this Program, the Exchange hoped to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the Program reflected an effort by the Exchange to use financial incentives to encourage a wider variety of member organizations to make positive commitments to promote market quality. The Exchange believes that different member organizations may respond to different incentives, and therefore the Enhanced Market Quality Program was designed to promote market quality through quoting activity. The Exchange recognized that while generally market participants will provide quotes with the intention of trading, market makers and liquidity providers cannot control when counterparties choose to interact with those quotes; as such, the Exchange believed that it would be beneficial to the market to offer this incentive based on quoting activity directly.

Proposed Amendments to the Existing Enhanced Market Quality Program

The Exchange remains committed to achieving the objectives of the Enhanced Market Quality Program insofar as it believes that the Program will facilitate the growth and strengthening of its market. However, the Exchange has determined that the existing design of the Program requires modification to improve its effectiveness. As presently designed, the Enhanced Market Quality Program provides incentives to those member organizations that meet the NBBO requirement for all securities in Tapes A and B, without consideration for the extent to which such securities actually trade. As a result, the Exchange has observed that it has paid much of its Fixed Payments to member organizations for quoting at the NBBO in securities that trade scarcely, if at all. Paying incentives in this way has done little to raise the profile and attractiveness of the Exchange. The Exchange believes that it would be better positioned to meet its objectives by reallocating incentives so that they reward member organizations that meet the NBBO requirement for securities in Tapes A and B that are in demand among market participants and trade extensively. To this end, the Exchange proposes the following amendments to the Enhanced Market Quality Program.

First, rather than pay Fixed Payments to member organizations that meet the NBBO requirements for any Tape A or B security, the Exchange proposes to limit payments each month to the top 1,500 securities in each of these Tapes, as determined by their total value traded during the second month prior to the current month. The Exchange would then divide these 1,500 securities into three equal groups (or ''Classes'') for each Tape, with the top 500 ranked securities placed in Class 3, the middle 500 ranked securities placed in Class 2, and the lowest ranked 500 securities placed in Class 1. The Exchange would assign Fixed Payment amounts to each of the three Classes in each Tape and in each of five Tiers,[5] with these amounts generally increasing from Class 1 to Class 3, and from Tiers 1–5. Generally speaking (with exceptions set forth in the schedules below), this proposed structure would provide the largest Fixed Payments to those member organizations that meet the NBBO requirement in the greatest number of qualifying securities and those that trade most extensively, and the lowest incentives to those member organizations that meet the NBBO requirement in the fewest number of qualifying securities and those that trade least extensively.

The proposed amended schedules are as follows:

TAPE A SECURITIES

Tiers	Average daily number of securities quoted at the NBBO for at least 30% of the time during Market Hours during the month	Fixed payment for securities in Tape A in Class 1	Fixed payment for securities in Tape A in Class 2	Fixed payment for securities in Tape A in Class 3.
1	0–24	$0 per qualified security per month.	$0 per qualified security per month.	$0 per qualified security per month.
2	25–49	$0 per qualified security per month.	$0 per qualified security per month.	$200 per qualified security over 24 per month.
3	50–149	$50 per qualified security per month [sic].	$200 per qualified security over 49 per month.	$5,000 + ($450 per qualified security over 49) per month.
4	150–249	$5,000 + ($100 per qualified security over 149) per month.	$20,000 + ($300 per qualified security over 149) per month.	$50,000 + ($600 per qualified security over 149) per month.
5	250 or greater	$15,000 + ($150 per qualified security over 249) per month.	$50,000 + ($350 per qualified security over 249) per month.	$50,000 + ($600 per qualified security over 149) per month.

[5] For securities in Tape B, the Exchange proposes to increase the number of Tiers from 4 to 5. For securities in both Tapes A and B, the Exchange proposes to modify the numbers of securities for which a member organization must meet the NBBO requirement during Market Hours during the month to qualify for each of these Tiers.

TAPE B SECURITIES

Tiers	Average daily number of securities quoted at the NBBO for at least 50% of the time during Market Hours during the month	Fixed payment for securities in Tape B in Class 1	Fixed payment for securities in Tape B in Class 2	Fixed payment for securities in Tape B in Class 3.
1	0–24	$0 per qualified security per month.	$0 per qualified security per month.	$0 per qualified security per month.
2	25–49	$0 per qualified security per month.	$0 per qualified security per month.	$100 per qualified security over 24 per month.
3	50–149	$0 per qualified security per month.	$25 per qualified security over 49 per month.	$2,500 + ($150 per qualified security over 49) per month.
4	150–249	$50 per qualified security over 149 per month.	$2,500 + ($50 per qualified security over 149) per month.	$17,500 + ($300 per qualified security over 149) per month.
5	250 or greater	$5,000 + ($75 per qualified security over 249) per month.	$7,500 + ($150 per qualified security over 249) per month.	$17,500 + ($300 per qualified security over 149) per month.

Under these proposed amended schedules, a member organization that meets the NBBO requirement for a requisite number of qualifying securities during a month to qualify for a particular Tier will be entitled to receive the Fixed Payment that corresponds to the combination of: (i) That Tier; and (ii) the Class in which the Exchange has placed the qualifying securities for that month.

Generally speaking, the Tier qualification calculation methodology will not change under the proposal,[6] except that the numbers of securities for which a member organization must meet the NBBO requirement to qualify for each Tier will be different. Also, the universe of qualifying securities that count towards the Tier requirement will be limited to the Exchange's list of the top 1,500 securities for each Tape by total value traded during the second month prior to the current month (*e.g.,* for October 2021, the measurement period for determining the list will be August 2021). The Exchange notes that a symbol that did not trade during the measurement month will not be eligible for inclusion in the list.

Under the proposal, a member organization that qualifies for a Fixed Payment for securities in each of Tapes A and B and in multiple Classes within each Tape will receive Fixed Payments covering qualifying securities in both Tapes, and within each Tape, for the each of the applicable Classes, but within each Tape and Class, a member organization may only qualify for one Tier during a month. The Exchange will continue to pay the Fixed Payment in addition to other rebates or fees provided under Equity 7, Sections 3(a)–(c).

As of the outset of every month, the Exchange will reevaluate and, as applicable, update its lists of the securities that it places in each Class, and it will publish its updated lists on its website as of the outset of the month in which they will apply.

The following are examples of the operation of the proposed amended Enhanced Market Quality Program.

Example 1: A member organization quotes an average of 200 symbols a day in Tape A, Class 2 in excess of the 30% NBBO requirement to qualify for a Tier during the month. Under the proposal, the member organization would qualify for a Fixed Payment equal to the combination of Tier 4, Class 2. The Fixed Payment due to such member organization is calculated as follows: 51 (the number of symbols over 149) times $300, which equals $15,300, plus $20,000, for a total of $35,300 for the month.

Example 2: A member organization meets the NBBO requirements for an average of 200 symbols a day in Tape A, Class 2, 26 symbols a day in securities in Tape A, Class 3, and 51 securities in Tape B, Class 2. In this scenario, the member organization would qualify for three Fixed Payments.

- First, for the 200 Tape A, Class 2 securities for which the member organization meets the NBBO requirement during the month, the member organization would receive a Fixed Payment equal to the combination of Tier 4, Class 2. The Fixed Payment due to such member organization is calculated as follows: 51 (the number of symbols over 149) times $300, which equals $15,300, plus $20,000, for a total of $35,300 for the month.
- Second, for the 26 Tape A, Class 3 securities for which the member organization meets the NBBO requirement during the month, the member organization would receive a Fixed Payment equal to the combination of Tier 2, Class 3. The Fixed Payment due to such member organization is calculated as follows: 2 (the number of symbols over 24) times $200, which equals $400 for the month.
- Third, for the 51 Tape B, Class 2 securities for which the member organization meets the NBBO requirement during the month, the member organization would receive a Fixed Payment equal to the combination of Tier 3, Class 2. The Fixed Payment due to such member organization is calculated as follows: 2 (the number of symbols over 49) times $25, which equals $50 for the month.

The total of all Fixed Payments due to the member organization for the month will be $35,750 ($35,300 + $400 + $50).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among member organizations and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission

[6] The amended Program will continue to be open to all member organizations. As in the existing Program, a member organization may, but is not required to be, a registered market maker in any security.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

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.'' [9]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [10] (''NetCoalition'') 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'. . . .'' [11]

The Exchange believes that the proposed amended Enhanced Market Quality Program is reasonable because it is similar to other incentive programs offered by the Exchange for displayed orders that provide liquidity, like the Qualified Market Maker Program set forth in Equity 7, Sections 3(c). The proposed amended Fixed Payment will provide an opportunity to member organizations to receive an additional credit in return for certain levels of participation on the Exchange as measured by quoting at the NBBO for a significant portion of the day each month. The proposed Fixed Payment is set at a level that reflects the beneficial contributions of market participants that quote significantly at the NBBO in certain qualifying securities. The Exchange believes that it is reasonable to amend the Program to limit the universe of qualifying securities to a list of 1,500 symbols that traded most extensively on the Exchange in Tapes A and B during the second month prior to the current month, and to vary the amount of Fixed Payments in relation to the relative extent to which symbols on that list trade, because improving the quality of quotes for more popular symbols will do more to enhance the attractiveness of the Exchange than will improving quote quality for thinly-traded symbols. Given that the Exchange has finite resources to allocate to incentive programs, it is reasonable to allocate (or reallocate) those resources in a manner that is most likely to achieve its intended objectives. The Exchange notes that a competing exchange which operates a similar incentive program also targets its incentives to a select list of symbols.[12]

The Exchange believes that it remains reasonable to limit applicability of the proposed Fixed Payments to securities in Tapes A and B, and to set the credits higher for the Tape A securities, insofar as the Exchange seeks to incentivize member organizations to quote at the NBBO on the Exchange in such securities and improve the market therefor.

The Exchange believes that the proposed amended Fixed Payments set forth by the Enhanced Market Quality Program are an equitable allocation and are not unfairly discriminatory because the Exchange will offer the same Fixed Payment rates to all similarly situated member organizations. Moreover, the proposed qualification criteria requires a member organization to quote significantly at the NBBO in securities that trade extensively, therefore contributing to market quality in a meaningful way on the Exchange. Any member organization may quote at the NBBO at the level required by the qualification criteria of the Enhanced Market Quality Program. The Exchange notes that it has a similar Qualified Market Maker Program in which member organizations are required to quote at the NBBO more than a certain amount of time during regular market hours.[13] For these reasons, the Exchange believes that the proposed amended Enhanced Market Quality Program Fixed Payments and qualification criteria are an equitable allocation and are not unfairly discriminatory.

The Exchange also believes that it is equitable and not unfairly discriminatory to apply the Enhanced Market Quality Program only to Tape A and Tape B securities, and then only to the top 1,500 symbols in each Tape by total value traded during the second month prior to the current month, and to set the Fixed Payment rates higher for the Tape A securities than Tape B securities, because the Exchange has limited resources available to it for incentive programs and the Exchange believes that the most effective application of such limited resources is to improve the market quality for the most actively traded Tape A and Tape B securities, as proposed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the Exchange's Program do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed amended Program will continue to provide member organizations with the opportunity to receive incentive payments if they improve the market by providing significant quoting at the NBBO in a large number of securities, while limiting the universe of such securities to those which the Exchange believes will do most to improve market quality.

In terms of intra-market 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 because the program

[9] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[10] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[11] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[12] Securities Exchange Act Release No. 34–92150 (June 10, 2021), 86 FR 32090, 32091 n.9 (June 16, 2021) (''SR–MEMX–2021–07'') (''As proposed, the term 'DLI Target Securities' means a list of securities designated as such, the universe of which will be determined by the Exchange and published on the Exchange's website. The Exchange anticipates that the initial DLI Target Securities list will include between 275 and 300 securities. The DLI Target Securities list will always include at least 75 securities and may be periodically updated by the Exchange, provided that the Exchange will not remove a security from the DLI Target Securities list without at least 30 days' prior notice to Members as published on the Exchange's website (unless the security is no longer eligible for trading on the Exchange).''

[13] *See* Qualified Market Maker Program, Equity 7, Section 3(c).

is open to all member organizations on the same terms.

In sum, the proposed amendments to the Program are designed to render it more effective in improving the quality of the Exchange for securities that are likely to attract the greatest trading interest; however, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–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–Phlx–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 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–Phlx–2021–64 and should be submitted on or before November 18, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–23435 Filed 10–27–21; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93407; File No. SR–NASDAQ–2021–081]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Schedule of Transaction Credits and Charges at Equity 7, Section 118(a)

October 22, 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 October 13, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's schedule of transaction credits and charges, at Equity 7, Section 118(a) as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of transaction credits and charges, at Equity 7, Section 118(a).

Each month, the Exchange determines the applicability to a member of the various credits and charges set forth in this schedule based, in part, on the nature and extent of a member's activities on the Exchange during the month. Credits generally apply to members that add liquidity to the Exchange during the month, with credit amounts varying based upon the extent or nature of such liquidity adding activity, or other criteria, while transaction charges that are discounted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

from the standard rate apply to members that remove liquidity from the Exchange during the month, with the amounts of the discounts varying based upon the extent or nature of such liquidity removal activity, or other criteria.

Among the order types that comprise a member's activity on the Exchange during a month are Midpoint Extended Life Orders (''M–ELOs'').[3] Generally, the M–ELO order type (including its Holding Period) is designed to create additional trading opportunities on the Exchange for investors with longer investment time horizons. M–ELO Order will only execute against other M–ELO orders, as well as certain other qualified midpoint orders on the continuous book.

Currently, the Exchange charges a member that executes a M–ELO Order a flat fee of $0.0004 per share executed (for securities priced at $1 or more), but does not provide a credit for liquidity provided or charge a fee for liquidity removed.[4] The design of the tiers of the Section 118 ''Nasdaq Market Center Order Execution and Routing'' mandates that member's trading activity that is not treated as ''liquidity provided,'' necessarily becomes activity classified as ''liquidity removed.'' Accordingly, before the proposed change became effective, all M–ELO trading activity was classified as removing liquidity.

Nasdaq now proposes to count all M–ELO Orders that a member executes on Nasdaq during the month as liquidity-adding activity on Nasdaq for the purposes of calculating the extent of a member's trading activity during the month on Nasdaq and determining the charges and credits applicable to such member's activity.[5] A M–ELO Order must rest on the book for at least 10 milliseconds, and therefore Nasdaq believes this approach is appropriate because M–ELO is an order type that focuses on the execution quality experience. Nasdaq believes that these qualities allow a M–ELO Order to have a lesser market price impact thus contributing to the market quality by providing passive liquidity.

The purpose of counting all M–ELO Orders that a member executes on Nasdaq during the month as liquidity-adding activity on Nasdaq for the purposes of calculating the extent of a member's trading activity during the month is to provide extra incentives to members to be actively involved in M–ELO on the Exchange. The Exchange believes that if such incentives are effective, then any ensuing increase in M–ELO activity on the Exchange will improve market quality, to the benefit of all participants.

2. Statutory Basis

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,[6] in general, and further the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposals are also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposals Are Reasonable

The Exchange's proposals are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [8]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [9]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposals represent reasonable attempts by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that it is reasonable to count all M–ELO Orders that a member executes on Nasdaq during the month as liquidity-adding activity on Nasdaq for the purposes of calculating the extent of a member's trading activity during the month on Nasdaq and determining the charges and credits applicable to such member's activity.

The proposal is reasonable because it will provide extra incentives to members to engage in substantial amounts of MELO-related activity on the Exchange during a month. Nasdaq believes that the qualities of a M–ELO Order cause it to have a lesser market price impact thus contributing to the market quality by providing passive liquidity. The Exchange believes that if such incentives are effective, then any ensuing increase in M–ELO Orders will improve the quality of the M–ELO market, and the market overall, to the benefit of M–ELO and all market participants.

[3] Pursuant to Equity 4, Rule 4702(b)(14), a ''Midpoint Extended Life Order'' is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will not be eligible to execute until a minimum period of 10 milliseconds has passed after acceptance of the Order by the System.

[4] Although the proposed rule change will classify all M–ELO trading activity as ''liquidity provided,'' a member that executes a M–ELO Order will continue to be assessed a fee of $0.0004 per share executed.

[5] Where a fee in a particular tier is determined based on shares of non-displayed liquidity (without specifying the treatment of M–ELO Orders) provided in all securities that represent more than a certain threshold of Consolidated Volume, executed M–ELO Orders will not be counted towards such non-displayed liquidity.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[9] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

The Exchange notes that those market participants that are dissatisfied with the proposals are free to shift their order flow to competing venues that offer more generous pricing or less stringent qualifying criteria.

The Proposals Are Equitable Allocations of Fees and Credits

The Exchange believes that it is an equitable allocation to modify the eligibility requirements for its transaction credits and fees because the proposal will encourage members to increase the extent to which they add M–ELO liquidity to the Exchange. Nasdaq believes that the qualities of a M–ELO Order cause it to have a lesser market price impact thus contributing to the market quality by providing passive liquidity. To the extent that the Exchange succeeds in increasing the levels of M–ELO liquidity on the Exchange, then the Exchange will experience improvements in its market quality, which stands to benefit all market participants.

Any participant that is dissatisfied with the proposals is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

The Proposals Are Not Unfairly Discriminatory

The Exchange believes that its proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange believes that its proposal to amend the qualifying criteria for its transaction fees and credits is not unfairly discriminatory because these credits and fees are available to all members. Nasdaq believes that the qualities of a M–ELO Order cause it to have a lesser market price impact thus contributing to the market quality by providing passive liquidity. Moreover, the proposal stands to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing members to increase the extent of their M–ELO liquidity provision or activity on the Exchange.

Any participant that is dissatisfied with the proposals is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

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.

Intramarket Competition

The Exchange does not believe that its proposals will place any category of Exchange participant at a competitive disadvantage because the change represents a reasonable effort to enhance the ability of longer-term trading interest to participate effectively on an exchange, without discriminating unfairly against other market participants or inappropriately or unnecessarily burdening competition. Nasdaq believes that the qualities of a M–ELO Order cause it to have a lesser market price impact thus contributing to the market quality by providing passive liquidity. In addition, the proposal is applicable to all members on equal terms.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposed treatment of M–ELO Orders is not desirable. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that its pricing tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee or credit levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. 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 believes that the degree to which fee and credit changes in this market may impose any burden on competition is extremely limited.

The proposal is reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprises upwards of 44% of industry volume.

The Exchange's proposal is pro-competitive in that the Exchange intends for the change to increase M–ELO liquidity addition on the Exchange, thereby rendering the Exchange a more attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2021–081 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2021–081. 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–NASDAQ–2021–081 and should be submitted on or before November 18, 2021.

[11] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–23434 Filed 10–27–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93416; File No. SR–NYSE–2021–61]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Rule 7.31

October 25, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 13, 2021, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 NYSE Rule 7.31 to establish a minimum dollar threshold into its rule for Limit Order Price Protection. 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 NYSE Rule 7.31 (Orders and Modifiers) to establish a minimum dollar threshold in its rule for Limit Order Price Protection.

Rule 7.31(a)(2)(B) (''Limit Order Price Protection'') describes the price protection mechanism for Limit Orders. Currently, the rule provides that a Limit Order to buy (sell) will be rejected if it is priced at or above (below) a specified percentage away from the National Best Offer (National Best Bid) (''NBO'' and ''NBB,'' respectively).[4]

The Exchange proposes to amend Rule 7.31(a)(2)(B) to introduce a minimum dollar threshold of $0.15 into the Limit Order Price Protection calculation for lower-priced securities. Accordingly, the proposed rule would provide that a Limit Order to buy (sell) would be rejected if it was priced at or above (below) the greater of $0.15 or a specified percentage away from the NBO (NBB).

The Exchange believes that the introduction of this minimum dollar threshold would enhance the Limit Order Price Protection mechanism for securities with a reference price below $1.50 because using the current 10% multiplier for such securities would result in too narrow of a price protection mechanism. Thus, the proposed rule change would encourage price continuity, specifically in lower-priced illiquid securities.

This proposed minimum dollar threshold of $0.15 is the same minimum dollar threshold that currently exists in the Limit Order Price Protection rules of the Exchange's affiliate exchanges NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago''), and NYSE National, Inc (''NYSE National'').[5]

[4] For securities with a reference price between $0.00 and $25.00, the specified percentage is 10%; for securities with a reference price between $25.01 and $50.00, the specified percentage is 5%; and for securities with a reference price greater than $50.00, the specified percentage is 3%.

[5] *See* NYSE American Rule 7.31E(a)(2)(B); NYSE Arca Rule 7.31–E(a)(2)(B); NYSE Chicago Rule 7.31(a)(2)(B); and NYSE National Rule 7.31(a)(2)(B). *See also* Securities Exchange Act Release Nos. 81943 (October 25, 2017), 82 FR 50475 (October 31, 2017) (SR–NYSAMER–2017–25) (adding $0.15 minimum dollar threshold to Limit Order Price Protection in NYSE American Rule 7.31E(a)(2)(B)); 82004 (November 2, 2017), 82 FR 51890 (November 8, 2017) (SR–NYSEArca–2017–126) (adding same to NYSE Arca Rule 7.31–E(a)(2)(B)); 87264 (October 9, 2019), 84 FR 55345 (October 16, 2019) (SR–NYSECHX–2019–08) (regarding NYSE Chicago Rule

Implementation

The Exchange anticipates implementing the proposed change in November 2021 and will announce the timing of such changes by Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and with Section 6(b)(5),[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change adding a $0.15 minimum price threshold to Rule 7.31(a)(2)(B) would 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, because the proposed change is based on the Limit Order Price Protection rules currently in effect on NYSE American, NYSE Arca, NYSE Chicago, and NYSE National, and therefore is not novel.[8] The Exchange further believes that the proposed change would enhance the Exchange's Limit Order Price Protection mechanism, which protects from aberrant prices, thus improving continuous trading and price discovery. In addition, the proposal to enhance Limit Order Price Protection by adding a minimum dollar threshold would assist with the maintenance of fair and orderly markets because such mechanisms protect investors from potentially receiving executions away from the prevailing market prices at any given time.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that 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. The proposed rule change is not intended to address competitive issues but rather would provide for a more effective Limit Order Price Protection mechanism, specifically for lower-priced securities.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to allow the Exchange to make the proposed enhancement to its Limit Order Price Protection mechanism when the technology associated with this proposed change is available, which is anticipated to be less than 30 days from the date of this filing.

The Exchange represents that the proposed change would assist with the maintenance of fair and orderly markets by protecting investors from potentially receiving executions away from the prevailing market prices at any given time. And the Commission notes that the proposed minimum dollar threshold is the same minimum dollar threshold that currently exists in the Limit Order Price Protection rules of the Exchange's affiliate exchanges.[13] The Commission therefore believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2021–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2021–61. 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

7.31(a)(2)(B)); 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR–NYSENAT–2018–02) (regarding NYSE National Rule 7.31(a)(2)(B)).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See supra* note 4.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b 4(f)(6). In addition, Rule 19b 4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] See *supra* note 5 and accompanying text.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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- NYSE–2021–61, and should be submitted on or before November 18, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–23532 Filed 10–27–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93412; File No. S7–09–21]

Order Granting Conditional Substituted Compliance in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Kingdom of Spain

October 22, 2021.

I. Overview

The Spanish Comisión Nacional del Mercado de Valores (''CNMV'') has submitted a ''substituted compliance'' application requesting that the Securities and Exchange Commission (''Commission'') determine, pursuant to the Securities Exchange Act of 1934 (''Exchange Act'') rule 3a71–6,[1] that security-based swap dealers and major security-based swap participants (''SBS Entities'') subject to regulation in the Kingdom of Spain (''Spain'') conditionally may satisfy requirements under the Exchange Act by complying with comparable Spanish and European Union (''EU'') requirements.[2] The CNMV sought substituted compliance in connection with certain Exchange Act requirements related to risk control, internal supervision, chief compliance officer, antitrust, counterparty protection, recordkeeping, reporting, and notification.[3] The CNMV Application incorporated comparability analyses between the relevant requirements in Exchange Act section 15F [4] and the rules and regulations thereunder and applicable Spanish and EU law, as well as information regarding Spanish and EU supervisory and enforcement frameworks.

On August 20, 2021, the Commission issued a notice of the CNMV Application, accompanied by a proposed order to grant substituted compliance with conditions in connection with the CNMV Application (''proposed Order'').[5] The proposed Order incorporated a number of conditions to tailor the scope of substituted compliance consistent with the prerequisite that relevant Spanish and EU requirements produce regulatory outcomes that are comparable to relevant requirements under the Exchange Act.

As discussed below, the Commission is adopting a final order (''Order'') that has been modified from the proposal in certain respects to address commenter concerns and to make clarifying changes.

II. Substituted Compliance Framework and Prerequisites

A. Substituted Compliance Framework and Purpose

As the Commission has discussed previously,[6] Exchange Act rule 3a71–6 provides a framework whereby non-U.S. SBS Entities may satisfy certain requirements under Exchange Act section 15F by complying with comparable regulatory requirements of a foreign jurisdiction.[7] Because substituted compliance does not constitute exemptive relief, but instead provides an alternative method by which non-U.S. SBS Entities may comply with applicable Exchange Act requirements, the non-U.S. SBS Entities would remain subject to the relevant requirements under section 15F. The Commission accordingly will retain the authority to inspect, examine, and supervise those SBS Entities' compliance and take enforcement action as appropriate. Under the substituted compliance framework, failure to comply with the applicable foreign requirements and other conditions to a substituted compliance order would lead to a violation of the applicable requirements under the Exchange Act and potential enforcement action by the Commission (as opposed to automatic revocation of the substituted compliance order).

Under rule 3a71–6, substituted compliance potentially is available in connection with certain section 15F requirements,[8] but is not available in connection with antifraud prohibitions and certain other requirements under the Federal securities laws.[9] SBS

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[15] 17 CFR 200.30–3(a)(12).

[1] 17 CFR 240.3a71–6.

[2] *See* Letter from Rodrigo Buenaventura, Chair, CNMV, dated August 20, 2021 (''CNMV Application''). The CNMV Application is available on the Commission's website at: *https://www.sec.gov/page/exchange-act-substituted-compliance-and-listed-jurisidction-applications-security-based-swap.*

[3] Risk control requirements include requirements related to internal risk management, trade acknowledgement and verification, portfolio reconciliation and dispute resolution, portfolio compression, and trading relationship documentation; internal supervision, chief compliance officer, and antittrust requirements include requirements related to diligent supervision, conflicts of interest, information gathering, chief compliance officers, and antitrust considerations; counterparty protection requirements include requirements related to disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, ''know your counterparty,'' suitability of recommendations, fair and balanced communications, disclosure of daily marks, and disclosure of clearing rights; and recordkeeping, reporting, and notification requirements include requirements related to making and keeping current certain prescribed records, preservation of records, reporting, and notificiation.

[4] 15 U.S.C. 78o–10.

[5] *See* Exchange Act Release No. 92716 (Aug. 20, 2021), 86 FR 47668 (Aug. 26, 2021) (''Spanish Substituted Compliance Notice and Proposed Order'').

[6] *See, e.g.,* Exchange Act Release No. 90378 (Nov. 9, 2020), 85 FR 72726 (Nov. 13, 2020) (''German Substituted Compliance Notice and Proposed Order''); Exchange Act Release No. 90765 (Dec. 22, 2020), 85 FR 85686 (Dec. 29, 2020) (''German Substituted Compliance Order'') Exchange Act Release No. 92647 (Aug. 12, 2021), 86 FR 46500 (Aug. 18, 2021) (''German Substituted Compliance Notice and Proposed Amended Order''); Exchange Act Release No. 93411 (Oct. 22, 2021) (''German Amended Substituted Compliance Order''); Exchange Act Release No. 90766 (Dec. 22, 2020), 85 FR 85720 (Dec. 29, 2020) (''French Substituted Compliance Notice and Proposed Order''); Exchange Act Release No. 91477 (Apr. 5, 2021), 86 FR 18341 (Apr. 8, 2021) (''French Substituted Compliance Re-Opening Release''); Exchange Act Release No. 92484 (July 23, 2021), 86 FR 41612 (Aug. 2, 2021) (''French Substituted Compliance Order''); Exchange Act Release No. 91476 (Apr. 5, 2021), 86 FR 18378 (Apr. 8, 2021) (''UK Substituted Compliance Notice and Proposed Order''); Exchange Act Release No. 92529 (July 30, 2021), 86 FR 43318 (August 6, 2021), ''UK Substituted Compliance Order''); Exchange Act Release No. 92632 (Aug. 10, 2021), 86 FR 45770 (Aug. 16, 2021) (''Swiss Substituted Compliance Notice and Proposed Order''); Exchange Act Release No. 93284 (Oct. 8, 2021), 86 FR 57455 (Oct. 15, 2021) (''Swiss Substituted Compliance Order''); Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47668.

[7] *See* Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30079 (May 13, 2016) (''Business Conduct Adopting Release'').

[8] 17 CFR 240.3a71–6(d).

[9] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47669 n.10 (addressing unavailability under Rule 3a71–6 of substituted compliance for information-related requirements under Exchange Act section 15F, as well as for provisions related to anti-fraud, transactions with counterparties that are not eligible contract participants, segregation of customer assets,

Entities in Spain accordingly must comply directly with those requirements notwithstanding the availability of substituted compliance for other requirements.

The substituted compliance framework reflects the cross-border nature of the security-based swap market, and is intended to promote efficiency and competition by helping to address potential duplication and inconsistency between relevant U.S. and foreign requirements.[10] In practice, substituted compliance may be expected to help SBS Entities leverage their existing systems and practices to comply with relevant Exchange Act requirements in conjunction with their compliance with relevant foreign requirements. Market participants began to count security-based swap transactions towards the thresholds for registration with the Commission as an SBS Entity on August 6, 2021. Security-based swap dealers and major security-based swap participants who met or exceeded one of the relevant *de minimis* thresholds for registration by the end of August are required to be registered with the Commission by November 1, 2021, or December 1, 2021, respectively.[11] Substituted compliance should assist relevant non-U.S. security-based swap market participants in preparing for registration.

B. Specific Prerequisites

1. Comparability of Regulatory Outcomes

Rule 3a71–6, adopted by the Commission in 2016, describes the requirements for the Commission to make a substituted compliance determination. Under the rule, the Commission must determine that the analogous foreign requirements are comparable to otherwise applicable requirements under the Exchange Act (*i.e.,* the relevant requirements in the Exchange Act and the rules and regulations thereunder), after accounting for factors such as ''the scope and objectives of the relevant foreign regulatory requirements'' and ''the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised'' by the foreign authority.[12] The comparability assessments are to be based on a ''holistic approach'' that ''will focus on the comparability of regulatory outcomes rather than predicating substituted compliance on requirement-by-requirement similarity.'' [13]

2. Memoranda of Understanding

Exchange Act rule 3a71–6(a)(2)(ii) further predicates the availability of substituted compliance on the Commission and the foreign financial regulatory authority or authorities having entered into a memorandum of understanding and/or other arrangement with the relevant foreign financial regulatory authority or authorities ''addressing supervisory and enforcement cooperation and other matters arising under the substituted compliance determination.'' [14] The CNMV Application asked the Commission to permit certain entities regulated and supervised by the CNMV and/or the Bank of Spain to use substituted compliance. Accordingly, the Commission recently entered into a memorandum of understanding with the CNMV and the Bank of Spain.[15] Moreover, because the CNMV, Bank of Spain, and European Central Bank (''ECB'') share responsibility for supervising compliance with certain provisions of EU and Spanish law, the Commission and the ECB also have entered into a memorandum of understanding to address cooperation matters related to substituted compliance.[16] Those memoranda of understanding or other arrangements must be in place before Covered Entities may use substituted compliance to satisfy obligations under the Exchange Act.[17]

3. ''Adequate Assurances''

A foreign financial regulatory authority may submit a substituted compliance application only if the authority provides ''adequate assurances'' that no law or policy would impede the ability of any entity that is directly supervised by the authority and that may register with the Commission ''to provide prompt access to the Commission to such entity's books and records or to submit to onsite inspection or examination by the Commission.'' [18] In the Spanish Substituted Compliance Notice and Proposed Order, the Commission stated that the CNMV had satisfied this prerequisite in the Commission's preliminary view, taking into account information and representations that the CNMV provided regarding certain Spanish and EU requirements that are relevant to the Commission's ability to inspect, and access the books and records of, firms using substituted compliance pursuant to the Order.[19] The Commission received no comments on this preliminary view and has not changed its view.

Commission rule 0–13 [20] addresses procedures for filing substituted compliance applications. The rule provides that the Commission will publish a notice when a completed

required clearing upon counterparty election, regulatory reporting and public dissemination, SBS Entity registration, and registration of offerings).

[10] *See generally* Business Conduct Adopting Release, 81 FR 30073 (stating that the cross-border nature of the security-based swap market poses special regulatory challenges, in that relevant U.S. requirements ''have the potential to lead to requirements that are duplicative of or in conflict with applicable foreign business conduct requirements, even when the two sets of requirements implement similar goals and lead to similar results'').

[11] *See* ''Key Dates for Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,'' available at *https://www.sec.gov/page/key-dates-registration-security-based-swap-dealers-and-major-security-based-swap-participants.*

[12] Exchange Act rule 3a71–6(a)(2)(i).

[13] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47670; *see also* Business Conduct Adopting Release, 81 FR 30078–79 (recognizing that ''different regulatory systems may be able to achieve some or all of those regulatory outcomes by using more or fewer specific requirements than the Commission, and that in assessing comparability the Commission may need to take into account the manner in which other regulatory systems are informed by business and market practices in those jurisdictions''). The Commission's assessment of a foreign authority's supervisory and enforcement effectiveness—as part of the broader comparability analysis—would be expected to consider not only overall oversight activities, but also oversight specifically directed at conduct and activity relevant to the substituted compliance determination. ''For example, it would be difficult for the Commission to make a comparability determination in support of substituted compliance if oversight is directed solely at the local activities of foreign security-based swap dealers, as opposed to the cross-border activities of such dealers.'' Business Conduct Adopting Release, 81 FR 30079 (footnote omitted). In the Spanish Substituted Compliance Notice and Proposed Order, the Commission preliminarily concluded that this comparability prerequisite was met in connection with a number of requirements under the Exchange Act, in some cases with the addition of conditions to help ensure the comparability of regulatory outcomes.

[14] Exchange Act rule 3a71–6(a)(2)(ii).

[15] The Commission expects to publish a copy of the memorandum of understanding on its website at *www.sec.gov* under the ''Substituted Compliance'' tab, which is located on the ''Security-Based Swap Markets'' page in the Division of Trading and Markets section of the site.

[16] The memorandum of understanding sets forth the conditions under which the Commission nay request, share, use, and protect from unauthorized disclosure supervisory and enforcement inform ation that is owned by the ECB. The memorandum of understanding also serves as a framework for consultation, cooperation, and exchange of information between the Commission and the ECB in the supervision, enforcement, and oversight of Spanish firms that are registered with the Commission as SBS Entities. A copy of the meorandum of understanding is available on the Commision's website oat *https://www.sec.gov/files/8162021-exec7ted-ecb-mou-redacted-annex-secured_0.pdf.*

[17] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47669 n.12.

[18] *See* Exchange Act rule 3a71–6(c)(3).

[19] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47669 n.13.

[20] 17 CFR 240.0–13.

application has been submitted and that any person may submit to the Commission ''any information that relates to the Commission action requested in the application.'' [21]

III. Scope of and Conditions to Substituted Compliance Under the Order

A. Comparability Considerations

In considering the CNMV's request for substituted compliance, the Commission viewed requirements under the Exchange Act and requirements under Spanish and EU law to maintain similar approaches with respect to achieving regulatory goals in several respects, though they follow differing approaches or incorporate disparate elements in certain other respects. The Commission considered those similarities and differences when analyzing comparability and developing its views, while recognizing that differences in approach do not necessarily preclude substituted compliance in light of the Commission's holistic, outcomes-oriented framework for assessing comparability. In this context, the Commission recognized that other regulatory regimes will have exclusions, exceptions, and exemptions that may not align perfectly with the corresponding requirements under the Exchange Act. Where the Commission found that the Spanish regime produces comparable outcomes notwithstanding those particular differences, the Commission has made a positive determination on substituted compliance.[22] Where the Commission found that those exclusions, exemptions, and exceptions lead to outcomes that are not comparable, the Commission has not provided for substituted compliance.[23] When a Covered Entity seeks to rely on substituted compliance to satisfy particular requirements under the Exchange Act, non-compliance with the applicable Spanish requirements would lead to a violation of those Exchange Act requirements and potential enforcement action by the Commission (as opposed to automatic revocation of the Order).

B. Covered Entities

1. Proposed Approach

Under the proposed Order, the definition of ''Covered Entity'' specified which entities could make use of substituted compliance. Consistent with the availability of substituted compliance under Exchange Act rule 3a71–6, the proposed definition would limit the availability of substituted compliance to registered SBS Entities that are not U.S. persons. In addition, to help ensure that firms that rely on substituted compliance are subject to relevant Spanish and EU requirements and oversight, the proposed definition would require a Covered Entity to be an investment firm or credit institution authorized by the CNMV and the ECB to provide investment services or perform investment activities in Spain. In addition, the proposed definition would require a Covered Entity to be a significant institution supervised by the CNMV and the ECB (with the participation of the Bank of Spain).[24]

2. Commenter Views and Final Provisions

Commenters did not address the proposed ''Covered Entity'' definition, and the Commission is issuing the definition as proposed.[25] Substituted compliance accordingly is available only to non-U.S. SBS Entities that have the relevant Spanish and EU regulatory permission and are subject to Spanish and EU oversight. Because the Covered Entity definition requires the firm to be ''authorized by the CNMV. . . to provided investment services and/or perform investment activities in'' Spain, only firms for whom the CNMV is the competent authority to grant such permission are able to qualify as Covered Entities.[26]

C. General Conditions to Substituted Compliance

1. Proposed Approach

The proposed Order incorporated a number of additional general conditions and other prerequisites, to help ensure that the relevant Spanish and EU requirements that form the basis for substituted compliance in practice will apply to the Covered Entity's security-based swap business and activities, and to promote the Commission's oversight over entities that avail themselves of substituted compliance:

- ''*Subject to and complies with*'' *applicability condition*—For each relevant section of the proposed Order, a positive substituted compliance determination would be predicated on the Covered Entity being subject to and complying with the applicable Spanish and EU requirements needed to establish comparability.[27]
- *Activities as MiFID* ''*investment services or activities*''—The Covered Entity's security-based swap activities would have to constitute ''investment services or activities'' for purposes of applicable provisions under the Markets in Financial Instruments Directive, Directive 2014/65/EU (''MiFID''), Spanish requirements that implement MiFID, and/or other EU and/or Spanish requirements adopted pursuant to those provisions, and must fall within the scope of the Covered Entity's authorization from the CNMV and the ECB.[28]

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[21] *See* Commission rule 0–13(h). The Commission may take final action on a substituted compliance application no earlier than 25 days following publication of the notice in the **Federal Register**.

[22] *See* paras. (b) through (e) of the Order (internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression, trading relationship documentation, internal supervision, chief compliance officers, disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, ''know your counterparty,'' suitability, fair and balanced communications, daily mark disclosure, recordkeeping, reporting, and notification requirements).

[23] *See* Parts V.B (antitrust requirements), VI.B (clearing rights disclosure and certain ''know your counterparty'' requirements), and VII.B (certain recordkeeping requirements), *infra*.

[24] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47670.

[25] *See* para. (f)(1) of the Order.

[26] Firms authorized as investment firms or credit institutions by authorities of other EU Member States, whose authorization to provide investment services and/or perform investment activities in Spain derives from the single market ''passport'' under EU law, are not able to qualify as Covered Entities under the Order.

[27] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47671 and n.31. The Commission stated, as an example, that this proposed condition would not be satisfied when the comparable Spanish or EU requirements would not apply to the security-based swap activities of a third-country branch of a Spanish SBS Entity. In that event, the Covered Entity would not be ''subject to'' those requirements, and the Covered Entity could not rely on substituted compliance in connection with those activities. Moreover, an SBS Entity's ''voluntary'' compliance with the relevant Spanish requirements also would not suffice for these purposes. Substituted compliance reflects an alternative means by which an SBS Entity may comply with applicable requirements under the Exchange Act, and thus mandates that the SBS Entity be subject to the requirements needed to establish comparability and face consequences arising from any failure to comply with those requirements. The comparability assessment takes into account the effectiveness of the supervisory compliance program administered and the enforcement authority exercised by the CNMV, the Bank of Spain, and the ECB, and Spanish and EU requirements would not be expected to promote comparable outcomes when compliance merely is ''voluntary.''

[28] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47671 and n.32. Under this condition, a Covered Entity's security-based swap activities would have to constitute ''investment services or activities'' only to the extent that the relevant part of the Order requires the Covered Entity to be subject to and comply with a provision of MiFID, Spanish requirements that implement MiFID, and/or related EU and/or Spanish requirements. If the relevant part of the Order does not require the Covered Entity to be subject to and comply with one of those provisions, then the Covered Entity's security-based swap activities would not have to constitute ''investment services or activities'' to be able to use substituted compliance under that part of the Order.

• *Counterparties as MiFID ''clients''*—The Covered Entity's counterparty (or potential counterparty) must be a ''client'' (or potential ''client'') for purposes of applicable provisions under MiFID, Spanish requirements that implement MiFID, and/or other EU and Spanish requirements adopted pursuant to those provisions.[29]

• *Security-based swaps as MiFID ''financial instruments''*—The relevant security-based swap must be a ''financial instrument'' for purposes of applicable provisions under MiFID, Spanish requirements that implement MiFID, and/or other EU and Spanish requirements adopted pursuant to those provisions.[30]

• *Covered Entity as CRD ''institution''*—The Covered Entity must be an ''institution'' for purposes of applicable provisions under the Capital Requirements Directive, Directive 2013/36/EU (''CRD''), Spanish requirements that implement CRD, and/or other EU and Spanish requirements adopted pursuant to those provisions.[31]

• *Counterparties as EMIR ''counterparties''*—If an applicable provision under the European Market Infrastructure Regulation, Regulation (EU) 648/2012 (''EMIR''), Commission Delegated Regulation (EU) 149/2013 (''EMIR RTS''), Delegated Regulation (EU) 2016/2251 (''EMIR Margin RTS''), and/or other EU requirements adopted pursuant to those provisions applies only to the Covered Entity's activities with specified types of counterparties, and if the counterparty is not any of the specified types of counterparties, the Covered Entity must comply with the applicable provision as if the counterparty were the specified type of counterparty. In addition, the proposed Order would provide that a Covered Entity could not satisfy a condition requiring compliance with those EMIR-based provisions by complying with third country requirements that EU authorities may determine to be equivalent to EMIR.[32]

• *Security-based swap status under EMIR*—The relevant security-based swap must be, for purposes of applicable provisions under EMIR, EMIR RTS, EMIR Margin RTS, and/or other EU requirements adopted pursuant to those provisions, either (i) and ''OTC derivative'' or ''OTC derivative contract,'' as defined in EMIR article 2(7), that has not been cleared by a central counterparty and otherwise is subject to the provisions of EMIR article 11, EMIR RTS articles 11 through 15, and EMIR Margin RTS article 2; or (ii) cleared by a central counterparty that is authorized or recognized to clear derivatives contracts by a relevant authority in the EU.[33]

• *Memoranda of understanding*—The Commission and the CNMV and the Bank of Spain must have an applicable memorandum of understanding or other arrangement addressing cooperation with respect to the Order at the time the Covered Entity makes use of substituted compliance. Because the CNMV, Bank of Spain, and ECB share responsibility for supervising compliance with some of the provisions of EU and Spanish law addressed by the proposed Order, at the time the Covered Entity makes use of substituted compliance the Commission and the ECB also must have a supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation with respect to the Order as it pertains to information owned by the ECB.[34]

• *Notice of reliance on substituted compliance*—To assist the Commission's oversight of firms that avail themselves of substituted compliance, a Covered Entity would be required to notify the Commission of its intent to use substituted compliance.[35] In the notice, the Covered Entity would need to identify each specific substituted compliance determination for which the Covered Entity intends to apply substituted compliance.[36] If a Covered Entity elects not to apply substituted compliance with respect to a specific substituted compliance determination, it must instead comply directly with the relevant Exchange Act requirements. Further, except in the case of the counterparty protection requirements and linked recordkeeping requirements discussed below, the Commission has determined that the Exchange Act requirements subject to substituted compliance determinations in the proposed Order are entity-level requirements. The Commission thus proposed that, if a Covered Entity elects to apply substituted compliance to these entity-level requirements, it must do so at the entity level.[37] The Covered Entity must promptly update the notice if it intends to modify its reliance on substituted compliance.[38]

[29] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47671 and n.33.

[30] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47671 and n.34.

[31] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47671 and n.35.

[32] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47671 and nn.36–37. The Commission proposed that, if the Covered Entity reasonably determines that the counterparty would be a financial counterparty if it were established in the EU and authorized by appropriate EU authority (including Member State authorities), it must treat the counterparty as if the counterparty were a financial counterparty, rather than as another type of counterparty to which the relevant EMIR-based requirements apply. EMIR article 2(8) defines a ''financial counterparty'' as including investment firms, credit institutions, insurers, and certain other types of businesses that have been authorized in accordance with EU directives.

[33] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47671 and n.38.

[34] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47671 and nn.39–41. The Commission, CNMV and Bank of Spain have entered into a memorandum of understanding to address substituted compliance cooperation. The Commission and the ECB also have entered into a memorandum of understanding to address substituted compliance cooperation with respect to information owned by the ECB. See also supra notes 15 through 17 and accompanying text. The proposed Order would require Covered Entities to ensure that these memoranda of understanding remain in place at the time the Covered Entity relies on substituted compliance.

[35] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47672 and n.42.

[36] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47672 and n.43. The Commission stated that, if the Covered Entity intends to rely on all the substituted compliance determinations in a given paragraph of the proposed Order, it can cite that paragraph in the notice. For example, if the Covered Entity intends to rely on the substituted compliance determinations for Exchange Act risk control requirements in paragraph (b) of the proposed Order, it would indicate in the notice that it is relying on the determinations in paragraph (b). However, if the Covered Entity intends to rely on the internal risk management, trade acknowledgement and verification, and portfolio reconciliation and dispute resolution determinations, but not the portfolio compression and trading relationship documentation determinations, it would need to indicate in the notice that it is relying on paragraphs (b)(1) through (3) of the proposed Order. In this case, paragraphs (b)(4) and (b)(5) of the proposed Order (the portfolio compression and trading relationship documentation determinations, respectively) would be excluded from the notice and the Covered Entity would need to comply with Exchange Act portfolio compression and trading relationship documentation requirements. Further, as discussed below in Part VII, the recordkeeping, reporting, and notification determinations in the proposed Order were structured to provide Covered Entities with a high level of flexibility in selecting specific requirements within those requirements for which they want to rely on substituted compliance. For example, paragraph (e)(1)(i) of the proposed Order set forth the Commission's preliminary substituted compliance determinations with respect to the requirements of Exchange Act rule 18a 5, 17 CFR 240.18a–5. These proposed determinations were set forth in proposed paragraphs (e)(1)(i)(A) through (M). If a Covered Entity intends to rely on some but not all of the determinations, it would need to identify in the notice the specific determinations in this paragraph it intends to rely on (*e.g.,* paragraphs (e)(1)(i)(A), (B), (C), (D), (G), (H), (I), and (M)). For any determinations excluded from the notice, the Covered Entity would need to comply with the Exchange Act rule 18a–5 requirement.

[37] *See* Part III.E, *infra*; Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47672 and n.44.

[38] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47672 and n.45. A Covered Entity would modify its reliance on substituted compliance, and thus trigger the requirement to update its notice, if it adds or

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• *Notification related to changes in capital category*—Covered Entities with a prudential regulator would need to apply substituted compliance with respect to the requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule 18a–8(c).[39] Exchange Act rule 18a–8(c) generally requires every security-based swap dealer with a prudential regulator that files a notice of adjustment of its reported capital category with the Federal Reserve Board, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation to give notice of this fact to the that same day by transmitting a copy to the Commission of the notice of adjustment of reported capital category in accordance with Exchange Act rule 18a–8(h).[40] Exchange Act rule 18a–8(h) sets forth the manner in which every notice or report required to be given or transmitted pursuant to Exchange Act rule 18a–8 must be made. While Exchange Act rule 18a–8(c) is not linked to an Exchange Act capital requirement, it is linked to capital requirements in the U.S. promulgated by the prudential regulators. In its application, the CNMV cited various Spanish provisions as providing similar outcomes to the notifications requirements of Exchange Act rule 18a–8.[41] This general condition would be designed to clarify that a prudentially regulated Covered Entity must provide the Commission with copies of any notifications regarding changes in the Covered Entity's capital situation required by Spanish law. The intent is to align the notification requirement with the EU and Spanish capital requirements applicable to the Covered Entity.

2. Commenter Views and Final Provisions

In the proposed Order, the Commission proposed to require Covered Entities to comply with only EMIR-based trade acknowledgement and verification and trading relationship documentation requirements, and not with MiFID-based trade acknowledgement and verification and trading relationship documentation requirements, in response concerns expressed by commenters on prior substituted compliance orders.[42] Commenters on those prior orders had requested that the Commission delete from those orders proposed conditions that would require firms using substituted compliance for trade acknowledgment and verification and trading relationship documentation requirements to comply with MiFID-based requirements.[43] Commenters argued that those MiFID-based conditions in practice would prevent SBS Entities with branches in other EU countries from relying on substituted compliance for those requirements, and that compliance with proposed EMIR conditions would be sufficient to produce the requisite regulatory outcomes. The Commission amended the prior orders to address these concerns, but only with the addition of the EMIR counterparties general condition and a related condition pertaining to EMIR. By requiring a Covered Entity to treat its counterparty as a type of counterparty that would trigger the application of the relevant EMIR-based requirements, the condition will require the Covered Entity to perform the relevant obligations pursuant to those EMIR-based requirements and thus act in a way that is comparable to Exchange Act requirements. Absent the condition, the Commission would not find comparability with regard to the categories of counterparties, such as U.S. persons and natural persons, to which EMIR is not applicable for the entity-level requirements and, accordingly, would not have been able to make a positive substituted compliance determination for those entity-level requirements. The EMIR counterparties general condition was intended to help ensure that, with the heightened reliance on EMIR-based requirements, there will be no opportunity for gaps that may prevent the EMIR-based requirements in practice from producing outcomes consistent with those of the Exchange Act.[44]

The Commission invited commenters on the proposed Order to address whether the responses to any of the questions that the Commission asked in connection with proposals to make positive substituted compliance determinations in respect of regulatory requirements and frameworks in Germany, France and the United Kingdom would differ if those questions applied to Spanish regulatory requirements and frameworks. The Commission also requested comment on any differences between Spanish regulatory requirements and frameworks and the German, French, or UK requirements and frameworks that formed the basis for the Commission's conditional grant of substituted compliance for Germany, France, and the United Kingdom.[45]

A commenter on the German Substituted Compliance Notice and Proposed Amended Order[46] stated that the EMIR counterparties general condition would override exemptions and exclusions from EMIR for certain public sector counterparties, such as multilateral development banks, and would expand the application of EMIR to counterparties who are not ''undertakings,'' such as natural persons.[47] That commenter noted that compliance with the condition would require the Covered Entity to ''assess whether these counterparties who are not subject to EMIR would be so subject as if it were the type of counterparty specified by EMIR as well as, in many cases, enter into documentation with those counterparties compliant with EMIR.'' [48] The commenter noted that these counterparties would be confused why an order of the Commission ''now deprives them of an exception or exemption under EU law that has for some time applied to them'' and would be reluctant to enter into new documentation to enable a Covered Entity to satisfy the Commission's substituted compliance order.[49] The Commission did not intend for the condition to require compliance with

subtracts substituted compliance determinations on which it is relying or completely discontinues its reliance on substituted compliance.

[39] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47672.

[40] 17 CFR 240.18a–8(c) and (h).

[41] *See* Act on Regulation, Supervision, and Solvency of Credit Institutions, Law 10/2014, of June 26 (''LOSSEC'') articles 116, 119, 121, and 122; and Spanish Securities Market Act, Royal Legislative Decree 4/2015, of October 23 (''SSMA'') articles 276bis, 276ter, 276quáter, and 276quinquies.

[42] *See* French Substituted Compliance Re-Opening Release, 86 FR 19341–43; German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46503.

[43] *See* Letter from Kyle Brandon, Managing Director, Head of Derivatives Policy, Securities and Financial Markets Association, dated Jan. 25, 2021 (''France SIFMA Letter'') at 3–6 (cited in French Substituted Compliance Re-opening Release, 86 FR 18341–42 and nn.5–6; German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46503 and nn.26–27); Letter from Etienne Barel, Deputy Chief Executive Officer, French Banking Federation, dated Jan. 25, 2021 (''FBF Letter'') at 2 (cited in French Substituted Compliance Re-opening Release, 86 FR 18341–42 and nn.5–6). These comment letters are available on the Commission's website at *https://www.sec.gov/comments/s7-22-20/s72220.htm.*

[44] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46503.

[45] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47687–90.

[46] *See* Letter from Kyle Brandon, Managing Director, Head of Derivatives Policy, Securities Industry and Financial Markets Association, dated Sept. 13 2021 (''Germany SIFMA Letter''). The Germany SIFMA Letter is available on the Commission's website at *https://www.sec.gov/comments/s7-08-21/s70821.htm.*

[47] *See* Germany SIFMA Letter at 2.

[48] *See* Germany SIFMA Letter at 3.

[49] *See* Germany SIFMA Letter at 3.

EMIR-based requirements under circumstances where neither those requirements nor the Exchange Act would apply. To clarify this intended scope, the Commission modified the EMIR counterparties general condition in the German Amended Substituted Compliance Order to clarify that this condition applies only to the extent that an Exchange Act section or rule cited in the relevant part of the Order applies to the security-based swap activities with that counterparty.[50] The Commission made conforming changes the UK Substituted Compliance Order and the French Substituted Compliance Order.[51]

Returning to the Commission's consideration of the same EMIR regulatory framework in Spain, one commenter stated that proposed Order ''reflects a thoughtful, holistic approach to substituted compliance.'' [52] The commenter noted in particular that the Commission's comparability assessments and the conditions and limitations in the proposed Order were consistent with the UK Substituted Compliance Order, French Substituted Compliance Order, and the German Substituted Compliance Notice and Proposed Amended Order, and as a result concluded that the proposed Order ''would facilitate an orderly implementation of the Commission's [security-based swap] regulatory regime among market participants across different jurisdictions without creating undue complexity or disparity.'' [53] In the context of the EMIR counterparties general condition, the Commission agrees that consistency among substituted compliance orders that require firms to be subject to and comply with EMIR and laws derived from EMIR, where feasible, would facilitate orderly implementation of substituted compliance. The Commission thus is changing the EMIR counterparties general condition in the Order to reflect the same changes made in the German Amended Substituted Compliance Order.[54] The Commission believes this change will promote consistency among substituted compliance orders that require firms to be subject to and comply with EMIR and laws derived from EMIR, consistent with the commenter's concern and with the Commission's request for comment on differences between the Spanish, German, French, and UK regulatory requirements and frameworks.

The Commission also is amending the general condition in paragraph (a)(6) of the Order to clarify that the condition applies only if the relevant EMIR-based requirement applies to OTC derivatives that have not been cleared by a central counterparty, as some provisions of EMIR cited in the Order, such as EMIR articles 39(4) and (5), are not limited in their application to non-centrally cleared OTC derivatives.

The Commission continues to believe that the remaining general conditions are structured appropriately to predicate a positive substituted compliance determination on the applicability of relevant Spanish and EU requirements needed to establish comparability, as well as on the continued effectiveness of the requisite memoranda of understanding, and the provision of appropriate notices to the Commission. The Commission is issuing these remaining general conditions as proposed, and substituted compliance accordingly is available only when the Covered Entity satisfies all applicable general conditions.[55]

D. European Union Cross-Border Matters

1. Proposed Approach

The proposed Order also included general conditions to address the cross-border application of MiFID, the Markets in Financial Instruments Regulation, Regulation (EU) 600/2014 (''MiFIR''), and the Market Abuse Regulation, Regulation (EU) 596/2014 (''MAR''), along with EU and Spanish requirements adopted pursuant to those laws.[56] For some requirements under MiFID and MiFIR (and other EU and Member State requirements adopted pursuant to MiFID and MiFIR), EU law allocates the responsibility for supervising and enforcing those requirements to authorities of the Member State where an entity provides certain services.[57] Similarly, for some requirements under MAR (and other EU and Member State requirements adopted pursuant to MAR), EU law allocates the responsibility for supervising and enforcing those requirements to authorities of potentially multiple Member States. To help ensure that the prerequisites to substituted compliance with respect to supervision and enforcement are satisfied in fact, when the proposed Order conditioned substituted compliance on the Covered Entity being subject to and complying with those MiFID- and MiFIR-related requirements, the proposed Order would permit substituted compliance only if the CNMV is the authority responsible for supervision and enforcement of those MiFID- and MiFIR-related requirements in relation to the particular service provided by the Covered Entity. When the proposed Order conditioned substituted compliance on the Covered Entity being subject to and complying with those MAR-related requirements, the proposed Order would permit substituted compliance only if one of the authorities responsible for supervision and enforcement of those requirements is the CNMV.

2. Commenter Views and Final Provisions

Commenters did not address the European Union cross-border conditions. The Commission continues to believe that requiring that the CNMV have responsibility for applicable MiFID, MiFIR, and MAR provisions will help ensure that the supervision and enforcement prerequisites to substituted compliance are satisfied.[58] In the Commission's view, these conditions are structured appropriately to permit the use of substituted compliance only when the CNMV is responsible for supervising a Covered Entity's compliance with a relevant provision of MiFID, MiFIR, MAR, or related EU or Spanish requirements. Additionally, the conditions help ensure that applicable MiFID, MiFIR, and MAR provisions are interpreted and applied in a consistent manner by an entity that is party to the memorandum of understanding and/or other arrangement that are a prerequisite to substituted compliance. Accordingly, the Commission is issuing the conditions as proposed.[59]

E. Substituted Compliance for Entity-Level and Transaction-Level Requirements

1. Proposed Approach

For entity-level Exchange Act requirements,[60] the proposed Order

[50] *See* German Amended Substituted Compliance Order, Exchange Act Release No. 93411.

[51] *See* German Amended Substituted Compliance Order, Exchange Act Release No. 93411.

[52] *See* Letter from Julia Bayón, Head of Business Legal and Vice-Secretary of the Board, Santander, dated Sept. 20, 2021 (''Santander Letter''). The Santander Letter is available on the Commission's website at *https://www.sec.gov/comments/s7-09-21/s70921.htm.*

[53] *See* Santander Letter at 1.

[54] *See* para. (a)(5) of the Order.

[55] *See* para. (a)(1) through (a)(9), and (a)(11) of the Order.

[56] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47672 and nn.48–50.

[57] *See* MiFID article 35(8).

[58] *See* Business Conduct Adopting Release, 81 FR 30080.

[59] *See* para. (a)(10) of the Order.

[60] Entity-level requirements relevant to the proposed Order relate to internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute resolution, portfolio compression, trading relationship documentation, internal supervision, chief compliance officers, counterparty protection, recordkeeping (other than

Continued

would require a Covered Entity to choose either to apply substituted compliance pursuant to the proposed Order with respect to all security-based swap business subject to the relevant Spanish and EU requirements or to comply directly with the Exchange Act with respect to all such business; a Covered Entity would not be able to choose to apply substituted compliance pursuant to the proposed Order for some of the business subject to the relevant Spanish or EU requirements and comply directly with the Exchange Act for another part of the business that is subject to the relevant Spanish and EU requirements.[61] Additionally, for entity-level Exchange Act requirements, if the Covered Entity also has security-based swap business that is not subject to the relevant Spanish and/or EU requirements, the proposed Order would require the Covered Entity either to comply directly with the Exchange Act for that business or to comply with the terms of another applicable substituted compliance order.[62] For transaction-level Exchange Act requirements,[63] a Covered Entity may decide to apply substituted compliance for some of its security-based swap business and to comply directly with the Exchange Act (or comply with another applicable substituted compliance order) for other parts of its security-based swap business.[64]

2. Commenter Views and Final Provisions

Commenters did not address the proposed approach to substituted compliance for entity-level and transaction-level requirements. The Commission continues to believe that the proposed scope of substituted compliance strikes the right balance between providing Covered Entities flexibility to tailor the application of substituted compliance to their business needs and ensuring that substituted compliance is consistent with the Commission's classification of the relevant Exchange Act requirements as either entity-level or transaction-level requirements. The Commission accordingly is issuing the Order with the proposed approach to substituted compliance for entity-level and transaction-level requirements.

IV. Substituted Compliance for Risk Control Requirements

A. Proposed Approach

The CNMV Application requested substituted compliance in connection with risk control requirements under the Exchange Act relating to:

- *Internal risk management*—Internal risk management system requirements pursuant to Exchange Act section 15F(j)(2) and relevant aspects of Exchange Act rule 15Fh–3(h)(2)(iii)(I).[65] Those provisions address the obligation of SBS Entities to follow policies and procedures reasonably designed to help manage the risks associated with their business activities.[66]
- *Trade acknowledgment and verification*—Trade acknowledgment and verification requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–2.[67] Those provisions help avoid legal and operational risks by requiring definitive written records of transactions and for procedures to avoid disagreements regarding the meaning of transaction terms.[68]
- *Portfolio reconciliation and dispute reporting*—Portfolio reconciliation and dispute reporting requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–3.[69] Those provisions require that counterparties engage in portfolio reconciliation and resolve discrepancies in connection with uncleared security-based swaps and promptly notify the Commission and applicable prudential regulators regarding certain valuation disputes.[70]
- *Portfolio compression*—Portfolio compression requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–4.[71] Those provisions require that SBS Entities have procedures addressing bilateral offset, bilateral compression and multilateral compression in connection with uncleared security-based swaps.[72]
- *Trading relationship documentation*—Trading relationship documentation requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–5.[73] Those provisions require that SBS Entities have procedures to execute written security-based swap trading relationship documentation with their counterparties prior to, or contemporaneously with, executing certain security-based swaps.[74]

Taken as a whole, these risk control requirements help to promote market stability by mandating that SBS Entities follow practices that are appropriate to manage the market, credit, counterparty, operational, and legal risks associated with their security-based swap businesses. In considering conditional substituted compliance for the risk control portion of the CNMV Application, the Commission preliminarily concluded that the relevant Spanish and EU requirements would produce regulatory outcomes that are comparable to those associated with the above risk control requirements, by subjecting Covered Entities to risk mitigation and documentation practices that are appropriate to the risks associated with their security-based swap businesses.[75]

Substituted compliance under the proposed Order was to be subject to certain additional conditions to help ensure the comparability of outcomes.

requirements linked to counterparty protection requirements), reporting, and notification. *See* Exchange Act Release No. 78011 (June 8, 2016) 81 FR 39808, 39827 (June 17, 2016) (''TAV Adopting Release''); Business Conduct Adopting Release, 81 FR 30064; Exchange Act Release No. 87005 (June 19, 2019) 84 FR 68550, 68596 (Dec. 16, 2019) (''Books and Records Adopting Release''); Exchange Act Adopting Release No. 87782 (Dec. 18, 2019) 85 FR 6359, 6378 (Feb. 4, 2020) (''Risk Mitigation Adopting Release'').

[61] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47672–73 and n.51.

[62] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47673 and n.53. In the context of the EMIR counterparties condition in paragraph (a)(5) of the proposed Order, a Covered Entity would be required to choose: (1) To apply substituted compliance pursuant to the proposed Order-including compliance with paragraph (a)(5) as applicable-for a particular set of entity-level requirements with respect to all of its business that would be subject to the relevant EMIR-based requirement if the counterparty were the relevant type of counterparty; or (2) to comply directly with the Exchange Act with respect to such business.

[63] Transaction-level requirements relevant to the proposed Order are the counterparty protection requirements and the recordkeeping requirements related to those counterparty protection requirements. *See* Business Conduct Adopting Release, 81 FR 30065.

[64] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47673 and n.54.

[65] The CNMV did not request substituted compliance in connection with Exchange Act rule 18a–1(f) Exchange Act rule 18a–2(c), which include additional internal risk management system requirements for non-prudentially regulated SBS Entities subject to the Commission's capital and margin requirements.

[66] *See* Exchange Act Release No. 68071 (Oct. 18, 2012), 77 FR 70214, 70250 (Nov. 23, 2012) (proposing capital and margin requirements for SBS Entities and discussing certain risk management requirements); Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47673 and n.56.

[67] 17 CFR 240.15Fi–2.

[68] *See* TAV Adopting Release, 81 FR 39808, 39809, 39820; Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47673 and n.58.

[69] 17 CFR 240.15Fi–3.

[70] *See* Risk Mitigation Adopting Release, 85 FR 6359, 6360–61; Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47673 and n.60.

[71] 17 CFR 240.15Fi–4.

[72] *See* Risk Mitigation Adopting Release, 85 FR 6361; Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47673 and n.62.

[73] 17 CFR 240.15Fi–5.

[74] *See* Risk Mitigation Adopting Release, 85 FR 6361; Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47673 and n.64.

[75] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47674.

First, substituted compliance under the proposed Order was to be conditioned on Covered Entities being subject to the Spanish and EU provisions that in the aggregate establish a framework that produces outcomes comparable to those associated with these risk control requirements under the Exchange Act.[76] Second, substituted compliance in connection with trading relationship documentation requirements would not extend to disclosures regarding legal and bankruptcy status that are required by Exchange Act rule 15Fi–5(b)(5) when the counterparty is a U.S. person.[77] Finally, substituted compliance in connection with portfolio reconciliation and dispute reporting requirements would be conditioned on the Covered Entity providing the Commission with reports regarding disputes between counterparties on the same basis as the Covered Entity provides those reports to competent authorities pursuant to EU law.[78]

B. Commenter Views and Final Provisions

One commenter supported the Commission's proposal to make the positive substituted compliance determinations in the proposed Order,[79] including positive substituted compliance determinations for internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression and trading relationship documentation requirements. The Commission continues to conclude that, taken as a whole, relevant Spanish and EU requirements would produce regulatory outcomes that are comparable to those associated with these risk control requirements, by subjecting Covered Entities to risk mitigation and documentation practices that are appropriate to the risks associated with their security-based swap businesses. While the Commission recognizes certain differences between Spanish and EU requirements and the applicable risk control requirements under the Exchange Act, in the Commission's view those differences on balance should not preclude substituted compliance for these requirements, as the relevant Spanish and EU requirements taken as a whole help to produce comparable regulatory outcomes.[80] Accordingly, the Commission is making positive substituted compliance determinations in connection with internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression and trading relationship documentation requirements and is issuing the risk control section of the Order as proposed.[81]

To help ensure the comparability of outcomes, and consistent with the proposed Order, substituted compliance for risk control requirements is subject to certain conditions. Substituted compliance for internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression and trading relationship documentation requirements is conditioned on the Covered Entity being subject to, and complying with, relevant Spanish and EU requirements.[82] In addition, substituted compliance for trading relationship documentation does not extend to disclosures regarding legal and bankruptcy status that are required by Exchange Act rule 15Fi–5(b)(5) when the counterparty is a U.S. person.[83] Finally, substituted compliance in connection with portfolio reconciliation and dispute reporting requirements is conditioned on the Covered Entity providing the Commission with reports regarding disputes between counterparties on the same basis as the Covered Entity provides those reports to competent authorities pursuant to EU law.[84] A Covered Entity that is unable to comply with an applicable condition—and thus is not eligible to use substituted compliance for the particular set of Exchange Act risk control requirements related to that condition—nevertheless may use substituted compliance for another set of Exchange Act requirements addressed in the Order if it complies with the conditions to the relevant parts of the Order.

Under the Order, substituted compliance for risk control requirements (relating to internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression, and trading relationship documentation) is not subject to a condition that the Covered Entity apply substituted compliance for related recordkeeping requirements in Exchange Act rules 18a–5 and 18a–6. A Covered Entity that applies substituted compliance for one or more risk control requirements, but does not apply substituted compliance for the related recordkeeping requirements in

[76] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47674 and n.65.

[77] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47674 and nn.66–67.

[78] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47674 and nn.68–70.

[79] *See* Santander Letter at 1.

[80] The comparability analysis requires consideration of Exchange Act requirements as a whole against analogous Spanish and EU requirements as a whole, recognizing that U.S. and non-U.S. regimes may follow materially different approaches in terms of specificity and technical content. This ''as a whole'' approach—which the Commission is following in lieu of requiring requirement-by-requirement similarity—further means that the conditions to substituted compliance should encompass all Spanish and EU requirements that establish comparability with the applicable regulatory outcome, and helps to avoid ambiguity in the application of substituted compliance.

[81] *See* para. (b) of the Order.

[82] *See* paras. (b)(1) through (5) of the Order.

[83] *See* para. (b)(5) of the Order. The Exchange Act rule 15Fi–5, 17 CFR 240.15Fi–5, disclosures address information regarding: (1) The status of the SBS Entity or its counterparty as an insured depository institution or financial counterparty, and (2) the possibility that in certain circumstances the SBS Entity or its counterparty may be subject to the insolvency regime set forth in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act or the Federal Deposit Insurance Act, which may affect rights to terminate, liquidate, or net security-based swaps. *See* Risk Mitigation Adopting Release, 85 FR 6374. Documentation requirements under applicable Spanish and EU law do not address the disclosure of information related to insolvency procedures under U.S. law. However, the absence of such disclosures would not appear to preclude a comparable regulatory outcome when the counterparty is not a U.S. person, as the insolvency-related consequences that are the subject of the disclosure would not apply to non-U.S. counterparties in most cases. Moreover, EMIR Margin RTS article 2 requires counterparties to establish, apply, and document risk management procedures providing for or specifying the terms of agreements entered into by the counterparties, including applicable governing law for non-centrally cleared derivatives. When counterparties enter into a netting or collateral exchange agreement, they also must perform an independent legal review of the enforceability of those agreements.

[84] *See* para. (b)(3)(ii) of the Order. This condition promotes comparability with the Exchange Act rule requiring reports to the Commission regarding significant valuation disputes, while leveraging Spanish and EU reporting provisions to avoid the need for Covered Entities to create additional reporting frameworks. When it proposed the requirement for all SBS Entities to report valuation disputes, the Commission recognized that valuation inaccuracies may lead to uncollateralized credit exposure and the potential for loss in the event of default. *See* Exchange Act Release No. 84861 (Dec. 19, 2018), 84 FR 4614, 4621 (Feb. 15, 2019). It thus is important that the Commission be informed regarding valuation disputes affecting SBS Entities. The principal difference between the Exchange Act and EU valuation dispute reporting requirements concerns the timing of notices. Under Exchange Act rule 15Fi–3, SBS Entities must promptly report to the Commission valuation disputes in excess of $20 million that have been outstanding for three or five business days (depending on the counterparty type). Under EMIR RTS article 15(2), firms must report at least monthly, to competent authorities, disputes between counterparties in excess of €15 million and outstanding for at least 15 business days. The Commission is mindful that the EU provision does not provide for notice as quickly as rule 15Fi–3(c), but in the Commission's view, on balance this difference would not be inconsistent with the conclusion that the two sets of risk control requirements-taken as a whole-produce comparable regulatory outcomes.

Exchange Act rules 18a–5 and 18a–6, will remain subject to the relevant provisions of Exchange Act rules 18a–5 and 18a–6. Those rules require the Covered Entity to make and preserve records of its compliance with Exchange Act risk control requirements and of its security–based swap activities required or governed by those requirements. A Covered Entity that applies substituted compliance for a risk control requirement, but complies directly with related recordkeeping requirements in rules 18a–5 and 18a–6, therefore must make and preserve records of its compliance with the relevant conditions of the Order and of its security–based swap activities required or governed by those conditions and/or referenced in the relevant parts of rules 18a–5 and 18a–6.

V. Substituted Compliance for Internal Supervision and Compliance Requirements

A. Proposed Approach

The CNMV Application requested substituted compliance in connection with requirements under the Exchange Act relating to:

- *Internal supervision*—Diligent supervision is required pursuant to Exchange Act rule 15Fh–3(h) and Exchange Act section 15F(j)(5) requires conflict of interest systems and procedures. These provisions generally require that SBS Entities establish, maintain, and enforce supervisory policies and procedures that reasonably are designed to prevent violations of applicable law, and implement certain systems and procedures related to conflicts of interest. Exchange Act section 15F(j)(4)(A) additionally requires systems and procedures to obtain necessary information to perform functions required under section 15F.[85]
- *Chief compliance officers*—Chief compliance officer requirements are set out in Exchange Act section 15F(k) and Exchange Act rule 15Fk–1.[86] These provisions in general require that SBS Entities designate individuals with the responsibility and authority to establish, administer, and review compliance policies and procedures; to resolve conflicts of interest; and to prepare and certify an annual compliance report to the Commission.[87]
- *Antitrust requirements*—Additional requirements related to antitrust prohibitions specified by Exchange Act section 15F(j)(6).[88]

Taken as a whole, these internal supervision, chief compliance officer, and additional Exchange Act section 15F(j) requirements help to promote SBS Entities' use of structures, processes, and responsible personnel reasonably designed to promote compliance with applicable law; to identify and cure instances of non-compliance; and to manage conflicts of interest. In considering conditional substituted compliance for this portion of the CNMV Application, the Commission preliminarily concluded that the relevant Spanish and EU requirements would produce regulatory outcomes that are comparable to those associated with Exchange Act internal supervision [89] and chief compliance officer requirements by providing that Covered Entities have structures and processes that reasonably are designed to promote compliance with applicable law and to identify and cure instances of non-compliance and manage conflicts of interest.[90]

Substituted compliance under the proposed Order was to be subject to certain conditions to help ensure the comparability of outcomes. First, substituted compliance for internal supervision and chief compliance officer requirements under the proposed Order was to be conditioned on Covered Entities being subject to the Spanish and EU requirements that in the aggregate establish a framework that produces outcomes comparable to those associated with these internal supervision, chief compliance officer, conflict of interest, and information-related requirements under the Exchange Act.[91] Second, substituted compliance in connection with internal supervision requirements would be conditioned on Covered Entities complying with applicable Spanish and EU internal supervision requirements *as if* those provisions also require the Covered Entity to comply with applicable requirements under the Exchange Act and the other applicable conditions of the proposed Order.[92] This condition was intended to reflect that, even with substituted compliance, Covered Entities still directly would be subject to a number of requirements under the Exchange Act and to conditions of the Order, all of which fall outside the ambit of Spanish and EU internal supervision requirements.[93] Finally, for similar reasons, substituted compliance in connection with chief compliance officer requirements would be subject to the conditions [94] that

[85] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47674 and n.71.

[86] 17 CFR 240.15Fk–1.

[87] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47674 and n.73.

[88] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47674 and n.74. Section 15F(j)(6) prohibits firms from adopting any process or taking any action that results in any unreasonable restraint of trade or imposing any material anticompetitive burden on trading or clearing.

[89] The proposed Order would provide for substituted compliance in connection with internal supervision provisions of Exchange Act rule 15Fh–3(h), the requirement in Exchange Act section 15F(j)(4)(A) to have systems and procedures to obtain necessary information to perform functions required under Exchange Act section 15F; and the conflict of interest provisions of Exchange Act section 15F(j)(5). The internal supervision portion of the proposed Order did not extend to the portions of rule 15Fh–3(h) that mandate supervisory policies and procedures in connection with: The internal risk management provisions of Exchange Act section 15F(j)(2) (which were addressed by paragraph (b)(1) of the proposed Order in connection with internal risk management); the information-related provisions of Exchange Act sections 15F(j)(3) and (j)(4)(B) (for which substituted compliance is not available); or the antitrust provisions of Exchange Act section 15F(j)(6) (for which the Commission did not propose to provide substituted compliance). *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47675 n.75.

[90] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47675.

[91] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47676 and n.86.

[92] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47675 and n.77. In other words, the proposed Order would require that the Covered Entity's supervisory and compliance program cover applicable requirements under the Exchange Act and other applicable conditions of the Order.

[93] While the Spanish and EU regulatory framework in general reasonably appears to promote Covered Entities' compliance with applicable Spanish and EU laws, those requirements do not appear to promote Covered Entities' compliance with requirements under the Exchange Act that are not subject to substituted compliance, or to promote Covered Entities' compliance with the applicable conditions to the proposed Order. These residual Exchange Act requirements could, for example, relate to requirements for which substituted compliance is not available, requirements for which the Order does not make a positive substituted compliance determination, security-based swap business for which the Covered Entity is unable to satisfy the conditions of the Order, and/or requirements or security-based swap business for which the Covered Entity decides not to use substituted compliance. The condition was designed to allow Covered Entities to use their existing internal supervision and compliance frameworks to comply with the relevant Exchange Act requirements and proposed Order conditions, rather than having to establish separate special-purpose internal supervision frameworks.

[94] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47675–76 and nn.80–85. Although certain Spanish and EU requirements address a Covered Entity's use of internal compliance reports, those requirements do not require it to submit compliance reports to the Commission. These conditions would allow a Covered Entity to leverage the compliance reports that it otherwise must produce, by extending those reports to address compliance with the conditions of the proposed Order. The Commission stated that, in practice, a Covered Entity may satisfy these conditions by identifying relevant Exchange Act requirements and proposed Order conditions and reporting on the implementation and effectiveness of its controls with regard to compliance with those requirements and conditions.

compliance reports required pursuant to Commission Delegated Regulation (EU) 2017/565 (''MiFID Org Reg'') article 22(2)(c) must: (1) Be provided to the Commission at least annually and in the English language; (2) include a certification signed by the chief compliance officer or senior officer of the Covered Entity that, to the best of the certifier's knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects; (3) address the Covered Entity's compliance with applicable requirements under the Exchange Act and other applicable conditions of the proposed Order; [95] (4) be provided to the Commission no later than 15 days following the earlier of the submission of the report to the Covered Entity's management body or the time the report is required to be submitted to the management body; [96] and (5) together cover the entire period that the Covered Entity's annual compliance report referenced in Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk–1(c) would be required to cover.[97]

Finally, the Commission preliminarily concluded that allowing an alternative means of compliance with Exchange Act antitrust requirements would not lead to comparable outcomes, and the proposed Order did not provide for substituted compliance in connection with those requirements.[98]

[95] MiFID Org Reg article 22(2)(c) particularly requires that a Covered Entity's compliance function ''report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken[.]'' Under the proposed condition, those reports, as submitted to the Commission and the Covered Entity's management body, also would address the Covered Entity's compliance with applicable Exchange Act requirements and other applicable conditions of the proposed Order (in addition to addressing the Covered Entity's compliance with applicable Spanish and EU provisions).

[96] This deadline was intended to promote timely notice of compliance matters in a manner comparable to Exchange Act requirements, while also accounting for the annual deadline required under MiFID Org Reg article 22(2)(c) as well as the possibility that the Covered Entity may submit reports ahead of this annual deadline.

[97] This requirement would prevent a Covered Entity from notifying the Commission just prior to the due date of its annual Exchange Act compliance report that it will use substituted compliance for chief compliance officer requirements and then providing the Commission a Spanish compliance report that covers only a part of the year that would have been covered in the Exchange Act report.

[98] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47676 and n.86.

B. Commenter Views and Final Provisions

One commenter supported the Commission's proposal to make the positive substituted compliance determinations in the proposed Order,[99] including positive substituted compliance determinations for internal supervision and chief compliance officer requirements. The Commission continues to conclude that, taken as a whole, relevant Spanish and EU requirements would produce regulatory outcomes that are comparable to those associated with Exchange Act internal supervision and chief compliance officer requirements by providing that Covered Entities have structures and processes that reasonably are designed to promote compliance with applicable law and to identify and cure instances of non-compliance and manage conflicts of interest. While the Commission recognizes certain differences between Spanish and EU requirements and the applicable internal supervision and chief compliance officer requirements under the Exchange Act, in the Commission's view those differences on balance should not preclude substituted compliance for these requirements, as the relevant Spanish and EU requirements taken as a whole help to produce comparable regulatory outcomes by requiring Covered Entities to have structures and processes reasonably designed to promote compliance with applicable law, identify and cure instances of non-compliance, and manage conflicts of interest. Accordingly, the Commission is making positive substituted compliance determinations in connection with internal supervision and chief compliance officer requirements and is issuing the internal supervision and compliance section of the Order as proposed.[100]

To help ensure the comparability of outcomes, and consistent with the proposed Order, substituted compliance for internal supervision and chief requirements is subject to certain conditions. Substituted compliance for both sets of requirements is conditioned on the Covered Entity being subject to, and complying with, relevant Spanish and EU requirements.[101] In addition, substituted compliance for internal supervision requirements (1) is conditioned on the Covered Entity's compliance with applicable Spanish and EU internal supervision requirements *as if* those provisions also require the Covered Entity to comply with applicable requirements under the Exchange Act and the other applicable conditions of the proposed Order [102] and (2) does not extend to certain specified internal supervision requirements.[103] Finally, substituted compliance in connection with chief compliance officer requirements is subject to the conditions that compliance reports required pursuant to MiFID Org Reg article 22(2)(c) must: (1) Be provided to the Commission at least annually and in the English language; (2) include a certification [104] signed by the chief compliance officer or senior officer of the Covered Entity that, to the best of the certifier's knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects; (3) address the Covered Entity's compliance with applicable requirements under the Exchange Act and other applicable conditions of the proposed Order; (4) be provided to the Commission no later than 15 days [105] following the earlier of

[99] *See* Santander Letter at 1.

[100] *See* para. (c) of the Order.

[101] *See* paras. (c)(1) through (3) of the Order.

[102] *See* paras. (c)(1)(ii) and (c)(4) of the Order. The Order provides that the Covered Entity must comply with relevant Spanish and EU provisions as if those provisions address applicable conditions of the Order connected to requirements for which the Covered Entity is relying on substituted compliance. That part of the condition does not apply to parts of the Order for which the Covered Entity does not rely on substituted compliance. In other words, a Covered Entity's reliance on substituted compliance under para. (c)(4) requires that the Covered Entity's supervisory and compliance programs cover applicable provisions under the Exchange Act and other applicable conditions of the Order.

[103] *See* para. (c)(1)(iii) of the Order. In particular, the Order does not extend to the portions of rule 15Fh–3(h) that mandate supervisory policies and procedures in connection with: The internal risk management provisions of Exchange Act section 15F(j)(2) (which are addressed by paragraph (b)(1) of the Order in connection with internal risk management); the information-related provisions of Exchange Act sections 15F(j)(3) and (j)(4)(B) (for which substituted compliance is not available); or the antitrust provisions of Exchange Act section 15F(j)(6) (for which the Commission is not making a positive substituted compliance determination).

[104] The Commission recognizes that Covered Entities preparing multiple Spanish compliance reports each year may find it difficult to submit to those reports to the Commission throughout the year, each with a chief compliance officer or senior officer certification and a section addressing the Covered Entity's compliance with U.S. requirements. However, on balance the Commission continues to believe that these elements are necessary to achieve a regulatory outcome comparable to the Exchange Act.

[105] The Commission continues to believe that it is appropriate for the Commission to receive compliance reports shortly after their submission to the management body. Providing these reports to the Commission near the times that the Covered Entity submits them to the management body also will better align with the Spanish and EU regulatory framework, which permits a Covered Entity to prepare and submit to the management body multiple compliance reports throughout the year.

Continued

the submission of the report to the Covered Entity's management body or the time the report is required to be submitted to the management body; and (5) together cover the entire period that the Covered Entity's annual compliance report referenced in Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk–1(c) would be required to cover.[106] A Covered Entity that is unable to comply with an applicable condition—and thus is not eligible to use substituted compliance for the particular set of Exchange Act risk control requirements related to that condition—nevertheless may use substituted compliance for another set of Exchange Act requirements addressed in the Order if it complies with the conditions to the relevant parts of the Order.

Under the Order, substituted compliance for internal supervision and chief compliance officer requirements is not subject to a condition that the Covered Entity apply substituted compliance for related recordkeeping requirements in Exchange Act rules 18a–5 and 18a–6. A Covered Entity that applies substituted compliance for internal supervision and/or chief compliance officer requirements, but does not apply substituted compliance for the related recordkeeping requirements in Exchange Act rules 18a–5 and 18a–6, will remain subject to the relevant provisions of Exchange Act rules 18a–5 and 18a–6. Those rules require the Covered Entity to make and preserve records of its compliance with Exchange Act internal supervision and chief compliance officer requirements and of its security–based swap activities required or governed by those requirements. A Covered Entity that applies substituted compliance for internal supervision and/or chief compliance officer requirements, but complies directly with related recordkeeping requirements in rules 18a–5 and 18a–6, therefore must make and preserve records of its compliance with the relevant conditions of the Order and of its security–based swap activities required or governed by those conditions and/or referenced in the relevant parts of rules 18a–5 and 18a–6.

Finally, for the reasons discussed in the proposed Order,[107] the Order does not extend to antitrust provisions under the Exchange Act.

VI. Substituted Compliance for Counterparty Protection Requirements

A. Proposed Approach

The CNMV requested substituted compliance in connection with counterparty protection requirements under the Exchange Act relating to:

- *Disclosure of material risks and characteristics and material incentives or conflicts of interest*—Exchange Act rule 15Fh–3(b) requires that SBS Entities disclose to certain counterparties to a security–based swap certain information about the material risks and characteristics of the security-based swap, as well as material incentives or conflicts of interest that the SBS Entity may have in connection with the security-based swap. These provisions address the need for security-based swap market participants to have information that is sufficient to make informed decisions regarding potential transactions involving particular counterparties and particular financial instruments.[108]
- *''Know your counterparty''*—Exchange Act rule 15Fh–3(e) requires a security-based swap dealer to establish, maintain, and enforce written policies and procedures to obtain and retain certain information regarding a counterparty that is necessary for conducting business with that counterparty. This provision accounts for the need that SBS Entities obtain essential counterparty information necessary to promote effective compliance and risk management.[109]
- *Suitability*—Exchange Act rule 15Fh–3(f) requires a security-based swap dealer that recommends to certain counterparties a security-based swap or trading strategy involving a security-based swap, to undertake reasonable diligence to understand the potential risks and rewards associated with the recommendation and to have a reasonable basis to believe that the recommendation is suitable for the counterparty. This provision accounts for the need to guard against security-based swap dealers making unsuitable recommendations.[110]
- *Fair and balanced communications*—Exchange Act rule 15Fh–3(g) requires that SBS Entities communicate with counterparties in a fair and balanced manner based on principles of fair dealing and good faith. These provisions promote complete and honest communications as part of SBS Entities' security-based swap businesses.[111]
- *Daily mark disclosure*—Exchange Act rule 15Fh–3(c) requires that SBS Entities provide daily mark information to certain counterparties. These provisions address the need for market participants to have effective access to daily mark information necessary to manage their security-based swap positions.[112]
- *Clearing rights disclosure*—Exchange Act rule 15Fh–3(d) requires that SBS Entities provide certain counterparties with information regarding clearing rights under the Exchange Act.[113]

Taken as a whole, the counterparty protection requirements under section 15F of the Exchange Act help to ''bring professional standards of conduct to, and increase transparency in, the security-based swap market and to require [SBS Entities] to treat parties to these transactions fairly.'' [114] The

The Commission views 15 days as providing a reasonable time to translate reports, if needed, and convey them to the Commission.

[106] *See* para. (c)(2)(ii) of the Order. The Commission continues to believe that these conditions are necessary to promote comparable regulatory outcomes, particularly in light of the granular approach to substituted compliance, and to ensure that the compliance report covers applicable Exchange Act requirements and proposed Order conditions if the Covered Entity uses substituted compliance for chief compliance officer requirements, whether or not the Covered Entity relies on substituted compliance for internal supervision.

[107] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47676 and n.86. The Commission is not taking any position regarding the applicability of the section 15F(j)(6) antitrust prohibitions in the cross-border context. Non-U.S. SBS Entities should assess the applicability of those prohibitions to their security-based swap businesses.

[108] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47676 and n.87.

[109] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47676 and n.88.

[110] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47676 and nn.89–90.

[111] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47676 and n.91.

[112] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47676 and n.92.

[113] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47676 and n.93. Exchange Act section 3C(g)(5) provides certain rights for counterparties to select the clearing agency at which a security-based swap is cleared. For all security-based swaps that an SBS Entity enters into with certain counterparties, the counterparty has the sole right to select the clearing agency at which the security-based swap is cleared. For security-based swaps that are not subject to mandatory clearing (pursuant to Exchange Act sections 3C(a) and (b)) and that an SBS Entity enters into with certain counterparties, the counterparty also may elect to require clearing of the security-based swap. Substituted compliance is not available in connection with these provisions.

[114] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47677 and n.94; Business Conduct Adopting Release, 81 FR 30065. For non-U.S. SBS Entities, the counterparty protection requirements under Exchange Act section 15F(h) apply only to the SBS Entity's transactions with U.S. counterparties (apart from certain transactions conducted through a foreign branch of the U.S. counterparty), or to transactions arranged, negotiated, or executed by personnel located in a U.S. branch or office. *See* Exchange Act rule 3a71–3(c), 17 CFR 240.3a71–3(c) (exception from business conduct requirements for a security–based swap dealer's ''foreign business''); *see also*

proposed Order provided for conditional substituted compliance in connection with disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, ''know your counterparty,'' suitability, fair and balanced communications, and daily mark disclosure requirements.[115] In proposing to provide conditional substituted compliance for these counterparty protection requirements, the Commission preliminarily concluded that the relevant Spanish and EU requirements produce regulatory outcomes that are comparable to these requirements under Exchange Act section 15F(h), by subjecting Covered Entities to obligations that promote standards of professional conduct, transparency, and the fair treatment of parties.

As proposed, substituted compliance for these requirements would be subject to certain conditions to help ensure the comparability of outcomes. First, under the proposed Order, substituted compliance for disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, ''know your counterparty,'' suitability, and fair and balanced communications requirements would be conditioned on Covered Entities being subject to, and complying with, relevant Spanish and EU requirements.[116] Second, the proposed Order additionally would condition substituted compliance for suitability requirements on the counterparty being a ''professional client'' as defined in MiFID (rather than a ''retail client'' or an elective ''professional client'' [117]) and not a ''special entity'' as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh–2(d).[118] The Commission continues to believe that, absent such a condition the MiFID-based suitability requirements would not be expected to produce a counterparty protection outcome that is comparable with the outcome produced by the suitability requirements under the Exchange Act.[119] Finally, in the proposed Order the Commission preliminarily viewed certain types of EU daily portfolio reconciliation requirements as comparable to Exchange Act daily mark disclosure requirements.[120] These daily portfolio reconciliation requirements apply to portfolios of a financial counterparty or a non-financial counterparty subject to the clearing obligation in EMIR in which counterparties have 500 or more OTC derivatives contracts outstanding with each other.[121] The Commission preliminarily viewed EU portfolio reconciliation requirements for other types of portfolios, which may be reconciled less frequently than each business day or may not require disclosure to counterparties, as not comparable to Exchange Act daily mark requirements.[122] Accordingly, the proposed Order would condition substituted compliance for daily mark requirements on the Covered Entity being required to reconcile, and in fact reconciling, the portfolio containing the relevant security-based swap on each business day pursuant to relevant EU requirements.[123]

The proposed Order would not provide substituted compliance in connection with Exchange Act requirements for SBS Entities to disclose a counterparty's clearing rights under Exchange Act section 3C(g)(5).[124] The CNMV Application cited certain EU provisions related to a counterparty's clearing rights in the European Union. However, those provisions do not require disclosure of Exchange Act section 3C(g)(5) clearing rights, and the Commission preliminarily viewed the EU clearing provisions as not comparable to Exchange Act clearing rights disclosure requirements.[125]

B. Commenter Views and Final Provisions

One commenter supported the Commission's proposal to make the positive substituted compliance determinations in the proposed Order,[126] including positive substituted compliance determinations for disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, ''know your counterparty,'' suitability, fair and balanced communications, and daily mark disclosure requirements. The Commission continues to conclude that, taken as a whole, relevant Spanish and EU requirements would produce regulatory outcomes that are comparable to those associated with these counterparty protection requirements, by subjecting Covered Entities to obligations that promote standards of professional conduct, transparency, and the fair treatment of parties. The Commission recognizes that there are certain differences between relevant Spanish and EU requirements and Exchange Act disclosure, ''know your counterparty,'' suitability, and communications requirements, but in the Commission's view those differences, when coupled with the conditions in the proposed Order, are not so material as to be inconsistent with substituted compliance within the requisite outcomes-oriented framework. Accordingly, the Commission is making

Exchange Act rule 3a71–3(a)(3), (8) and (9) (definitions of ''transaction conducted through a foreign branch,'' ''U.S. business'' and ''foreign business'').

[115] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47677.

[116] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47677 and nn.97–99.

[117] Annex II of MiFID describes which clients are ''professional clients.'' Section I of Annex II describes the types of clients considered to be professional clients unless the client elects non-professional treatment; these clients are per se professional clients. Section II of Annex II describes the types of clients who may be treated as professional clients on request; these clients are elective professional clients. *See* MiFID Annex II. Retail clients are those that are not professional clients. *See* MiFID article 4(1)(11).

[118] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47677.

[119] The Commission recognizes that Exchange Act rules permit security-based swap dealers, when making a recommendation to an ''institutional counterparty,'' to satisfy some elements of the suitability requirement if the security-based swap dealer reasonably determines that the counterparty or its agent is capable of independently evaluating relevant investment risks, the counterparty or its agent represents in writing that it is exercising independent judgment in evaluating recommendations, and the security-based swap dealer discloses to the counterparty that it is acting as counterparty and is not undertaking to assess the suitability of the recommendation for the counterparty. *See* Exchange Act rule 15Fh–3(f)(2). However, the institutional counterparties to whom this alternative applies are only a subset of the ''professional clients'' to whom more narrowly tailored suitability requirements apply under MiFID. The institutional counterparty alternative under the Exchange Act remains available, in accordance with its terms, for recommendations that are not eligible for, or for which a Covered Entity does not rely on, substituted compliance under the Order.

[120] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47677–78.

[121] *See* EMIR RTS article 13(3)(a)(i); EMIR article 10.

[122] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47677–78.

[123] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47677–78. This approach would avoid reliance on Spanish and EU trade reporting or mark-to-market (or mark-to-model) requirements. The Spanish and EU mark-to-market (or mark-to-model) requirements direct certain types of derivatives counterparties to mark-to-market (or mark-to-model) uncleared transactions each day but do not require disclosure of those marks to counterparties. Moreover, though Spanish and EU trade reporting requirements direct certain derivatives counterparties to report to a EU trade repository updated daily valuations for each OTC derivative contract, in practice U.S. counterparties may encounter challenges when attempting to access daily marks reported to multiple EU trade repositories with which they may not otherwise have business relationships. In addition, the information may be less current, given the time necessary for reporting and for the trade repository to make the information available.

[124] Though the requirement to disclose a counterparty's Exchange Act section 3C(g)(5) clearing rights is eligible for substituted compliance, the section 3C(g)(5) clearing rights themselves are not.

[125] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47678 and n.102.

[126] *See* Santander Letter at 1.

positive substituted compliance determinations in connection with disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, ''know your counterparty,'' suitability, fair and balanced communications, and daily mark disclosure requirements.[127] The Commission is amending the substituted compliance determination for ''know your counterparty'' requirements for the reasons discussed below, and is issuing the remainder of the counterparty protection section of the Order as proposed.

The Commission is amending paragraph (d)(3) of the Order to replace the requirements of Directive (EU) 2015/849 (''MLD'') and the Spanish Anti-Money Laundering Act, Law 10/2010, of April 28 (''SMLA'') with provisions of MiFID, MiFID Org Reg, SSMA and Royal Decree 217/2008, of February 15 (''RD 217/2008'').[128] Exchange Act rule 15Fh–3(e)(3) is one of three prongs of the Exchange Act ''know your counterparty requirements,'' and requires a security-based swap dealer to establish, maintain, and enforce written policies and procedures to obtain and retain a record of information regarding the authority of any person acting for its counterparty. Before making a positive substituted compliance determination, Exchange Act rule 3a71–6 requires the Commission to determine that foreign requirements are comparable to the otherwise applicable Exchange Act requirements, after accounting for factors such as the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised, by the foreign authority in respect of the relevant requirements, as well as to enter into a memorandum of understanding and/or other arrangement with the relevant foreign financial regulatory authority or authorities addressing supervisory and enforcement cooperation and other matters arising under the substituted compliance determination.[129] The customer due diligence provisions in the proposed Order's MLD and SMLA requirements are relevant to the Exchange Act ''know your counterparty'' requirements relating to records of the authority of a person acting on behalf of the counterparty. However, in Spain supervision and enforcement of these MLD and SMLA requirements are within the jurisdiction of the Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias (''SEPBLAC'') and the Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias (''COPBLAC''). The CNMV and the Bank of Spain do work closely with the SEPBLAC and COPBLAC, but the substituted compliance memorandum of understanding between the Commission and the CNMV and the Bank of Spain, finalized after publication of the Spanish Substituted Compliance Notice and Proposed Order, does not provide for ongoing sharing of supervisory and enforcement information regarding these MLD and SMLA requirements, as neither the SEPBLAC nor the COPBLAC is a party to the memorandum of understanding. Other requirements based on MiFID, as applied by the CNMV, are, however, comparable to the Exchange Act requirement to establish, maintain, and enforce written policies and procedures to obtain and retain a record of information regarding the authority of any person acting for its counterparty.[130] The CNMV, rather than SEPBLAC or COPBLAC, is responsible for supervision and enforcement of these MiFID-based requirements and the memorandum of understanding would provide for ongoing sharing of supervisory and enforcement information regarding these requirements. Accordingly, the Commission is replacing the MLD and SMLA requirements listed in paragraph (d)(3) of the proposed Order with these MiFID-based requirements.

To help ensure the comparability of outcomes, and consistent with the proposed Order, substituted compliance for these counterparty protection requirements is subject to certain conditions. First, substituted compliance for disclosure of material risks and characteristics,[131] disclosure of material incentives or conflicts of interest,[132] ''know your counterparty,''[133] suitability,[134] and fair and balanced communications[135] requirements is conditioned on Covered Entities being subject to, and complying with, relevant Spanish and EU requirements. Second, substituted compliance for suitability requirements is conditioned on the counterparty being a ''professional client'' as defined in MiFID (rather than a ''retail client'' or an elective ''professional client'') and not a ''special entity'' as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh–2(d).[136] Third, substituted compliance for daily mark disclosure requirements is conditioned on the Covered Entity being required to reconcile, and in fact reconciling, the portfolio containing the relevant security-based swap on each business day pursuant to relevant EU requirements.[137] A Covered Entity that is unable to comply with an applicable condition—and thus is not eligible to use substituted compliance for the particular set of Exchange Act counterparty protection requirements related to that condition—nevertheless may use substituted compliance for another set of Exchange Act requirements addressed in the Order if

[127] *See* para. (d) of the Order.

[128] *See* para. (d)(3) of the Order. Paragraph (d)(3) of proposed Order cited the following MLD-based requirements: MLD articles 11 and 13; SMLA articles 3(1) and (2), 4, 5, 6, 7(1) through (4), 7(7), 7(8), and 8; MLD articles 8(3) and 8(4)(a) as applied to internal policies, controls and procedures regarding recordkeeping of customer due diligence activities; and SMLA article 26 as applied to policies and procedures regarding recordkeeping of customer due diligence activities. The Commission is replacing these requirements with MiFID article 16(6), MiFID Org Reg articles 72, 74, 75, and applicable parts of Annex I, SSMA article 194(1), and RD 217/2008 article 32(1) and (10).

[129] *See* Parts II.B.1 and II.B.2, *supra.*

[130] MiFID article 16(6), implemented in Spain in SSMA article 194(1) and RD 217/2008 article 32(1) and (10), requires a Covered Entity to arrange for records to be kept of all services, activities, and transactions undertaken by it that are sufficient to enable the CNMV to fulfill its supervisory and enforcement mandates, and in particular to determine that the Covered Entity has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market. MiFID Org Reg articles 74 and 75 require Covered Entities to record and keep at the CNMV's disposal certain information about client orders and decisions to deal. Annex IV of MiFID Org Reg describes that required client information and includes a requirement to make a record of the ''name and designation of any relevant person acting on behalf of the client.'' The CNMV commented that this requirement to make a record regarding persons acting on behalf of the client ''implies that the investment firm or credit institution for internal control reasons, must obtain documentation of the powers/authorization of the person to be represented which is verifiable y the CNMV.'' *See* Memorandum of Correspondence with Santiago Yraola, Deputy Director of International Affairs, CNMV, dated Sept. 24, 2021 (''CNMV Memorandum''), at 2. Moreover, the CNMV confirmed that in supervising compliance with this requirement, it requires Covered Entities to provide records of the power of attorney or public deed establishing the authority of client representatives. *See* CNMV Memorandum at 2. Finally, MiFID Org Reg article 72 and Annex I require the Covered Entity to maintain records in the medium, form, and format that allow the CNMV to access the records readily and to easily ascertain any amendments, and that make it impossible to manipulate or alter the records.

[131] *See* para. (d)(1) of the Order.

[132] *See* para. (d)(2) of the Order.

[133] *See* para. (d)(3) of the Order.

[134] *See* para. (d)(4)(i) of the Order.

[135] *See* para. (d)(5) of the Order.

[136] *See* para. (d)(4)(ii) of the Order.

[137] *See* para. (d)(6) of the Order. A Covered Entity must be required to reconcile, and in fact reconcile, the portfolio containing the security-based swap for which substituted compliance is used, on each business day pursuant to EMIR articles 11(1)(b) and 11(2) and EMIR RTS article 13. A Covered Entity may not use substituted compliance for daily mark disclosure requirements if the relevant security-based swap is in a portfolio that these EU requirements do not require to be reconciled on each business day.

it complies with the conditions to the relevant parts of the Order.

Under the Order, substituted compliance for counterparty protection requirements (relating to disclosure of information regarding material risks and characteristics, disclosure of information regarding material incentives or conflicts of interest, ''know your counterparty,'' suitability, fair and balanced communications and daily mark disclosure) is not subject to a condition that the Covered Entity apply substituted compliance for related recordkeeping requirements in Exchange Act rules 18a–5 and 18a–6. A Covered Entity that applies substituted compliance for one or more counterparty protection requirements, but does not apply substituted compliance for the related recordkeeping requirements in Exchange Act rules 18a–5 and 18a–6, will remain subject to the relevant provisions of Exchange Act rules 18a–5 and 18a–6. Those rules require the Covered Entity to make and preserve records of its compliance with Exchange Act counterparty protection requirements and of its security-based swap activities required or governed by those requirements. A Covered Entity that applies substituted compliance for a counterparty protection requirement, but complies directly with related recordkeeping requirements in rules 18a–5 and 18a–6, therefore must make and preserve records of its compliance with the relevant conditions of the Order and of its security-based swap activities required or governed by those conditions and/or referenced in the relevant parts of rules 18a–5 and 18a–6.

Finally, for the reasons discussed in the proposed Order, the Order does not extend to clearing rights disclosure provisions under the Exchange Act.[138]

VII. Substituted Compliance for Recordkeeping, Reporting, Notification, and Securities Count Requirements

A. CNMV Request and Associated Analytic Considerations

The CNMV Application in part requested substituted compliance for requirements applicable to SBS Entities with a prudential regulator under the Exchange Act relating to:

- *Record Making*—Exchange Act rule 18a–5 requires prescribed records to be made and kept current.[139]
- *Record Preservation*—Exchange Act rule 18a–6 requires preservation of records.[140]
- *Reporting*—Exchange Act rule 18a–7 requires certain reports.[141]
- *Notification*—Exchange Act rule 18a–8 requires notification to the Commission when certain financial or operational problems occur.[142]
- *Daily Trading Records*—Exchange Act section 15F(g) requires SBS Entities to maintain daily trading records.[143]

Taken as a whole, the recordkeeping, reporting, and notification requirements that apply to SBS Entities with a prudential regulator are designed to promote the prudent operation of the firm's security-based swap activities, assist the Commission in conducting compliance examinations of those activities, and alert the Commission to potential financial or operational problems that could impact the firm and its customers.

B. Commenter Views and Final Provisions

1. General Considerations

In proposing to provide conditional substituted compliance in connection with this part of the CNMV Application, the Commission preliminarily concluded that the relevant EU and Spanish requirements, subject to conditions and limitations, would produce regulatory outcomes that are comparable to the outcomes associated with the vast majority of the recordkeeping, reporting, notification, and securities count requirements under the Exchange Act applicable to SBS Entities pursuant to Exchange Act rules 18a–5, 18a–6, 18a–7, 18a–8, and Exchange Act section 15F(g) (collectively, the recordkeeping, reporting, and notification requirements'').[144] Substituted compliance for the recordkeeping, reporting, and notification requirements accordingly is conditioned on Covered Entities being subject to and complying with the EU and Spanish provisions that in the aggregate establish a framework that produces outcomes comparable to those associated with the analogous recordkeeping, reporting, and notification requirements under the Exchange Act.[145]

The proposed structure of the substituted compliance determinations with respect to the recordkeeping, reporting, and notification requirements would have provided Covered Entities with greater flexibility to select distinct requirements within the broader rules for which they want to apply substituted compliance.[146] This would not preclude a Covered Entity from applying substituted compliance for the entire rule (subject to conditions and limitations). However, it would permit the Covered Entity to apply substituted compliance with respect to certain requirements of a given rule and to comply directly with the remaining requirements. This more granular approach to the recordkeeping, reporting, and notification rules was intended to permit Covered Entities to leverage existing recordkeeping and reporting systems that are designed to comply with the broker-dealer recordkeeping and reporting requirements on which the recordkeeping, reporting, and notification requirements applicable to SBS Entities are based. For example, it may be more efficient for a Covered Entity to comply with certain Exchange Act requirements within a given recordkeeping, reporting, or notification rule (rather than apply substituted compliance) because it can utilize systems that its affiliated broker-dealer has implemented to comply with them. This proposed approach was consistent with the approach taken by the Commission in the French Substituted Compliance Order and UK Substituted Compliance Order.[147]

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[138] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47678.

[139] 17 CFR 240.18a–5. The CNMV Application discusses Spanish and EU recordmaking requirements. *See* CNMV Application Appendix B, Category: Recordkeeping and Reporting Requirements; Subcategory: Record creation, at 1–27, 55–57.

[140] 17 CFR 240.18a–6. The CNMV Application discusses Spanish and EU record preservation requirements. *See* CNMV Application Appendix B, Category: Recordkeeping and Reporting; Subcategory: Record Preservation at 28–58.

[141] 17 CFR 240.18a–7. The CNMV Application discusses Spanish and EU requirements that address firms' obligations to make certain reports. *See* CNMV Application Appendix B, Category: Reports and Notifications at 59–62.

[142] 17 CFR 240.18a–8. The CNMV Application discusses Spanish and EU requirements that address firms' obligations to make certain notifications. *See* CNMV Application Appendix B category 2 at 62–65.

[143] The CNMV Application discusses Spanish and EU requirements that address firms' record preservation obligations related to records that firms are required to create, as well as additional records such as records of communications. *See* CNMV Application Appendix B, Category: Recordkeeping and Reporting Requirements; Subcategory: Record Creation at 2–3.

[144] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47678-85, 47693-95.

[145] *See* paras. (e)(1)(i)(A), (e)(1)(i)(B), (e)(1)(i)(C), (e)(1)(i)(D), (e)(1)(i)(E), (e)(1)(i)(F)(1), (e)(1)(i)(G), (e)(1)(i)(H), (e)(1)(i)(I)(*1*), (e)(1)(i)(J)(*1*), (e)(1)(i)(K)(*1*), (e)(2)(i)(A), (e)(2)(i)(B), (e)(2)(i)(C), (e)(2)(i)(D), (e)(2)(i)(E), (e)(2)(i)(F)(*1*), (e)(2)(i)(G)(*1*), (e)(2)(i)(H), (e)(2)(i)(I), (e)(2)(i)(J), (e)(2)(i)(K)(*1*), (e)(2)(i)(L), (e)(2)(i)(M), (e)(3)(i), (e)(4)(i)(A), (e)(4)(i)(B)(*1*), and (e)(5) of the Order.

[146] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47678–79, 47693–95.

[147] *See* French Substituted Compliance Order, 86 FR 41649; UK Substituted Compliance Order, 86 FR 43360.

As applied to Exchange Act rules 18a–5 and 18a–6, this approach of providing greater flexibility resulted in preliminary substituted compliance determinations with respect to the different categories of records these rules require SBS Entities to make, keep current, and/or preserve.[148] The objective of these rules—taken as a whole—is to assist the Commission in monitoring and examining for compliance with substantive Exchange Act requirements applicable to SBS Entities (*e.g.,* business conduct requirements) as well as to promote the prudent operation of these firms.[149] The Commission believes the comparable Spanish recordkeeping rules achieve these outcomes with respect to compliance with substantive Spanish requirements for which preliminary positive substituted compliance determinations were being made in the proposed Order (*e.g.,* the preliminary positive substituted compliance determinations with respect to the majority of the Exchange Act business conduct requirements). At the same time, the recordkeeping rules address different categories of records through distinct requirements within the rules. Each requirement with respect to a specific category of records (*e.g.,* paragraph (b)(1) of Exchange Act rule 18a–5 addressing trade blotters) can be viewed in isolation as a distinct recordkeeping rule. Therefore, the Commission made preliminary substituted compliance determinations at this level of Exchange Act rules 18a–5 and 18a–6.[150] The Commission did not receive comment on this granular approach and is adopting it as proposed.[151]

Second, the Commission did not make a preliminary positive substituted compliance determination with respect to a discrete provision of the recordkeeping, reporting, and notification requirements if it was fully or partially linked to a substantive Exchange Act requirement for which substituted compliance was not available or for which a preliminary positive substituted compliance determination was not being made.[152] In particular, a preliminary positive substituted compliance determination was not made, in full or in part, for recordkeeping, reporting, or notification requirements linked to the following Exchange Act rules for which substituted compliance is not available or a preliminary positive substituted compliance determination was not made: (1) Exchange Act rule 15Fh–4; (2) Exchange Act rule 15Fh–5; (3) Exchange Act rule 15Fh–6; (4) Exchange Act rule 18a–4; (5) Regulation SBSR; (6) Form SBSE and its variations; (7) Exchange Act rule 15Fh–1; and (8) Exchange Act rule 15Fh–2. This proposed approach was consistent with the approach taken by the Commission in the French Substituted Compliance Order and UK Substituted Compliance Order.[153] The Commission did not receive comment on these limitations and the Order includes them.[154]

Third, the Commission conditioned substituted compliance with discrete provisions of the recordkeeping, reporting, and notification requirements that were fully or partially linked to a substantive Exchange Act requirement for which substituted compliance was available on the Covered Entity applying substituted compliance with respect to the linked Exchange Act requirement.[155] In particular, substituted compliance for a provision of the recordkeeping, reporting, and notification requirements that is linked to the following Exchange Act rules was conditioned on the SBS Entity applying substituted compliance to the linked substantive Exchange Act rule: (1) Exchange Act rule 15Fh–3, except paragraphs (a) and (d) for which substituted compliance was not requested; (2) Exchange Act rule 15Fi–2; (3) Exchange Act rule 15Fi–3; (4) Exchange Act rule 15Fi–4; (5) Exchange Act rule 15Fi–5; and (6) Exchange Act rule 15Fk–1. The Commission did not receive comment on these conditions and the Order includes them.[156]

Fourth, the Commission conditioned substituted compliance with Exchange Act rule 18a–7 on Covered Entities filing periodic unaudited financial and operational information with the Commission or its designee in the manner and format required by Commission rule or order.[157] The Commission did not receive comment on this condition and the Order includes it.[158]

Fifth, the proposed Order conditioned substituted compliance with Exchange Act rule 18a–8 on Covered entities simultaneously sending a copy of any notice required to be sent by Spanish or EU law to the Commission in the manner specified on the Commission's website and including with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice.[159] The Commission did not receive comment on these conditions and the Order includes them.[160]

Sixth, the proposed Order included a condition that Covered Entities must promptly furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F of this Order.[161] The Commission did not receive a comment on this condition and the Order includes it.[162]

2. Citations to EU and Spanish Law

The Commission received a comment recommending changes to the proposed Order to refine the scope of Spanish law provisions that would operate as conditions to substituted compliance.[163] The Commission reviewed each of the Spanish law citations that the commenter recommended removing from the proposed Order for relevance to the comparable Exchange Act requirement while also keeping in mind that each EU or Spanish law citation was included in the CNMV Application intentionally. The Commission's conclusion and reasoning with respect to the commenter's recommendations are discussed in further detail below.

The commenter recommended removing references to SSMA articles 276bis, 276ter, 276quater, and 276quinquies from paragraphs (e)(1)(i)(F)(*1*), and (e)(2)(i)(A), (B), and (C) of the proposed Order. The commenter stated that SSMA articles 276bis, 276ter, 276quater, and

[148] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47679.

[149] *See, e.g.,* Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194, 25199–200 (May 2, 2014).

[150] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47679.

[151] *See* paras. (e)(1)(i) and (e)(2)(ii) of the Order.

[152] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47679 (discussing this limitation).

[153] *See* French Substituted Compliance Order, 86 FR 41650; UK Substituted Compliance Order, 86 FR 45778.

[154] *See* para. (e) of the Order.

[155] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47679 (discussing this condition).

[156] *See* para. (e) of the Order.

[157] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47683 (discussing this condition). *See* also Exchange Act Release No. 93335 (Oct. 14, 2021) (order specifying the manner and format of filing unaudited financial and operational information by Covered Entities relying on substituted compliance determinations with respect to Exchange Act rule 18a–7).

[158] *See* para. (e)(3) of the Order.

[159] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47683–84 (discussing this condition).

[160] *See* para. (e)(4)(ii)(A) of the Order.

[161] *See* Spanish Substituted Compliance Notice and Proposed Order, 86 FR 47685 (discussing this condition).

[162] *See* para. (e)(7) of the Order.

[163] *See* Santander Letter at 1–2.

276quinquies set out requirements regarding notifications to the CNMV about certain violations under Spanish law and are unrelated to the Commission's recordkeeping requirements addressed by paragraphs (e)(1)(i)(F)(*1*), and (e)(2)(i)(A), (B), and (C). Instead, the commenter states, SSMA articles 276bis, 276ter, 276quater, and 276quinquies should be, and are, included in paragraph (e)(4)(i), which addresses the Commission's notification requirements. The Commission agrees with the commenter's reasoning and is therefore removing references to SSMA articles 276bis, 276ter, 276quater, and 276quinquies from paragraphs (e)(1)(i)(F)(*1*), and (e)(2)(i)(A), (B), and (C) of the Order.[164]

In addition, as discussed in Part VI.B. above, MLD and SMLA are supervised by SEPBLAC and COPBLAC which are not signatories to the supervisory and enforcement memorandum of understanding with the Commission. Accordingly, paragraphs (e)(1)(i)(G), (e)(1)(i)(I), and (e)(2)(i)(F) of the Order no longer require a Covered Entity to be subject to and comply with MLD articles 11 and 13 and SMLA articles 3–7 and instead require the Covered Entity to be subject to and comply with comparable MiFID-based requirements.[165]

No other comments were received regarding any other Spanish law provisions that would operate as conditions to substituted compliance. Accordingly, the Commission is issuing these remaining conditions as proposed.

VIII. Supervisory and Enforcement Considerations

A. Proposed Approach

Exchange Act rule 3a71–6(a)(2)(i) provides that the Commission's assessments regarding the comparability of foreign requirements in part should take into account ''the effectiveness of the supervisory program administered, and the enforcement authority exercised'' by the foreign financial regulatory authority. This provision is intended to help ensure that substituted compliance is not predicated on rules that appear high-quality on paper if market participants in practice are allowed to fall short of their obligations, while also recognizing that differences among supervisory and enforcement regimes should not be assumed to reflect flaws in one regime or another.[166] The CNMV Application accordingly included information regarding the supervisory and enforcement framework applicable to derivatives markets and market participants in Spain.

In proposing to grant substituted compliance in connection with the CNMV Application, the Commission preliminarily concluded that the relevant supervisory and enforcement considerations were consistent with substituted compliance. That preliminary conclusion took into account information regarding the CNMV and the Bank of Spain (together, the ''Spanish Authorities'') and the ECB's roles and practices in supervising investment firms and credit institutions located in Spain, as well as their enforcement-related authority and practices.[167]

B. Commenter Views and Final Provisions

Commenters did not address the Commission's preliminary conclusions regarding supervisory and enforcement considerations, and the Commission continues to conclude that the relevant supervisory and enforcement considerations in Spain are consistent with substituted compliance. In particular, based on the available information regarding the Spanish Authorities' and the ECB's authority and practices to oversee market participants' compliance with applicable requirements and to take action in the event of violations, the Commission remains of the view that, consistent with rule 3a71–6, comparability determinations reflect Spain and EU requirements as they apply in practice.

To be clear, the supervisory and enforcement considerations addressed by rule 3a71–6 do not mandate that the Commission make judgments regarding the comparative merits of U.S. and foreign supervisory and enforcement frameworks, or to require specific findings regarding the supervisory and enforcement effectiveness of a foreign regime. The rule 3a71–6 considerations regarding supervisory and enforcement effectiveness instead address whether comparability analyses related to substituted compliance reflect requirements that market participants must follow, and for which market participants are subject to enforcement consequences in the event of violations. Those considerations are satisfied here.

IX. Conclusion

It is hereby determined and ordered, pursuant to rule 3a71–6 under the Exchange Act, that a Covered Entity (as defined in paragraph (f)(1) of this Order) may satisfy the requirements under the Exchange Act that are addressed in paragraphs (b) through (e) of this Order so long as the Covered Entity is subject to and complies with relevant requirements of the Kingdom of Spain and the European Union and with the conditions of this Order, as amended or superseded from time to time.

(a) *General conditions.*

This Order is subject to the following general conditions, in addition to the conditions specified in paragraphs (b) through (e):

(1) *Activities as MiFID ''investment services or activities.''* For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID; provisions of SSMA and/or RD 217/2008 that implement MiFID; and/or other EU and Spanish requirements adopted pursuant to those provisions, the Covered Entity's relevant security-based swap activities constitute ''investment services'' or ''investment activities,'' as defined in MiFID article 4(1)(2) and in SSMA article 140, and fall within the scope of the Covered Entity's authorization from the CNMV and the ECB to provide investment services and/or perform investment activities in the Kingdom of Spain.

(2) *Counterparties as MiFID ''clients.''* For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID; provisions of SSMA and/or RD 217/2008 that implement MiFID; and/or other EU and Spanish requirements adopted pursuant to those provisions, the relevant counterparty (or potential counterparty) to the Covered Entity is a ''client'' (or potential ''client''), as defined in MiFID article 4(1)(9) and in the First Additional Provision of Royal Decree Law 14/2018, of 28 September.

(3) *Security-based swaps as MiFID ''financial instruments.''* For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID; provisions of SSMA and/or RD 217/2008 that implement MiFID; and/or other EU and Spanish requirements adopted pursuant to those provisions, the relevant security-based swap is a ''financial instrument,'' as defined in MiFID article 4(1)(15) and in the Annex to SSMA.

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[164] *Compare* paras. (e)(1)(i)(F)(*1*), and (e)(2)(i)(A), (B), and (C) of the proposed Order, with paras. (e)(1)(i)(F)(*1*), and (e)(2)(i)(A), (B), and (C) of the Order.

[165] Compare paras. (e)(1)(i)(G), (e)(1)(i)(I), and (e)(2)(i)(F) of the proposed Order, with paras. (e)(1)(i)(G), (e)(1)(i)(I), and (e)(2)(i)(F) of the Order.

[166] *See* French Substituted Compliance Notice and Proposed Order, 85 FR 85734.

[167] Id. at 85734–36.

(4) *Covered Entity as CRD/CRR ''institution.''* For each condition in paragraph (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, the provisions of CRD; provisions of LOSSEC, RD 84/2015, BoS Circular 2/2016, SSMA, and/or RD 217/2008 that implement CRD; CRR; and/or other EU and Spanish requirements adopted pursuant to those provisions, the Covered Entity is an ''institution,'' as defined in CRD article 3(1)(3) and CRR article 4(1)(3), and either a credit institution, as defined in LOSSEC article 1 (in the case of a provision of LOSSEC, RD 84/2015, and/or BoS Circular 2/2016), or an investment firm, as defined in SSMA article 138 (in the case of a provision of SSMA and/or RD 217/2008 that implements CRD).

(5) *Counterparties as EMIR ''counterparties.''* For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of EMIR, EMIR RTS, EMIR Margin RTS, and/or other EU requirements adopted pursuant to those provisions, if the relevant provision applies only to the Covered Entity's activities with specified types of counterparties, and if the counterparty to the Covered Entity is not any of the specified types of counterparty, the Covered Entity complies with the applicable condition of this Order:

(i) As if the counterparty were the specified type of counterparty; in this regard, if the Covered Entity reasonably determines that the counterparty would be a financial counterparty if it were established in the EU and authorized by an appropriate EU authority, it must treat the counterparty as if the counterparty were a financial counterparty;

(ii) Without regard to the application of EMIR article 13; and

(iii) Only to the extent that an Exchange Act section or rule cited in paragraphs (b) through (e) of this Order applies to the security-based swap activities with that counterparty.

(6) *Security-based swap status under EMIR.* For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of EMIR, EMIR RTS, EMIR Margin RTS, and/or other EU requirements adopted pursuant to those provisions, if the relevant provision applies to the Covered Entity's OTC derivatives or OTC derivative contracts that have not been cleared by a central counterparty, then either:

(i) The relevant security-based swap is an ''OTC derivative'' or ''OTC derivative contract,'' as defined in EMIR article 2(7), that has not been cleared by a central counterparty and otherwise is subject to the provisions of EMIR article 11, EMIR RTS articles 11 through 15, and EMIR Margin RTS article 2; or

(ii) The relevant security-based swap has been cleared by a central counterparty that is authorized or recognized to clear derivatives contracts by a relevant authority in the EU.

(7) *Memorandum of Understanding with the Spanish Authorities.* The Commission and the CNMV and the Bank of Spain have a supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation with respect to this Order at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.

(8) *Memorandum of Understanding Regarding ECB-Owned Information.* The Commission and the ECB have a supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation with respect to this Order as it pertains to information owned by the ECB at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.

(9) *Notice to Commission.* A Covered Entity relying on this Order must provide notice of its intent to rely on this Order by notifying the Commission in writing. Such notice must be sent to the Commission in the manner specified on the Commission's website. The notice must include the contact information of an individual who can provide further information about the matter that is the subject of the notice. The notice must also identify each specific substituted compliance determination within paragraphs (b) through (e) of this Order for which the Covered Entity intends to apply substituted compliance. A Covered Entity must promptly provide an amended notice if it modifies its reliance on the substituted compliance determinations in this Order.

(10) *European Union Cross-Border Matters.*

(i) If, in relation to a particular service provided by a Covered Entity, responsibility for ensuring compliance with any provision of MiFID or MiFIR or any other EU or Spanish requirement adopted pursuant to MiFID or MiFIR listed in paragraphs (b) through (e) of this Order is allocated to an authority of the Member State of the European Union in whose territory a Covered Entity provides the service, the CNMV must be the authority responsible for supervision and enforcement of that provision or requirement in relation to the particular service.

(ii) If responsibility for ensuring compliance with any provision of MAR or any other EU requirement adopted pursuant to MAR listed in paragraphs (b) through (e) of this Order is allocated to one or more authorities of a Member State of the European Union, one of such authorities must be the CNMV.

(11) *Notification Requirements Related to Changes in Capital.* A Covered Entity that is prudentially regulated relying on this Order must apply substituted compliance with respect to the requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule 18a–8(c).

(b) *Substituted compliance in connection with risk control requirements.*

This Order extends to the following provisions related to risk control:

(1) *Internal risk management.* The requirements of Exchange Act section 15F(j)(2) and related aspects of Exchange Act rule 15Fh–3(h)(2)(iii)(I), provided that

(i) The Covered Entity is subject to and complies with the requirements of:

(A) MiFID articles 16 and 23; SSMA articles 193, 194, 208bis, 220bis, 221, 222, 223, and 224; and RD 217/2008 articles 30, 30bis, 30ter, 30quáter, 30quinqies, 30sexies, 32, 41, 42, 43, 44, 45, 46, 47, 48, 61, 66, 67, 68, 69, 70, 71, 72, 72bis, 72ter, 73, 74, 74bis, 74ter, 75, 75bis, 76, 76bis, and 79; and, if the Covered Entity is a credit institution, also BoS Circular 2/2016 article 43 and RD 84/2015 article 22;

(B) MiFID Org Reg articles 21 through 37, 72 through 76 and Annex IV;

(C) CRD articles 74, 76, 79 through 87, 88(1), 91(1) and (2), 91(7) through (9), 92, 94, and 95; SSMA articles 182(1) and (2) and 183(1) and (2); and RD 217/2008 article 35; and, if the Covered Entity is a credit institution, also LOSSEC articles 24, 25, 26, 27, 28, 29, 32, 33, 34, 36, 37, and 38; RD 84/2015 articles 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, and 54; and BoS Circular 2/2016 articles 26, 27, 28, 29, 30, 31, 32, 33(4), 34, 35, 36, 37, 38, 39, 40, 41, 46, 47, 48, 49, 50, 51, 52, and 60; and, if the Covered Entity is an investment firm, also SSMA articles 183(3), 184, 184bis, 185, 185bis, 186, 188, 189(1) through (3) and (5), 189bis, 189ter, and 192bis; and RD 217/2008 articles 14(1)(f), 20, 20bis, 21, 22, 24, 31, 31bis, 36, 38, 39(1) and (2), 40, 88, 90, 91, 92, 93, 94, 95, 96, 97(1) through (3), and 98;

(D) CRR articles 286 through 288 and 293; and

(E) EMIR Margin RTS article 2;

(ii) If the Covered Entity is an investment firm, the Covered Entity is not exempt from certain provisions of RD 217/2008 pursuant to RD 217/2008 article 87(2) and/or (3) and/or exempt from SSMA article 189 pursuant to SSMA article 189(6) and/or (7); and

(iii) If the Covered Entity is an investment firm, the Covered Entity establishes, maintains, and implements policies and procedures for management of residual risk associated with the use of recognized credit risk mitigation techniques described in RD 217/2008 article 103(1)(c).

(2) *Trade acknowledgement and verification.* The requirements of Exchange Act rule 15Fi–2, provided that the Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(a) and EMIR RTS article 12.

(3) *Portfolio reconciliation and dispute reporting.* The requirements of Exchange Act rule 15Fi–3, provided that:

(i) The Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(b) and EMIR RTS articles 13 and 15; and

(ii) The Covered Entity provides the Commission with reports regarding disputes between counterparties on the same basis as it provides those reports to competent authorities pursuant to EMIR RTS article 15(2).

(4) *Portfolio compression.* The requirements of Exchange Act rule 15Fi–4, provided that the Covered Entity is subject to and complies with the requirements of EMIR RTS article 14.

(5) *Trading relationship documentation.* The requirements of Exchange Act rule 15Fi–5, other than paragraph (b)(5) to that rule when the counterparty is a U.S. person, provided that the Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(a), EMIR RTS article 12, and EMIR Margin RTS article 2.

(c) *Substituted compliance in connection with internal supervision and compliance requirements and certain Exchange Act section 15F(j) requirements.*

This Order extends to the following provisions related to internal supervision and compliance and Exchange Act section 15F(j) requirements:

(1) *Internal supervision.* The requirements of Exchange Act rule 15Fh–3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5), provided that:

(i) The Covered Entity is subject to and complies with the requirements identified in paragraph (c)(3) of this Order and complies with the other conditions in that paragraph;

(ii) The Covered Entity complies with paragraph (c)(4) of this Order; and

(iii) This paragraph (c) does not extend to the requirements of paragraph (h)(2)(iii)(I) to rule 15Fh–3 to the extent those requirements pertain to compliance with Exchange Act sections 15F(j)(2), (j)(3), (j)(4)(B) and (j)(6), or to the general and supporting provisions of paragraph (h) to rule 15Fh–3 in connection with those Exchange Act sections.

(2) *Chief compliance officers.* The requirements of Exchange Act section 15F(k) and Exchange Act rule 15Fk–1, provided that:

(i) The Covered Entity is subject to and complies with the requirements identified in paragraph (c)(3) of this Order and complies with the other conditions in that paragraph;

(ii) All reports required pursuant to MiFID Org Reg article 22(2)(c) must also:

(A) Be provided to the Commission at least annually, and in the English language;

(B) Include a certification signed by the chief compliance officer or senior officer (as defined in Exchange Act rule 15Fk–1(e)(2)) of the Covered Entity that, to the best of the certifier's knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects;

(C) Address the Covered Entity's compliance with:

(i) Applicable requirements under the Exchange Act; and

(ii) The other applicable conditions of this Order in connection with requirements for which the Covered Entity is relying on this Order;

(D) Be provided to the Commission no later than 15 days following the earlier of:

(i) The submission of the report to the Covered Entity's management body; or

(ii) The time the report is required to be submitted to the management body; and

(E) Together cover the entire period that the Covered Entity's annual compliance report referenced in Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk–1(c) would be required to cover.

(3) *Applicable supervisory and compliance requirements.* (i) Paragraphs (c)(1) and (c)(2) are conditioned on the Covered Entity being subject to and complying with the following requirements:

(A) MiFID articles 16 and 23; SSMA articles 193, 194, 208bis, 220bis, 221, 222, 223, and 224; and RD 217/2008 articles 30, 30bis, 30ter, 30quáter, 30quinqies, 30sexies, 32, 41, 42, 43, 44, 45, 46, 47, 48, 61, 66, 67, 68, 69, 70, 71, 72, 72bis, 72ter, 73, 74, 74bis, 74ter, 75, 75bis, 76, 76bis, and 79; and, if the Covered Entity is a credit institution, also BoS Circular 2/2016 article 43 and RD 84/2015 article 22;

(B) MiFID Org Reg articles 21 through 37, 72 through 76 and Annex IV;

(C) CRD articles 74, 76, 79 through 87, 88(1), 91(1) and (2), 91(7) through (9), 92, 94, and 95; SSMA articles 182(1) and (2) and 183(1) and (2); and RD 217/2008 article 35; and, if the Covered Entity is a credit institution, also LOSSEC articles 24, 25, 26, 27, 28, 29, 32, 33, 34, 36, 37, and 38; RD 84/2015 articles 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, and 54; and BoS Circular 2/2016 articles 26, 27, 28, 29, 30, 31, 32, 33(4), 34, 35, 36, 37, 38, 39, 40, 41, 46, 47, 48, 49, 50, 51, 52, and 60; and, if the Covered Entity is an investment firm, also SSMA articles 183(3), 184, 184bis, 185, 185bis, 186, 188, 189(1) through (3) and (5), 189bis, 189ter, and 192bis; and RD 217/2008 articles 14(1)(f), 20, 20bis, 21, 22, 24, 30, 31, 31bis, 36, 38, 39(1) and (2), 40, 88, 90, 91, 92, 93, 94, 95, 96, 97(1) through (3), and 98;

(D) CRR articles 286 through 288 and 293; and

(E) EMIR Margin RTS article 2.

(ii) Paragraphs (c)(1) and (c)(2) also are conditioned on the Covered Entity's compliance with the following conditions:

(A) If the Covered Entity is an investment firm, the Covered Entity is not exempt from certain provisions of RD 217/2008 pursuant to RD 217/2008 article 87(2) and/or (3) and/or exempt from SSMA article 189 pursuant to SSMA article 189(6) and/or (7); and

(B) If the Covered Entity is an investment firm, the Covered Entity establishes, maintains, and implements policies and procedures for management of residual risk associated with the use of recognized credit risk mitigation techniques described in RD 217/2008 article 103(1)(c).

(4) *Additional condition to paragraph (c)(1).* Paragraph (c)(1) further is conditioned on the requirement that the Covered Entity complies with the provisions specified in paragraph (c)(3) as if those provisions also require compliance with:

(i) Applicable requirements under the Exchange Act; and

(ii) The other applicable conditions of this Order in connection with requirements for which the Covered Entity is relying on this Order.

(d) *Substituted compliance in connection with counterparty protection requirements.*

This Order extends to the following provisions related to counterparty protection:

(1) *Disclosure of information regarding material risks and characteristics.* The requirements of Exchange Act rule 15Fh–3(b) relating to disclosure of material risks and characteristics of one or more security-based swaps subject thereto, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of MiFID article 24(4); SSMA articles 209(1) and (3) and 210(1); RD 217/2008 articles 65 and 77(1); and MiFID Org Reg articles 48–50.

(2) *Disclosure of information regarding material incentives or conflicts of interest.* The requirements of Exchange Act rule 15Fh–3(b) relating to disclosure of material incentives or conflicts of interest that a Covered Entity may have in connection with one or more security-based swaps subject thereto, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of either:

(i) MiFID article 23(2) and (3); RD 217/2008 article 61(2) and (3); and MiFID Org Reg articles 33–35;

(ii) MiFID article 24(9); MiFID Delegated Directive article 11(5); and SSMA articles 220ter, 220quáter, and 220quinquies; RD 217/2008 articles 62, 63, and 64; or

(iii) MAR article 20(1) and MAR Investment Recommendations Regulation articles 5 and 6.

(3) ''*Know your counterparty.*'' The requirements of Exchange Act rule 15Fh–3(e), as applied to one or more security-based swap counterparties subject thereto, provided that the Covered Entity, in relation to the relevant security-based swap counterparty, is subject to and complies with the requirements of MiFID article 16(2) and (6); SSMA articles 193(2)(a) and 194(1); RD 217/2008 articles 30 and 32(1) and (10); MiFID Org Reg articles 21, 22, 25, 26, 72, 74, 75 and applicable parts of Annexes I and IV; CRD articles 74(1) and 85(1); SSMA articles 182(1) and 193(3)(b); and RD 217/2008 article 35 and, if the Covered Entity is a credit institution, also LOSSEC article 29(1); RD 84/2015 articles 43 and 52(1); BoS Circular 2/2016 article 28; and, if the Covered Entity is an investment firm, also SSMA article 189bis and RD 217/2008 article 96(1).

(4) *Suitability.* The requirements of Exchange Act rule 15Fh–3(f), as applied to one or more recommendations of a security-based swap or trading strategy involving a security-based swap subject thereto, provided that:

(i) The Covered Entity, in relation to the relevant recommendation, is subject to and complies with the requirements of MiFID articles 24(2) and (3) and 25(1) and (2); SSMA articles 208ter(1) and (2), 209(2), 212, 213, and 220sexies; RD 217/2008 articles 66, 71, 72, 72bis, 72ter, 73, 74, 74bis, 74ter, 75, 75bis, 76bis, and 80; CNMV Technical Guide 4/2017; and MiFID Org Reg articles 21(1)(b) and (d), 54, and 55; and

(ii) The counterparty to which the Covered Entity makes the recommendation is a ''professional client'' mentioned in MiFID Annex II section I and in SSMA article 205 and RD 217/2008 article 58 and is not a ''special entity'' as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh–2(d).

(5) *Fair and balanced communications.* The requirements of Exchange Act rule 15Fh–3(g), as applied to one or more communications subject thereto, provided that the Covered Entity, in relation to the relevant communication, is subject to and complies with the requirements of:

(i) Either MiFID articles 24(1) and (3) and SSMA articles 208 and 209(2) or MiFID article 30(1) and SSMA article 207(4); and

(ii) MiFID articles 24(4) and (5); SSMA articles 209(1) and (3) and 210(1); RD 217/2008 article 77; MiFID Org Reg articles 46–48; MAR articles 12(1)(c), 15 and 20(1); and MAR Investment Recommendations Regulation articles 3 and 4.

(6) *Daily mark disclosure.* The requirements of Exchange Act rule 15Fh–3(c), as applied to one or more security-based swaps subject thereto, provided that the Covered Entity is required to reconcile, and does reconcile, the portfolio containing the relevant security-based swap on each business day pursuant to EMIR articles 11(1)(b) and 11(2) and EMIR RTS article 13.

(e) *Substituted compliance in connection with recordkeeping, reporting, and notification requirements.*

This Order extends to the following provisions that apply to a Covered Entity related to recordkeeping, reporting, and notification:

(1)(i) *Make and keep current certain records.* The requirements of the following provisions of Exchange Act rule 18a–5, provided that the Covered Entity complies with the relevant conditions in this paragraph (e)(1)(i) and with the applicable conditions in paragraph (e)(1)(ii):

(A) The requirements of Exchange Act rule 18a–5(b)(1), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 74, 75, and Annex IV; MiFIR article 25(1);

(B) The requirements of Exchange Act rule 18a–5(b)(2), provided that the Covered Entity is subject to and complies with the requirements of MiFID Delegated Directive article 2; MiFID Org Reg articles 72, 74 and 75; EMIR article 39(4); RD 217/2008 article 41;

(C) The requirements of Exchange Act rule 18a–5(b)(3), provided that the Covered Entity is subject to and complies with the requirements of CRR article 103; MiFID articles 16(6), 25(5), and 25(6); MiFID Org Reg articles 59, 74, 75 and Annex IV; MiFIR article 25(1); EMIR articles 9(2) and 11(1)(a); SSMA articles 194(1), 218, and 211; and RD 217/2008 articles 3, 32(1), and 82;

(D) The requirements of Exchange Act rule 18a–5(b)(4), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg article 59; EMIR articles 9(2) and 11(1)(a); MiFID articles 16(6), 25(5), and 25(6); SSMA articles 194(1), 218, and 211; and RD 217/2008 articles 3, 32(1), and 82;

(E) The requirements of Exchange Act rule 18a–5(b)(5), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 74, 75, and Annex IV; and MiFIR article 25(1);

(F) The requirements of Exchange Act rules 18a–5(b)(6) and (b)(11), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of CRR articles 103, 105(3), and 105(10); CRD article 73; MiFID articles 16(6), 25(5), 25(6); MiFID Delegated Directive article 2; MiFID Org Reg articles 59, 74, 75, and Annex IV; MiFIR article 25(1); EMIR articles 9(2), 11(1)(a), and 39(4); SSMA articles 194(1), 218, 211; and RD 217/2008 articles 3, 32(1), 41, and 82; and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 15Fi-2 pursuant to this Order;

(G) The requirements of Exchange Act rule 18a–5(b)(7), provided that the Covered Entity is subject to and complies with the requirements of MiFIR article 25(1); MiFID article 25(2); MiFID Org Reg article 74 and section 1 of Annex 4; and SSMA article 213; (H) The requirements of Exchange Act rule 18a–5(b)(8), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(1)(d), 35; CRD articles 88,

91(1), 91(8); MiFID articles 9(1) and 16(3); SSMA articles 193(2)(b) and 208bis; LOSSEC articles 24(1) and 29(2); and BoS Circular 2/2016 Rule 32(1);

(I) The requirements of Exchange Act rule 18a–5(b)(13), regarding one or more provisions of Exchange Act rules 15Fh–3 or 15Fk–1 for which substituted compliance is available under this Order, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 73, 74, 75, and Annexes I and IV; MiFID articles 16(6) and 25(2); EMIR article 39(5); SSMA articles 194(1) and 213; and RD 217/2008 article 32(1) and (10), in each case with respect to the relevant security-based swap or activity;

(*2*) With respect to the portion of Exchange Act rule 18a-5(b)(13) that relates to one or more provisions of Exchange Act rule 15Fh–3 for which substituted compliance is available under this Order, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh–3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and

(*3*) With respect to the portion of Exchange Act rule 18a–5(b)(13) that relates to Exchange Act rule 15Fk–1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk–1 pursuant to this Order;

(J) The requirements of Exchange Act rule 18a–5(b)(14)(i) and (ii), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(b) and EMIR RTS article 15(1)(a); and

(*2*) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi–3 pursuant to this Order; and

(K) The requirements of Exchange Act rule 18a–5(b)(14)(iii), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(b) and EMIR RTS article 15(1)(a), in each case with respect to such security-based swap portfolio(s); and

(*2*) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi–4 pursuant to this Order.

(ii) Paragraph (e)(1)(i) is subject to the following further conditions:

(A) Paragraphs (e)(1)(i)(A) through (C) and (G) are subject to the condition that the Covered Entity preserves all of the data elements necessary to create the records required by the applicable Exchange Act rules cited in such paragraphs and upon request furnishes promptly to representatives of the Commission the records required by those rules;

(B) A Covered Entity may apply the substituted compliance determination in paragraph (e)(1)(i)(I) to records of compliance with Exchange Act rule 15Fh–3(b), (c), (e), (f) and (g) in respect of one or more security-based swaps or activities related to security-based swaps; and

(C) This Order does not extend to the requirements of Exchange Act rule 18a–5(b)(9), (b)(10) or (b)(12).

(2)(i) *Preserve certain records.* The requirements of the following provisions of Exchange Act rule 18a–6, provided that the Covered Entity complies with the relevant conditions in this paragraph (e)(2)(i) and with the applicable conditions in paragraph (e)(2)(ii):

(A) The requirements of Exchange Act rule 18a–6(a)(2), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 74, 75, and Annex IV; CRR article 103; MiFIR article 25(1); EMIR article 9(2); MiFID articles 16(6) and 69(2); CRD article 73; MiFID Delegated Directive article 2; SSMA articles 194(1), 234; and RD 217/2008 articles 32(1) and 41;

(B) The requirements of Exchange Act rule 18a–6(b)(2)(i), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 74, 75, and Annex IV; CRR article 103; MiFIR article 25(1); EMIR article 9(2); MiFID articles 16(6) and 69(2); CRD article 73; MiFID Delegated Directive article 2; SSMA articles 194(1), 234; and RD 217/2008 articles 32(1) and 41;

(C) The requirements of Exchange Act rule 18a–6(b)(2)(ii), provided that the Covered Entity is subject to and complies with the requirements of CRR article 103; MiFID Org Reg articles 72, 73, 74, 75, 76, Annex I and Annex IV; MiFIR article 25(1); EMIR article 9(2); CRD article 73; MiFID articles 16(6), 16(7); MiFID Delegated Directive article 2; SSMA articles 194(1) through (3); and RD 217/2008 articles 32(1) through (8) and 41;

(D) The requirements of Exchange Act rule 18a–6(b)(2)(iii), provided that the Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg articles 72(1) and 73; MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1);

(E) The requirements of Exchange Act rule 18a–6(b)(2)(iv), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72(1) and 73; MiFIR article 25(1); EMIR article 9(2); MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1);

(F) The requirements of Exchange Act rule 18a–6(b)(2)(vii), regarding one or more provisions of Exchange Act rules 15Fh–3 or 15Fk–1 for which substituted compliance is available under this Order, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg articles 72, 74, and 75 and Annexes I and IV; MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1) and (10), in each case with respect to the relevant security-based swap or activity;

(*2*) With respect to the portion of Exchange Act rule 18a–6(b)(2)(vii) that relates to one or more provisions of Exchange Act rule 15Fh–3 for which substituted compliance is available under this Order, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh–3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and

(*3*) With respect to the portion of Exchange Act rule 18a–6(b)(2)(vii) that relates to Exchange Act rule 15Fk–1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk–1 pursuant to this Order;

(G) The requirements of Exchange Act rule 18a–6(c), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(1)(f) and 72(1); MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1); and

(*2*) This Order does not extend to the requirements of Exchange act rule 18a–6(c) relating to Forms SBSE, SBSE–A, SBSE–C, SBSE–W, all amendments to these forms, and all other licenses or other documentation showing the registration of the Covered Entity with any securities regulatory authority or the U.S. Commodity Futures Trading Commission;

(H) The requirements of Exchange Act rule 18a–6(d)(1), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 35 and 72(1); CRD articles 88, 91(1), 91(8); MiFID article 9(1), 16(3), 16(6); LOSSEC articles 24(1) and 29(1) and (2); SSMA articles 193(2)(b), 194(1), and 208bis; RD 217/2008 articles 30, 31, and 32(1); and BoS Circular 2/2016 Rule 32(1);

(I) The requirements of Exchange Act rule 18a–6(d)(2)(ii), provided that the Covered Entity is subject to and

complies with the requirements of EMIR article 9(2); MiFID Org Reg articles 72(1) and 72(3); MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1);

(J) The requirements of Exchange Act rule 18a–6(d)(3)(ii), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(1)(f), 72, 73, and Annex I; MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1);

(K) The requirements of Exchange Act rule 18a–6(d)(4) and (d)(5), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg articles 24, 25(2), 72(1) and 73; MiFID articles 16(2), 16(6), and 25(5); SSMA articles 193(2)(a), 194(1), and 218; and RD 217/2008 articles 30(2), 32(1), and 82; and

(*2*) The Covered Entity applies substituted compliance for Exchange Act rules 15Fi–3, 15Fi–4, and 15Fi–5 pursuant to this Order;

(L) The requirements of Exchange Act rule 18a–6(e), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(2), 58, 72(1) and 72(3); MiFID articles 16(5), 16(6); SSMA articles 193(3) and 194(1); and RD 217/2008 article 32(1); and

(M) The requirements of Exchange Act rule 18a–6(f), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg article 31(1); MiFID article 16(5); and SSMA article 193(3).

(ii) Paragraph (e)(2)(i) is subject to the following further conditions:

(A) A Covered Entity may apply the substituted compliance determination in paragraph (e)(2)(i)(F) to records related to Exchange Act rule 15Fh–3(b), (c), (e), (f) and (g) in respect of one or more security-based swaps or activities related to security-based swaps; and

(B) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(2)(v), (b)(2)(vi), or (b)(2)(viii).

(3) *File Reports.* The requirements of Exchange Act rule 18a–7(a)(2) and the requirements of Exchange Act rule 18a–7(j) as applied to the requirements of Exchange Act rule 18a–7(a)(2), provided that:

(i) The Covered Entity is subject to and complies with the requirements of CRR articles 99, 394, 430 and Part Six: Title II and Title III; CRR Reporting ITS annexes I, II, III, IV, V, VIII, IX, X, XI, XII and XIII, as applicable; and

(ii) The Covered Entity files periodic unaudited financial and operational information with the Commission or its designee in the manner and format required by Commission rule or order and presents the financial information in the filing in accordance with generally accepted accounting principles that the Covered Entity uses to prepare general purpose publicly available or available to be issued financial statements in Spain.

(4)(i) *Provide Notification.* The requirements of the following provisions of Exchange Act rule 18a–8, provided that the Covered Entity complies with the relevant conditions in this paragraph (e)(4)(i) and with the applicable conditions in paragraph (e)(4)(ii):

(A) The requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of Exchange Act rule 18a–8(c), provided that the Covered Entity is subject to and complies with the requirements of LOSSEC articles 116, 119, 121, and 122; and SSMA articles 276bis, 276ter, 276quáter, and 276quinquies;

(B) The requirements of Exchange Act rule 18a–8(d) and the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of Exchange Act rule 18a–8(d), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of LOSSEC articles 116, 119, 121, and 122; and SSMA articles 276bis, 276ter, 276quáter, and 276quinquies; and

(*2*) This Order does not extend to the requirements of Exchange Act rule 18a–8(d) to give notice with respect to books and records required by Exchange Act rule 18a–5 for which the Covered Entity does not apply substituted compliance pursuant to this Order;

(ii) Paragraph (e)(4)(i) is subject to the following further conditions:

(A) The Covered Entity:

(*1*) Simultaneously sends a copy of any notice required to be sent by Spanish law cited in this paragraph of the Order to the Commission in the manner specified on the Commission's website; and

(*2*) Includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice; and

(B) This Order does not extend to the requirements of paragraph (g) of rule 18a–8 or to the requirements of Exchange Act rule 18a–8(h) as applied to such requirements.

(5) *Daily Trading Records.* The requirements of Exchange Act section 15F(g), provided that the Covered Entity is subject to and complies with the requirements of SSMA Article 194(1); and RD 217/2008 Article 32(1).

(6) *Examination and Production of Records.* Notwithstanding the forgoing provisions of paragraph (e) of this Order, this Order does not extend to, and Covered Entities remain subject to, the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a–6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the Covered Entity that are required to be preserved under Exchange Act rule 18a–6, or any other records of the Covered Entity that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.

(7) *English Translations.* Notwithstanding the forgoing provisions of paragraph (e) of this Order, to the extent documents are not prepared in the English language, Covered Entities must promptly furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F of this Order.

(f) *Definitions.*

(1) ''Covered Entity'' means an entity that:

(i) Is a security-based swap dealer or major security-based swap participant registered with the Commission;

(ii) Is not a ''U.S. person,'' as that term is defined in rule 3a71–3(a)(4) under the Exchange Act; and

(iii) Is an investment firm or a credit institution authorized by the CNMV and the ECB to provide investment services and/or perform investment activities in the Kingdom of Spain; and

(iv) Is a significant institution supervised by the CNMV and the ECB (with the participation of the BoS).

(2) ''MiFID'' means the ''Markets in Financial Instruments Directive,'' Directive 2014/65/EU, as amended from time to time.

(3) ''MiFID Org Reg'' means Commission Delegated Regulation (EU) 2017/565, as amended from time to time.

(4) ''MiFID Delegated Directive'' means Commission Delegated Directive (EU) 2017/593, as amended from time to time.

(5) ''MiFIR'' means Regulation (EU) 600/2014, as amended from time to time.

(6) ''EMIR'' means the ''European Market Infrastructure Regulation,''

Regulation (EU) 648/2012, as amended from time to time.

(7) ''EMIR RTS'' means Commission Delegated Regulation (EU) 149/2013, as amended from time to time.

(8) ''EMIR Margin RTS'' means Commission Delegated Regulation (EU) 2016/2251, as amended from time to time.

(9) ''CRD'' means Directive 2013/36/EU, as amended from time to time.

(10) ''CRR'' means Regulation (EU) 575/2013, as amended from time to time.

(11) ''CRR Reporting ITS'' means Commission Implementing Regulation (EU) 680/2014, as amended from time to time.

(12) ''MAR'' means the ''Market Abuse Regulation,'' Regulation (EU) 596/2014, as amended from time to time.

(13) ''MAR Investment Recommendations Regulation'' means Commission Delegated Regulation (EU) 2016/958, as amended from time to time.

(14) ''CNMV'' means the Spanish Comisión Nacional del Mercado de Valores.

(15) ''BoS'' means the Spanish Banco de España.

(16) ''ECB'' means the European Central Bank.

(17) ''Accounting Directive'' means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013, as amended from time to time.

(18) ''BRRD'' means Bank Recovery and Resolution Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014, as amended from time to time.

(19) ''SSMA'' means the Spanish Securities Market Act, Royal Legislative Decree 4/2015, of October 23, as amended from time to time.

(20) ''RD 217/2008'' means Royal Decree 217/2008, of February 15, as amended from time to time.

(21) ''LOSSEC'' means the Act on Regulation, Supervision, and Solvency of Credit Institutions, Law 10/2014, of June 26, as amended from time to time.

(22) ''RD 84/2015'' means Royal Decree 84/2015, of February 13, as amended from time to time.

(23) ''BoS Circular 2/2016'' means Circular 2/2016, of February 2, of the Bank of Spain, as amended from time to time.

(24) ''Prudentially regulated'' means a Covered Entity that has a ''prudential regulator'' as that term is defined in Exchange Act section 3(a)(74).

By the Commission.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–23444 Filed 10–27–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93411; File No. S7–08–21]

Amended and Restated Order Granting Conditional Substituted Compliance in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany; Amended Orders Addressing Non-U.S. Security-Based Swap Entities Subject to Regulation in the French Republic or the United Kingdom; and Order Extending the Time To Meet Certain Conditions Relating to Capital and Margin

October 22, 2021.

I. Overview

A. Amended and Restated Order

Pursuant to Securities Exchange Act of 1934 (''Exchange Act'') rule 3a71–6, in December 2020, the Securities and Exchange Commission (''Commission'') issued a substituted compliance order [1] providing that security-based swap dealers and major security-based swap participants (''SBS Entities'') subject to regulation in the Federal Republic of Germany (''Germany'') conditionally may satisfy certain requirements under the Exchange Act related to risk control, internal supervision and compliance, counterparty protection, and books and records by complying with comparable German and European Union (''EU'') requirements.[2] The German Order did not address substituted compliance for Exchange Act capital and margin requirements applicable to SBS Entities without a prudential regulator.

In August 2021, the Bundesanstalt für Finanzdienstleistungsaufsicht (''BaFin'') submitted an amended ''substituted compliance'' application (''Amended Application'') requesting that the Commission amend the existing German Order [3] to address nonbank capital and margin requirements.[4] The Amended Application incorporated comparability analyses between the relevant requirements in Exchange Act section 15F and the rules and regulations thereunder for which BaFin is seeking substituted compliance determinations and applicable German and EU law, as well as information regarding German supervisory and enforcement frameworks.

On August 12, 2021, the Commission issued a notice of the Amended Application, accompanied by a proposed amended and restated substituted compliance order (the ''proposed Amended Order'').[5] In addition to addressing margin and capital requirements, the proposed Amended Order proposed changes the Commission preliminarily viewed as necessary to align the German Order with substituted compliance orders for SBS Entities subject to regulation in the French Republic (''France'') [6] and the United Kingdom (''UK'') [7] which the

[1] *See* Exchange Act Release No. 90765 (Dec. 22, 2020), 85 FR 85686 (Dec. 29, 2020) (''German Order'').

[2] ''Risk control'' includes requirements related to internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute resolution, portfolio compression and trading relationship documentation; ''internal supervision and compliance'' includes requirements related to diligent supervision, conflicts of interest, information gathering under Exchange Act section 15F(j), 15 U.S.C. 78*o*–10(j), and chief compliance officers; ''counterparty protection'' includes requirements related to disclosure of material risks and characteristics and material incentives or conflicts of interest, ''know your counterparty,'' suitability of recommendations, fair and balanced communications, disclosure of daily marks and disclosure of clearing rights; and ''books and records'' includes requirements related to making and keeping current certain prescribed records, preservation of records, reporting, notification and securities counts.

[3] *See* Letter from Thorsten Pötzsch, Chief Executive Director of BaFin's Resolution Sector, BaFin, to Vanessa Countryman, Secretary, Commission, dated August 12, 2021. The Amended Application is available on the Commission's website at: *https://www.sec.gov/page/exchange-act-substituted-compliance-and-listed-jurisdiction-applications-security-based-swap.*

[4] ''Capital and margin'' includes requirements related to capital applicable to non-prudentially regulated security-based swap dealers and to margin applicable to non-prudentially regulated SBS Entities. More specifically, the Amended Application requested that the Commission extend the German Order to also provide for substituted compliance for the capital requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d (collectively, ''Exchange Act Rule 18a–1''), the margin requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–3, and related recordkeeping, reporting, notification, and securities count requirements.

[5] *See* Exchange Act Release No. 92647 (Aug. 12, 2021), 86 FR 46500 (Aug. 18, 2021) (''German Substituted Compliance Notice and Proposed Amended Order'').

[6] *See* Exchange Act Release No. 92484 (July 23, 2021), 86 FR 41612 (Aug. 2, 2021) (''French Order''). *See also* Exchange Act Release No. 90766 (Dec. 22, 2020), 85 FR 85720 (Dec. 29, 2020) (''French Substituted Compliance Notice and Proposed Order''); Exchange Act Release No. 91477 (Apr. 5, 2021), 86 FR 18341 (Apr. 8, 2021) (''French Reopening Release'').

[7] *See* Exchange Act Release No. 92529 (July 30, 2021), 86 FR 43318 (Aug. 6, 2021) (''UK Order''). *See also* Exchange Act Release No. 91476 (Apr. 5, 2021), 86 FR 18378 (Apr. 8, 2021) (''UK Substituted Compliance Notice and Proposed Order'').

Commission finalized after issuing the German Order.[8]

As discussed below, the Commission is adopting an Amended Order that has been modified from the proposal in certain respects to address commenter concerns and to make clarifying changes.

B. Amendments to French and UK Orders

The French and UK Orders include an additional capital condition that is designed to ensure comparable regulatory outcomes between Exchange Act capital requirements and French and UK capital requirements, respectively.[9] The Commission proposed an identical additional capital condition with respect to non-U.S. security-based swap dealers subject to regulation in Germany applying substituted compliance with respect to Exchange Act capital requirements.[10] As discussed in part V, the Commission is modifying this additional capital condition in the Amended Order. These modifications respond to comments that were also directed to the capital conditions in the French and UK Orders.[11] The Commission is now issuing an order to amend the French and UK Orders to make the additional capital conditions in those orders consistent with the additional capital condition in the Amended Order.

In addition, in response to one commenter's concern regarding general condition (a)(5) as discussed in parts II.B and IV below,[12] which is relevant to French and UK Orders as well, the Commission is amending the French and UK Orders.

C. Order Extending Time To Meet Certain Capital Conditions

In addition, as discussed in part V, the Commission is extending until January 1, 2022 the time to meet certain additional conditions to applying substituted compliance to Exchange Act capital and margin requirements in the Amended Order, the French Order, and the UK Order. The Commission also is extending the compliance date for Exchange Act capital requirements for a certain type of security-based swap dealer located in Germany.

II. Substituted Compliance Framework, Scope of Substituted Compliance, and Prerequisites

A. Substituted Compliance Framework and Purpose

As the Commission discussed when it finalized the German Order,[13] Exchange Act rule 3a71–6 provides a framework whereby non-U.S. SBS Entities may satisfy certain requirements under Exchange Act section 15F by complying with comparable regulatory requirements of a foreign jurisdiction.[14] Because substituted compliance does not constitute exemptive relief, but instead provides an alternative method by which non-U.S. SBS Entities may comply with applicable Exchange Act requirements, the non-U.S. SBS Entities would remain subject to the relevant requirements under section 15F. The Commission accordingly will retain the authority to inspect, examine and supervise those SBS Entities' compliance and take enforcement action as appropriate. Under the substituted compliance framework, failure to comply with the applicable foreign requirements and other conditions to a substituted compliance order would lead to a violation of the applicable requirements under the Exchange Act and potential enforcement action by the Commission (as opposed to automatic revocation of the substituted compliance order).

Under rule 3a71–6, substituted compliance potentially is available in connection with certain section 15F requirements,[15] but is not available in connection with antifraud prohibitions and certain other requirements under the Federal securities laws.[16] As stated in the German Order, SBS Entities in Germany accordingly must comply directly with those requirements notwithstanding the availability of substituted compliance for other requirements.[17]

The substituted compliance framework reflects the cross-border nature of the security-based swap market, and is intended to promote efficiency and competition by helping to address potential duplication and inconsistency between relevant U.S. and foreign requirements.[18] In practice, substituted compliance may be expected to help SBS Entities leverage their existing systems and practices to comply with relevant Exchange Act requirements in conjunction with their compliance with relevant foreign requirements. Market participants began to count security-based swap transactions toward the thresholds for registration with the Commission as an SBS Entity on August 6, 2021, and the first security-based swap dealers and major security-based swap participants are required to be registered with the Commission by November 1, 2021 and December 1, 2021, respectively.[19] Substituted compliance should assist relevant non-U.S. security-based swap market participants in preparing for registration.

B. Scope of Substituted Compliance

BaFin, in both its initial application and its Amended Application, sought substituted compliance for SBS Entities subject to regulation in Germany for entity-level and transaction-level Exchange Act requirements. For entity-level Exchange Act requirements,[20] a

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[8] In addition, the Commission had the benefit of the public comment on the French Substituted Compliance Notice and Proposed Order, the French Reopening Release and the UK Substituted Compliance Notice and Proposed Order, some of which also referenced the German Order. *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46500 n.6.

[9] *See* French Order, 86 FR 41630–36, 41659; UK Order, 86 FR 43338–44, 43372.

[10] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46505–09, 46528–29.

[11] *See* Letter from Kyle Brandon, Managing Director, Head of Derivatives Policy, SIFMA (Sept. 13, 2021) (''SIFMA II Letter'') at 2. Comments may be found on the Commission's website at: *http://www.sec.gov/comments/s7-08-21/s70821.htm.*

[12] *See* SIFMA II Letter at 3.

[13] *See* German Order, 85 FR 85687. *See also, e.g.,* French Substituted Compliance Notice and Proposed Order, 85 FR 85721.

[14] *See* Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30079 (May 13, 2016) (''Business Conduct Adopting Release'').

[15] 17 CFR 240.3a71–6(d).

[16] Exchange Act Release No. 90378 (Nov. 9, 2020), 85 FR 72726, 72727 nn.11 & 12 (Nov. 13, 2020)(''German Substituted Compliance Notice and Proposed Order'')(addressing unavailability of substituted compliance in connection with antifraud provisions, as well as provisions related to transactions with counterparties that are not eligible contract participants (''ECPs''), segregation of customer assets, required clearing upon counterparty election, regulatory reporting and public dissemination, and registration of offerings).

[17] *See* German Order, 85 FR 85687.

[18] *See generally* Business Conduct Adopting Release, 81 FR 30073 (noting that the cross-border nature of the security-based swap market poses special regulatory challenges, in that relevant U.S. requirements ''have the potential to lead to requirements that are duplicative of or in conflict with applicable foreign business conduct requirements, even when the two sets of requirements implement similar goals and lead to similar results'').

[19] *See* ''Key Dates for Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,'' available at *https://www.sec.gov/page/key-dates-registration-security-based-swap-dealers-and-major-security-based-swap-participants.*

[20] The entity-level requirements relate to capital and margin, books and records (other than those linked to the counterparty protection rules), internal risk management systems, trade acknowledgement and verification, portfolio reconciliation, compression, trading relationship documentation, and internal supervision and chief compliance officer requirements. *See* Exchange Act Release No. 86175 (June 21, 2019) 84 FR 43872, 43879 (Aug 22, 2019) (''Capital and Margin Adopting Release''); Exchange Act Release No. 87005 (June 19, 2019) 84 FR 68550, 68596 (Dec. 16, 2019) (''Books and Records Adopting Release''); Exchange Act Release No. 78011 (June 8, 2016) 81 FR 39808, 39827 (June 17, 2016) (''TAV Adopting Release''); Exchange Act Adopting Release No.

Covered Entity (as such term in defined in the Amended Order) [21] must choose either to apply substituted compliance pursuant to the proposed Amended Order with respect to all security-based swap business subject to the relevant German and EU requirements or to comply directly with the Exchange Act with respect to all such business; a Covered Entity may not choose to apply substituted compliance for some of the business subject to the relevant German or EU requirements and comply directly with the Exchange Act for another part of the business that is subject to the relevant German and EU requirements. Additionally, for entity-level Exchange Act requirements, if the Covered Entity also has security-based swap business that is not subject to the relevant German requirements, the Covered Entity must either comply directly with the Exchange Act for that business or comply with the terms of another applicable substituted compliance order.[22] For transaction-level Exchange Act requirements,[23] a Covered Entity may decide to apply substituted compliance for some of its security-based swap business and to comply directly with the Exchange Act (or comply with another applicable substituted compliance order) for other parts of its security-based swap business.

One commenter requested that the Commission make an exception to its approach to substituted compliance for entity-level requirements when a Covered Entity enters into a security-based swap with a counterparty that is not subject to EMIR.[24] The commenter asked that the Commission permit the Covered Entity, in those circumstances, to choose either to apply the relevant EMIR-related requirements to that counterparty as though it were covered by EMIR or to comply directly with the relevant Exchange Act requirement. In effect, the commenter asked that Covered Entities be permitted to treat entity-level requirements as transaction-level requirements when the Covered Entity enters into a security-based swap with a counterparty that is not subject to EMIR. The commenter made a related request with respect to counterparties not subject to EMIR, which the Commission addresses in part IV.B below.

The Amended Order requires a Covered Entity to be subject to and comply with EMIR-related requirements if it applies substituted compliance for Exchange Act entity-level requirements related to internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute resolution, portfolio compression, trading relationship documentation, internal supervision, chief compliance officers, recordkeeping, and securities count requirements. When the Commission adopted these requirements, it determined that SBS Entities should apply them at an entity level.[25] The Commission believes that allowing non-U.S. SBS Entities to follow a different approach to these entity-level requirements for purposes of the Amended Order would undermine its decision to require all SBS Entities to apply these requirements at an entity level and create unwarranted disparities in the requirements applicable to SBS Entities. In choosing to use substituted compliance for an Exchange Act entity-level requirement, the Covered Entity is choosing to comply with the relevant conditions of the Amended Order. Any Covered Entity that wishes to avoid complying with the relevant conditions of the Amended Order, such as applying EMIR-related requirements to all of its business that satisfies all conditions of the Amended Order, may do so by choosing not to use substituted compliance for the relevant entity-level requirements.

For these reasons, and for the reasons discussed in part IV.B below, the Commission is not making an exception to its approach to substituted compliance for entity-level requirements when a Covered Entity enters into a security-based swap with a counterparty that is not subject to EMIR. Commenters did not address the proposed approach to substituted compliance for transaction-level requirements. The Commission accordingly is issuing the Amended Order with the proposed approach to entity-level and transaction-level requirements.

C. Specific Prerequisites

1. Covered Entity

Under the German Order, the definition of ''Covered Entity'' specified which entities could make use of substituted compliance.[26] In connection with its Amended Application related to capital and margin requirements, BaFin requested substituted compliance with respect to investment firms and credit institutions that are authorized by BaFin to provide investment services or perform investment activities in Germany and are supervised by the European Central Bank (''ECB'') as significant institutions (or had a licensing application pending as of August 12, 2021).[27] In order to ensure that the firms that would rely on the proposed Amended Order are subject to the relevant German and EU requirements and oversight, the proposed definition was revised in accordance with BaFin's request.[28]

Commenters did not address the amended ''Covered Entity'' definition, and the Commission is issuing the definition as proposed.[29] Substituted compliance accordingly is available only to Covered Entities that are subject to the relevant German and EU regulatory requirements and oversight.

2. Comparability of Regulatory Outcomes

As discussed in the German Order and earlier in the German Substituted Compliance Notice and Proposed Order,[30] Rule 3a71–6 describes the requirements for the Commission to make a substituted compliance determination. Under the rule, the Commission must determine that the analogous foreign requirements are comparable to otherwise applicable requirements under the Exchange Act (*i.e.,* the relevant requirements in the Exchange Act and the rules and regulations thereunder), after accounting for factors such as ''the

87782 (Dec. 18, 2019) 85 FR 6359, 6378 (Feb. 4, 2020) (''Risk Mitigation Adopting Release''); Business Conduct Adopting Release, 81 FR 30064.

[21] *See* para. (g)(1)(iii) of the Amended Order.

[22] In the context of the EMIR counterparties condition in paragraph (a)(5) of the proposed Amended Order, a Covered Entity would have to choose: (1) To apply substituted compliance pursuant to the proposed Amended Order—including compliance with paragraph (a)(5) as applicable—for a particular set of entity-level requirements with respect to all of its business that would be subject to the relevant EMIR-based requirement if the counterparty were the relevant type of counterparty; or (2) to comply directly with the Exchange Act with respect to such business.

[23] Transaction-level requirements encompass business conduct requirements for the protection of counterparties, and additional provisions for the protection of special entities. *See* Business Conduct Adopting Release, 81 FR 30065.

[24] *See* SIFMA II Letter at 3.

[25] *See* note 20, *supra.*

[26] The German Order defined a ''Covered Entity'' as an entity that (i) is an SBS Entity registered with the Commission; (ii) is not a ''U.S. person,'' as that term is defined in Exchange Act rule 3a71–3(a)(4); and (iii) is an investment firm or credit institution authorized by BaFin to provide investment services or perform investment activities in Germany. See para. (f)(1) of the German Order, 85 FR 85700.

[27] *See* Amended Application at 1. The Amended Application requested that firms that had a licensing application pending with the ECB as of the date of the Amended Application be included within the definition of Covered Entity.

[28] *See* para. (g)(1)(iii) of the proposed Amended Order; *see also* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46533.

[29] *See* para. (g)(1)(iii) of the Amended Order.

[30] *See* German Order, 85 FR 85687; German Substituted Compliance Notice and Proposed Order, 85 FR 72727.

scope and objectives of the relevant foreign regulatory requirements'' and ''the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised'' by the foreign authority.[31] As noted upon adoption of the German Order and subsequent substituted compliance orders, the comparability assessments are to be based on a ''holistic approach'' that ''will focus on the comparability of regulatory outcomes rather than predicating substituted compliance on requirement-by-requirement similarity.'' [32] The Commission has concluded that this comparability prerequisite is met in connection with a number of requirements under the Exchange Act, in some cases with the addition of conditions to help ensure the comparability of regulatory outcomes.[33]

3. Memoranda of Understanding

Exchange Act rule 3a71–6(a)(2)(ii) further predicates the availability of substituted compliance on the Commission and the foreign financial regulatory authority or authorities entering into a supervisory and enforcement memorandum of understanding and/or other arrangement with the relevant foreign financial regulatory authorities ''addressing supervisory and enforcement cooperation and other matters arising under the substituted compliance determination.'' [34] With the proposed expansion of substituted compliance to nonbank capital and margin requirements, BaFin and the ECB share responsibility for supervising compliance with the provisions of EU and German law applicable to the Amended Order. Accordingly, the Commission entered into relevant memoranda of understanding with BaFin on December 20, 2020 [35] and with the ECB on August 16, 2021.[36] Both memoranda of understanding must be in place before Covered Entities may use substituted compliance to satisfy obligations under the Exchange Act.[37]

4. ''Adequate assurances''

A foreign financial regulatory authority may submit a substituted compliance application only if the authority provides ''adequate assurances'' that no law or policy would impede the ability of any entity that is directly supervised by the authority and that may register with the Commission ''to provide prompt access to the Commission to such entity's books and records or to submit to onsite inspection or examination by the Commission.'' [38] The Commission found that BaFin had satisfied this requirement in connection with the German Order when noticing the application.[39] In addition, in proposing the Amended Order, the Commission stated that BaFin had again satisfied this prerequisite in the Commission's preliminary view, taking into account information and representations that BaFin provided regarding certain German and EU requirements that are relevant to the Commission's ability to inspect, and access the books and records of, firms using substituted compliance pursuant to the Order.[40] The Commission received no comments on this preliminary view and has not changed its view.

III. Amended and Additional General Conditions

The original German Order incorporated a number of general conditions and other prerequisites to help ensure that the relevant German and EU requirements that form the basis for substituted compliance in practice will apply to the Covered Entity's security-based swap business and activities, and to promote the Commission's oversight over entities that avail themselves of substituted compliance.[41] In the German Substituted Compliance Notice and Proposed Amended Order, the Commission proposed to amend certain of the general conditions and prerequisites and to include additional new conditions. The proposed Amended Order would address BaFin's request to extend the German Order to provide substituted compliance for nonbank capital and margin requirements and also provide clarity and consistency with the French Order and the UK Order as described more fully in this part III below.

A. Revision of General Condition Regarding Notice

1. Proposed Approach

The German Order included a general condition that Covered Entities must provide the Commission with written notice of their intent to rely on substituted compliance.[42] To promote clarity in the notice regarding the Covered Entity's intended use of substituted compliance and for consistency with the Commission's other substituted compliance orders, [43] the Commission proposed to amend the general condition to require that the notice identify each specific substituted compliance determination for which the Covered Entity intends to apply substituted compliance. The proposed Amended Order also would require the Covered Entity to amend the notice if it modifies the scope of its reliance on substituted compliance and to send the notice to the Commission in the manner

[31] Exchange Act rule 3a71–6(a)(2)(i).

[32] *See* German Order; 85 FR 85687; French Order, 86 FR 41613; UK Order, 86 FR 43319. *See also* Business Conduct Adopting Release, 81 FR 30078–79 (further recognizing that ''different regulatory systems may be able to achieve some or all of those regulatory outcomes by using more or fewer specific requirements than the Commission, and that in assessing comparability the Commission may need to take into account the manner in which other regulatory systems are informed by business and market practices in those jurisdictions''). The Commission's assessment of a foreign authority's supervisory and enforcement effectiveness—as part of the broader comparability analysis—would be expected to consider not only overall oversight activities, but also oversight specifically directed at conduct and activity relevant to the substituted compliance determination. ''For example, it would be difficult for the Commission to make a comparability determination in support of substituted compliance if oversight is directed solely at the local activities of foreign security-based swap dealers, as opposed to the cross-border activities of such dealers.'' Business Conduct Adopting Release, 81 FR 30079 (footnote omitted).

[33] *See* German Order, 85 FR 85687.

[34] Exchange Act rule 3a71–6(a)(2)(ii).

[35] On December 18, 2020, the Commission and BaFin entered into a memorandum of understanding to address substituted compliance cooperation, a copy of which is on the Commission's website at *www.sec.gov* under the ''Substituted Compliance'' tab, which is located on the ''Security-Based Swap Markets'' page in the Division of Trading and Markets section of the site.

[36] On August 16, 2021, the Commission and the ECB entered into a memorandum of understanding setting forth the conditions under which supervisory and enforcement information for certain subject matters, including but not limited to margin and capital, that is owned by the ECB, can be requested, shared, used and protected from unauthorized disclosure by the SEC and ECB. The memorandum of understanding serves as a framework for consultation, cooperation and the exchange of information between the SEC and the ECB in the supervision, enforcement and oversight of the covered firms. A copy of the memorandum of understanding is available on the Commission's website at *www.sec.gov* under the ''Substituted Compliance'' tab, which is located on the ''Security-Based Swap Markets'' page in the Division of Trading and Markets section of the site.

[37] *See* paras. (a)(7) and (8) of the Amended Order.

[38] *See* Exchange Act rule 3a71–6(c)(3).

[39] *See* German Substituted Compliance Notice and Proposed Order, 85 FR 72728. In adopting the German Order, the Commission reiterated its view with regard to adequate assurances. *See* German Order, 85 FR 85696.

[40] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46522. *See also* Amended Application at 2 (providing ''adequate assurances'' regarding access to books and records and on-site inspections and examinations).

[41] *See* paras. (a)(1) through (7) of the German Order, 85 FR 85698.

[42] *See* para. (a)(6) of the German Order.

[43] *See* French Order, 86 FR 41685; UK Order, 86 FR 43371. *See also* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46501 n.13.

specified on the Commission's website.[44]

2. Commenter Views and Final Provisions

Commenters did not address the revision to the notice requirement in paragraph (a)(9) of the proposed Amended Order for the Covered Entity to notify the Commission in writing of its intent to rely on substituted compliance and the Commission is issuing this requirement as proposed.[45]

B. Additional Condition Regarding Notification of Requirements Related to Changes in Capital

1. Proposed Approach

The Commission proposed to add a general condition that Covered Entities with a prudential regulator relying on substituted compliance pursuant to the proposed Amended Order must apply substituted compliance with respect to the requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule 18a–8(c).[46] Exchange Act rule 18a–8(c) generally requires every security-based swap dealer with a prudential regulator that files a notice of adjustment of its reported capital category with the Federal Reserve Board, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation to give notice of this fact on same day by transmitting a copy to the Commission of the notice of adjustment of reported capital category in accordance with Exchange Act rule 18a–8(h).[47] Exchange Act rule 18a–8(h) sets forth the manner in which every notice or report required to be given or transmitted pursuant to Exchange Act rule 18a–8 must be made.[48] While Exchange Act rule 18a–8(c) is not linked to an Exchange Act capital requirement, it is linked to capital requirements in the U.S. promulgated by the prudential regulators. In its application, BaFin cited several German and EU provisions as providing similar outcomes to the notifications requirements of Exchange Act Rule 18a–8.[49] This proposed general condition was designed to clarify that a prudentially regulated Covered Entity must provide the Commission with copies of any notifications regarding changes in the Covered Entity's capital situation required by German or EU law. The intent was to align the notification requirement with the German and EU capital requirements applicable to the Covered Entity.

2. Commenter Views and Final Provisions

The Commission did not receive any comments on this proposed amendment to the German Order and the Amended Order includes this provision.[50]

C. Amendment to General Condition Regarding EU Cross-Border Matters

1. Proposed Approach

The Commission proposed to modify the German Order's general condition related to EU cross-border matters. Substituted compliance under the German Order in part is predicated on BaFin being responsible for the supervision and enforcement of Covered Entities in connection with certain MiFID provisions that constitute conditions to individual substituted compliance provisions.[51] That general condition is intended to help ensure that the prerequisites to substituted compliance with respect to supervision and enforcement are satisfied in practice when MiFID allocates responsibility for ensuring compliance to another EU Member State. Because MiFIR is subject to similar allocation provisions,[52] the Commission proposed to incorporate references to MiFIR requirements into the general condition.[53] This change would be consistent with the French Order.[54]

2. Commenter Views and Final Provisions

The Commission did not receive any comments on this proposed revision to the German Order's general condition related to EU cross-border matters and is issuing the revision as proposed.[55]

D. Additional MOU-Related General Condition

1. Proposed Approach

In light of the Amended Application addressing capital and margin requirements for nonbanks, the Commission also proposed to add a new general condition that would predicate substituted compliance on the presence of a supervisory and enforcement memorandum of understanding between the Commission and the ECB, pertaining to information owned by the ECB.[56] The Commission stated its preliminary view that access to this ECB information will assist the Commission's effective oversight of Covered Entities that use substituted compliance in connection with capital and margin requirements. The Commission and the ECB entered into a MOU addressing supervisory and enforcement cooperation related to substituted compliance on August 16, 2021.[57]

2. Commenter Views and Final Provisions

The Commission did not receive any comments on this new proposed general condition to the German Order requiring a supervisory and enforcement memorandum of understanding between the Commission and the ECB and is issuing the condition as proposed.[58]

IV. Changes to Risk Control and Internal Supervision Requirements

A. Changes to Trade Acknowledgement and Verification and Trading Relationship Documentation

1. Proposed Approach

Under the original German Order, substituted compliance for trade acknowledgement and verification and for trading relationship documentation in part requires that a Covered Entity comply with certain requirements under MiFID (plus the German implementation of MiFID) and with certain requirements under EMIR.[59] Commenters to the French Order expressed concern that the interplay between those particular MiFID conditions and a separate EU cross-border condition to the Order in practice would preclude the availability of substituted compliance for entities that have branches in other EU Member States.[60] After careful consideration and

[44] *See* para. (a)(9) of the proposed Amended Order.

[45] *See* para. (a)(9) of the Amended Order.

[46] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46502; para. (a)(11) of the proposed Amended Order.

[47] 17 CFR 240.18a–8(c).

[48] *See* 240.18a–8(h).

[49] *See* KWG section 25a(1) sentence 6 no. 3, and FinDAG section 4d.

[50] *See* para. (a)(11) of the Amended Order.

[51] *See* part IX, *infra.*

[52] *See* MiFID art. 35(8) (in part allocating responsibility over MiFIR articles 14 to 26 to competent authorities in member states in which branches are located).

[53] *See* para. (a)(10) of the proposed Amended Order.

[54] *See* para. (a)(10) of the French Order.

[55] *See* para. (a)(10) of the Amended Order.

[56] *See* para. (a)(8) of the proposed Amended Order.

[57] *See* note 36, *supra.*

[58] *See* para. (a)(8) of the Amended Order.

[59] *See* paras. (b)(2) and (5) of the German Order.

[60] *See* Letter from Kyle Brandon, Managing Director, Head of Derivatives Policy, SIFMA (Jan. 25, 2021)(''SIFMA Letter I'') (commenting on the French Substituted Compliance Notice and Proposed Order but stating that the concerns applied equally to the German Order). SIFMA Letter I can be found on the Commission's website at: *http://www.sec.gov/comments/s7-22-20/s72220.htm.* In relevant part, the cross-border condition of paragraph (a)(10) of the proposed Amended Order stated that if responsibility for ensuring compliance with any provision of MiFID or MiFIR (or the EU or German implementing

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finalization of the French Order, the Commission proposed to amend the German Order to address those concerns and for consistency with the French Order. The proposed Amended Order revised the conditions related to trade acknowledgment and verification requirements, and to trading relationship documentation, by removing the MiFID-related conditions and instead relying solely on EMIR conditions to establish comparability for those requirements.[61] The Commission believes that the Amended Order's EU cross-border condition provides an important safeguard to help ensure that firms that avail themselves of substituted compliance are subject to appropriate regulatory supervision and enforcement.

Consistent with French Order,[62] the proposed Amended Order removed the MiFID conditions to substituted compliance for trade acknowledgement and verification and trade relationship documentation.[63] In addition, the Commission proposed to add the confirmation provisions of EMIR article 11(1)(a) and EMIR RTS article 12 as conditions to substituted compliance for trade relationship documentation.[64] The Commission preliminarily believed that the EMIR provisions related condition described below, were sufficient for regulatory comparability and recognized that in practice the interplay between the EU cross-border conditions and MiFID documentation provisions may limit the use of substituted compliance and its associated regulatory benefits.[65] To ensure that there would be no opportunity for gaps that may prevent the EMIR provisions in practice from producing outcomes consistent with those of the Exchange Act rules, that preliminary view, however, required the addition of the EMIR-related conditions in paragraphs (a)(5) and (a)(6) of the proposed Amended Order and described below.

2. Commenter's Views and Final Provisions

The Commission did not receive any comments on the proposed revisions to the German Order's conditions related to trade acknowledgment and verification requirements, and trading relationship documentation, to remove the MiFID-related conditions and rely solely on EMIR conditions to establish comparability for those requirements, and issues those revisions as proposed and consistent with the French Order.[66] This decision takes into account the discussion below related to the EMIR-related general conditions and the comment the Commission received on the EMIR-related general condition regarding counterparty status.

B. Addition of EMIR-Related General Conditions

1. Proposed Approach

The heightened reliance on the EMIR conditions to establish comparability in connection with trade acknowledgment and verification and trading relationship documentation requires additional safeguards to help ensure that there will be no opportunity for gaps that may prevent the EMIR provisions in practice from producing outcomes consistent with those of the Exchange Act rules. In response, the proposed Amended Order included two additional EMIR-related general conditions. The first such condition provides that the Covered Entity must comply with the applicable EMIR-related condition of the proposed Amended Order as if the counterparty were the type of counterparty that would trigger the application of the relevant EMIR-based requirements. If the Covered Entity reasonably determines that its counterparty would be a financial counterparty[67] if not for the counterparty's location and/or lack of regulatory authorization in the EU, the condition further requires the Covered Entity to treat the counterparty as if the counterparty were a financial counterparty, rather than as another type of counterparty to which the relevant EMIR-based requirements may apply.[68]

The second such condition would require that, for each part of the Order that requires compliance with EMIR-related requirements, either: (i) The relevant security-based swap is an ''OTC derivative'' or ''OTC derivative contract,'' as defined in EMIR article 2(7), that has not been cleared by a central counterparty and otherwise is subject to the provisions of EMIR article 11, EMIR RTS articles 11 through 15, and EMIR Margin RTS article 2; or (ii) the relevant security-based swap has been cleared by a central counterparty that has been authorized or recognized to clear derivatives contracts by a relevant authority in the EU.[69] This second condition would help ensure that substituted compliance is available in connection with an instrument that has been cleared at an EU-authorized or EU-recognized central counterparty (and hence is not within the Exchange Act rule's exclusion but also is not subject to relevant EMIR requirements).

2. Commenter's Views and Final Provisions

One commenter stated that the proposed additional EMIR-related condition related to counterparty status effectively would override exemptions and exclusions from EMIR for certain public sector counterparties, such as multilateral development banks, and would expand the application of EMIR to counterparties who are not ''undertakings,'' such as natural persons.[70] The commenter noted that

requirement) that is a condition for substituted compliance is allocated to an authority in a Member State of the EU in whose territory a Covered Entity provides a service, BaFin must be the authority responsible for supervision and enforcement of that provision. In practice (pursuant to MiFID article 35), this allocation of oversight applies to requirements pursuant to MiFID article 25 (''assessment of suitability and appropriateness and reporting to clients'') as well as certain other MiFID provisions not relevant here. In the commenter's view, application of those MiFID article 25 conditions in connection with trade acknowledgment and verification requirements and trading relationship documentation requirements would ''in practice lead to an untenable patchwork of substituted compliance.'' *See* SIFMA Letter I at 3. The commenter further states that SBS Entities ''operating branches throughout the EU'' would not be able to avail themselves of substituted compliance in connection with these requirements ''unless authorities or regulated SBS Entities in every or nearly every one of the 27 EU Member States submit their own substituted compliance applications covering local branches of SBS Entities, and the Commission reviews and responds to those applications and enters into memoranda of understanding . . . with authorities in each of these Member States.'' That problem does not arise in connection with requirements under EMIR, which does not allocate oversight of a German entity's compliance to authorities in other EU Member States. That problem also does not arise in connection with other requirements under MiFID (*e.g.,* MiFID art. 16 organizational provisions) that are not subject to the same allocation of oversight.

[61] *See* paras. (b)(2) and (5) of the proposed Amended Order.

[62] *See* para. (b)(2) of the French Order.

[63] *See* paras. (b)(2) and (5) of the proposed Amended Order.

[64] *See* para. (b)(5) of the proposed Amended Order.

[65] In addition, these proposed changes are consistent with the French Order. *See* paras. (a)(5) and (a)(6) of the French Order.

[66] *See* paras. (b)(2) and (b)(5) of the Amended Order.

[67] EMIR article 2(8) defines ''financial counterparty'' to encompass investment firms, credit institutions, insurers and certain other types of businesses that have been authorized in accordance with EU law. Under EMIR, the distinction between financial counterparties and other types of counterparties such as non-financial counterparties is manifested, *inter alia,* in connection with confirmation timing standards. *See* EMIR RTS article 12.

[68] *See* para. (a)(5) of the proposed Amended Order.

[69] *See* para. (a)(6) of the proposed Amended Order. Prong (i) to this proposed condition would be satisfied by uncleared instruments that fall within the ambit of the EMIR requirements at issue. The alternative prong (ii) would be satisfied when instruments fall outside the ambit of those EMIR requirements by virtue of being cleared in the EU, akin to the Exchange Act rules' exclusion for security-based swaps cleared by clearing agencies registered with the Commission.

[70] *See* SIFMA II Letter at 2.

compliance with the condition would require the Covered Entity to ''assess whether these counterparties who are not subject to EMIR would be so subject as if it were the type of counterparty specified by EMIR as well as, in many cases, enter into documentation with those counterparties compliant with EMIR.'' [71] The commenter noted that these counterparties would be confused why an order of the Commission ''now deprives them of an exception or exemption under EU law that has for some time applied to them'' and would be reluctant to enter into new documentation to enable a Covered Entity to satisfy the Commission's substituted compliance order.[72] To address this reluctance, the commenter requested a six-month transition period until May 1, 2022, before a Covered Entity will be required to comply with the EMIR counterparty general condition in paragraph (a)(5) of the Amended Order.

The Commission proposed revisions to the conditions to trade acknowledgement and verification and trading relationship documentation substituted compliance to remove the MiFID conditions and rely entirely on EMIR requirements in response to commenters' concerns that the relevant MiFID conditions in the German Order would preclude the availability of substituted compliance for entities that have branches in EU Member States.[73] The Commission proposed to amend the German Order to address those concerns and for consistency with French Order, but only with the addition of the EMIR-related counterparty condition. By requiring a Covered Entity to treat its counterparty as a type of counterparty that would trigger the application of the relevant EMIR-based requirements, the condition will require the Covered Entity to perform the relevant obligations pursuant to those EMIR-based requirements and thus act in a way that is comparable to Exchange Act requirements. Absent the condition, the Commission would not find comparability with regard to the categories of counterparties, such as U.S. persons and natural persons, to which EMIR is not applicable for the entity-level requirements and, accordingly, would not have been able to make a positive substituted compliance determination for those entity-level requirements. The EMIR-related conditions were intended to help ensure that there will be no opportunity for gaps that may prevent the EMIR provisions in practice from producing outcomes consistent with those of the Exchange Act rules.[74]

The Commission, however, did not intend for the condition to require compliance with EMIR under circumstances where neither EMIR nor the Exchange Act would apply. As such, the Commission is modifying the EMIR counterparties general condition to clarify that this condition applies only to the extent that an Exchange Act section or rule cited in the relevant part of the Amended Order applies to the security-based swap activities with that counterparty.[75] To promote consistency in the use of substituted compliance across other jurisdictions in which EMIR applies, the Commission also is modifying the same condition in the French Order and the UK Order.

Although the Commission is not modifying the condition to the extent requested by the commenter, the Commission is not providing an additional transition period at this time. The registration compliance date for U.S. and non-U.S. SBS Entities is October 6, 2021, and that is also the compliance date for the entity-level requirements at issue. This date has been known to potential SBS Entities since February 4, 2020.[76] In areas where the Commission makes a positive substituted compliance determination under the Amended Order, Covered Entities will have additional flexibility with respect to how to comply with the relevant Exchange Act requirements, but they, like all registered SBS Entities, must comply with the Exchange Act as of the later of the registration compliance date or the date when they register with the Commission. Commission staff are available to discuss implementation issues with Covered Entities during the implementation period.

The same commenter asked that the Commission confirm that, when a Covered Entity enters into a security-based swap with a counterparty that is not subject to EMIR, the Covered Entity may choose either to apply the relevant EMIR-related requirements to that counterparty as though it were covered by EMIR or to comply directly with the relevant Exchange Act requirement.[77] As discussed in part II.B above, the Commission is not providing the requested relief.

The Commission did not receive any comments on the proposed addition of the general condition in paragraph (a)(6) of the Amended Order related to the security-based swap's status as an ''OTC derivative'' or ''OTC derivate contract'' under EMIR. The Commission is issuing this additional general condition with a clarification that the condition applies only if the relevant EMIR-based requirement applies to OTC derivatives that have not been cleared by a central counterparty.[78] The Commission is making this clarification because some provisions of EMIR cited in the Amended Order, such as EMIR articles 39(4) and (5), are not limited in their application to non-centrally cleared OTC derivatives. The Commission also is clarifying that the condition applies whenever the Amended Order requires the application of, and the Covered Entity's compliance with EMIR, EMIR RTS EMIR Margin RTS and/or other EU requirements adopted pursuant to those provisions. These clarifications already appear in a similar condition in the UK Order, and, to promote consistency in the use of substituted compliance across other jurisdictions in which EMIR applies, the Commission also is modifying the same condition in the French Order.

C. Revisions to Internal Risk Management and Internal Supervision

1. Proposed Approach

The Commission also proposed to incorporate—as part of the relevant conditions in paragraph (b)(1) of the proposed Amended Order relating to internal risk management—MiFID articles 16 and 23 and the related implementing provisions, MiFID Org Reg articles 25 through 37, 72 through 76 and Annex IV, as well as CRD articles 88(1), 91(1)–(2) and (7)–(9) and the related implementing provisions.[79] These provisions address additional aspects of a Covered Entity's management of the risks posed by internal governance and organization, business operations, conflicts of interest with and between clients, and senior staff remuneration policies and were part of the Commission's comparability determination for entities subject to regulation in France. The Commission also proposed to incorporate CRR articles 286–88 and 293 and EMIR Margin RTS article 2 to the conditions of paragraph (d)(3) of the proposed Amended Order relating to internal

[71] *See* SIFMA II Letter at 3.

[72] *See* SIFMA II Letter at 3.

[73] *See* German Substituted Compliance Order and Proposed Amended Order, 86 FR 46503.

[74] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46503.

[75] *See* para. (a)(5)(iii) of the Amended Order.

[76] *See* Exchange Act Release No. 87780 (Dec. 18, 2019), 85 FR 6270, 6345–46 (Feb. 4, 2020).

[77] *See* SIFMA II Letter at 3.

[78] *See* para. (a)(6) of the Amended Order.

[79] *See* para. (b)(1) of the proposed Amended Order.

supervision.[80] These provisions relate to counterparty credit risk and risk management generally and collateral-related risk management procedures and were also part of the Commission's comparability analysis in the French Order.[81] Also consistent with the French Order, the Commission proposed to delete CRD article 93 and the related implementing provisions from both paragraph (d)(1) and (d)(3), as those provisions relate to remuneration policies for institutions that benefit from exceptional (German and EU) government intervention.[82]

2. Commenter Views and Final Provisions

The Commission did not receive any comments on the proposed revisions to paragraphs (b)(1) and (d)(3) of the German Order related to the inclusion of additional conditions and to paragraphs (d)(1) and (d)(3) of the German Order related to the deletion of CRD article 93 and implementing provisions. The Commission issues these revisions to the German Order as proposed.[83]

V. Substituted Compliance for Capital and Margin Requirements

A. Proposed Approach

The Amended Application in part requested substituted compliance in connection with requirements under the Exchange Act relating to:

- *Capital*—Capital requirements pursuant to Exchange Act section 15F(e) and Exchange Act rule 18a–1 and 18a–1a through 18a–1d applicable to certain SBS Entities.[84] Exchange Act rule 18a–1 helps to ensure the SBS Entity maintains at all times sufficient liquid assets to promptly satisfy its liabilities, and to provide a cushion of liquid assets in excess of liabilities to cover potential market, credit, and other risks.[85] The rule's net liquid assets test standard protects customers and counterparties and mitigates the consequences of an SBS Entity's failure by promoting the ability of the firm to absorb financial shocks and, if necessary, to self-liquidate in an orderly manner.[86] As part of the capital requirements, security-based swap dealers without a prudential regulator also must comply with the internal risk management control requirements of Exchange Act Rule 15c3–4 with respect to certain activities.[87]
- *Margin*—Margin requirements pursuant to Exchange Act section 15F(e) and Exchange Act rule 18a–3 for non-prudentially regulated SBS Entities.[88] The margin requirements are designed to protect SBS Entities from the consequences of a counterparty's default.[89]

Taken as a whole, these capital and margin requirements help to promote market stability by mandating that SBS Entities follow practices to manage the market, credit, liquidity, solvency, counterparty, and operational risks associated with their security-based swap businesses.

In proposing to provide conditional substituted compliance in connection with this part of the Amended Application, the Commission preliminarily concluded that substituted compliance with respect to the Exchange Act capital and margin requirements would be subject to certain additional conditions.[90]

B. Commenter Views and Final Provisions

1. Capital

Substituted compliance with respect to the capital requirements of Exchange Act rule 18a–1 would be conditioned on Covered Entities being subject to and complying with relevant EU and German capital requirements.[91] The Commission did not receive comment on this proposed capital condition and the Amended Order includes the condition.[92]

The first additional capital condition required that the Covered Entity apply substituted compliance with respect to Exchange Act rules 18a–5(a)(9) (a record making requirement), 18a–6(b)(1)(x) (a record preservation requirement), and 18a–8(a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) (notification requirements relating to capital).[93] These recordkeeping and notification requirements are directly linked to the capital requirements of Exchange Act rule 18a–1. The proposed Amended Order conditioned substituted compliance with respect to these recordkeeping and notification requirements on the Covered Entity applying substituted compliance with respect to Exchange Act rule 18a–1.[94] This additional capital condition in the proposed Amended Order did the reverse: It conditioned substituted compliance with respect to Exchange Act rule 18a–1 on the Covered Entity applying substituted compliance for these linked recordkeeping and notification requirements. This proposed additional capital condition was designed to provide clarity as to the Covered Entity's obligations under these recordkeeping and notification requirements when applying substituted compliance with respect to Exchange Act rule 18a–1. The Commission did not receive comment on this proposed additional capital condition and the Amended Order includes the condition.[95]

The second additional capital condition imposed a simplified net liquid assets test and related

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[80] *See* para. (d)(3) of the proposed Amended Order.

[81] *See* paras. (b)(1) and (d)(3) of the French Order.

[82] *See* paras. (b)(1) and (d)(3) of the proposed Amended Order.

[83] *See* paras. (b)(1), (d)(1) and (d)(3) of the Amended Order.

[84] Exchange Act rule 18a–1 applies to security-based swap dealers that: (1) Do not have a prudential regulator; and (2) are either (a) not dually registered with the Commission as a broker-dealer or (b) are dually registered with the Commission as a special purpose broker-dealer known as an OTC derivatives dealer. Security-based swap dealers that are dually-registered with the Commission as a full-service broker-dealer are subject to the capital requirements of Exchange Act rule 15c3–1 (17 CFR 240.15c3–1) for which substituted compliance is not available. *See* 17 CFR 240.3a71–6(d)(4)(i) (making substituted compliance available only with respect to the capital requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–1).

[85] *See* Capital and Margin Adopting Release, 84 FR 43947. The Amended Application discusses EU and German requirements that address firms' capital requirements. *See* Amended Application Annex A category 3 (Side Letter Addressing Capital Requirements). *See also* Amended Application Annex A category 4 (Internal Risk Management Requirements) (generally discussing internal risk management requirements).

[86] *See* Capital and Margin Adopting Release, 84 FR 43879–83. The capital standard of Exchange Act rule 18a–1 is based on the net liquid assets test of Exchange Act rule 15c3–1 applicable to broker-dealers. *Id.* The net liquid assets test seeks to promote liquidity by requiring that a firm maintain sufficient liquid assets to meet all liabilities, including obligations to customers, counterparties, and other creditors, and, in the event a firm fails financially, to have adequate additional resources to wind-down its business in an orderly manner without the need for a formal proceeding. *See id.* at 43879. *See* Amended Application Annex A category 3 (Side Letter Addressing Capital Requirements).

[87] *See* 17 CFR 240.15c3–4 and 18a–1(f).

[88] 17 CFR 240.18a–3.

[89] *See* Capital and Margin Adopting Release, 84 FR 43947, 43949 (''Obtaining collateral is one of the ways OTC derivatives dealers manage their credit risk exposure to OTC derivatives counterparties. Prior to the financial crisis, in certain circumstances, counterparties were able to enter into OTC derivatives transactions without having to deliver collateral. When 'trigger events' occurred during the financial crisis, those counterparties faced significant liquidity strains when they were required to deliver collateral''). The Amended Application discusses EU and German requirements that address firms' margin requirements. *See* Amended Application Annex A category 4 (Margin Requirements for Nonbank Firms).

[90] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46505–11.

[91] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46505.

[92] *See* para. (c)(1)(i) of the Amended Order.

[93] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46505.

[94] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46512–18, 46520–22.

[95] *See* para. (c)(1)(ii) of the Amended Order.

requirements on the Covered Entity.[96] This condition was designed to help ensure the comparability of regulatory outcomes between Exchange Act rule 18a–1 (which imposes a net liquid assets test) and the capital requirements applicable to nonbank security-based swap dealers in Germany that are expected to register with the Commission. Those capital requirements are based on the international capital standard for banks (''Basel capital standard'').[97]

The second additional capital condition had four prongs. In particular, it conditioned substituted compliance with respect to Exchange Act rule 18a–1 on the Covered Entity: (1) Maintaining liquid assets (as defined in the proposed condition) that have an aggregate market value that exceeds the amount of the Covered Entity's total liabilities by at least $100 million before applying the deduction specified in the proposed condition, and by at least $20 million after applying the deduction specified in the proposed condition; (2) making and preserving for three years a quarterly record with respect to the first prong; [98] (3) notifying the Commission in writing within 24 hours in the manner specified on the Commission's website if the Covered Entity fails to meet the requirements of the proposed condition and including in the notice the contact information of an individual who could provide further information about the failure to meet the requirements; and (4) including its most recent statement of financial condition filed with its local supervisor (whether audited or unaudited) with its initial written notice to the Commission of its intent to rely on substituted compliance.[99]

For the purposes of the capital condition, ''liquid assets'' would be defined as: (1) Cash and cash equivalents; (2) collateralized agreements; (3) customer and other trading related receivables; (4) trading and financial assets; and (5) initial margin posted by the Covered Entity to a counterparty or third-party that meets certain conditions.[100] These categories of liquid assets were designed to align with assets that are considered allowable assets for purposes of calculating net capital under Exchange Act rule 18a–1. If an asset did not fall within one of the five categories of ''liquid assets'' as defined in the proposed Amended Order, it would be considered non-liquid, and could not be treated as a liquid asset for purposes of this capital condition.[101] For example, the following categories of assets generally would not have been able to be treated as liquid assets: (1) Investments; (2) loans; and (3) other assets.[102] The non-liquid ''investment'' category would have included the Covered Entity's ownership interests in subsidiaries or other affiliates. The non-liquid ''loans'' category would have included unsecured loans and advances. The non-liquid ''other'' assets category would have referred to assets that do not fall into any of the other categories of liquid or non-liquid assets. These non-liquid ''other'' assets would have included furniture, fixtures, equipment, real estate, property, leasehold improvements, deferred tax assets, prepayments, and intangible assets.

The deduction (haircut) required for purposes of this capital condition would be determined by dividing the amount of the Covered Entity's total risk-weighted assets by 12.5 (*i.e.,* the reciprocal of 8%).[103] Under the Basel standard, Covered Entities must risk-weight their assets.[104] This involves adjusting the nominal value of each asset based on the inherent market or credit risk of the asset. Less risky assets are adjusted to lower values (*i.e.,* have less weight) than more risky assets. As a result, Covered Entities must hold lower levels of regulatory capital for less risky assets and higher levels of capital for riskier assets. The Commission's proposal to use risk-weighted assets to calculate the deduction was designed to be similar to how haircuts are calculated under Exchange Act rule 18a–1 insomuch as less risky assets incur lower haircuts than riskier assets and, therefore, require less net capital to be held in relation to them.[105] Consequently, the Commission stated that the process of risk-weighting assets under the Basel capital standard provides a method to account for the inherent risk in an asset held by a Covered Entity similar to how the haircuts under the Exchange Act rule 18a–1 account for the risk of assets held by SBS Entities.[106]

The proposed approach to calculating the deduction for the capital condition would have required a Covered Entity to divide the *total* amount of its risk-weighted assets by 12.5. In proposing to use the total amount of risk-weighted assets, the Commission acknowledged that a Covered Entity's total risk-weighted assets include components in addition to credit and market risk charges (*e.g.,* operational risk charges).[107]

Commenters addressed two aspects of the additional four pronged capital condition and made recommendations as to how they believed it should be clarified or modified.[108] One of the commenters stated that the recommendations with respect to the Amended Order ''apply equally to the UK and French Orders.'' [109]

First, commenters made recommendations about how to calculate total liabilities.[110] In particular, commenters requested that the calculation of total liabilities exclude instruments that qualify as Tier 2 capital under the Basel capital standard, including subordinated debt instruments that qualify as Tier 2

[96] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46505–09.

[97] *See, e.g.,* Basel Committee on Banking Supervision (''BCBS''), The Basel Framework, available at: *https://www.bis.org/basel_framework/.*

[98] In particular, quarterly record would need to: (1) Identify and value the liquid assets (as defined in the proposed condition) maintained pursuant to the proposed condition; (2) compare the amount of the aggregate value the liquid assets maintained pursuant to the proposed condition to the amount of the Covered Entity's total liabilities and show the amount of the difference between the two amounts (''the excess liquid assets amount''), and (3) show the amount of the deduction specified in the proposed condition and the amount that deduction reduces the excess liquid assets amount. *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46509.

[99] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46507–09.

[100] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46508. The fifth category of liquid assets would be initial margin posted by the Covered Entity to a counterparty or a third-party custodian, provided: (1) The initial margin requirement is funded by a fully executed written loan agreement with an affiliate of the Covered Entity; (2) the loan agreement provides that the lender waives repayment of the loan until the initial margin is returned to the Covered Entity; and (3) the liability of the Covered Entity to the lender can be fully satisfied by delivering the collateral serving as initial margin to the lender. *Id.*

[101] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46508.

[102] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46508.

[103] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46508–09. Under the Basel capital standard, Covered Entities must hold regulatory capital equal to at least 8% of the amount of their risk-weighted assets. *See* BCBS, *Risk-based capital requirements (RBC20),* available at: *https://www.bis.org/basel_framework/chapter/RBC/20.htm?inforce=20191215&published=20191215.*

[104] *See* BCBS, *Risk-based capital requirements (RBC20).*

[105] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46508–09.

[106] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46509.

[107] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46509, n.87.

[108] *See* Letter from Andrew Nash, Managing Director, Morgan Stanley (July 20, 2021) (''Morgan Stanley Letter'') at 1–3; SIFMA II Letter at 4–7. The Morgan Stanley Letter may be found on the Commission's website at: *https://www.sec.gov/comments/s7-16-20s/s71620.htm.*

[109] *See* SIFMA II Letter at 2.

[110] *See* Morgan Stanley Letter; SIFMA II Letter.

capital.[111] Commenters pointed out that Exchange Act rule 18a–1 recognizes subordinated debt that meets certain requirements as a form of regulatory capital.[112] In addition, commenters stated that Covered Entities are generally subject to a minimum requirement for own funds and eligible liabilities (referred to as ''MREL'') in connection with supporting ''bail-in'' tools of resolution regimes.[113] Commenters requested that eligible liabilities under MREL also be excluded from the total liabilities calculation because the MREL liabilities share key characteristics with Tier 2 capital, including the condition that the liabilities satisfy certain requirements related to maturity, subordination, repayment, ownership, reduction, and/or conversion.[114] Further, a commenter provided a table comparing the requirements for debt to qualify as capital under Exchange Act rule 18a–1, as Tier 2 capital under the Basel capital standard, and as an eligible liability under MREL.[115] The commenter stated that debt to qualifying as Tier 2 capital under the Basel capital standard or an eligible liability under MREL has ''characteristics comparable to subordinated loans that qualify'' as capital under Exchange Act rule 18a–1.[116]

In response to these comments, the Commission believes it would be appropriate to exclude *subordinated debt* issued by the Covered Entity that qualifies as Tier 2 capital under the Basel Capital standard from the calculation of total liabilities for purposes of the capital condition.[117] Exchange Act rule 18a–1 permits subordinated debt that meets certain requirements to count as regulatory capital by excluding the liability from the calculation of net worth for purposes of computing net capital.[118] Subordinated debt that qualifies for this treatment under Exchange Act rule 18a–1 and subordinated debt that qualifies as Tier 2 capital under the Basel capital standard have comparable characteristics in terms of requirements relating to minimum terms, effective subordination, permissive prepayments, and accelerating maturity.[119] The Commission, however, does not believe other types of instruments that might qualify as Tier 2 capital under the Basel standard should be excluded from liabilities for the purposes of the capital condition. Exchange rule 18a–1 makes a specific allowance for *subordinated debt.* Similarly, the Commission does not believe eligible liabilities under MREL should be excluded from liabilities for the purposes of the capital condition. While these liabilities may share characteristics with subordinated debt that qualifies as Tier 2 capital, they do not qualify as Common Equity Tier 1, Additional Tier 1, or Tier 2 capital under the Basel capital standard.[120]

To implement this modification, the term ''total liabilities'' in the capital condition has been replaced with the term ''adjusted liabilities.'' [121] Further, the term ''adjusted liabilities'' has been defined to mean the Covered Entity's total liabilities, excluding subordinated debt issued by the Covered Entity that qualifies as Tier 2 capital pursuant to the Basel capital standard.[122]

Second, commenters made recommendations about how to calculate the deduction (haircut) derived from risk-weighted assets.[123] In particular, commenters recommended that assets that are not treated as liquid assets for purposes of the proposed capital condition be excluded from the calculation of total risk-weighted assets.[124] A commenter stated that these assets are excluded from the calculation of ''liquid assets'' and, therefore, they are subject to a 100 percent deduction for purposes of the capital condition.[125] Therefore, including them in the risk-weighted assets deduction would result in their being deducted twice for purposes of the capital condition. A commenter also requested that components of risk-weighted assets other than CRR Part Three, Title III (credit risk) and CRR Part Three, Title IV (market risk) be excluded from the calculation of total risk-weighted assets.[126] In particular, the commenter requested that the following components be excluded: (1) CRR Part Three, Title III (operational risk); (2) CRR Part Three, Title IV (settlement risk); and CRR Part Three, Title VI (credit valuation adjustment risk). The commenter stated that the standardized or model-based haircuts required by Exchange Act rule 18a–1 address credit and market risk and that the parallel requirements under the Basel capital standard are the calculations under CRR Part Three, Title III (credit risk) and CRR Part Three, Title IV (market risk). A commenter stated that calculations under CRR Part Three, Title III (operational risk), (2) CRR Part Three, Title IV (settlement risk), and CRR Part Three, Title VI (credit valuation adjustment risk) are not directly analogous to the Commission's net capital requirements and may not be suitable for inclusion in the risk-weighted assets used to calculate the deduction (haircut) for purposes of the proposed capital condition.[127] Finally, a commenter stated that excluding these assets from risk-weighted assets would be straightforward and transparent process since a Covered Entity must track illiquid assets and must separately compute the different categories of risk-weighted assets under the Basel capital standard.[128]

In response to these comments, the Commission believes it would be appropriate to exclude assets that are not treated as liquid assets for purposes of the capital condition from the amount of the risk-weighted assets used to calculate the deduction.[129] These illiquid assets will be deducted entirely from the Covered Entity's assets prior to applying the deduction derived from the Covered Entity's risk-weighted assets. Consequently, their illiquidity will be addressed in that first step of the calculation. The Commission also believes it would be appropriate to exclude risk-weighted assets that are calculated under CRR Part Three, Title III (Own Funds Requirements for Operational Risk) from the amount of the risk-weighted assets used to calculate the deduction.[130] Under Exchange Act rule 18a–1, SBS Entities that are approved to use models must take market and credit risk deductions.[131] The proposed capital condition is modeled, in part, on the provisions of Exchange Act rule 18a–1 applicable to SBS Entities approved to use models.[132] The provisions of Exchange Act rule 18a–1 governing the use of models by SBS Entities do not

[111] *See* Morgan Stanley Letter at 2–3; SIFMA II Letter at 5.

[112] *See* Morgan Stanley Letter at 3; SIFMA II Letter at 5.

[113] *See* SIFMA II Letter at 5.

[114] *See* SIFMA II Letter at 6.

[115] *See* SIFMA II Letter, Appendix.

[116] *See* SIFMA II Letter at 5.

[117] *See* paras. (c)(1)(iii)(A)(*1*) and (c)(1)(iii)(C) of the Amended Order.

[118] *See* 17 CFR 240.18a–1(c)(1)(ii).

[119] *Compare* 17 CFR 240.18a–1d, *with* CRR Article 63.

[120] *See* BRRD.

[121] *See* paras. (c)(1)(iii)(A)(*1*) and (c)(1)(iii)(A)(*2*)(*b*) of the Amended Order.

[122] *See* para. (c)(1)(iii)(C) of the Amended Order.

[123] *See* Morgan Stanley Letter; SIFMA II Letter.

[124] *See* Morgan Stanley Letter at 2; SIFMA II Letter at 6–7.

[125] *See* SIFMA II Letter at 6.

[126] *See* SIFMA II Letter at 7.

[127] *See* Morgan Stanley Letter at 2, n.4.

[128] *See* SIFMA II Letter at 7.

[129] *See* paras. (c)(1)(iii)(D)(*1*) and (*2*) of the Amended Order.

[130] *See* paras. (c)(1)(iii)(D)(*1*) and (*2*) of the Amended Order.

[131] *See* 17 CFR 240.18a–1(e).

[132] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46507–08.

require operational risk charges. The Commission, however, does not agree that risk-weighted assets calculated under CRR Part Three, Title IV (settlement risk) and CRR Part Three, Title VI (credit valuation adjustment risk) should be excluded from the amount of the risk-weighted assets used to calculate the deduction. These components do relate to credit risk.

To implement these modifications, the Amended Order provides that a Covered Entity may exclude assets that are not treated as liquid assets for the purposes of the capital condition and risk-weighted assets that are calculated under CRR Part Three, Title III (Own Funds Requirements for Operational Risk) from the amount of the risk-weighted assets used to calculate the deduction.[133]

The French and UK Orders also include the four pronged additional capital condition.[134] In light of the modifications to the four pronged capital condition in the Amended Order, the Commission is issuing an order that makes conforming amendments to the French and UK Orders.

In addition to these comments on the four pronged capital condition, commenters responded to questions the Commission asked about a Covered Entity operating under waivers from capital and liquidity requirements that can be granted by German and EU authorities under Articles 7 and 8 of the CRR.[135] Under Articles 7 and 8 of the CRR, supervisory authorities can grant a Covered Entity a waiver from EU and German capital and liquidity requirements, respectively, if its parent is subject to them. The Bafin's Amended Application requested substituted compliance for Covered Entities operating pursuant to these waivers.[136] The Bafin stated that this type of waiver is only granted under strict conditions.

The proposed Amended Order required the Covered Entity (*i.e.,* the registrant itself) to be subject to the specified EU and German capital and liquidity requirements. Accordingly, it would not have provided substituted compliance for Exchange Act rule 18a–1 to a Covered Entity operating pursuant to these waivers. However, the Commission requested comment on whether a positive substituted compliance determination (subject to conditions and limitations) could be made with respect to a Covered Entity operating pursuant to a waiver from compliance with the Basel capital and liquidity requirements.[137] Specifically, the Commission requested comment on whether additional conditions could be imposed on a Covered Entity operating pursuant to these waivers that could produce a comparable regulatory outcome to Exchange Act rule 18a–1.

Commenters supported permitting a firm operating under the Article 7 waiver from the German and EU capital requirements to apply substituted compliance to Exchange Act rule 18a–1.[138] A commenter stated that relevant competent authorities will only approve a request for a waiver if the Covered Entity and holding company satisfy a number of requirements that are designed to ensure that resources would be available to the Covered Entity to substantially the same extent absent a waiver.[139] This commenter stated that competent authorities will not approve a waiver unless Covered Entity and its holding company can demonstrate that there are not structural or corporate impediments to the free transfer of funds between the entities, the parent is sufficiently involved in setting the risk appetite and risk management of the Covered Entity; and the Covered Entity complies with the group's risk management policy. Commenters also stated that the level of oversight by European and German supervisors over a Covered Entity operating pursuant to the waiver is no different than the level of oversight exercised with respect to a Covered Entity that is not operating pursuant to the waiver.[140]

The Commission is not prepared at the this time to permit a Covered Entity that is operating under an Article 7 and/or 8 waiver to apply substituted compliance to Exchange Act rule 18a–1. The Commission's preliminary substituted compliance determination with respect to Exchange Act rule 18a–1 was based, in part, on the Covered Entity being subject to and complying with the Basel capital standard.[141] In fact, all of the Commission's substituted compliance determinations are conditioned on the Covered Entity being subject to and complying with comparable requirements of the home jurisdiction. Further, Exchange Act rule 3a71–6 provides that the Commission will consider (in addition to any conditions imposed) whether the capital requirements of the foreign financial regulatory system are designed to help ensure the safety and soundness of registrants in a manner that is *comparable* to the applicable provisions arising under the Exchange Act and its rules and regulations (emphasis added). Exchange Act rule 18a–1 does not have a comparable provision under which an SBS Entity can obtain a waiver from the requirements of that rule if its immediate holding company is subject to the rule.

However, the Commission also believes it would be appropriate to provide additional time for a Covered Entity located in Germany and operating under the Article 7 waiver to take steps necessary to comply with the terms and conditions of the Amended Order or otherwise address the fact that it does not meet the those terms and conditions. Otherwise, the Covered Entity may have to drastically reduce its operations on November 1, 2021 (the SBS Entity registration date), which could cause severe disruptions to the services the Covered Entity provides its security-based swap customers. Therefore, the Commission, by order, is extending the compliance date for Exchange Act rule 18a–1 until January 1, 2022 for a Covered Entity located in Germany that is operating under an Article 7 waiver.

Finally, commenters requested that the application of the additional capital conditions be delayed until September 1, 2022.[142] A commenter stated that Covered Entities did not have effective notice of the additional capital conditions until the issuance of the French Order on July 23, 2021, and that there is not sufficient time between that date and the November 1, 2021 registration date to come into compliance with the capital conditions.[143] The commenter stated that Covered Entities must put in place systems for performing the calculations required by the additional four pronged capital condition. Further, this commenter stated that complying with the capital conditions by November 1, 2021 may create significant challenges with the senior officer certification required in connection with registration, which requires a certification that a Covered Entity has developed and implemented policies and procedures

[133] *See* para. (c)(1)(iii)(D)(*2*) of the Amended Order.

[134] *See* French Order, 86 FR 41630–36, 41659; UK Order, 86 FR 43338–44, 43372.

[135] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46524 (requesting comment on this topic). *See also* Morgan Stanley Letter; SIFMA II Letter (responding to the request for comment).

[136] Amended Application Annex A category 3 (Side Letter Addressing Capital Requirements).

[137] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46524.

[138] *See* Morgan Stanley Letter at 1–2; SIFMA II Letter at 7.

[139] *See* SIFMA II Letter at 7.

[140] *See* SIFMA II Letter at 7.

[141] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46505–07.

[142] *See* Morgan Stanley Letter at 4; SIFMA II Letter at 10.

[143] *See* SIFMA II Letter at 9.

reasonably designed to prevent violations of Federal securities laws and regulations.[144]

In response to the comments requesting a delay in compliance with the capital conditions until September 1, 2022, the Commission acknowledges that Covered Entities will have a limited period of time to comply with the conditions before the November 1, 2021 registration compliance date. Substituted compliance, however, is conditioned upon the capital conditions in the Amended Order and it is important for Covered Entities to comply with these conditions in order for German and European capital requirements to have comparable outcomes to Exchange Act rule 18a–1. Consequently, in order to balance the limited timeframe to achieve compliance with the capital conditions with the policy goals of comparability, the Commission is, by order, extending the time when a Covered Entity needs to meet the additional capital condition in paragraph (c)(1)(iii) of the Amended Order until January 1, 2022. The Commission similarly is, by order, extending the time to meet the capital condition in paragraph (c)(1)(iii) of the French Order and (c)(1)(iii) of the UK Order until January 1, 2022.

2. Margin

Substituted compliance with respect to the margin requirements of Exchange Act rule 18a–3 was subject to two additional conditions. The first additional condition required a Covered Entity to collect variation margin, as defined in the EMIR Margin RTS, from a counterparty with respect to a transaction in non-cleared security-based swaps, unless the counterparty would qualify for an exception under Exchange Act rule 18a–3 from the requirement to deliver variation margin to the Covered Entity. This additional condition was designed to close the gap between the counterparty exceptions of Exchange Act rule 18a–3 and the EU and German margin rules with respect to variation margin. The second additional condition required a Covered Entity to collect initial margin, as defined in the EMIR Margin RTS, from a counterparty with respect to transactions in non-cleared security-based swaps, unless the counterparty would qualify for an exception under Exchange Act rule 18a–3 from the requirement to deliver initial margin to a Covered Entity. This additional condition was designed to close the gap between the counterparty exceptions of Exchange Act rule 18a–3 and the EU and German margin rules with respect to initial margin.

The Commission did not receive any comments on the margin conditions in the proposed Amended Order. A commenter, however, recommended that the application of the additional margin conditions be delayed until September 1, 2022.[145] A commenter stated that Covered Entities did not have effective notice of the additional margin conditions until the issuance of the French Order on July 23, 2021, and that there is not sufficient time between that date and the November 1, 2021 registration date to come into compliance with the capital conditions.[146] The commenter stated that in connection with the margin requirements, a Covered Entity will need to work with counterparties to determine which counterparties may be subject to exemptions for initial and/or variation margin under the Exchange Act rule 18a–3. In addition, if counterparties are subject to Exchange Act rule 18a–3, a commenter stated that a Covered Entity will need to enter into written agreements and put in place systems necessary to collect margin.[147]

The Commission is adopting the margin conditions as proposed.[148] In response to comments regarding a delay in compliance with the margin conditions until September 1, 2022, the Commission is, by order, extending the time when a Covered Entity needs to meet the additional margin conditions in paragraphs (c)(2)(ii) and (iii) of the Amended Order until January 1, 2022. The Commission similarly is, by order, extending the time to meet the margin conditions in paragraphs (c)(2)(ii) and (iii) the French Order and paragraphs (c)(2)(ii) and (iii) of the UK Order until January 1, 2022.

VI. Amendments Related to Chief Compliance Officer Reports

A. Proposed Approach

Exchange Act rule 15Fk–1 states that the required compliance reports must include ''a certification by the chief compliance officer or senior officer that, to the best of his or her knowledge and reasonable belief and under penalty of law, the information contained in the compliance report is accurate and complete in all material respects.'' [149] The standard applied in the German Order required certification that ''under penalty of law, the report is accurate and complete.'' [150] The Commission preliminarily believed that, consistent with the French Order,[151] further alignment of the proposed Amended Order's certification requirement with that of the applicable Exchange Act rule was appropriate. Therefore, the proposed Amended Order clarified that the required reports should be certified by ''the chief compliance officer or senior officer'' of the Covered Entity and that the same certification standard contained in Exchange Act rule 15Fk–1 applies.[152]

In further seeking consistency with the Commission's other substituted compliance orders,[153] the Commission proposed to amend the German Order to clarify the timing for Covered Entities to submit compliance reports to the Commission. To promote timely notice comparable to what the Exchange Act rule provides, the Commission proposed to incorporate a timing standard that accounts for MiFID-required timing as well as the possibility that the relevant reports may be submitted to the management body early. Under the proposed Amended Order, the applicable compliance reports would be provided to the Commission no later than 15 days following the earlier of: (i) The submission of the report to the Covered Entity's management body; or (ii) the time the report is required to be submitted to the management body.[154] The proposed Amended Order also clarified that together the reports must cover the entire period that the Covered Entity's annual compliance report referenced in Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk–1(c) would be required to cover.[155]

B. Commenters Views and Final Provisions

No commenters addressed the proposed changes to the compliance report requirements and the Commission is issuing the changes described in part VI.A above as proposed.

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[144] *See* SIFMA II Letter at 10.

[145] *See* SIFMA II Letter at 9–10.

[146] *See* SIFMA II Letter at 9.

[147] *See* SIFMA II Letter at 9–10.

[148] *See* para. (c)(2) of the Amended Order.

[149] Exchange Act rule 15Fk–1(c)(2)(ii)(D), 17 CFR 240.15Fk–1(c)(2)(ii)(D). *See also* Exchange Act rule 15Fk–1(e)(2) (defining ''senior officer'' as ''the chief executive officer or other equivalent officer'').

[150] *See* para. (d)(2) of the German Order.

[151] See French Order, 86 FR 41659; UK Order, 86 FR 43372.

[152] *See* para. (d)(2)(ii)(B) of the proposed Amended Order. In addition, for consistency with the French Order, the Commission is proposing to incorporate CRR articles 286–88 and 293 and EMIR Margin RTS article 2 as part of para. (d)(3) of the proposed Amended Order.

[153] *See, e.g.,* French Order, 86 FR 41659.

[154] *See* para. (d)(2)(D) of the proposed Amended Order.

[155] *See* para. (d)(2)(E) of the proposed Amended Order.

VII. Amendments Related to Counterparty Protection Requirements

A. Proposed Approach

1. Disclosure of Information Regarding Material Risks and Characteristics

With the Amended Order, the Commission proposed to add two requirements to the list of German and EU disclosure of information regarding material incentives or conflicts of interest requirements that the Covered Entity must be subject to and comply with. The MAR Investment Recommendations Regulation articles 5 and 6 enumerate specific obligations in relation to disclosure of interests or of conflicts of interest. Article 5 requires that persons who produce recommendations disclose in their recommendations all relationships and circumstances that may reasonably be expected to impair the objectivity of the recommendation, including interests or conflicts of interest. Article 6 imposes additional obligations on certain entities, including the disclosure of information on their interests and conflicts of interest concerning the issuer to which a recommendation relates. The Commission preliminarily believed that requiring Covered Entities to be subject to and comply with MAR Investment Recommendations Regulation articles 5 and 6 contributes to a determination that relevant German and EU requirements produce regulatory outcomes that are comparable to relevant requirements of Exchange Act rule 15Fh–3(b).

2. Fair and Balanced Communications

The Commission also proposed to modify the fair and balanced communications section of the proposed Amended Order.[156] First, the Commission believes that German and EU fair and balanced communications requirements are more comparable to Exchange Act requirements when considering three additional EU requirements: MAR article 20(1) would require the Covered Entity to present recommendations in a manner that ensures the information is objectively presented and to disclose interests and conflicts of interest concerning the financial instruments to which the information relates. MAR Investment Recommendations Regulation article 3 would require a Covered Entity to communicate only recommendations that present facts in a way that they are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information; label clearly and prominently projections, forecasts and price targets; indicate the relevant material assumptions and substantial material sources of information; and include only reliable information or a clear indication when there is doubt about reliability. MAR Investment Recommendations Regulation article 4 would require the Covered Entity to provide in its recommendation additional information about the factual basis of its recommendation. Accordingly, the Commission proposed to add these three requirements to the Amended Order's list of German and EU fair and balanced communications requirements that the Covered Entity must be subject to and comply with.[157] Second, the German Order required the Covered Entity to be subject to and comply with MAR Investment Recommendations Regulation article 5,[158] which relates to obligations to disclose conflicts of interest. As discussed above, the Commission is requiring Covered Entities to comply with this requirement and with MAR Investment Recommendations Regulation article 6 when using substituted compliance for disclosure of material incentives and conflicts of interest requirements. Accordingly, the Commission believes that MAR Investment Recommendations Regulation article 5 is less relevant to comparability of fair and balanced communications requirements and proposed to delete the reference to it in relation to substituted compliance for fair and balanced communications.

B. Commenters Views and Final Provisions

Commenters did not address the proposed revisions to the counterparty protection requirements described in part VII.A above and the Commission is amending and restating this part of the Amended Order as proposed.

VIII. Amendments Related to Recordkeeping, Reporting, Notification, and Securities Count Requirements

A. Proposed Approach

In its initial application (the ''BaFin Application''), the BaFin requested, in part, substituted compliance for requirements applicable to SBS Entities with and without a prudential regulator under the Exchange Act relating to:

- *Recordmaking*—Exchange Act rule 18a–5 requires prescribed records to be made and kept current.[159]
- *Record Preservation*—Exchange Act rule 18a–6 requires preservation of records.[160]
- *Reporting*—Exchange Act rule 18a–7 requires certain reports.[161]
- *Notification*—Exchange Act rule 18a–8 requires notification to the Commission when certain financial or operational problems occur.[162]
- *Securities Count*—Exchange Act rule 18a–9 requires non-prudentially regulated security-based swap dealers to perform a quarterly securities count.[163]
- *Daily Trading Records*—Exchange Act section 15F(g) requires SBS Entities to maintain daily trading records.[164]

Taken as a whole, the recordkeeping, reporting, notification, and securities count requirements that apply to SBS Entities are designed to promote the prudent operation of the firm's security-based swap activities, assist the Commission in conducting compliance examinations of those activities, and alert the Commission to potential financial or operational problems that could impact the firm and its customers.

In issuing the German Order, the Commission found that relevant EU and German requirements, subject to conditions and limitations, would produce regulatory outcomes that are comparable to the outcomes associated with the recordkeeping, reporting, and notification requirements of Exchange Act rules 18a–5, 18a–6, 18a–7, and 18a–8 applicable to SBS Entities with a prudential regulator.[165] However, the BaFin Application did not seek substituted compliance for the Exchange Act capital and margin requirements

[156] *See* para. (e)(2)(iii) of the proposed Amended Order.

[157] *See* para. (e)(5) of the Amended Order.

[158] *See* para. (d)(2) of the German Order.

[159] *See* 17 CFR 240.18a–5. The BaFin Application discusses German requirements that address firms' record creation obligations related to matters such as financial condition, operations, transactions, counterparties and their property, personnel and business conduct. *See* BaFin Application Annex A category 2 at 4–34.

[160] *See* 17 CFR 240.18a–6. The BaFin Application discusses German requirements that address firms' record preservation obligations related to records that firms are required to create, as well as additional records such as records of communications. *See* BaFin Application Annex A category 2 at 35–79.

[161] *See* 17 CFR 240.18a–7. The BaFin Application discusses German requirements that address firms' obligations to make certain reports. *See* BaFin Application Annex A category 2 at 80–91, 96–102.

[162] *See* 17 CFR 240.18a–8. The BaFin Application discusses German requirements that address firms' obligations to make certain notifications. *See* BaFin Application Annex A category 2 at 92–96, 102.

[163] *See* 17 CFR 240.18a–9. The BaFin Application discusses German requirements that address firms' obligations to perform securities counts. *See* BaFin Application Annex A category 2 at 27–30.

[164] *See* 15 U.S.C. 78o–10(g). The BaFin Application discusses German requirements that address firms' record preservation obligations related to records that firms are required to create, as well as additional records such as records of communications. *See* BaFin Application Annex A category 2 at 35–79.

[165] *See* German Order, 85 FR 85695–97.

applicable to SBS Entities without a prudential regulator. Because of the close relationship between many of the Exchange Act recordkeeping, reporting, and notification requirements and the administration and oversight of Exchange Act capital and margin requirements, the German Order did not address substituted compliance for recordkeeping, reporting, notification, and securities count requirements applicable to SBS Entities without a prudential regulator.

The BaFin's Amended Application requested substituted compliance for the Exchange Act capital and margin requirements applicable to SBS Entities without a prudential regulator. Consequently, the Commission considered substituted compliance for the recordkeeping, reporting, notification, and securities count requirements applicable to SBS Entities without a prudential regulator.[166] The Commission also considered substituted compliance with respect to the trading record preservation requirements of Exchange Act section 15F(g), which are applicable to SBS Entities with and without a prudential regulator.[167]

The Commission preliminarily concluded that the relevant EU and German requirements, subject to conditions and limitations, would produce regulatory outcomes that are comparable to the outcomes associated with the requirements of Exchange Act rules 18a–5, 18a–6, 18a–7, 18a–8, and 18a–9 applicable to SBS Entities without a prudential regulator and to the outcomes associated with Exchange Act section 15F(g) applicable to all SBS Entities (collectively, the ''Exchange Act Recordkeeping an Reporting Requirements'').[168] Moreover, the proposed structure of the substituted compliance determinations with respect to Exchange Act rules 18a–5, 18a–6, 18a–7, and 18a–8 (collectively, the ''recordkeeping, reporting, and notification rules'') would have provided Covered Entities with greater flexibility to select distinct requirements within the broader rules for which they want to apply substituted compliance.[169]

B. Commenter Views and Final Provisions

As was the case with German Order, the Commission's preliminary substituted compliance determinations for the additional Exchange Act Recordkeeping and Reporting Requirements were subject to the condition that the Covered Entity is subject to and complies with the relevant German or EU laws.[170] Substituted compliance for all of the Exchange Act Recordkeeping and Reporting Requirements accordingly is conditioned on Covered Entities being subject to and complying with the EU and German provisions that in the aggregate establish a framework that produces outcomes comparable to those associated with the analogous Exchange Act Recordkeeping and Reporting Requirements.[171]

In addition to making preliminary substituted compliance determinations with respect to requirements of Exchange Act rules 18a–5, 18a–6, 18a–7, 18a–8, and 18a–9 applicable to SBS Entities without a prudential regulator and to the requirements of Exchange Act section 15F(g) applicable to all SBS Entities, the Commission proposed to amend the German Order in a number of ways.[172] The proposed amendments are discussed below.

1. General Considerations

The Commission proposed to amend the German Order in ways that would implicate two or more of Exchange Act rules 18a–5, 18a–6, 18a–7, and 18a–8.

First, the German Order made substituted compliance available with respect to the entirety of Exchange Act rules 18a–5, 18a–6, 18a–7, and 18a–8 as applicable to Covered Entities with a prudential regulator.[173] Consequently, under the German Order, the Covered Entity could elect to apply substituted compliance with respect to the entire rule (subject to conditions and limitations) or, alternatively, comply with the Exchange Act rule. The Commission proposed modifying this approach to provide all Covered Entities with greater flexibility to select which distinct requirements within the broader rule for which they would apply substituted compliance.[174] This would not preclude a Covered Entity from applying substituted compliance for the entire rule (subject to conditions and limitations). However, it would permit the Covered Entity to apply substituted compliance with respect to certain requirements of a given rule and to comply directly with the remaining requirements. This more granular approach to the recordkeeping, reporting, and notification rules was intended to permit Covered Entities to leverage existing recordkeeping and reporting systems that are designed to comply with the *broker-dealer* recordkeeping, reporting, and notification requirements on which the recordkeeping, reporting, and notification requirements applicable to SBS Entities are based. For example, it may be more efficient for a Covered Entity to comply with certain Exchange Act requirements within a given recordkeeping, reporting, or notification rule (rather than apply substituted compliance) because it can utilize systems that its affiliated broker-dealer has implemented to comply with them. This proposed approach was consistent with the approach taken by the Commission in the French and UK Orders.[175]

As applied to Exchange Act rules 18a–5 and 18a–6, this approach of providing greater flexibility resulted in preliminary substituted compliance determinations with respect to the different categories of records these rules require SBS Entities to make, keep current, and/or preserve.[176] The objective of these rules—taken as a whole—is to assist the Commission in monitoring and examining for compliance with substantive Exchange Act requirements applicable to SBS Entities (*e.g.,* capital and margin requirements) as well as to promote the prudent operation of these firms.[177] The Commission stated a preliminary belief that the comparable EU and German recordkeeping rules achieve these outcomes with respect to compliance with substantive EU and German requirements for which preliminary positive substituted compliance

[166] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46512–522.

[167] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46522.

[168] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46512–22.

[169] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46512–22.

[170] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46530–33.

[171] *See* paras. (f)(1)(i)(A)(*1*), (f)(1)(i)(B)(*1*), (f)(1)(i)(C)(*1*), (f)(1)(i)(D)(*1*), (f)(1)(i)(E), (f)(1)(i)(F)(*1*), (f)(1)(i)(G)(*1*), (f)(1)(i)(H)(*1*), (f)(1)(i)(I)(*1*), (f)(1)(i)(J)(*1*), (f)(1)(i)(K), (f)(1)(i)(L)(*1*), (f)(1)(i)(M)(*1*), (f)(1)(i)(N)(*1*), (f)(1)(i)(O)(*1*), (f)(2)(i)(A), (f)(2)(i)(B), (f)(2)(i)(C)(*1*), (f)(2)(i)((D), (f)(2)(i)(E)(*1*), (f)(2)(i)(F)(*1*), (f)(2)(i)(G)(*1*), (f)(2)(i)(H)(*1*), (f)(2)(i)(O)(*1*), (f)(2)(i)(C)(*1*), (f)(2)(i)(J)(*1*), (f)(2)(i)(K)(*1*), (f)(2)(i)(L)(*1*), (f)(2)(i)(M), (f)(2)(i)(N)(*1*), (f)(2)(i)(P)(*1*), (f)(2)(i)(Q), (f)(2)(i)(R), (f)(3)(i)(A), (f)(3)(ii)(B), (f)(e)(iii)(A), (f)(3)(iv)(A), (f)(4)(i)(A)(*1*), (f)(4)((ii)(B), (f)(4)(iii)(A)(*1*), (f)(4)(iv)(D)(*1*), (f)(5)(i), and (f)(6) of the Amended Order.

[172] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46512–22, 46530–33.

[173] *See* German Order, 85 FR 85699–700.

[174] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46512–13, 46530–33.

[175] *See* French Order, 86 FR 41649; UK Order, 86 FR 43360.

[176] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46513, 46530–32.

[177] *See, e.g.,* Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194, 25199–200 (May 2, 2014).

determinations were being made (*e.g.,* the preliminary positive substituted compliance determinations with respect to the Exchange Act capital and margin requirements).[178] At the same time, the recordkeeping rules address different categories of records through distinct requirements within the rules. Each requirement with respect to a specific category of records (*e.g.,* paragraph (a)(2) of Exchange Act rule 18a–5 addressing ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts) can be viewed in isolation as a distinct recordkeeping rule. Therefore, the Commission made preliminary substituted compliance determinations at this level of Exchange Act rules 18a–5 and 18a–6.[179]

The Commission did not receive any comments on this proposed approach and the Amended Order structures the substituted compliance determinations in this manner.[180]

Second, the Commission did not make a preliminary positive substituted compliance determination with respect to a discrete provision of the Exchange Act Recordkeeping and Reporting Requirements if it was fully or partially linked to a substantive Exchange Act requirement for which substituted compliance was not available or for which a preliminary positive substituted compliance determination was not being made.[181] In particular, a preliminary positive substituted compliance determination was not made, in full or in part, for recordkeeping, reporting, or notification requirements linked to the following Exchange Act rules for which substituted compliance is not available or a positive substituted compliance determination was not made: (1) Exchange Act rule 15Fh–4; (2) Exchange Act rule 15Fh–5; (3) Exchange Act rule 15Fh–6; (4) Exchange Act rule 18a–2; (5) Exchange Act rule 18a–4; (6) Regulation SBSR; and (7) Form SBSE and its variations. This proposed approach was consistent with the approach taken by the Commission in the French and UK Orders.[182]

The Commission did not receive comment on these limitations and the Amended Order includes the limitations.[183]

Third, the Commission conditioned substituted compliance with discrete provisions of the Exchange Act Recordkeeping and Reporting Requirements that were fully or partially linked to a substantive Exchange Act requirement for which substituted compliance was available on the Covered Entity applying substituted compliance with respect to the linked Exchange Act requirement.[184] In particular, substituted compliance for a provision of the Exchange Act Recordkeeping and Reporting Requirements that is linked to the following Exchange Act rules was conditioned on the SBS Entity applying substituted compliance to the linked substantive Exchange Act rule: (1) Exchange Act rule 15Fh–3; (2) Exchange Act rule 15Fi–2; (3) Exchange Act rule 15Fi–3; (4) Exchange Act rule 15Fi–4; (5) Exchange Act rule 15Fi–5; (6) Exchange Act rule 15Fk–1; (7) Exchange Act rule 18a–1; (8) Exchange Act rule 18a–3; (9) Exchange Act rule 18a–5; (10) Exchange Act rule 18a–6(b)(1)(viii); and (11) Exchange Act rule 18a–7. This proposed approach was consistent with the approach taken by the Commission in the French and UK Orders.[185]

The Commission did not receive comment on these proposed conditions and the Amended Order includes the conditions.[186]

Fourth, the Commission conditioned substituted compliance with discrete provisions of the Exchange Act Recordkeeping and Reporting Requirements that would be important for monitoring or examining compliance with the capital rule for nonbank security-based swap dealers on the Covered Entity applying substituted compliance with respect to the capital rule (*i.e.,* the Rule 18a–1 Condition).[187] This approach was designed to ensure that, if the Covered Entity does not apply substituted compliance with respect to Exchange Act rule 18a–1, it makes and preserves records and files reports that the Commission uses to monitor and examine for compliance with the Exchange Act rule 18a–1, and that the firm makes and preserves records to assist it in complying with these rules. This proposed approach was consistent with the approach taken by the Commission in the French and UK Orders.[188]

The Commission did not receive comment on these proposed conditions and the Amended Order includes the conditions.[189]

Fifth, the proposed Amended Order would allow a Covered Entity to apply substituted compliance on a transaction-by-transaction basis to the Commission's recordkeeping requirements that are linked with the counterparty protection requirements of Exchange Act rule 15Fh–3.[190] This approach was designed to align with the proposed Amended Order allowing Covered Entities to apply substituted compliance on a transaction-by-transaction basis for the Commission's counterparty protection requirements. This proposed approach was consistent with the approach taken by the Commission in the French and UK Orders.[191]

The Commission did not receive comment on this proposed approach and the Amended Order permits substituted compliance to be applied in this manner.[192]

Sixth, the proposed Amended Order included a condition that Covered Entities must promptly furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F of this Order.[193] This proposed approach was consistent with

[178] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46513.

[179] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46513, 46530–32.

[180] *See* paras. (f)(1), (f)(2), (f)(3), and (f)(4) of the Amended Order.

[181] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46513.

[182] *See* French Order, 86 FR 41650; UK Order, 86 FR 43361.

[183] *See* paras. (f)(1)(i)(J)(*3*), (f)(1)(ii)(C), (f)(2)(i)(E)(*3*), (f)(2)(i)(H)(*4*), (f)(2)(i)(H)(*5*), (f)(2)(i)(L)(*2*), (f)(2)(ii)(B), (f)(4)(i)(C)(*2*), (f)(4)(i)(D)(*3*), (f)(4)(i)(D)(*4*), (f)(4)(ii)(B), and (f)(4)(ii)(C) of the Amended Order.

[184] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46513–22, 46530–33.

[185] *See* French Order, 86 FR 41650; UK Order, 86 FR 43361.

[186] *See* paras. (f)(1)(i)(G)(*2*), (f)(1)(i)(L)(*2*), (f)(1)(i)(M)(*2*), (f)(1)(i)(M)(*3*), (f)(1)(i)(N)(*2*), (f)(1)(i)(O)(*2*), (f)(2)(i)(E)(*2*), (f)(2)(i)(H)(*2*), (f)(2)(i)(H)(*3*), (f)(2)(i)(I)(*2*), (f)(2)(i)(J)(*2*), (f)(2)(i)(K)(*2*), (f)(2)(i)(K)(*3*), (f)(2)(i)(P)(*2*), (f)(3)(i)(C), (f)(3)(i)(D), (f)(3)(ii)(B), (f)(3)(iii)(C), (f)(3)(iv)(C), (f)(3)(iv)(D), (f)(4)(i)(A)(*2*), and (f)(4)(i)(D)(*2*) of the Amended Order.

[187] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46514–15, 46530–33.

[188] *See* French Order, 86 FR 41650–51; UK Order, 86 FR 43361.

[189] *See* paras. (f)(1)(i)(A)(*2*), (f)(1)(i)(B)(*2*), (f)(1)(i)(C)(*2*), (f)(1)(i)(D)(*2*), (f)(1)(i)(F)(*2*), (f)(1)(i)(H)(*2*), (f)(1)(i)(I)(*2*), (f)(1)(i)(J)(*2*), (f)(2)(i)(C)(*2*), (f)(2)(i)(F)(*2*), (f)(2)(i)(G)(*2*), (f)(2)(i)(N)(*2*), (f)(2)(i)(O)(*2*), and (f)(5)(ii) of the Amended Order.

[190] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46514–21, 46530–32.

[191] *See* French Order, 86 FR 41613; UK Order, 86 FR 43324–25.

[192] *See* paras. (f)(1)(ii)(B) and (f)(2)(ii)(A) of the Amended Order.

[193] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46522, 46533.

the approach taken by the Commission in the French and UK Orders.[194]

The Commission did not receive comment on this proposed condition and the Amended Order includes the condition.[195]

2. Exchange Act Rule 18a–5

The proposed Amended Order conditioned substituted compliance in connection with the record making requirements of Exchange Act rule 18a–5 applicable to Covered Entities without a prudential regulator on the firm: (1) Preserving all of the data elements necessary to create the records required by Exchange Act rules 18a–5(a)(1), (2), (3), (4), and (7); and (2) upon request furnishing promptly to representatives of the Commission the records required by those rules (''SEC Format Condition'').[196] This proposed condition is modeled on the alternative compliance mechanism in paragraph (c) of Exchange Act rule 18a–5. In effect, a Covered Entity applying substituted compliance with respect to these requirements of Exchange Act rule 18a–5 would need to comply with the comparable EU and German requirements. However, under the SEC Format Condition, the Covered Entity would need to produce a record that is formatted in accordance with the requirements of Exchange Act rule 18a–5 at the request of Commission staff. The objective would be to require—on a very limited basis—the production of a record that consolidates the information required by Exchange Act rules 18a–5(a)(1), (2), (3), (4), and (7) in a single record and, as applicable, in a blotter or ledger format. This would assist the Commission staff in reviewing the information on the record.

The Commission did not receive any comment on this proposed condition and the Amended Order includes the condition.[197] However, for consistency with the UK Order, the Commission is modifying paragraph (f)(1)(i)(M)(2) of the Amended Order to clarify that substituted compliance for the portions of Exchange Act rules 18a–5(a)(17) and (b)(13) relating to Exchange Act rule 15Fh–3 is conditioned on the Covered Entity applying substituted compliance for the relevant paragraphs of Exchange Act rule 15Fh–3, rather than the entirety of Exchange Act rule 15Fh–3. To promote consistency with the other EU jurisdictions, the Commission also is modifying the same condition in paragraph (f)(1)(i)(M)(2) of the French Order.

3. Exchange Act Rule 18a–6

The Amended Order did not extend substituted compliance to the requirements of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a–6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the Covered Entity without a prudential regulator that are required to be preserved under Exchange Act rule 18a–6, or any other records of the Covered Entity that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.[198]

The Commission did not receive any comments on this proposed limitation and the Amended Order includes the limitation, which now applies to Covered Entities with and without a prudential regulator.[199] In addition, for consistency with the UK Order, the Commission is modifying paragraph (f)(2)(i)(K)(*2*) of the Amended Order to clarify that substituted compliance for the portions of Exchange Act rules 18a–6(a)(17) and (b)(13) relating to Exchange Act rule 15Fh–3 is conditioned on the Covered Entity applying substituted compliance for the relevant paragraphs of Exchange Act rule 15Fh–3, rather than the entirety of Exchange Act rule 15Fh–3. To promote consistency with the other EU jurisdictions, the Commission also is modifying the same condition in paragraph (f)(2)(i)(K)(*2*) of the French Order.

4. Exchange Act Rule 18a–7

Paragraph (a)(2) of Exchange Act rule 18a–7 requires SBS Entities with a prudential regulator to file the FOCUS Report Part IIC on a quarterly basis. The German Order provided substituted compliance for this requirement subject to the condition that the Covered Entity file with the Commission periodic unaudited financial and operational information in the manner and format specified by the Commission by order or rule (''Manner and Format Condition'') and present the financial information in accordance with GAAP that the firm uses to prepare general purpose publicly available or available to be issued financial statements in Germany (''German GAAP Condition'').[200] The Amended Order continues to provide Covered Entities with a prudential regulator substituted compliance for paragraph (a)(2) of Exchange Act rule 18a–7, subject to the Manner and Format and German GAAP Conditions.[201]

Paragraph (a)(1) of Exchange Act rule 18a–7 requires SBS Entities without a prudential regulator to file the FOCUS Report Part II on a monthly basis. The proposed Amended Order would provide Covered Entities without a prudential regulator substituted compliance for paragraph (a)(1) of Exchange Act rule 18a–7 subject to the Manner and Format and German GAAP conditions.[202] However, there were two additional conditions. First, the Covered Entity would need to apply substituted compliance for Exchange Act Rule 18a–1 (*i.e.,* substituted compliance would be subject to the Rule 18a–1 Condition). Second, the Covered Entity would need to apply substituted compliance with respect to Exchange Act rule 18a–6(b)(1)(viii) (a record preservation requirement). This record preservation requirement is directly linked to the financial and operational reporting requirements of Exchange Act rule 18a–7(a)(1).

The Commission did not receive comment on these proposed conditions and the Amended Order includes the conditions.[203]

Paragraphs (c), (d), (e), (f), (g), and (h) of Exchange Act rule 18a–7 set forth requirements for SBS Entities that are not prudentially regulated to annually file financial statements and certain reports, as well as reports covering those statements and reports prepared by an independent public accountant.[204] The Commission proposed amending the German Order to make substituted compliance available with respect to these requirements, subject to six

[194] *See* French Order, 86 FR 41651; UK Order, 86 FR 43361.

[195] *See* para. (f)(8) of the Amended Order.

[196] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46515, 46531. The German Order included this condition for a Covered Entity with a prudential regular to apply substituted compliance for Exchange Act rule 18a–5. *See* German Order, 85 FR 85699.

[197] *See* para. (f)(1)(ii)(A) of the Amended Order.

[198] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46517, 46533. The German Order did not extend substituted compliance to these requirements as applicable to a Covered Entity with a prudential regular. *See* German Order, 85 FR 85700.

[199] *See* para. (f)(7) of the Amended Order.

[200] *See* German Order, 85 FR 85700. *See also* Exchange Act Release No. 93335 (Oct. 14, 2021) (order specifying the manner and format of filing unaudited financial and operational information by Covered Entities relying on substituted compliance determinations with respect to Exchange Act rule 18a–7).

[201] *See* para. (f)(3)(i) of the Amended Order.

[202] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46518, 46532.

[203] *See* para. (f)(3)(i) of the Amended Order.

[204] *See* 17 CFR 240.18a–7(c) through (h).

additional conditions.[205] The first condition would be that the Covered Entity simultaneously sends a copy of the financial statements the Covered Entity is required to file with EU or German authorities, including a report of an independent public accountant covering the financial statements, to the Commission in the manner specified on the Commission's website (''SEC Filing Condition''). Because EU and German laws would not otherwise require the financial statements and report of the independent public accountant covering the financial statements to be filed with the Commission, the purpose of this condition would be to provide the Commission with the financial statements and report to more effectively supervise and monitor Covered Entities.

The second condition would be that the Covered Entity include with the transmission of the annual financial statements and report the contact information of an individual who can provide further information about the financial statements and reports (''Contact Information Condition''). This would assist the Commission staff in promptly contacting an individual at the Covered Entity who can respond to questions that information on the financial statements or report may raise about the Covered Entity's financial or operational condition.

The third condition would be that the Covered Entity includes with the transmission the report of an independent public accountant required by Exchange Act rule 18a–7(c)(1)(i)(C) covering the annual financial statements if EU and German laws do not require the Covered Entity to engage an independent public accountant to prepare a report covering the annual financial statements (''Accountant's Report Condition''). The third condition further would provide that the report of the independent public accountant may be prepared in accordance with generally accepted auditing standards (''GAAS'') in Germany that are used to perform audit and attestation services and the accountant complies with German independence requirements. According to the BaFin Application, German laws only require certain investment firms (depending on their size) to have their financial statements audited, so this condition would be designed to ensure that all SBS Entities subject to the requirement in rule 18a–7 to file audited annual reports are required to have their financial statements audited.

The fourth condition would be that a Covered Entity that is a security-based swap dealer would need to file the reports required by Exchange Act rule 18a–7(c)(1)(i)(B) and (C) addressing the statements identified in Exchange Act rule 18a–7(c)(3) or (c)(4), as applicable, that relate to Exchange Act rule 18a–4 (''Rule 18a–4 Limited Exclusion'').[206] These reports are designed to provide the Commission with information about an SBS Entity's compliance with Rule 18a–4. Substituted compliance is not available for Exchange Act rule 18a–4 and, therefore, this condition is designed to provide the Commission with similar compliance information. Under this condition, Covered Entities would need to file a limited compliance report that includes the statements relating to Rule 18a–4 [207] or an exemption report if the Covered Entity claims an exemption from Rule 18a–4. The Covered Entity also would need to file the report of an independent public accountant covering the limited compliance report or exemption report. The fourth condition further would provide that the report of the independent public accountant may be prepared in accordance with GAAS in Germany that are used to perform audit and attestation services and the accountant complies with German independence requirements.

The fifth condition would be that a Covered Entity that is a major security-based swap participant would need to file the supporting schedules required by Exchange Act rule 18a–7(c)(1)(i)(A) and (C) addressing the statements identified in Exchange Act rules 18a–7(c)(2)(ii) and (iii) that relate to Exchange Act rule 18a–2 for which the proposed Amended Order would not provide substituted compliance. These supporting schedules are the Computation of Tangible Net Worth.

The sixth condition would be that a Covered Entity that is a security-based swap dealer would need to file the supporting schedules required by Exchange Act rule 18a–7(c)(1)(i)(A) and (C) addressing the statements identified in Exchange Act rules 18a–7(c)(2)(ii) and (iii) that relate to Exchange Act rule 18a–4 and 18a–4a if the Covered Entity is not exempt from Exchange Act rule 18a–4 (*i.e.,* the Rule 18a–4 Limited Exclusion). These supporting schedules are the Computation for Determination of Security-Based Swap Customer Reserve Requirements and the Information Relating to the Possession or Control Requirements for Security-Based Swap Customers, which are designed to provide the Commission with information about an SBS Entity's compliance with Rule 18a–4. Substituted compliance for Exchange Act rule 18a–4 is not available.

The Commission did not receive any comment on these proposed conditions and the Amended Order includes the conditions.[208]

5. Exchange Act Rule 18a–8

Exchange Act rule 18a–8 requires SBS Entities to send notifications to the Commission if certain adverse events occur.[209] The German Order provided substituted compliance for the requirements of Exchange Act rule 18a–8 applicable to SBS Entities with a prudential regulator (subject to conditions and limitations).[210] In particular, the requirements of: (1) Paragraph (c) of Exchange Act rule 18a–8 that an SBS Entity that is a security-based swap dealer and that files a notice of adjustment to its reported capital category with a U.S. prudential regulator must transmit a copy of the notice to the Commission; (2) paragraph (d) of the rule that an SBS Entity provide notification to the Commission if it fails to make and keep current books and records under Exchange Act rule 18a–5 and to transmit a subsequent report on steps being taken to correct the situation; (3) and paragraph (h) of the rule setting forth how to make the notifications required by Exchange Act 18a–8.

Under the German Order, substituted compliance in connection with the notification requirements of Exchange Act rule 18a–8 were subject to the conditions that the Covered Entity: (1) Simultaneously sends a copy of any notice required to be sent by EU or German notification laws to the Commission in the manner specified on

[205] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46519–20, 46532–33.

[206] This was viewed as a limited exclusion from the availability of substituted compliance for these requirements because the proposed Amended Order would permit these reports relating Exchange Act rule 18a–4 to be included with the German regulatory reports the Covered Entities would file with the Commission and because the reports could be prepared in accordance with German GAAS (as discussed below).

[207] The limited compliance report would not need to address Exchange Act rule 18a–9 if the Covered Entity is applying substituted compliance to this requirement. Further, as discussed above, substituted compliance with paras. (c) through (h) of Exchange Act rule 18a–7 is conditioned on the Covered Entity applying substituted compliance to Exchange Act rule 18a–1. Therefore, the Covered Entity would not need to address that rule in the compliance report. Finally, the Covered Entity would not need to address an account statement rule of a self-regulatory organization.

[208] *See* para. (f)(3)(iv)(B) of the Amended Order.

[209] *See* 17 CFR 240.18a–8.

[210] *See* German Order, 85 FR 85700.

the Commission's website (*i.e.,* the ''SEC Filing Condition''); and (2) includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice (*i.e.,* the ''Contact Information Condition'').[211] The purpose of these conditions was to alert the Commission to financial or operational problems that could adversely affect the firm—the objective of Exchange Act rule 18a–8. In addition, the German Order did not provide substituted compliance for paragraph (g) of Exchange Act rule 18a–8 requiring an SBS Entity that is a security-based swap dealer provide to notification if it fails to make a required deposit into its special reserve account for the exclusive benefit of security-based swap customers under Exchange Act rule 18a–4.[212] Substituted compliance is not available for Exchange Act rule 18a–4. The proposed Amended Order would continue to provide Covered Entities with a prudential regulator substituted compliance for the notification requirements of Exchange Act rule 18a–8 discussed above subject to the conditions and limitations.[213]

The proposed Amended Order would provide Covered Entities without a prudential regulator substituted compliance for paragraph (d) of Exchange Act rule 18a–8, subject to the SEC Filing and Contact Information Conditions.[214] Exchange Act rule 18a–8 has notification requirements that apply exclusively to Covered Entities without a prudential regulator. In particular, paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) of Exchange Act rule 18a–8 require an SBS Entity that is a security-based swap dealer and that does not have a prudential regulator to provide notifications related to the capital requirements of Exchange Act rule 18a–1. Paragraph (e) of Exchange Act rule 18a–8, in pertinent part, requires an SBS Entity that is a security-based swap dealer and that does not have a prudential regulator to provide notification if it has a material weakness under Exchange Act rule 18a–7 and to transmit a subsequent report on the steps being taken to correct the situation. The Commission conditioned substituted compliance for these notification requirements on the SEC Filing and Contact Information Conditions.[215]

The Commission did not receive any comment on these proposed conditions and the Amended Order includes the conditions.[216]

IX. Additional Considerations Regarding Supervisory and Enforcement Effectiveness Related to Capital and Margin

A. Proposed Approach

Exchange Act rule 3a71–6(a)(2)(i) provides that the Commission's assessments regarding the comparability of foreign requirements in part should take into account ''the effectiveness of the supervisory program administered, and the enforcement authority exercised'' by the foreign financial regulatory authority. This provision is intended to help ensure that substituted compliance is not predicated on rules that appear high-quality on paper if market participants in practice are allowed to fall short of their obligations, while also recognizing that differences among supervisory and enforcement regimes should not be assumed to reflect flaws in one regime or another.[217] In the German Order, the Commission concluded that the ''relevant supervisory and enforcement considerations in German are consistent with substituted compliance.'' [218] BaFin's Amended Application provided the Commission with additional information on the supervision and enforcement framework for compliance with capital and margin applicable to significant credit institutions.

In proposing to grant substituted compliance in connection with BaFin's Amended Application, the Commission preliminarily concluded that the relevant supervisory and enforcement considerations were consistent with substituted compliance. That preliminary conclusion took into account information regarding BaFin's and the ECB's roles and practices in supervising investment firms and credit institutions located in Germany, as well as their enforcement-related authority and practices.[219]

B. Commenter Views and Final Provisions

Commenters did not address the Commission's preliminary conclusions regarding supervisory and enforcement considerations, and the Commission continues to conclude that the relevant supervisory and enforcement considerations in Germany are consistent with substituted compliance.

X. Conclusion

It is hereby determined and ordered, pursuant to rule 3a71–6 under the Exchange Act, that the Commission's Order dated December 22, 2020, granting conditional substituted compliance in connection with certain requirements applicable to non-U.S. security-based swap dealers and major security-based swap participants subject to regulation in the Federal Republic of Germany is amended and restated to provide that a Covered Entity (as defined in paragraph (g)(1) of this Order) may satisfy the requirements under the Exchange Act that are addressed in paragraphs (b) through (f) of this Order so long as the Covered Entity is subject to and complies with relevant requirements of the Federal Republic of Germany and the European Union and with the conditions of this Order, as amended or superseded from time to time.

(a) General conditions.

This Order is subject to the following general conditions, in addition to the conditions specified in paragraphs (b) through (f):

(1) *Activities as MiFID ''investment services or activities.''* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID, provisions of WpHG that implement MiFID, and/or other EU and German requirements adopted pursuant to those provisions, the Covered Entity's relevant security-based swap activities constitute ''investment services'' or ''investment activities,'' as defined in MiFID article 4(1)(2) and in WpHG section 2(8), and fall within the scope of the Covered Entity's authorization from BaFin to provide investment services and/or perform investment activities in the Federal Republic of Germany.

(2) *Counterparties as MiFID ''clients.''* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID, provisions of WpHG that implement MiFID and/or other EU and German requirements adopted pursuant to those provisions, the relevant counterparty (or potential counterparty) to the Covered Entity is a ''client'' (or potential ''client''), as defined in MiFID article 4(1)(9) and in WpHG section 67(1).

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[211] *See* German Order, 85 FR 85700.

[212] *See* German Order, 85 FR 85700.

[213] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46520.

[214] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46520.

[215] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46520–21.

[216] *See* para. (f)(4)(ii)(A) of the Amended Order.

[217] *See* German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46522–23.

[218] *See* German Order, 85 FR 84697.

[219] German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46522–23.

(3) *Security-based swaps as MiFID ''financial instruments.''* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID, provisions of WpHG that implement MiFID and/or other EU and German requirements adopted pursuant to those provisions, the relevant security-based swap is a ''financial instrument,'' as defined in MiFID article 4(1)(15) and in WpHG section 2(4).

(4) *Covered Entity as CRD/CRR ''institution.''* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, the provisions of CRD, provisions of KWG that implement CRD, CRR and/or other EU and German requirements adopted pursuant to those provisions, the Covered Entity is an ''institution,'' as defined in CRD article 3(1)(3), in CRR article 4(1)(3) and in KWG section 1(1b).

(5) Counterparties as EMIR ''counterparties.'' For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of EMIR, EMIR RTS, EMIR Margin RTS and/or other EU requirements adopted pursuant to those provisions, if the relevant provision applies only to the Covered Entity's activities with specified types of counterparties, and if the counterparty to the Covered Entity is not any of the specified types of counterparty, the Covered Entity complies with the applicable condition of this Order:

(i) As if the counterparty were the specified type of counterparty; in this regard, if the Covered Entity reasonably determines that the counterparty would be a financial counterparty if it were established in the EU and authorized by an appropriate EU authority, it must treat the counterparty as if the counterparty were a financial counterparty;

(ii) Without regard to the application of EMIR article 13; and

(iii) Only to the extent that an Exchange Act section or rule cited in paragraphs (b) through (f) of this Order applies to the security-based swap activities with that counterparty.

(6) *Security-based swap status under EMIR.* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of EMIR, EMIR RTS, EMIR Margin RTS, and/or other EU requirements adopted pursuant to those provisions, if the relevant provision applies to the Covered Entity's OTC derivatives or OTC derivative contracts that have not been cleared by a central counterparty, then either:

(i) The relevant security-based swap is an ''OTC derivative'' or ''OTC derivative contract,'' as defined in EMIR article 2(7), that has not been cleared by a central counterparty and otherwise is subject to the provisions of EMIR article 11, EMIR RTS articles 11–15, and EMIR Margin RTS article 2; or

(ii) The relevant security-based swap has been cleared by a central counterparty that is authorized or recognized to clear derivatives contracts by a relevant authority in the EU.

(7) *Memorandum of Understanding with BaFin.* The Commission and BaFin have a supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation with respect to this Order at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.

(8) *Memorandum of Understanding Regarding ECB-Owned Information.* The Commission and the ECB have a supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation with respect to this Order as it pertains to information owned by the ECB at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.

(9) *Notice to Commission.* A Covered Entity relying on this Order must provide notice of its intent to rely on this Order by notifying the Commission in writing. Such notice must be sent to the Commission in the manner specified on the Commission's website. The notice must include the contact information of an individual who can provide further information about the matter that is the subject of the notice. The notice must also identify each specific substituted compliance determination within paragraphs (b) through (f) of the Order for which the Covered Entity intends to apply substituted compliance. A Covered Entity must promptly provide an amended notice if it modifies its reliance on the substituted compliance determinations in this Order.

(10) *European Union Cross-Border Matters.*

(i) If, in relation to a particular service provided by a Covered Entity, responsibility for ensuring compliance with any provision of MiFID or MiFIR or any other EU or German requirement adopted pursuant to MiFID or MiFIR listed in paragraphs (b) through (f) of this Order is allocated to an authority of the Member State of the European Union in whose territory a Covered Entity provides the service, BaFin must be the authority responsible for supervision and enforcement of that provision or requirement in relation to the particular service.

(ii) If responsibility for ensuring compliance with any provision of MAR or any other EU requirement adopted pursuant to MAR listed in paragraphs (b) through (f) of this Order is allocated to one or more authorities of a Member State of the European Union, one of such authorities must be BaFin.

(11) *Notification Requirements Related to Changes in Capital.* A Covered Entity that is prudentially regulated relying on this Order must apply substituted compliance with respect to the requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule 18a–8(c).

(b) Substituted compliance in connection with risk control requirements.

This Order extends to the following provisions related to risk control:

(1) *Internal risk management.* The requirements of Exchange Act section 15F(j)(2) and related aspects of Exchange Act rule 15Fh–3(h)(2)(iii)(I), provided that the Covered Entity is subject to and complies with the requirements of: MiFID articles 16 and 23; WpHG sections 63, 80, 83 and 84; MiFID Org Reg articles 21–37, 72–76 and Annex IV; CRD articles 74, 76 and 79–87, 88(1), 91(1)–(2), 91(7)–(9) and 92, 94 and 95; and KWG sections 25a, 25b, 25c (other than 25c(2)), 25d (other than 25d(3) and 25d(11)), 25e and 25f; CRR articles 286–88 and 293; and EMIR Margin RTS article 2.

(2) *Trade acknowledgement and verification.* The requirements of Exchange Act rule 15Fi–2, provided that the Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(a) and EMIR RTS article 12.

(3) *Portfolio reconciliation and dispute reporting.* The requirements of Exchange Act rule 15Fi–3, provided that:

(i) The Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(b) and EMIR RTS articles 13 and 15; and

(ii) The Covered Entity provides the Commission with reports regarding disputes between counterparties on the same basis as it provides those reports to competent authorities pursuant to EMIR RTS article 15(2).

(4) *Portfolio compression.* The requirements of Exchange Act rule 15Fi–4, provided that the Covered Entity is subject to and complies with

the requirements of EMIR RTS article 14.

(5) *Trading relationship documentation.* The requirements of Exchange Act rule 15Fi–5, other than paragraph (b)(5) to that rule when the counterparty is a U.S. person, provided that the Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(a), EMIR RTS article 12, and EMIR Margin RTS article 2.

(c) Substituted compliance in connection with capital and margin.

(1) *Capital.* The requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1, and 18a–1a through d, provided that:

(i) The Covered Entity is subject to and complies with: CRR, Part One (General Provisions) Article 6(1), Part Two (Own Funds), Part Three (Capital Requirements), Part Four (Large Exposures), Part Five (Exposures to Transferred Credit Risk), Part Six (Liquidity), and Part Seven (Leverage); MiFID Org Reg article 23; BRRD, articles 45(6) and 81(1); CRD, articles 73, 79, 86, 129, 129(1), 130, 130(1), 130(5), 131, 133, 133(1), 133(4), 141, 142(1) and (2); EMIR Margin RTS, articles 2, 3(b), 7, and 19(1)(d) and (e), (3) and (8); KWG, sections 10b–10h, 10i(2)–(9), 25a(1) sentence 3 no. 2 and no. 3 b), 33(1) sentence 1c); SAG, section 49(2), 49d, 62(1), 138(1); and SolvV, section 37;

(ii) The Covered Entity applies substituted compliance for the requirements of Exchange Act rules 18a–5(a)(9), 18a–6(b)(1)(x), and 18a–8(a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) pursuant to this Order;

(iii)(A) The Covered Entity:

(*1*) Maintains liquid assets as defined in paragraph (c)(1)(iii)(B) that have an aggregate market value that exceeds the amount of the Covered Entity's adjusted liabilities as defined in paragraph (c)(1)(iii)(C) by at least $100 million before applying the deduction specified in paragraph (c)(1)(iii)(D) and by at least $20 million after applying the deduction specified in paragraph (c)(1)(iii)(D);

(*2*) Makes and preserves for three years a quarterly record that:

(*a*) Identifies and values the liquid assets maintained pursuant to paragraph (c)(1)(iii)(A)(*1*);

(*b*) Compares the amount of the aggregate value the liquid assets maintained pursuant to paragraph (c)(1)(iii)(A)(*1*) to the amount of the Covered Entity's total liabilities and shows the amount of the difference between the two amounts (''the excess liquid assets amount''); and

(*c*) Shows the amount of the deduction specified in paragraph (c)(1)(iii)(D) and the amount that deduction reduces the excess liquid assets amount;

(*3*) The Covered Entity notifies the Commission in writing within 24 hours in the manner specified on the Commission's website if the Covered Entity fails to meet the requirements of paragraph (c)(iii)(A)(*1*) and includes in the notice the contact information of an individual who can provide further information about the failure to meet the requirements; and

(*4*) Includes its most recent statement of financial condition filed with its local supervisor (whether audited or unaudited) with its initial written notice to the Commission of its intent to rely on substituted compliance under condition (a)(9) above.

(B) For the purposes of paragraph (c)(1)(iii)(A)(*1*), liquid assets are:

(*1*) Cash and cash equivalents;

(*2*) Collateralized agreements;

(*3*) Customer and other trading related receivables;

(*4*) Trading and financial assets; and

(*5*) Initial margin posted by the Covered Entity to a counterparty or a third-party custodian, provided:

(*a*) The initial margin requirement is funded by a fully executed written loan agreement with an affiliate of the Covered Entity;

(*b*) The loan agreement provides that the lender waives re-payment of the loan until the initial margin is returned to the Covered Entity; and

(*c*) The liability of the Covered Entity to the lender can be fully satisfied by delivering the collateral serving as initial margin to the lender.

(C) For the purposes of paragraph (c)(1)(iii)(A)(*1*), adjusted liabilities are the Covered Entity's total liabilities, excluding subordinated debt issued by the Covered Entity that qualifies as Tier 2 capital pursuant to the capital requirements identified in paragraph (c)(1)(i).

(D) The deduction required by paragraph (c)(1)(iii)(A) is the amount of the Covered Entity's risk-weighted assets, excluding risk-weighted assets that are included in CRR Part Three, Title III (Own Funds Requirements for Operational Risk) and risk-weighted assets that are not treated as liquid assets for the purposes of paragraph (c)(1)(iii)(A)(*1*), calculated for the purposes of the capital requirements identified in paragraph (c)(1)(i) divided by 12.5.

(2) *Margin.* The requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–3, provided that:

(i) The Covered Entity is subject to and complies with the requirements of: EMIR article 11; EMIR Margin RTS; CRR articles 103, 105(3); 105(10); 111(2), 224, 285, 286, 286(7), 290, 295, 296(2)(b), 297(1), 297(3), and 298(1); MiFID Org Reg article 23(1); CRD articles 74 and 79(b); and KWG section 25a(1);

(ii) The Covered Entity collects variation margin, as defined in EMIR Margin RTS, from a counterparty with respect to transactions in non-cleared security-based swaps, unless the counterparty would qualify for an exception from the collateral collection requirements under paragraph (c)(1)(iii) or (c)(2)(iii) of Exchange Act 18a–3;

(iii) The Covered Entity collects initial margin, as defined in the EMIR Margin RTS, from a counterparty with respect to transactions in non-cleared security-based swaps, unless the counterparty would qualify for an exception from the collateral collection requirements under paragraph (c)(1)(iii) of Exchange Act rule 18a–3; and

(iv) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a–5(a)(12) pursuant to this Order.

(d) Substituted compliance in connection with internal supervision and compliance requirements and certain Exchange Act section 15F(j) requirements.

This Order extends to the following provisions related to internal supervision and compliance and Exchange Act section 15F(j) requirements:

(1) *Internal supervision.* The requirements of Exchange Act rule 15Fh–3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5), provided that:

(i) The Covered Entity is subject to and complies with the requirements identified in paragraph (d)(3) of this Order;

(ii) The Covered Entity complies with paragraph (d)(4) of this Order; and

(iii) This paragraph (d) does not extend to the requirements of paragraph (h)(2)(iii)(I) to rule 15Fh–3 to the extent those requirements pertain to compliance with Exchange Act sections 15F(j)(2), (j)(3), (j)(4)(B) and (j)(6), or to the general and supporting provisions of paragraph (h) to rule 15Fh–3 in connection with those Exchange Act sections.

(2) *Chief compliance officers.* The requirements of Exchange Act section 15F(k) and Exchange Act rule 15Fk–1, provided that:

(i) The Covered Entity is subject to and complies with the requirements identified in paragraph (d)(3) of this Order;

(ii) All reports required pursuant to MiFID Org Reg article 22(2)(c) must also:

(A) Be provided to the Commission at least annually, and in the English language;

(B) Include a certification signed by the chief compliance officer or senior officer (as defined in Exchange Act rule 15Fk–1(e)(2)) of the Covered Entity that, to the best of the certifier's knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects;

(C) Address the Covered Entity's compliance with:

(i) Applicable requirements under the Exchange Act; and

(ii) The other applicable conditions of this Order in connection with requirements for which the Covered Entity is relying on this Order;

(D) Be provided to the Commission no later than 15 days following the earlier of:

(i) The submission of the report to the Covered Entity's management body; or

(ii) The time the report is required to be submitted to the management body; and

(E) Together cover the entire period that the Covered Entity's annual compliance report referenced in Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk–1(c) would be required to cover.

(3) *Applicable supervisory and compliance requirements.* Paragraphs (d)(1) and (d)(2) are conditioned on the Covered Entity being subject to and complying with the following requirements: MiFID articles 16 and 23; WpHG sections 63, 80, 83 and 84; MiFID Org Reg articles 21–37, 72–76 and Annex IV; CRD articles 74, 76, 79–87, 88(1), 91(1)–(2), 91(7)–(9) and 92, 94 and 95; and KWG sections 25a, 25b, 25c (other than 25c(2)), 25d (other than 25d(3) and 25d(11)), 25e and 25f, and CRR articles 286–88 and 293; and EMIR Margin RTS article 2.

(4) *Additional condition to paragraph (d)(1).* Paragraph (d)(1) further is conditioned on the requirement that the Covered Entity complies with the provisions specified in paragraph (d)(3) as if those provisions also require compliance with:

(i) Applicable requirements under the Exchange Act; and

(ii) The other applicable conditions of this Order in connection with requirements for which the Covered Entity is relying on this Order.

(e) Substituted compliance in connection with counterparty protection requirements.

This Order extends to the following provisions related to counterparty protection:

(1) *Disclosure of information regarding material risks and characteristics.* The requirements of Exchange Act rule 15Fh–3(b) relating to disclosure of material risks and characteristics of one or more security-based swaps subject thereto, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of MiFID article 24(4), WpHG sections 63(7) and 64(1) and MiFID Org Reg articles 48–50.

(2) *Disclosure of information regarding material incentives or conflicts of interest.* The requirements of Exchange Act rule 15Fh–3(b) relating to disclosure of material incentives or conflicts of interest that a Covered Entity may have in connection with one or more security-based swaps subject thereto, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of either:

(i) MiFID article 23(2)–(3); WpHG section 63(2); and MiFID Org Reg articles 33–35;

(ii) MiFID article 24(9); WpHG section 70; and MiFID Delegated Directive article 11(5); or

(iii) MAR article 20(1) and MAR Investment Recommendations Regulation articles 5 and 6.

(3) ''*Know your counterparty.*'' The requirements of Exchange Act rule 15Fh–3(e), as applied to one or more security-based swap counterparties subject thereto, provided that the Covered Entity, in relation to the relevant security-based swap counterparty, is subject to and complies with the requirements of MiFID article 16(2); WpHG section 80(1); MiFID Org Reg articles 21–22, 25–26 and applicable parts of Annex I; CRD articles 74(1) and 85(1); KWG section 25a; MLD articles 11 and 13; GwG sections 10–11; MLD articles 8(3) and 8(4)(a) as applied to internal policies, controls and procedures regarding recordkeeping of customer due diligence activities; and GwG section 6(1)–(2) as applied to vigilance measures regarding recordkeeping of customer due diligence activities.

(4) *Suitability.* The requirements of Exchange Act rule 15Fh–3(f), as applied to one or more recommendations of a security-based swap or trading strategy involving a security-based swap subject thereto, provided that:

(i) The Covered Entity, in relation to the relevant recommendation, is subject to and complies with the requirements of MiFID articles 24(2)–(3) and 25(1)–(2); WpHG sections 63(5)–(6), 80(9)–(13) and 87(1)–(2); and MiFID Org Reg articles 21(1)(b) and (d), 54 and 55; and

(ii) The counterparty to which the Covered Entity makes the recommendation is a ''professional client'' mentioned in MiFID Annex II section I and WpHG section 67(2) and is not a ''special entity'' as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh–2(d).

(5) *Fair and balanced communications.* The requirements of Exchange Act rule 15Fh–3(g), as applied to one or more communications subject thereto, provided that the Covered Entity, in relation to the relevant communication, is subject to and complies with the requirements of:

(i) Either MiFID articles 24(1), (3) and WpHG sections 63(1), (6) or MiFID article 30(1) and WpHG section 68(1); and

(ii) MiFID articles 24(4)–(5); WpHG sections 63(7) and 64(1); MiFID Org Reg articles 46–48; MAR articles 12(1)(c), 15 and 20(1); and MAR Investment Recommendations Regulation articles 3 and 4.

(6) *Daily mark disclosure.* The requirements of Exchange Act rule 15Fh–3(c), as applied to one or more security-based swaps subject thereto, provided that the Covered Entity is required to reconcile, and does reconcile, the portfolio containing the relevant security-based swap on each business day pursuant to EMIR articles 11(1)(b) and 11(2) and EMIR RTS article 13.

(f) Substituted compliance in connection with recordkeeping, reporting, notification, and securities count requirements.

This Order extends to the following provisions that apply to a Covered Entity related to recordkeeping, reporting, notification and securities counts:

(1)(i) *Make and keep current certain records.* The requirements of the following provisions of Exchange Act rule 18a–5, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(1)(i) and with the applicable conditions in paragraph (f)(1)(ii):

(A) The requirements of Exchange Act rule 18a–5(a)(1) or (b)(1), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 74, 75, and Annex IV; and MiFIR article 25(1); and

(*2*) With respect to the requirements of Exchange Act rule 18a–5(a)(1), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order.

(B) The requirements of Exchange Act rule 18a–5(a)(2), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of CRD article 73; MiFID Delegated Directive article 2; MiFID Org Reg articles 72, 74 and 75; EMIR article 39(4); KWG section 10a; and WpHG section 84; and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(C) The requirements of Exchange Act rule 18a–5(a)(3) or (b)(2), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Delegated Directive article 2; MiFID Org Reg articles 72, 74 and 75; EMIR article 39(4); and WpHG section 84; and

(*2*) With respect to the requirements of Exchange Act rule 18a–5(a)(3), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(D) The requirements of Exchange Act rule 18a–5(a)(4) or (b)(3), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of CRR article 103; MiFID articles 16(6), 25(5), and 25(6); MiFID Org Reg articles 59, 74, 75 and Annex IV; MiFIR article 25(1); EMIR articles 9(2) and 11(1)(a); WpHG sections 63 and 64; and

(*2*) With respect to the requirements of Exchange Act rule 18a–5(a)(4), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(E) The requirements of Exchange Act rule 18a–5(b)(4) provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg article 59; EMIR articles 9(2) and 11(1)(a); MiFID articles 16(6), 25(5), and 25(6); and WpHG sections 63, 64, and 83 paragraphs 1 and 2;

(F) The requirements of Exchange Act rule 18a–5(a)(5) or (b)(5), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 74, 75 and Annex IV; and MiFIR article 25(1); and

(*2*) With respect to the requirements of Exchange Act rule 18a–5(a)(5), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(G) The requirements of Exchange Act rules 18a–5(a)(6) and (a)(15) or (b)(6) and (b)(11), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of CRR articles 103, 105(3), and 105(10); CRD article 73; MiFID articles 16(6), 25(5), 25(6); MiFID Delegated Directive article 2; MiFID Org Reg articles 59, 74, 75, and Annex IV; MiFIR article 25(1); EMIR articles 9(2), 11(1)(a), and 39(4); KWG section 10a; and WpHG sections 63, 64, 83 paragraphs 1 through 2, and 84; and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 15Fi–2 pursuant to this Order;

(H) The requirements of Exchange Act rule 18a–5(a)(7) or (b)(7), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MiFIR article 25(1); MLD4 articles 11 and 13; MiFID article 25(2); WpHG section 64 paragraph 3; and GWG sections 10 and 11; and

(*2*) With respect to the requirements of Exchange Act rule 18a–5(a)(7), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(I) The requirements of Exchange Act rule 18a–5(a)(8), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of CRR articles 103, 105(3), and 105(10); MiFID Org Reg articles 59, 74, 75 and Annex IV; MiFIR article 25(1); EMIR articles 9(2), 11(1)(a), and 39(4); MiFID articles 16(6), 25(5), and 25(6); CRD article 73; MiFID Delegated Directive article 2; WpHG sections 63, 64, 83 paragraphs 1 through 2, and 84; and KWG section 10a; and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order.;

(J) The requirements of Exchange Act rule 18a–5(a)(9), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of CRD article 73; MiFID Delegated Directive article 2; EMIR article 39(4); MiFID Org Reg articles 72, 74, and 75; KWG section 10a; and WpHG Section 84;

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order; and

(*3*) This Order does not extend to the requirements of Exchange Act rule 18a–5(a)(9) relating to Exchange Act rule 18a–2;

(K) The requirements of Exchange Act rule 18a–5(a)(10) and (b)(8), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(1)(d), 35; CRD articles 88, 91(1), 91(8); MiFID article 9(1) and 16(3); KWG sections 15, 25a(1), 25c(1) through (3), 25c(4a), 25d(1) through (3), 25d(7), 25d(11), and 36; and WpHG sections 81(1) and 84;

(L) The requirements of Exchange Act rule 18a–5(a)(12), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of CRR articles 103, 105(3) and 105(10); MiFID Org Reg. articles 72, 74 and 75; CRD article 73; MiFID Delegated Directive article 2; KWG section 10a; and WpHG section 84; and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–3 pursuant to this Order;

(M) The requirements of Exchange Act rule 18a–5(a)(17) and (b)(13), as applicable, regarding one or more provisions of Exchange Act rules 15Fh–3 or 15Fk–1 for which substituted compliance is available under this Order, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 73, and Annex I; MiFID articles 16(6) and 25(2); MLD articles 11 and 13; EMIR article 39(5); WpHG sections 64 paragraph 3 and 83 paragraph 1; and GWG sections 10 and 11, in each case with respect to the relevant security-based swap or activity;

(*2*) With respect to the portion of Exchange Act rule 18a–5(a)(17) and (b)(13) that relates to one or more provisions of Exchange Act rule 15Fh–3 for which substituted compliance is available under this Order, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh–3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and

(*3*) With respect to the portion of Exchange Act rule 18a–5(a)(17) and (b)(13) that relates to Exchange Act rule 15Fk–1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk–1 pursuant to this Order;

(N) The requirements of Exchange Act rule 18a–5(a)(18)(i) and (ii) or (b)(14)(i) and (ii), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of

EMIR article 11(1)(b); and EMIR RTS article 15(1)(a); and

(*2*) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi–3 pursuant to this Order; and

(O) The requirements of Exchange Act rule 18a–5(a)(18)(iii) or (b)(14)(iii), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(b); and EMIR RTS article 15(1)(a), in each case with respect to such security-based swap portfolio(s); and

(*2*) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi–4 pursuant to this Order.

(ii) Paragraph (f)(1)(i) is subject to the following further conditions:

(A) Paragraphs (f)(1)(i)(A) through (D) and (H) are subject to the condition that the Covered Entity preserves all of the data elements necessary to create the records required by the applicable Exchange Act rules cited in such paragraphs and upon request furnishes promptly to representatives of the Commission the records required by those rules;

(B) A Covered Entity may apply the substituted compliance determination in paragraph (f)(1)(i)(M) to records of compliance with Exchange Act rule 15Fh–3(b), (c), (e), (f) and (g) in respect of one or more security-based swaps or activities related to security-based swaps; and

(C) This Order does not extend to the requirements of Exchange Act rule 18a–5(a)(13), (a)(14), (a)(16), (b)(9), (b)(10) or (b)(12).

(2)(i) *Preserve certain records.* The requirements of the following provisions of Exchange Act rule 18a–6, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(2)(i) and with the applicable conditions in paragraph (f)(2)(ii):

(A) The requirements of Exchange Act rule 18a–6(a)(1) or (a)(2), as applicable, provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 74, 75, and Annex IV; CRR article 103; MiFIR article 25(1); EMIR article 9(2); MiFID articles 16(6) and 69(2); CRD article 73; MiFID Delegated Directive article 2; WpHG sections 6, 7, 83 paragraph 1, and 84; and KWG section 10a;

(B) The requirements of Exchange Act rule 18a–6(b)(1)(i) or (b)(2)(i), as applicable, provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 74, 75, and Annex IV; CRR article 103; MiFIR article 25(1); EMIR article 9(2); MiFID articles 16(6) and 69(2); CRD article 73; MiFID Delegated Directive article 2; WpHG sections 6, 7, 83 paragraph 1, and 84; and KWG section 10a;

(C) The requirements of Exchange Act rule 18a–6(b)(1)(ii) and (iii), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 74 and 75; EMIR article 9(2); CRD article 73; MiFID Delegated Directive article 2; MiFID 16(6); KWG section 10a; and WpHG sections 83 paragraph 1, and 84; and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(D) The requirements of Exchange Act rule 18a–6(b)(1)(iv) or (b)(2)(ii), as applicable, provided that the Covered Entity is subject to and complies with the requirements of CRR article 103; MiFID Org Reg articles 72, 73, 74, 75, 76, Annex I and Annex IV; MiFIR article 25(1); EMIR article 9(2); CRD article 73; MiFID articles 16(6), 16(7); MiFID Delegated Directive article 2; KWG section 10a; and WpHG sections 83 paragraphs 1 and 3 through 8, and 84;

(E) The requirements of Exchange Act rule 18a–6(b)(1)(v), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); CRR articles 99, 294, 394, 415, 430 and Part Six: Title II and Title III; CRR Reporting ITS article 14 and annexes I–V and VIII–XIII; and MiFID Org Reg article 72(1);

(*2*) With respect to the requirements of Exchange Act rule 18a–6(b)(1)(v), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant this Order; and

(*3*) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(1)(v) relating to Exchange Act rule 18a–2;

(F) The requirements of Exchange Act rule 18a–6(b)(1)(vi) or (b)(2)(iii), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg articles 72(1) and 73; MiFID article 16(6); and WpHG section 83 paragraph 1; and

(*2*) With respect to the requirements of Exchange Act rule 18a–6(b)(1)(vi), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(G) The requirements of Exchange Act rule 18a–6(b)(1)(vii) or (b)(2)(iv), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72(1) and 73; MiFIR article 25(1); EMIR article 9(2); MiFID article 16(6); and WpHG section 83 paragraph 1; and

(*2*) With respect to the requirements of Exchange Act rule 18a–6(b)(1)(vii), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(H) The requirements of Exchange Act rule 18a–6(b)(1)(viii), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of CRR articles 99, 294, 394, 415, 430 and Part Six: Title II and Title III; CRR Reporting ITS article 14 and annexes I–V and VIII–XIII, as applicable; and MiFID Org Reg article 72(1);

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a–7(a)(1), (b), (c) through (h), and Exchange Act rule 18a–7(j) as applied to these requirements pursuant to this Order;

(*3*) With respect to the requirements of Exchange Act rule 18a–6(b)(1)(viii), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(*4*) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(1)(viii)(L); and

(*5*) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(1)(viii)(M) relating to Exchange Act rule 18a–2.

(I) The requirements of Exchange Act rule 18a–6(b)(1)(ix), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 22(3)(c), 23, 24, 25(2), 26, 29(2)(c), 35 and 72(1); CRR articles 176, 286 and 293(1)(d); EMIR RTS; EMIR article 9(2); MiFID articles 16(2), 16(3), 16(5), 24(9); MiFID Delegated Directive article 11; CRD article 73, 75–87; WpHG sections 64 paragraph 3, 70, 80 paragraph 6, and 84; WpDVerOV section 6; and KWG sections 10a, 25a, 25c(3)(3), 25c(3)(4), 25c(4a), 25d(6), 25(8); and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(J) The requirements of Exchange Act rule 18a–6(b)(1)(x), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg article 72(1); CRD article 73; MiFID article 16(6); KWG section 10a; and WpHG section 83 paragraph 1; and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(K) The requirements of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii), as applicable, regarding one or more provisions of Exchange Act rules 15Fh–3 or 15Fk–1 for which substituted compliance is available under this Order, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MLD4 articles 11 and 13; MiFID Org Reg article 72(1); MiFID article 16(6); GWG sections 10 and 11; and WpHG section 83 paragraph 1, in each case with respect to the relevant security-based swap or activity;

(*2*) With respect to the portion of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii) that relates to one or more provisions of Exchange Act rule 15Fh–3 for which substituted compliance is available under this Order, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh–3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and

(*3*) With respect to the portion of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii), as applicable, that relates to Exchange Act rule 15Fk–1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk–1 pursuant to this Order;

(L) The requirements of Exchange Act rule 18a–6(c), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(1)(f) and 72(1); MiFID article 16(6); and WpHG section 83 paragraph 1; and

(*2*) This Order does not extend to the requirements of Exchange act rule 18a–6(c) relating to Forms SBSE, SBSE–A, SBSE–C, SBSE–W, all amendments to these forms, and all other licenses or other documentation showing the registration of the Covered Entity with any securities regulatory authority or the U.S. Commodity Futures Trading Commission;

(M) The requirements of Exchange Act rule 18a–6(d)(1), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 35 and 72(1); CRD articles 88, 91(1), 91(8); MiFID article 9(1), 16(3), 16(6); KWG sections 25c(1) through (3), 25d(1) through (3), and 36; and WpHG sections 81(1), 83 paragraph 1, and 84;

(N) The requirements of Exchange Act rule 18a–6(d)(2), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg articles 72(1) and 72(3); MiFID article 16(6); and WpHG section 83 paragraph 1; and

(*2*) With respect to the requirements of Exchange Act rule 18a–6(d)(2)(i), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(O) The requirements of Exchange Act rule 18a–6(d)(3), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(1)(f), 72, 73, and Annex I; MiFID article 16(6); and WpHG section 83 paragraph 1; and

(*2*) With respect to the requirements of Exchange Act rule 18a–6(d)(3)(i), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(P) The requirements of Exchange Act rule 18a–6(d)(4) and (d)(5), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg articles 24, 25(2), 72(1) and 73; MiFID articles 16(2), 16(6), and 25(5); and WpHG sections 64 paragraph 3 and 83 paragraphs 1 and 2; and

(*2*) The Covered Entity applies substituted compliance for Exchange Act rules 15Fi–3, 15Fi–4, and 15Fi–5 pursuant to this Order;

(Q) The requirements of Exchange Act rule 18a–6(e), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(2), 58, 72(1) and 72(3); MiFID articles 16(5), 16(6); and WpHG sections 80 paragraph 6, and 83 paragraph 1; and

(R) The requirements of Exchange Act rule 18a–6(f), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg article 31(1); MiFID article 16(5); and WpHG section 80 paragraph 6.

(ii) Paragraph (f)(2)(i) is subject to the following further conditions:

(A) A Covered Entity may apply the substituted compliance determination in paragraph (f)(2)(i)(K) to records related to Exchange Act rule 15Fh–3(b), (c), (e), (f) and (g) in respect of one or more security-based swaps or activities related to security-based swaps; and

(B) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(1)(xi), (b)(1)(xiii), (b)(2)(v), (b)(2)(vi), or (b)(2)(viii).

(3) *File Reports.* The requirements of the following provisions of Exchange Act rule 18a–7, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(3):

(i) The requirements of Exchange Act rule 18a–7(a)(1) or (a)(2), as applicable, and the requirements of Exchange Act rule 18a–7(j) as applied to the requirements of Exchange Act rule 18a–7(a)(1) or (a)(2), as applicable, provided that:

(A) The Covered Entity is subject to and complies with the requirements of CRR articles 99, 394, 430 and Part Six: Title II and Title III; CRR Reporting ITS annexes I, II, III, IV, V, VIII, IX, X, XI, XII and XIII, as applicable;

(B) The Covered Entity files periodic unaudited financial and operational information with the Commission or its designee in the manner and format required by Commission rule or order and presents the financial information in the filing in accordance with generally accepted accounting principles that the Covered Entity uses to prepare general purpose publicly available or available to be issued financial statements in Germany;

(C) With respect to the requirements of Exchange Act rule 18a–7(a)(1), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order; and

(D) With respect to the requirements of Exchange Act rule 18a–7(a)(1), the Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a–6(b)(1)(viii) pursuant to this Order;

(ii) The requirements of Exchange Act rule 18a–7(a)(3) and the requirements of Exchange Act rule 18a–7(j) as applied to the requirements of Exchange Act rule 18a–7(a)(3), provided that:

(A) The Covered Entity is subject to and complies with the requirements of CRR articles 99, 394, 431, 433,452, 454, and 455; CRR Reporting ITS annexes I, II, VIII and IX, as applicable; and

(B) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(iii) The requirements of Exchange Act rule 18a–7(b), provided that:

(A) The Covered Entity is subject to and complies with the requirements of

CRR articles 431 through 455; and HGB sections 316 and 325; and

(B) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a–6(b)(1)(viii) pursuant to this Order.

(iv) The requirements of Exchange Act rule 18a–7(c), (d), (e), (f), (g) and (h) and the requirements of Exchange Act rule 18a–7(j) as applied to the requirements of paragraphs (c), (d), (e), (f), (g) and (h) of Exchange Act rule 18a–7, provided that:

(A) The Covered Entity is subject to and complies with the requirements of CRR articles 26(2), 132(5), 154, 191, 321, 325bi, 350, 353, 368, 418; HGB sections 316 and 325; WpHG section 24 and 84, and 89 (1) sentence 1 no. 1; and KWG section 26a(1);

(B) With respect to financial statements the Covered Entity is required to file annually with the German BaFin, including a report of an independent public accountant covering the financial statements, the Covered Entity:

(*1*) Simultaneously sends a copy of such annual financial statements and the report of the independent public accountant covering the annual financial statements to the Commission in the manner specified on the Commission's website;

(*2*) Includes with the transmission the contact information of an individual who can provide further information about the financial statements and report;

(*3*) Includes with the transmission the report of an independent public accountant required by Exchange Act rule 18a–7(c)(1)(i)(C) covering the annual financial statements if German laws do not require the Covered Entity to engage an independent public accountant to prepare a report covering the annual financial statements; provided, however, that such report of the independent public accountant may be prepared in accordance with generally accepted auditing standards in Germany that the independent public accountant uses to perform audit and attestation services and the accountant complies with German independence requirements;

(*4*) Includes with the transmission the reports required by Exchange Act rule 18a–7(c)(1)(i)(B) and (C) addressing the statements identified in Exchange Act rule 18a–7(c)(3) or (c)(4), as applicable, that relate to Exchange Act rule 18a–4; provided, however, that the report of the independent public accountant required by Exchange Act rule 18a–7(c)(1)(i)(C) may be prepared in accordance with generally accepted auditing standards in Germany that the independent public accountant uses to perform audit and attestation services and the accountant complies with German independence requirements; and

(*5*) Includes with the transmission the supporting schedules and reconciliations, as applicable, required by Exchange Act rules 18a–7(c)(2)(ii) and (iii), respectively, relating to Exchange Act rule 18a–2; and

(*6*) Includes with the transmission the supporting schedules and reconciliations, as applicable, required by Exchange Act rules 18a–7(c)(2)(ii) and (iii), respectively, relating to Exchange Act rules 18a–4 and 18a–4a;

(C) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order; and

(D) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a–6(b)(1)(viii) pursuant to this Order.

(4)(i) *Provide Notification.* The requirements of the following provisions of Exchange Act rule 18a–8, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(4)(i) and with the applicable conditions in paragraph (f)(4)(ii):

(A) The requirements of paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) of Exchange Act rule 18a–8 and the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) of Exchange Act rule 18a–8, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of CRR article 366(5); KWG section 25a (1) sentence 6 no. 3; and FinDAG section 4d; and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(B) The requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of Exchange Act rule 18a–8(c), provided that the Covered Entity is subject to and complies with the requirements of KWG section 25a(1) sentence 6 no. 3; and FinDAG section 4d;

(C) The requirements of Exchange Act rule 18a–8(d) and the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of Exchange Act rule 18a–8(d), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of KWG section 25a(1) sentence 6 no. 3; and FinDAG section 4d; and

(*2*) This Order does not extend to the requirements of Exchange Act rule 18a–8(d) to give notice with respect to books and records required by Exchange Act rule 18a–5 for which the Covered Entity does not apply substituted compliance pursuant to this Order;

(D) The requirements of Exchange Act rule 18a–8(e) and the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of Exchange Act rule 18a–8(e), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of KWG section 25a(1) sentence 6 no. 3; and FinDAG section 4d;

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(*3*) This Order does not extend to the requirements of Exchange act rule 18a–8(e) relating to Exchange Act rule 18a–2 or to the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of Exchange act rule 18a–8(e) relating to Exchange Act rule 18a–2; and

(*4*) This Order does not extend to the requirements of Exchange act rule 18a–8(e) relating to Exchange Act rule 18a–4 or to the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of Exchange Act rule 18a–8(e) relating to Exchange Act rule 18a–4;

(ii) Paragraph (f)(4)(i) is subject to the following further conditions:

(A) The Covered Entity:

(*1*) Simultaneously sends a copy of any notice required to be sent by German law cited in this paragraph of the Order to the Commission in the manner specified on the Commission's website; and

(*2*) Includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice;

(B) This Order does not extend to the requirements of paragraphs (a)(2) and (b)(3) of Exchange Act rule 18a–8 relating to Exchange Act rule 18a–2 or to the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of paragraphs (a)(2) and (b)(3) of Exchange Act rule 18a–8 relating to Exchange Act rule 18a–2;

(C) This Order does not extend to the requirements of paragraph (g) of Exchange Act rule 18a–8 or to the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of paragraph (g) of rule 18a–8.

(5) *Securities Counts.* The requirements of Exchange Act rule 18a–9, provided that:

(i) The Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(b); EMIR RTS articles 12 and 13; WpHG section 84; HGB sections 316 and 325; and WpHG section 89 (1) sentence 1 no. 1; and

(ii) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order.

(6) *Daily Trading Records.* The requirements of Exchange Act section 15F(g), provided that the Covered Entity is subject to and complies with the requirements of WpHG section 83 paragraph 1; and MiFID Org Reg article 21(1)(f), 21(4), and 72(1).

(7) *Examination and Production of Records.* Notwithstanding the forgoing provisions of paragraph (f) of this Order, this Order does not extend to, and Covered Entities remain subject to, the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a–6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the Covered Entity that are required to be preserved under Exchange Act rule 18a–6, or any other records of the Covered Entity that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.

(8) *English Translations.* Notwithstanding the forgoing provisions of paragraph (f) of this Order, to the extent documents are not prepared in the English language, Covered Entities must promptly furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F of this Order.

(g) *Definitions.*

(1) ''Covered Entity'' means an entity that:

(i) Is a security-based swap dealer or major security-based swap participant registered with the Commission;

(ii) Is not a ''U.S. person,'' as that term is defined in rule 3a71–3(a)(4) under the Exchange Act; and

(iii) Is an investment firm and/or credit institution that is authorized by BaFin to provide investment services or perform investment activities in Germany and is supervised by the ECB (or has a licensing application pending with the ECB as of August 12, 2021) as a significant institution.

(2) ''MiFID'' means the ''Markets in Financial Instruments Directive,'' Directive 2014/65/EU, as amended from time to time.

(3) ''WpHG'' means Germany's ''Wertpapierhandelsgesetz'', as amended or superseded from time to time.

(4) ''MiFID Org Reg'' means Commission Delegated Regulation (EU) 2017/565, as amended from time to time.

(5) ''MiFID Delegated Directive'' means Commission Delegated Directive (EU) 2017/593, as amended from time to time.

(6) ''MLD'' means Directive (EU) 2015/849, as amended from time to time.

(7) ''GwG'' means Germany's ''Geldwäschegesetz,'' as amended from time to time.

(8) ''MiFIR'' means Regulation (EU) 600/2014, as amended from time to time.

(9) ''EMIR'' means the ''European Market Infrastructure Regulation,'' Regulation (EU) 648/2012, as amended from time to time.

(10) ''EMIR RTS'' means Commission Delegated Regulation (EU) 149/2013, as amended from time to time.

(11) ''EMIR Margin RTS'' means Commission Delegated Regulation (EU) 2016/2251, as amended from time to time.

(12) ''CRR Reporting ITS'' means Commission Implementing Regulation (EU) 680/2014, as amended from time to time.

(13) ''CRD'' means Directive 2013/36/EU, as amended from time to time.

(14) ''KWG'' means Germany's ''Kreditwesengesetz,'' as amended from time to time.

(15) ''CRR'' means Regulation (EU) 575/2013, as amended from time to time.

(16) ''MAR'' means the ''Market Abuse Regulation,'' Regulation (EU) 596/2014, as amended from time to time.

(17) ''MAR Investment Recommendations Regulation'' means Commission Delegated Regulation (EU) 2016/958, as amended from time to time.

(18) ''FinDAG'' means Germany's ''Finanzdienstleistungsaufsichtsgesetz,'' as amended from time to time.

(19) ''BaFin'' means the Bundesanstalt für Finanzdienstleistungsaufsicht.

(20) ''ECB'' means the European Central Bank.

(21) ''WpDVerOV'' means Germany's ''Wertpapierdienstleistungs-Verhaltens- und -Organisationsverordnung,'' as amended from time to time.

(22) ''SAG'' means Germany's ''Sanierungs- und Abwicklungsgesetz,'' as amended from time to time.

(23) ''SolvV'' means Germany's ''*Solvabilitätsverordnung,*'' as amended from time to time.

(24) ''BRRD'' means Bank Recovery and Resolution Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014, as amended from time to time.

It is hereby further determined and ordered pursuant to rule 3a71–6 under the Exchange Act, that the paragraph (c)(1)(iii) of the *Order Granting Conditional Substituted Compliance in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the French Republic* issued by the Commission (Exchange Act Release No. 92484, 86 FR 41612) (''French Substituted Compliance Order'') is amended and replaced with the following:

(iii)(A) The Covered Entity:

(*1*) Maintains liquid assets as defined in paragraph (c)(1)(iii)(B) that have an aggregate market value that exceeds the amount of the Covered Entity's adjusted liabilities as defined in paragraph (c)(1)(iii)(C) by at least $100 million before applying the deduction specified in paragraph (c)(1)(iii)(D) and by at least $20 million after applying the deduction specified in paragraph (c)(1)(iii)(D);

(*2*) Makes and preserves for three years a quarterly record that:

(*a*) Identifies and values the liquid assets maintained pursuant to paragraph (c)(1)(iii)(A)(*1*);

(*b*) Compares the amount of the aggregate value the liquid assets maintained pursuant to paragraph (c)(1)(iii)(A)(*1*) to the amount of the Covered Entity's total liabilities and shows the amount of the difference between the two amounts (''the excess liquid assets amount''); and

(*c*) Shows the amount of the deduction specified in paragraph (c)(1)(iii)(D) and the amount that deduction reduces the excess liquid assets amount;

(*3*) The Covered Entity notifies the Commission in writing within 24 hours in the manner specified on the Commission's website if the Covered Entity fails to meet the requirements of paragraph (c)(iii)(A)(*1*) and includes in the notice the contact information of an individual who can provide further information about the failure to meet the requirements; and

(*4*) Includes its most recent statement of financial condition filed with its local supervisor (whether audited or unaudited) with its initial written notice

to the Commission of its intent to rely on substituted compliance under condition (a)(9) above.

(B) For the purposes of paragraph (c)(1)(iii)(A)(*1*), liquid assets are:

(*1*) Cash and cash equivalents;

(*2*) Collateralized agreements;

(*3*) Customer and other trading related receivables;

(*4*) Trading and financial assets; and

(*5*) Initial margin posted by the Covered Entity to a counterparty or a third-party custodian, provided:

(*a*) The initial margin requirement is funded by a fully executed written loan agreement with an affiliate of the Covered Entity;

(*b*) The loan agreement provides that the lender waives re-payment of the loan until the initial margin is returned to the Covered Entity; and

(*c*) The liability of the Covered Entity to the lender can be fully satisfied by delivering the collateral serving as initial margin to the lender.

(C) For the purposes of paragraph (c)(1)(iii)(A)(*1*), adjusted liabilities are the Covered Entity's total liabilities, excluding subordinated debt issued by the Covered Entity that qualifies as Tier 2 capital pursuant to the capital requirements identified in paragraph (c)(1)(i).

(D) The deduction required by paragraph (c)(1)(iii)(A) is the amount of the Covered Entity's risk-weighted assets, excluding risk-weighted assets that are included in CRR Part Three, Title III (Own Funds Requirements for Operational Risk) and risk-weighted assets that are not treated as liquid assets for the purposes of paragraph (c)(1)(iii)(A)(*1*), calculated for the purposes of the capital requirements identified in paragraph (c)(1)(i) divided by 12.5.

It is hereby further determined and ordered pursuant to rule 3a71–6 under the Exchange Act, that the paragraph (c)(1)(iii) of the *Order Granting Conditional Substituted Compliance in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the United Kingdom* (Exchange Act Release No. 92529, 86 FR 43318) (''UK Substituted Compliance Order'') is amended and replaced with the following:

(iii)(A) The Covered Entity:

(*1*) Maintains liquid assets as defined in paragraph (c)(1)(iii)(B) that have an aggregate market value that exceeds the amount of the Covered Entity's adjusted liabilities as defined in paragraph (c)(1)(iii)(C) by at least $100 million before applying the deduction specified in paragraph (c)(1)(iii)(D) and by at least $20 million after applying the deduction specified in paragraph (c)(1)(iii)(D);

(*2*) Makes and preserves for three years a quarterly record that:

(*a*) Identifies and values the liquid assets maintained pursuant to paragraph (c)(1)(iii)(A)(*1*);

(*b*) Compares the amount of the aggregate value the liquid assets maintained pursuant to paragraph (c)(1)(iii)(A)(*1*) to the amount of the Covered Entity's total liabilities and shows the amount of the difference between the two amounts (''the excess liquid assets amount''); and

(*c*) Shows the amount of the deduction specified in paragraph (c)(1)(iii)(D) and the amount that deduction reduces the excess liquid assets amount;

(*3*) The Covered Entity notifies the Commission in writing within 24 hours in the manner specified on the Commission's website if the Covered Entity fails to meet the requirements of paragraph (c)(iii)(A)(*1*) and includes in the notice the contact information of an individual who can provide further information about the failure to meet the requirements; and

(*4*) Includes its most recent statement of financial condition filed with its local supervisor (whether audited or unaudited) with its initial written notice to the Commission of its intent to rely on substituted compliance under condition (a)(9) above.

(B) For the purposes of paragraph (c)(1)(iii)(A)(*1*), liquid assets are:

(*1*) Cash and cash equivalents;

(*2*) Collateralized agreements;

(*3*) Customer and other trading related receivables;

(*4*) Trading and financial assets; and

(*5*) Initial margin posted by the Covered Entity to a counterparty or a third-party custodian, provided:

(*a*) The initial margin requirement is funded by a fully executed written loan agreement with an affiliate of the Covered Entity;

(*b*) The loan agreement provides that the lender waives re-payment of the loan until the initial margin is returned to the Covered Entity; and

(*c*) The liability of the Covered Entity to the lender can be fully satisfied by delivering the collateral serving as initial margin to the lender.

(C) For the purposes of paragraph (c)(1)(iii)(A)(*1*), adjusted liabilities are the Covered Entity's total liabilities, excluding subordinated debt issued by the Covered Entity that qualifies as Tier 2 capital pursuant to the capital requirements identified in paragraph (c)(1)(i).

(D) The deduction required by paragraph (c)(1)(iii)(A) is the amount of the Covered Entity's risk-weighted assets, excluding risk-weighted assets that are included in CRR Part Three, Title III (Own Funds Requirements for Operational Risk) and risk-weighted assets that are not treated as liquid assets for the purposes of paragraph (c)(1)(iii)(A)(*1*), calculated for the purposes of the capital requirements identified in paragraph (c)(1)(i) divided by 12.5.

It is hereby further determined and ordered pursuant to rule 3a71–6 under the Exchange Act, that the paragraph (a)(5) of the French Substituted Compliance Order is amended and replaced with the following:

(5) Counterparties as EMIR ''*counterparties.*'' For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of EMIR, EMIR RTS, EMIR Margin RTS and/or other EU requirements adopted pursuant to those provisions, if the relevant provision applies only to the Covered Entity's activities with specified types of counterparties, and if the counterparty to the Covered Entity is not any of the specified types of counterparty, the Covered Entity complies with the applicable condition of this Order:

(i) As if the counterparty were the specified type of counterparty; in this regard, if the Covered Entity reasonably determines that the counterparty would be a financial counterparty if it were established in the EU and authorized by an appropriate EU authority, it must treat the counterparty as if the counterparty were a financial counterparty;

(ii) Without regard to the application of EMIR article 13; and

(iii) Only to the extent that an Exchange Act section or rule cited in paragraphs (b) through (f) of this Order applies to the security-based swap activities with that counterparty.

It is hereby further determined and ordered pursuant to rule 3a71–6 under the Exchange Act, that the paragraph (a)(6) of the French Substituted Compliance Order is amended and replaced with the following:

(6) *Security-based swap status under EMIR.* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of EMIR, EMIR RTS, EMIR Margin RTS, and/or other EU requirements adopted pursuant to those provisions, if the relevant provision applies to the Covered Entity's OTC derivatives or OTC derivative contracts that have not been cleared by a central counterparty, then either:

(i) The relevant security-based swap is an ''OTC derivative'' or ''OTC derivative contract,'' as defined in EMIR article 2(7), that has not been cleared by a central counterparty and otherwise is subject to the provisions of EMIR article 11, EMIR RTS articles 11–15, and EMIR Margin RTS article 2; or

(ii) The relevant security-based swap has been cleared by a central counterparty that is authorized or recognized to clear derivatives contracts by a relevant authority in the EU.

It is hereby further determined and ordered pursuant to rule 3a71–6 under the Exchange Act, that the paragraph (f)(1)(i)(M)(*2*) of the French Substituted Compliance Order is amended and replaced with the following:

(*2*) With respect to the portion of Exchange Act rule 18a–5(a)(17) and (b)(13) that relates to one or more provisions of Exchange Act rule 15Fh–3 for which substituted compliance is available under this Order, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh–3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and

It is hereby further determined and ordered pursuant to rule 3a71–6 under the Exchange Act, that the paragraph (f)(2)(i)(K)(*2*) of the French Substituted Compliance Order is amended and replaced with the following:

(*2*) With respect to the portion of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii) that relates to one or more provisions of Exchange Act rule 15Fh–3 for which substituted compliance is available under this Order, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh–3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and

It is hereby further determined and ordered pursuant to rule 3a71–6 under the Exchange Act, that the paragraph (a)(13) of the UK Substituted Compliance Order is amended and replaced with the following:

(13) Covered Entity's counterparties as UK EMIR ''counterparties.'' For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of UK EMIR, UK EMIR RTS, UK EMIR Margin RTS, and/or other UK requirements adopted pursuant to those provisions, if the relevant provision applies only to the Covered Entity's activities with specified types of counterparties, and if the counterparty to the Covered Entity is not any of the specified types of counterparty, the Covered Entity complies with the applicable condition of this Order:

(i) As if the counterparty were the specified type of counterparty; in this regard, if the Covered Entity reasonably determines that the counterparty would be a financial counterparty if it were established in the UK and authorized by an appropriate UK authority, it must treat the counterparty as if the counterparty were a financial counterparty;

(ii) Without regard to the application of UK EMIR article 13; and

(iii) Only to the extent that an Exchange Act section or rule cited in paragraphs (b) through (f) of this Order applies to the security-based swap activities with that counterparty.

It is hereby further determined and ordered pursuant to rule 3a71–6 under the Exchange Act, that a security-based swap dealer applying substituted compliance with respect to the capital requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1, and 18a–1a through d has until January 1, 2022 to meet (as applicable):

a. The additional capital condition in paragraph (c)(1)(iii) of the *Amended and Restated Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany* (Exchange Act Release No. 35–93411) (''German Amended Order'');

b. The additional capital condition in paragraph (c)(1)(iii) of the French Substituted Compliance Order; or

c. The additional capital condition in paragraph (c)(1)(iii) of the UK Substituted Compliance Order.

It is hereby further determined and ordered pursuant to rule 3a71–6 under the Exchange Act, that a security-based swap dealer applying substituted compliance with respect to the margin requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–3 has until January 1, 2022 to meet (as applicable):

a. The additional margin conditions in paragraphs (c)(1)(ii) and (iii) of the German Amended Order;

b. The additional margin conditions in paragraphs (c)(1)(ii) and (iii) of the French Substituted Compliance Order; or

c. The additional margin conditions in paragraphs (c)(1)(ii) and (iii) of the UK Substituted Compliance Order.

It is further determined and ordered that the compliance date for Exchange Act section 15F(e) and Exchange Act rules 18a–1, and 18a–1a through d is January 1, 2022 for a security-based swap dealer with a principal place of business in Germany that is operating pursuant to a waiver under CRR, Article 7 (Derogation from the application of prudential requirements on an individual basis).

By the Commission.

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93403; File No. SR–CBOE–2021–061]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Length of Its Current Global Trading Hours Session

October 22, 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 October 21, 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 extend the length of its current global trading hours session (''Global Trading Hours'' or ''GTH''). 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the hours of its GTH session. The proposed rule change to extend the current GTH session aims to meet growing customer demand globally for expanded access to trade SPX and VIX options, which are designed to help enable investors to hedge or gain exposure to the broad U.S. market and global equity volatility.

By way of background, the Exchange currently offers two trading sessions.[5] Regular Trading Hours (''RTH'') and GTH. Rule 5.1 currently sets forth the trading hours for the Exchange's RTH and GTH trading sessions. Particularly, RTH for transactions in equity options (including options on individual stocks, ETFs, ETNs, and other securities) are the normal business days and hours set forth in the rules of the primary market currently trading the securities underlying the options, except for options on ETFs, ETNs, Index Portfolio Shares, Index Portfolio Receipts, and Trust Issued Receipts the Exchange designates to remain open for trading beyond 4:00 p.m.[6] but in no case later than 4:15 p.m.[7] RTH for transactions in index options are from 9:30 a.m. to 4:15 p.m., subject to certain exceptions.[8] The GTH session currently begins at 3:00 a.m. and goes until 9:15 a.m. on Monday through Friday.[9] The Exchange's rules provide that the Exchange may designate as eligible for trading during GTH any exclusively listed index option designated for trading under Chapter 4, Section B.[10] Currently, SPX, VIX and XSP are approved for trading during GTH.[11]

The Exchange notes that it originally adopted the GTH trading session due to global demand from investors to trade SPX and VIX options, as alternatives for hedging and other investment purposes, particularly as a complementary investment tool to VIX futures.[12] Given that SPX and VIX options only traded during regular trading hours prior to the adoption of the GTH session, it was historically difficult for U.S. investors that traded in non-U.S. markets to use these products as part of their global investment strategies. Accordingly, the Exchange adopted the GTH session to meet that demand and allow market participants to engage in trading these options (SPX and VIX) in conjunction with trading VIX futures on Cboe Futures Exchange, LLC (''CFE'') during extended hours.[13] Currently, VIX futures are open for trading on CFE nearly 23 hours a day, 5 days a week.[14]

The proposed rule change to extend the GTH trading session aims to provide global market participants with expanded access to trade the products offered during GTH. Indeed, the proposal to lengthen the current GTH session is designed to help meet growing investor demand for the ability to manage risk more efficiently, react to global macroeconomic events as they are happening and adjust SPX and VIX options positions nearly around the clock. Additionally, the Exchange notes the proposed expanded hours overlap with the Asia Pacific markets, thereby offering a new segment of global market participants the opportunity to trade GTH products in their local time. Specifically, the Exchange proposes to expand the session by starting the GTH session at 8:15 p.m. on the immediately preceding calendar day, rather than at the current start time of 3:00 a.m.[15] The GTH session would continue to end at 9:15 a.m. Transactions effected during the GTH session will have the same trade date as the RTH session that immediately follows it.[16] The proposed rule change otherwise makes no changes to the trading rules applicable to GTH. The GTH trading session will continue to be a separate trading session from RTH and the rules that currently apply (or don't apply) to the current GTH session will continue to apply (or not apply) to the lengthened GTH session.[17] The Exchange will continue to use the same servers and hardware during the lengthened GTH session as it uses for RTH and GTH today. Further, Trading Permit Holders (''TPHs'') may continue to use the same ports and connections to the Exchange for both trading sessions. The Book used during the lengthened GTH session will also be the same Book used currently during RTH and GTH. The Exchange proposes to amend and conform various rules to relating to the proposed expanded GTH, as described more fully below.

Trading Days and Hours

As noted above, Rule 5.1 (Trading Days and Hours) currently sets forth the trading hours for RTH and GTH. The Exchange proposes to amend Rule 5.1 in connection with its proposal to lengthen the GTH session. Particularly, the Exchange proposes to amend Rule 5.1(c), which sets forth the trading hours for the GTH session, to provide that except under unusual conditions as may be determined by the Exchange, GTH hours are from 8:15 p.m. (previous day) to 9:15 a.m. on Monday through Friday (instead of 3:00 a.m. to 9:15 a.m. Monday through Friday). The Exchange also proposes to add language providing that the hours for the GTH session that

[5] The term ''trading session'' means the hours during which the Exchange is open for trading for Regular Trading Hours or Global Trading Hours (each of which may referred to as a trading session). Unless otherwise specified in the Rules or the context otherwise indicates, all Rules apply in the same manner during each trading session. *See* Rule 1.1 (Definitions).

[6] All times referenced herein are Eastern Standard Time.

[7] *See* Rule 5.1(b)(1).

[8] *See* Rule 5.1(b)(2).

[9] *See* Rule 5.1(c).

[10] The Exchange notes that Rule 5.1(c)(1) inadvertently refers to the wrong section of Chapter 4. Particularly, Rule 5.1(c)(1) references Chapter 4, Section D, which section governs Corporate Debt Security Options, instead of the intended reference of Chapter 4, Section B, which section governs Index Options. The Exchange proposes to correct that inadvertent cross-reference error now.

[11] If the Exchange designates a class of index options as eligible for trading during GTH, FLEX Options with the same underlying index are also deemed eligible for trading during GTH. The Exchange also notes that although eligible, XSP is not currently listed for trading during GTH.

[12] *See* Securities Exchange Act Release No. 34–73017 (September 8, 2014), 79 FR 54758 (September 12, 2014) (SR–CBOE–2014–062).

[13] *Id.*

[14] *See* CFE Rule 1202(b).

[15] For example, the GTH trading session for Mondays currently begins on Mondays at 3:00 a.m. Pursuant to the proposed rule change, a Monday GTH trading session will commence on the immediately preceding Sunday at 8:15 p.m.

[16] Transactions effected between 8:15 p.m. to 11:59 p.m. would be considered to have the trade date of the following business day. For example, any transactions effected during the GTH session that begins at 8:15 p.m. on Tuesday, November 23 will be considered to have the trade date of Wednesday, November 24 regardless of whether the trades were effected between 8:15 p.m. and 11:59 p.m. on Tuesday, November 23 or between 12:00 a.m. and 9:15 a.m. on Wednesday November 24.

[17] For example, business conduct rules in Chapter 8 and rules related to doing business with the public in Chapter 9 will continue to apply during the GTH session. Additionally, a broker-dealer's due diligence and best execution obligations apply during the GTH trading session. As there will still be no open outcry trading on the floor during the GTH trading, Chapter 5, Section G will continue not to apply as such rules pertain to manual order handling and open-outcry trading.

follows any holiday listed under Rule 5.1(d)[18] will be from 12:00 a.m. (the calendar day immediately following the day the holiday is observed) until 9:15 a.m., unless the holiday is observed on a Friday, in which case, GTH hours for the subsequent GTH session will start at 8:15 p.m. on the Sunday following the holiday (observed) until 9:15 a.m.[19] The Exchange proposes to start the GTH session that follows a holiday (other than holidays observed on Fridays) at 12:00 a.m. on the trading day immediately following the holiday (observed) because current Rule 5.1(d) provides the Exchange is not open for business on those holidays. The proposed rule change therefore ensures the proposed extended GTH session remains consistent with the current language of Rule 5.1(d) (*i.e.,* the Exchange remains closed for business on holidays).

Index Values

The Exchange next proposes to amend Rule 5.1(c)(3) which currently provides that while it may not be calculated and disseminated at all times during GTH, current values of the VIX Index (*i.e.,* intraday/spot values of the VIX Index) will be widely disseminated at least once every 15 seconds by OPRA or one or more major market vendors during that trading session. Rule 5.1(c)(3) also provides no current index value underlying any other index option trading during GTH is disseminated during or at the close of that trading session.

Pursuant to Rules 4.10(f) and (g), to list options on a broad-based index (currently, the only options that trade during GTH overlying broad-based indexes), current indexes values must be widely disseminated at least once every 15 seconds. The initial purpose of having a rule provision regarding the potential lack of dissemination of index values during GTH was to supersede those requirements with respect to GTH, as index reporting authorities may not disseminate updated values outside of regular trading hours. Moreover, the Exchange notes authority to decide when and how frequently to calculate and disseminate index values lies solely with a reporting authority. Currently, S&P Dow Jones Indices LLC (''S&P'') does not disseminate current values of the S&P 500 Index during GTH, whereas Cboe Global Indices, LLC (''CGI'')[20] currently does disseminate current values of the VIX Index for most (but not all)[21] of the GTH session. While CGI plans to continue its current dissemination of VIX Index values during the current GTH hours (*i.e.,* between 3:00 a.m. to 9:15 a.m.), it does not intend to calculate or disseminate current values of the VIX Index during the proposed additional GTH hours (*i.e.,* from 8:15 p.m. to 3:00 a.m.). The proposed rule change therefore amends Rule 5.1(c)(3) to reflect this change and clarify that current values of VIX will be widely disseminated at least once every fifteen (15) seconds by the Options Price Reporting Authority or one or more major market vendors during that trading session only between 3:00 a.m. to 9:15 a.m. and further provide that between 8:15 p.m. to 3:00 a.m. the Exchange will not report a value of an index underlying an index option trading during GTH, because the value of the underlying indexes of index options trading during GTH (*i.e.,* SPX and VIX) will not be recalculated during this time.

The Exchange notes that since the inception of the Exchange's GTH trading session in 2014, the Exchange has disclosed the possibility that index values on options listed for trading during that session may not be disseminated. Particularly, VIX is intended to represent the market's expectation of S&P 500 volatility over the next 30 days. The accuracy of the calculation for VIX indicative (or spot) values depends on the quality of bid and offer quotes for constituent SPX options series. As the proposed additional GTH hours has yet to be implemented, CGI cannot currently know that the SPX option quotes displayed during those hours will be sufficient to calculate accurate and meaningful VIX indicative values in the same manner it does during RTH or the current GTH session. Indeed, the Exchange expects that initially there will be overall lower levels of trading during the proposed additional GTH hours (8:15 p.m. to 3:00 a.m.) as compared to both RTH and the current GTH session. Therefore, CGI has determined to not calculate VIX spot values during the proposed additional GTH hours. After the launch of extended GTH, to the extent CGI as index calculator determines that SPX quotes during such additional hours will support accurate VIX indicative values, CGI will reconsider whether to calculate and disseminate these values during the entirety of GTH (and the Exchange would submit rule filings to amend the rules, as necessary). The Exchange notes that it similarly did not report a value of an index underlying an index option trading during GTH when the GTH session was first adopted.[22] Additionally, pursuant to Rule 9.20, any TPH that accepts orders for customers for execution during GTH must disclose to those customers various risks related to trading during that trading session, including the risk that an updated underlying index or portfolio value or intraday indicative value will not be calculated or publicly disseminated during GTH. Further, the closing value of the index from the previous trading day will still be available for TPHs that trade during GTH. The proposed change to Rule 5.1(c)(3) also has no impact on trading during GTH. The Exchange lastly notes that the proposed change is also consistent with the rules of its affiliated exchanges that have a GTH session.[23]

Definitions

The Exchange proposes to amend the definition of ''Business Day'' and ''Trading Day'' under Rule 1.1 (Definitions) in connection with the proposed expansion of the GTH trading session. The terms ''business day'' and ''trading day'' currently mean a day on

[18] Rule 5.1(d) provides that the Exchange is not open for business on the following holidays: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

[19] For example, the GTH session that follows Thanksgiving (observed this year on November 25, 2021), will begin at 12:00 a.m. on Friday, November 26, 2021 and end at 9:15 a.m. Because Christmas in 2021 will be observed on a Friday, the GTH session that follows the observed holiday on Friday, December 24, 2021, will start at 8:15 p.m. on Sunday, December 26, 2021 and end at 9:15 a.m.

[20] CGI is an affiliate of the Exchange and is the reporting authority for the Cboe Volatility Index (the ''VIX Index'') (which underlies VIX options the Exchange currently lists for trading) and the Cboe Short-Term Volatility Index (''VIX9D) (which underlies VXST options the Exchange is authorized to, but does not, list for trading).

[21] There may be times when a current value is not available, such as if CGI (as reporting authority) does not begin making current index values available until after a certain amount of time (approximately 15 minutes) has passed following the open of the current GTH session (for example, to ensure sufficient quotes in series used to calculate the index values) or if there are technical issues preventing CGI (as reporting authority) from calculating index values. During the times the current value of VIX is not available (and thus not disseminated) during current GTH, VIX options will continue to be listed for trading during that trading session.

[22] *See* Securities Exchange Act Release No. 34–73704 (November 28, 2014), 79 FR 72044 (December 4, 2014) (SR–CBOE–2014–062) (order granting accelerated approval of proposed rule change, as modified by Amendments Nos 1 and 2, to adopt Extended Trading Hours for SPX and VIX). Particularly, the Exchange proposed to adopt Rule 6.1A(k), which provided ''[t]he Exchange will not report a value of an index underlying an index option trading during Extended Trading Hours, because the value of the underlying index will not be recalculated during or at the close of Extended Trading Hours.''

[23] *See* Cboe C2 Exchange, Inc. (''C2'') Rule 5.1(c)(3) and Cboe EDGX Exchange, Inc. (''Cboe EDGX'') Rule 21.2(c)(3).

which the Exchange is open for trading during RTH. The definition currently provides that a business day or trading day includes both trading sessions on that day. As the expanded GTH session will now begin on a calendar day different than the business day (or trading day), the Exchange proposes to eliminate this language and adopt clarifying language that instead provides that a business day or trading day includes the RTH session and the GTH session that immediately precedes it. Also, because the expanded GTH session will begin on the same calendar day as an RTH session, the Exchange proposes to eliminate the following language from this definition to avoid potential confusion: ''[I]if the Exchange is not open for Regular Trading Hours on a day, then it will not be open for Global Trading Hours on that day.'' In its place, the Exchange proposes to clarify that if the Exchange is not open for Regular Trading Hours on a day, then it will not be open for a Global Trading Hours session immediately preceding what would have otherwise been the Regular Trading Hours session on that day. The Exchange believes the proposed amendments to the definition to add clarity and alleviate potential confusion.

Entry of Orders, Quotes and Cancellations

The Exchange proposes to amend Rule 5.7 (Entry of Orders and Quotes), which currently provides that Users can enter orders and quotes into the System, or cancel previously entered orders and quotes, from 2:00 a.m. until RTH market close, subject to certain requirements and conditions. The Exchange first notes that Rule 5.7 inadvertently omits to differentiate the start time for the entry of orders, quotes and cancellations for All Sessions [24] classes and RTH classes.[25] The start time for RTH Classes is currently 7:30 a.m., which is reflected accurately in Rule 5.31(b). The Exchange therefore proposes to update Rule 5.7 to make clear that Users can enter orders and quotes, or cancel previously entered orders and quotes, from 7:30 a.m. until RTH market close for RTH Classes. In light of the proposal to start the GTH session at 8:15 p.m. (instead of 3:00 a.m.), the Exchange proposes to update the time that Users can begin entering orders and quotes into the System (or canceling previously entered orders and quotes) for All Sessions Classes from its current start time of 2:00 a.m. to 8:00 p.m. on the previous day. While Users will have less time to submit orders quotes and cancellations prior to the GTH opening, the Exchange believes having 15 minutes, as proposed, to submit orders, quotes and cancellations in All Sessions Classes prior to the GTH opening will to be an adequate and sufficient amount of time, especially given that the Exchange lists only two classes for trading during GTH.

Opening Auction Process

The Exchange proposes to amend Rule 5.31 (Opening Auction Process), which rule governs opening auctions during RTH and GTH. First, the Exchange proposes to update Rule 5.31(b) which sets forth the time the Queuing Period begins. The Queuing Period refers to the time period prior to the initiation of an opening rotation during which the System accepts orders and quotes in the Queuing Book [26] for participation in the open rotation for the applicable session. Rule 5.31(b) currently provides that the Queuing Period begins at 2:00 a.m. for All Sessions Classes and at 7:30 a.m. for RTH Only Classes. The Exchange proposes to update the Rule 5.31(b) to provide that the Queuing Period for All Sessions Classes will begin at 8:00 p.m. (the previous day). The Exchange believes the proposed Queuing Period still provides a sufficient amount of time for TPHs to enter quotes and orders into the Queuing Book for participation in the GTH opening rotation, especially given that the Exchange lists only two classes for trading during GTH.

Next, the Exchange proposes to amend Rule 5.31(c), which currently states that beginning at 2:00 a.m. for the GTH trading session and at 8:30 a.m. for the RTH trading session, and until the conclusion of the opening rotation for a series, the Exchange disseminates opening auction updates for the series.[27] The Exchange proposes to update Rule 5.31(c) to provide that opening auction updates will be disseminated beginning at 8:00 p.m. (the previous day) for GTH.

The Exchange also proposes to amend Rule 5.31(d), which describes the events that will trigger the opening rotation for a class during RTH and GTH. Currently Rule 5.31(d) (2) provides that for the Global Trading Hours session, the System initiates the opening rotation at 3:00 a.m. The Exchange proposes to update Rule 5.31(d)(2), to reflect the new opening rotation time of 8:15 p.m. (the previous day).

The Exchange finally proposes to amend Rule 5.33 (Complex Orders). Particularly, the Exchange proposes to amend Rule 5.33(c), which describes the COB Opening Process, which occurs at the beginning of each trading session and after a trading halt. The System accepts complex orders for inclusion in the COB Opening Process at the times and in the manner set forth in Rules 5.7 and 5.31(b), except the Queuing Period for complex orders ends when the complex strategy opens. Complex orders entered during the Queuing Period are not eligible for execution until the initiation of the COB Opening Process. Rule 5.33(c)(1) currently states that the Exchange will disseminate indicative prices and order imbalance information based on complex orders queued in the System for the COB Opening Process beginning at (A) 2:00 a.m. for All Sessions classes for the GTH trading session and (B) 8:30 a.m. for RTH Only classes and 9:15 a.m. for All Sessions classes for the RTH trading session, and updated every five seconds thereafter until the initiation of the COB Opening Process. This functionality provides users with information regarding the expected COB opening, which the Exchange believes may contribute additional transparency and price discovery to the COB Opening Process. The Exchange proposes to amend Rule 5.33(c)(1) to reflect that in light of the proposed extended GTH session, indicative prices and order imbalance information will be disseminated beginning at 8:00 p.m. the previous day (instead of 2:00 a.m.) for All Sessions classes for the GTH trading session.

Market-Maker Rules

Current Rule 5.50(b) (Market-Maker Appointments) provides that a Market-Maker may enter an appointment request via an Exchange-approved electronic interface with the Exchange's systems by 2:30 a.m. for All Sessions, which appointment becomes effective

[24] The term ''All Sessions class'' means an options class the Exchange lists for trading during both GTH and RTH, which currently is only SPX and VIX. As noted above, although eligible, XSP is not currently listed for trading during GTH.

[25] The term ''RTH class'' means an options class the Exchange lists for trading during RTH only (currently all classes other than SPX and VIX).

[26] The term ''Queuing Book'' means the book into which Users may submit orders and quotes (and onto which GTC and GTD orders remaining on the Book from the previous trading session or trading day, as applicable, are entered) during the Queuing Period for participation in the applicable opening rotation. Orders and quotes on the Queuing Book may not execute until the opening rotation. The Queuing Book for the GTH opening auction process may be referred to as the ''GTH Queuing Book,'' and the Queuing Book for the RTH opening auction process may be referred to as the ''RTH Queuing Book.'' *See* Rule 5.31(a).

[27] The Exchange disseminates updates every five seconds, unless there are no updates to the opening information since the previously disseminated update, in which case the Exchange disseminates updates every minute, to all subscribers to the Exchange's data feeds that deliver these messages until a series opens. *See* Rule 5.31(c).

on the open of the GTH trading session, or by 9:00 a.m. for RTH Only classes, which appointment becomes effective on the open of the RTH session. In light of the proposed change to the start time of the GTH session, the Exchange proposes to update the time by which Market-Makers may enter an appointment request for All Sessions classes that would become effective at the open of the subsequent GTH trading session. Particularly, the Exchange proposes to update the cutoff time to submit a request for an All Sessions class appointment for the GTH session (currently only SPX and VIX) from 2:30 a.m. to 5:30 p.m. the previous day, which is the earliest time the Exchange may ''restart'' the System to prepare for GTH, and clarify that such appointment would be effective upon the open of the GTH session (*i.e.,* starting at 8:15 p.m.). The Exchange notes that it intends to additionally continue to maintain an additional cutoff time of 1:30 a.m. for All Sessions appointment classes. Particularly, any appointment request submitted after 5:30 p.m. and at or prior to 1:30 a.m. would be effective starting at 2:30 a.m. Providing for an additional appointment request cutoff time would provide Market-Makers, including Market-Makers who may only trade during the current GTH hours between 3:00 a.m. and 9:15 a.m., an additional opportunity to submit a request for a VIX or SPX appointment and be able to quote the remainder of the GTH session. The Exchange also notes that Market-Makers do not often update appointment selections with respect to SPX and VIX and therefore believes any changes to the appointment cutoff time(s) will have a de minimis impact. Lastly, the Exchange proposes to clarify that the current 9:00 a.m. cutoff for class appointments to be effective on the open of RTH currently applies, and will continue to apply, to all classes, not just RTH Only classes (*i.e.,* if a Market-Maker submits an SPX or VIX appointment after 1:30 a.m., while the Market-Maker will not be eligible to start quoting during that current GTH session, that appointment will be effective starting on the open of RTH so long as it was submitted prior to 9:00 a.m.).

The Exchange also notes that Rule 5.50(a) (Market-Maker Appointments) provides that a Market-Maker's selected class appointment applies to classes during all trading sessions. In other words, if a Market-Maker selects an appointment in SPX options, for example, that appointment would apply during both GTH and RTH (and thus, the Market-Maker would have an appointment to make markets in SPX during GTH and RTH). As a result, the Market-Maker continuous quoting obligations set forth in Rule 5.52(d) applies to the class for an entire trading day (including both trading sessions). Pursuant to Rule 5.52(d), a Market-Maker must enter continuous bids and offers in 60% of the series of the Market-Maker's appointed classes, excluding any adjusted series, any intra-day add-on series on the day during which such series are added for trading, any Quarterly Option series, and any series with an expiration of greater than 270 days.[28] The Exchange calculates this requirement by taking the total number of seconds the Market-Maker disseminates quotes in each appointed class (excluding the series noted above) and dividing that time by the eligible total number of seconds each appointed class is open for trading that day. The Exchange also notes however, that pursuant to Rule 5.52(d)(2)(E), the obligations apply only when the Market-Maker is quoting in a particular class during a given trading day and the obligations are not applicable to an appointed class if a Market-Maker is not quoting in that appointed class. Accordingly, if a Market-Maker does not wish to quote during the proposed new GTH hours (8:15 p.m. to 3:00 a.m.) but does quote the current GTH hours (3:00 a.m. to 9:15 a.m.), then so long as the Market-Maker doesn't log in and quote before 3:00 a.m., the time between 8:15 p.m. and 3:00 a.m. won't be considered when determining a Market-Maker's compliance with the quoting obligations. Similarly, for example, if a Market-Maker quotes only from 8:15 p.m. to 3:00 a.m. and then logs out, the time between 3:00 a.m. and 9:15 a.m. will not be considered when determining compliance. Accordingly, the extension of GTH will have a de minimis, if any, impact on a Market-Maker's continuous quoting obligations, as they may continue to choose when to actively quote and have their obligations to their appointed classes apply. Moreover, selecting an appointment in SPX or VIX options will be optional and within the discretion of a Market-Maker. Additionally, Market-Makers have the opportunity to quote during GTH (and receive the benefits of acting as a Market-Maker with respect to transactions it effects during that time) without obtaining an additional Trading Permit or creating additional connections to the Exchange. Given this ease of access to the GTH trading session, the Exchange believes Market-Makers may be encouraged to quote during the trading session, even as amended. The Exchange believes Market-Makers will continue to have an incentive to quote during GTH given the significance of the SPX and VIX within the financial markets, the expected demand, and given that the related futures also trading during those hours (which may permit execution of certain hedging strategies). The Exchange believes continuing to extend a Market-Maker's appointment to GTH notwithstanding the proposed extension of the trading session will enhance liquidity during that trading session, which benefits all investors during those hours. Therefore, the Exchange believes the proposed rule change provides customer trading interest with a net benefit and continues to maintain a balance of Market-Maker benefits and obligations.

With respect to Lead-Market-Makers (''LMMs''), the Exchange plans to utilize the same LMM structure it uses today during GTH. More specifically, Rule 3.55 (LMMS) currently provides that the Exchange may approve one or more Market-Makers to act as LMMs in each class during GTH. Further, subparagraph (b) of Rule 5.55 (LMMs) provides that if a LMM is approved to act as an LMM during GTH, then the LMM must comply with the continuous quoting obligation and other obligations of Market-Makers set forth in Rule 5.52(d)(2) but does not have to comply with the obligations under Rule 5.55(a). Additionally, subparagraph (a)(2)(B)(iv) of Rule 5.32 (Order and Quote Book Processing, Display, Priority and Execution) provides that the DPM/LMM/PMM participation entitlement does not apply during GTH. LMMs appointed in the GTH session will therefore continue to not be obligated to satisfy heightened continuous quoting and opening quoting standards during GTH, nor will they receive a benefit in exchange for satisfying an obligation (*i.e.,* LMMs do and will not receive a participation entitlement during GTH). The Exchange instead will adopt via a separate rule filing an incentive program that provides appointed LMMs a rebate if they meet certain heightened continuous quoting standards during the proposed additional hours, which the Exchange believes will encourage LMMs to provide significant liquidity during this time.

FLEX

Subparagraph (b) of Rule 5.71 (Opening of FLEX Trading) currently sets forth the times that FLEX traders may begin submitting FLEX Orders into an electronic FLEX Auction, a FLEX AIM, or a FLEX SAM or initiate an open

[28] *See* Rule 5.52(d)(2).

outcry FLEX Auction on the trading floor for the RTH and GTH sessions. The Exchange proposes to update the time FLEX traders may submit such orders during GTH from after 3:00 a.m. (which is the current start time of the GTH session) to after 8:15 p.m. the previous day (which is the proposed start time of the GTH session).

Discussion

As discussed above, rules that currently apply to the GTH trading session will continue to apply in the same manner to the expanded GTH session, albeit certain cutoff times and commencement times will be updated to reflect the proposed new start time of the GTH session. The Exchange also notes the following:

• All TPHs will continue to be allowed to, but will not be required to, participate during GTH.[29] As noted above, while a Market-Maker's appointment to an All Sessions class will apply to that class whether it quotes in series in that class or not during GTH, the Exchange believes the proposed lengthening of the GTH session will have a de minimis, if any, impact on a Market-Maker's continuous quoting obligations, as they may continue to choose when to actively quote and have their obligations to their appointed classes apply. Additionally, even if a Market-Maker elects to not quote during part of GTH, its ability to satisfy its continuous quoting obligation will not be substantially impacted given the few classes that will be listed for trading during GTH.

• The Exchange will continue to use the same connection lines, message formats, and feeds during RTH and GTH.[30] TPHs may use the same ports and EFIDs [31] for each trading session.[32] Accordingly, the Exchange expects TPHs that want to trade during the lengthened GTH session to have minimal preparation.

• The same opening process will continue to be used to open GTH, albeit at an earlier start time.

• Order processing will operate in the same manner during GTH as it does during RTH and the current GTH session. There will be no changes to the ranking, display, or allocation algorithms rules.

• There will be no changes to the processes for clearing, settlement, exercise, and expiration.[33]

• The Exchange will report Exchange quotation and last sale information to the Options Price Reporting Authority (''OPRA'') pursuant to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (the ''OPRA Plan'') during the proposed additional GTH hours in the same manner it currently reports this information to OPRA during RTH and GTH today.[34] The Exchange will also continue to disseminate an opening quote and trade price through OPRA during the proposed additional GTH hours (as it does for RTH and GTH today). Therefore, all TPHs that elect to trade during the proposed extended GTH session will have access to quote and last sale information during that trading session. Exchange proprietary data feeds will also continue to be disseminated during GTH using the same formats and delivery mechanisms with which the Exchange disseminates them during RTH and GTH today. Use of these proprietary data feeds during GTH will be optional (as they are today during RTH and GTH).[35]

• The same TPHs that are required to maintain connectivity to a backup trading facility during RTH and GTH today will be required to do so during the extended GTH session.[36] Because the same connections and servers will be used for both trading sessions, a TPH will not be required to take any additional action to comply with this requirement, regardless of whether the TPH chooses to trade during GTH.

• The Exchange will process all clearly erroneous trade breaks during GTH in the same manner it does during RTH and GTH today and will have Exchange officials available to do so.

• The Exchange will perform all necessary surveillance coverage during GTH.

• The Exchange may halt trading during GTH in the interests of a fair and orderly market in the same manner it may during RTH and GTH today pursuant to Rule 5.20.

Under Rule 5.22 (Market-wide Trading Halts due to Extraordinary Market Volatility), the Exchange will halt trading in all classes whenever a market-wide trading halt (commonly known as a circuit breaker) is initiated in response to extraordinary market conditions. Rule 5.22(b)(1) states that the Exchange will halt trading for 15 minutes if a Level 1 or Level 2 Market Decline occurs after 9:30 a.m. and up to and including 3:25 p.m. (or 12:25 p.m. for an early scheduled close). Additionally, the Exchange will not halt trading if a Level 1 or Level 2 Market Decline occurs after 3:25 p.m. (or 12:25 p.m., if applicable). Rule 5.22(b)(2) states that the Exchange will halt trading until the next trading day if a Level 3 Market Decline occurs. The Exchange notes that Rule 5.22(b)(1) will continue not to apply during the extended GTH session, just as it does not apply during GTH today, as the beginning of GTH, even as amended, will still occur past the 15-minute halt window for a Level 1 or Level 2 Market Decline. Rule 5.22(b)(2) will also continue not to apply to the GTH session, as the GTH session is still considered a different (*i.e.,* the next) trading day than the preceding RTH session (even though the GTH session would begin on the same calendar day as such a halt). As such, if a Level 3

[29] In order to participate in GTH, including the proposed additional hours, a TPH must have a letter of guarantee from a Clearing TPH that is properly authorized by the Options Clearing Corporation (''OCC'') to operate during the GTH session. *See* Cboe Options Rule 3.61. A letter of guarantee from a Clearing TPH authorized to operate during the GTH session will allow a TPH to participate in the entire GTH session, (*i.e.,* from 8:15 p.m. to 9:15 a.m.).

[30] The same telecommunications lines used by TPHs during RTH and/or GTH today may be used during GTH, even as extended, and these lines will be connected to the same application server at the Exchange during both trading sessions.

[31] The term ''EFID'' means an Executing Firm ID. The Exchange assigns an EFID to a TPH, which the System uses to identify the TPH and the clearing number for the execution of orders and quotes submitted to the System with that EFID.

[32] A TPH may elect to have separate ports or EFIDs for each trading session, but the Exchange will not require that.

[33] The Exchange has held discussions with the Options Clearing Corporation, which is responsible for clearance and settlement of all listed options transactions and has informed the Exchange that it will be able to clear and settle all transactions that occur on the Exchange during the extended GTH trading session subject to its existing requirements for transactions executed during extended and overnight trading sessions. *See* Exchange Act Release No. 74268 (February 12, 2015), 80 FR 8917 (February 19, 2015) (SR–OCC–2014–024) (approval of proposed rule change concerning extended and overnight trading sessions), which applies to both index options and index future products.

[34] The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are trading on the participant exchanges. The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981). The full text of the OPRA Plan is available at *http://www.opraplan.com.* All operating U.S. options exchanges participate in the OPRA Plan. The Exchange will report its best bid and offer and executed trades to OPRA during the proposed additional GTH hours in the same manner that they are reported during RTH and GTH today. The operator of OPRA has also informed the Exchange that it will continue to include a modifier to the disseminated information during GTH.

[35] Any fees related to receipt of the OPRA data feed during GTH would be included on the OPRA fee schedule. Any fees related to receipt of the Exchange's proprietary data feeds during GTH will be included on the Exchange's fee schedule (and will be included in a separate rule filing) or the Exchange's market data website, as applicable.

[36] *See* Rule 5.24.

Market Decline occurs at any time during RTH, the Exchange will halt trading in SPX and VIX only until the start of GTH. The Exchange believes that it is appropriate to continue to not apply Rule 5.22(b) because, even if stock trading was halted at the close of the previous trading day, the condition that led to the halt is likely to have been resolved by the time the GTH session starts given the length of time between the close of the previous trading day and the proposed start time of GTH (approximately 4 hours). Moreover, current Rule 5.20(a)(6) continues to allow the Exchange to consider unusual conditions or circumstances when determining whether to halt trading during GTH. To the extent a circuit breaker caused a stock market to be closed at the end of the prior trading day, the Exchange could consider, for example, whether it received notice from stock exchanges that trading was expected to resume (or not) the next trading day in determining whether to halt trading during GTH. Because the stock markets would not begin trading until after GTH opens, the Exchange believes it should be able to open GTH rather than waiting several hours to see whether stock markets open to allow investors to participate in GTH if the Exchange believe such trading can occur in a fair and orderly manner based on then-existing circumstances, not circumstances that existed many hours earlier.

The Exchange understands that systems and other issues may arise and is committed to resolving those issues as quickly as possible, including during the new GTH trading hours. Thus, the Exchange will have appropriate staff on-site and otherwise available as necessary during GTH to handle any technical and support issues that may arise during those hours. Additionally, the Exchange will have personnel available to address any trading issues that may arise during the additional GTH trading hours. The Exchange is also committed to fulfilling its obligations as a self-regulatory organization at all times, including during GTH, and will have appropriately trained, qualified regulatory staff in place during GTH to the extent it deems necessary to satisfy those obligations. The Exchange believes its surveillance procedures are adequate to properly monitor trading during the lengthened GTH session, but notes if additional changes are needed in the future, it will revise such procedures to the extent necessary.

Implementation Date

The Exchange will announce the implementation date of the proposed rule change in accordance with Rule 1.5. The Exchange also notes that it first announced its proposal to lengthen the current GTH session to market-participants via a Trade Desk notice back in January 2021.[37] Since then, the Exchange has issued numerous updated notices, FAQs and detailed technical specifications.

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.[38] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [39] 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) [40] 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 to expand the hours of the Global Trading Hours session will remove impediments to and perfect the mechanism of a free and open market and a national market system. Particularly, the expansion of GTH is a competitive initiative designed to improve the Exchange's marketplace for the benefit of investors and allow the Exchange to provide a competitive marketplace for market participants to trade certain products for a longer period of time outside of RTH. Additionally, the expansion of the GTH trading session is designed to increase the overlap in time that SPX and VIX options are open alongside the related futures contracts and further aims to provide global market participants with expanded access to trade the products offered during GTH. As discussed above, lengthening the GTH session is designed to better help meet growing investor demand for the ability to manage risk more efficiently, react to global macroeconomic events as they are happening and adjust SPX and VIX options positions nearly around the clock. The proposed rule change also provides a mechanism for the Exchange to more effectively compete with exchanges located outside of the United States. Global markets have become increasingly interdependent and linked, both psychologically and through improved communications technology. This has been accompanied by an increased desire among investors to have access to U.S.-listed exchange products outside of regular trading hours, and the Exchange believes this desire extends to its exclusively listed products. Indeed, market participants in the Asia Pacific region have expressed their interest in having the ability to participate in the GTH session during their market hours, which coincide with the proposed additional GTH hours. The Exchange therefore believes that the proposed rule change is reasonably designed to provide an appropriate mechanism for additional trading hours available outside of its current RTH and GTH sessions, while providing for appropriate Exchange oversight pursuant to the Act, trade reporting, and surveillance.

The Exchange also notes that it, along with some of its affiliated options exchanges, already allow for trading outside of the hours of RTH (*i.e.,* during the current GTH trading session).[41] Furthermore, the Commission has authorized U.S. stock exchanges to be open for trading outside of regular trading hours.[42] Thus, the proposed rule change to expand the hours of the GTH session is not novel or unique. Additionally, as noted above, futures exchanges also operate outside of those hours and during the hours proposed to be added to the GTH trading session, including the Exchange's affiliate, CFE, which operates during the hours the

[37] *See* Exchange Notice C2021012501 ''Cboe Options Exchange to Extended Global Trading Hours in Q4 2021''.

[38] 15 U.S.C. 78f(b).

[39] 15 U.S.C. 78f(b)(5).

[40] *Id.*

[41] *See* Cboe Options Rule 5.1, C2 Rule 5.1 and Cboe EDGX Rule 21.2.

[42] *See e.g.,* Cboe BZX Exchange, Inc. Rule 1.5, which provides for an After Hours Trading Session which is a trading session from 4:00 p.m.–8:00 p.m. and follows the Regular Trading Hours session which takes place between 9:30 a.m. and 4:00 p.m. *See also* Exchange Act Release No. 59963 (May 21, 2009), 74 FR 25787 (May 29, 2009) (SR–BATS–2009–012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rules to Offer an After Hours Trading Session).

Exchange proposes to operate the expanded GTH trading session.[43]

As described in detail above, the Exchange's trading rules that apply to GTH today will continue to apply during the lengthened GTH session, which rules have all been previously filed with the Commission as being consistent with the goals of the Act. Rules that will continue to apply during GTH include rules that protect public customers, impose best execution requirements on TPHs, and prohibit acts and practices that are inconsistent with just and equitable principles of trade as well as fraudulent and manipulative practices. The Exchange's rules will also continue to provide opportunities for price improvement during GTH and applies the same allocation and priority rules that are available to the Exchange during RTH and GTH today. The Exchange believes, therefore, that the rules that will apply during GTH, even as expanded, will continue to promote just and equitable principles of trade and prevent fraudulent and manipulative acts.

The proposed rule change clearly identifies the ways in which trading during the expanded GTH will be different from trading during current GTH (such as the start time for queuing periods that will be updated in connection with the new session start time and the proposed absence of a disseminated updated index value during the new hours). This ensures that investors are aware of any differences relating to the proposed additional GTH trading hours. Additionally, the Exchange notes that it will continue to require that disclosures be made to customers describing these potential risks, which will continue to further protect investors from any additional risks related to trading during GTH.[44] The Exchange believes that, with these disclosures, GTH remains appropriate and beneficial. The All Sessions order[45] and RTH Only order[46] will continue to protect investors by permitting investors who wish only to trade during RTH from having orders or quotes execute outside of the RTH session, including during the expanded GTH trading session. Consistent with the goal of investor protection, the Exchange will not allow market orders during GTH due to the expected increased volatility and decreased liquidity during these hours, just as it does not currently allow such orders during GTH today for the same reasons.

Additionally, the Exchange believes that the proposed rule change will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, as the Exchange will ensure that adequate staffing is available during the proposed additional GTH hours (as it does during current GTH hours) to provide appropriate trading support during those hours, as well as Exchange officials to make any necessary determinations under the rules during GTH (such as trading halts and trade nullification for obvious errors). The Exchange is also committed to continuing to fulfill its obligations as a self-regulatory organization at all times, including during GTH. The Exchange believes its surveillance procedures are adequate to properly monitor trading during GTH, including during the additional proposed trading hours. Clearing and settlement processes will be the same for transactions executed during the proposed expanded GTH trading session as they are for transactions executing during RTH or GTH trading session today.

The proposed rule change further removes impediments to a free and open market and does not unfairly discriminate among market participants, as all TPHs with access to the Exchange may trade during GTH using the same connection lines, message formats data feeds, and EFIDs they use during RTH and GTH today, minimizing any preparation efforts necessary to participate during the expanded GTH session. TPHs will continue not be required to trade during GTH.

Additionally, as discussed above, while the proposed rule change increases the total time during which a Market-Maker with an appointment has the ability to quote in a selected class, the Exchange believes this increase has a de minimis, if any, impact on Market-Makers given that a Market-Maker's compliance with its continuous quoting obligation is based on all classes in which it has an appointment in the aggregate and based only when a Market-Maker is quoting it its appointed classes. Indeed, as noted above, if a Market-Maker who quotes during the GTH session today does not wish to quote during the proposed additional GTH hours, then so long as such Market-Maker does not log into the system and quote prior to 3:00 a.m. (or whatever other time it wishes to begin quoting), there will be no impact with respect to the Market-Maker's ability to satisfy its continuous quoting obligations. Selecting an appointment in SPX and/or VIX options will continue to be optional and within the discretion of a Market-Maker. Additionally, Market-Makers continue to have the opportunity to quote during GTH (and receive the benefits of acting as a Market-Maker with respect to transactions it effects during that time) without obtaining an additional Trading Permit or creating additional connections to the Exchange. The Exchange believes Market-Makers will have an incentive to quote in SPX and VIX during the expanded GTH session given the significance of these products within the financial markets, the expected demand, and given that the related futures are also trading during those hours (which may permit execution of certain hedging strategies). The Exchange believes continuing to extend a Market-Maker's appointment to the entirety of the GTH session will enhance liquidity during that trading session, which benefits all investors during those hours. The Exchange believes that any slight additional burden of extending the continuous quoting obligation to the additional hours being added to the GTH trading session in the eligible classes would be outweighed by the Exchange's efforts to add liquidity during the entire GTH trading session in All Sessions classes, the minimal preparation a Market-Maker may require to participate in the GTH trading session, and the benefits to investors that may result from that liquidity. Therefore, the Exchange believes the proposed rule change provides customer trading interest with a net benefit and continues to maintain a balance of Market-Maker benefits and obligations.

The proposed rule change is also consistent with Section 11A of the Act and Regulation NMS thereunder, because it continues to provide for the dissemination of transaction and quotation information during GTH through OPRA, pursuant to the OPRA Plan, which the Commission approved and indicated to be consistent with the Act. While Section 11A and Regulation NMS contemplate an integrated system for trading securities, they also envision competition between markets, and innovation that provides marketplace benefits to attract order flow to an exchange does not result in unfair competition if other markets are free to

[43] *See, e.g.,* CFE Rule 1202, which outlines the trading schedule for futures on the Cboe Volatility Index and includes an Extended trading session that lasts from 5:30 p.m. (previous day to 8:30 a.m.) CT.

[44] *See* Cboe Options Rule 9.20.

[45] An All Sessions order is an order a User designates as eligible to trade during both GTH and RTH. *See* Cboe Options Rule 5.6(c).

[46] An RTH Only order is an order a User designates as eligible to trade only during RTH or not designated as All Sessions. *See* Cboe Options Rule 5.6(c).

compete in the same manner.[47] As discussed, the Exchange, as well as other options exchanges, already offer trading sessions outside of regular trading hours.[48]

Lastly, the Exchange believes the proposed rule change to provide the Exchange will not report a value of VIX during the proposed additional GTH hours will remove impediments to and perfect the mechanism of a free and open market and a national market system as it will reflect the fact that the relevant index reporting authority (*i.e.,* CGI) will not disseminate updated values during the proposed additional GTH hours. As discussed above, the authority to decide when and how frequently to calculate and disseminate index values lies solely with a reporting authority (in this case S&P for SPX and CGI for VIX). The proposed rule change therefore updates the Exchange's rule to reflect the fact that CGI has determined not to calculate and disseminate current values of VIX during GTH from 8:15 p.m. to 3:00 a.m.[49] Particularly, because the proposed additional GTH hours have not yet been implemented, CGI cannot currently know that the SPX option quotes displayed during the proposed additional hours will be sufficient to calculate accurate and meaningful VIX indicative values in the same manner it does during RTH and current GTH. Indeed, the Exchange expects that initially there will be overall lower levels of trading during the proposed additional GTH hours (8:15 p.m. to 3:00 a.m.) as compared to both RTH and the current GTH session. Therefore, CGI has determined to not calculate VIX spot values between 8:15 p.m. and 3:00 a.m. Also as noted above, after the launch of the additional GTH hours, to the extent CGI as index calculator determines that SPX quotes during such trading session will support accurate VIX indicative values, CGI will reconsider whether to calculate and disseminate these values during the entirety of GTH (and the Exchange would submit rule filings to amend the rules, as necessary).

Further, as discussed above, since the inception of the Exchange's GTH trading session in 2014, the Exchange has disclosed the possibility that index values on options listed for trading during that session may not be disseminated. In fact, when the Exchange first adopted the GTH session, it adopted the same rule provision it is proposing today for the expanded hours since neither reporting authorities for these indexes calculated index values during GTH when it first launched, which rule was approved by the Commission.[50] Moreover, Rule 9.20, provides that any TPH that accepts orders for customers for execution during GTH must disclose to those customers various risks related to trading during that trading session, including the risk that an updated underlying index or portfolio value or intraday indicative value will not be calculated or publicly disseminated during GTH. Additionally, the closing value of the index from the previous trading day will still be available for TPHs that trade during GTH. The Exchange notes the proposed change to Rule 5.1(c)(3) also has no impact on trading during GTH. The Exchange lastly notes that its affiliated exchanges' GTH rules similarly provide that no current index value underlying an index option trading during the respective exchange's GTH session is disseminated during or at the close of that trading session.[51]

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 to lengthen the current GTH trading session will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because all TPHs will be able, but not be required, to participate during GTH, and will be able to do so using the same connectivity as they use during RTH and GTH today. As discussed, participation in GTH will be voluntary and within the discretion of TPHs. While the proposed rule change increases the total time during which a Market-Maker with either a SPX and/or VIX appointment may be able quote, the Exchange believes the proposal will have a de minimis, if any, impact on a Market-Maker's continuous quoting obligations, as they may continue to choose when to actively quote and have their obligations to their appointed classes apply. Furthermore, selecting an appointment in these options classes will be optional and within the discretion of a Market-Maker. Additionally, Market-Makers continue to have the opportunity to quote during GTH (and receive the benefits of acting as a Market-Maker with respect to transactions it effects during that time) without obtaining an additional Trading Permit or creating additional connections to the Exchange. The Exchange believes that extending the continuous quoting obligation to the additional trading hours being added to the GTH trading session in two classes is also outweighed by the Exchange's efforts to add liquidity during the entire GTH trading session in All Sessions classes, the minimal preparation a Market-Maker may require to participate in the GTH trading session, and the benefits to investors that may result from that liquidity. Therefore, the Exchange believes the proposed rule change provides customer trading interest with a net benefit and continues to maintain a balance of Market-Maker benefits and obligations.

The Exchange does not believe that the proposed rule change to lengthen the GTH trading session will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed rule change is a competitive initiative that will benefit the marketplace and investors. Additionally, all options exchanges are free to compete in the same manner. The Exchange further believes that the same level of competition among options exchanges will continue during RTH. Because the Exchange will continue to make only exclusively listed products available for trading during GTH, and because any All Sessions

[47] *See* Exchange Act Release Nos. 73704 (November 28, 2014), 79 FR 72044 (December 4, 2014) (SR–CBOE–2014–062) (approval of proposed rule change for Cboe Options to extend its trading hours outside of Regular Trading Hours); and 29237 (May 24, 1991), 46 FR 24853 (May 31, 1991) (SR–NYSE–1990–052 and SR–NYSE–1990–053) (approval of proposed rule change for NYSE to extend its trading hours outside of Regular Trading Hours). The Exchange also notes that no other U.S. options exchange provides for trading SPX or VIX options outside of RTH, so there is currently no need for intermarket linkage during GTH. If another Cboe Affiliated Exchange lists any options authorized to trade during GTH outside of RTH, trading of such options on the Exchange would comply with linkage rules.

[48] *See, e.g.,* Cboe Options Rule 5.1, C2 Rule 5.1 and Cboe EDGX. Rule 21.2.

[49] S&P will also continue to not calculate and disseminate current values of the S&P 500 Index during GTH (during both the proposed additional hours and the current GTH session).

[50] *See* Securities Exchange Act Release No. 34–73704 (November 28, 2014), 79 FR 72044 (December 4, 2014) (SR–CBOE–2014–062) (order granting accelerated approval of proposed rule change, as modified by Amendments Nos 1 and 2, to adopt Extended Trading Hours for SPX and VIX). Particularly, the Exchange proposed to adopt Rule 6.1A(k), which provided ''[t]he Exchange will not report a value of an index underlying an index option trading during Extended Trading Hours, because the value of the underlying index will not be recalculated during or at the close of Extended Trading Hours.'' It wasn't until March 2016 that CGI determined to calculate and make available current values of VIX every 15 seconds during GTH.

[51] *See* Cboe C2 Exchange, Inc. (''C2'') Rule 5.1(c)(3) and Cboe EDGX Exchange, Inc. (''Cboe EDGX'') Rule 21.2(c)(3).

orders that do not trade during GTH will be eligible to trade during the RTH trading sessions in the same manner as all other orders submitted during RTH, the proposed rule change will have no effect on the national best prices or trading during RTH. The Exchange also believes the proposed rule change could further increase its competitive position outside of the United States by providing investors with an additional investment vehicle with respect to their global trading strategies during times that better correspond with parts of regular trading hours outside of the United States.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[52] and Rule 19b–4(f)(6)[53] 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–CBOE–2021–061 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–2021–061. 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–2021–061 and should be submitted on or before November 18, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

J. Matthew DeLesDernier,

Assistant Secretary.

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[52] 15 U.S.C. 78s(b)(3)(A).

[53] 17 CFR 240.19b–4(f)(6).

[54] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93404; File No. SR–MIAX–2021–51]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Options Fee Schedule To Establish a Policy Relating to Billing Errors

October 22, 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 October 14, 2021, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 establish a policy relating to billing errors.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend MIAX's Fee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Schedule to establish a policy relating to billing errors. More specifically, the Exchange proposes to amend the footer on the Title page of its Fee Schedule to adopt language that would provide that all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final. Particularly, the Exchange will resolve an error by crediting or debiting Members [3] and non-Members based on the fees or rebates that should have been applied in the three full calendar months preceding the month in which the Exchange became aware of the error, which includes all impacted transactions that occurred during those months.[4] The Exchange will apply the three month look back regardless of whether the error was discovered by the Exchange or by a Member or non-Member that submitted a fee dispute to the Exchange.[5]

The purpose of the proposed change is to encourage Members and non-Members to promptly review their Exchange invoices so that any disputed charges can be addressed in a timely manner. The Exchange notes that it provides Members with both daily and monthly fee reports and thus believes they should be aware of any potential billing errors within three months. Further, any fees assessed on non-Members are sent as monthly invoices, and thus these firms will likewise receive sufficient notice of any potential billing errors. The requirement that Members and non-Members submit disputes in writing and provide supporting documentation in a timely manner while the information and data underlying those charges (*e.g.,* applicable fees and order information) is still easily and readily available is not changing under this proposal.

The proposed rule change to provide all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final provides both the Exchange and Members and non-Members finality and the ability to close their books after a known period of time. The proposed change encourages Members and non-Members to provide a timely review of their billing invoices.

The Exchange notes that it routinely conducts audits of its Members and non-Members to ensure that each is complying with the terms and conditions of the subscriber agreement they have signed. The audit process is independent of the billing process. The audit function is administered by the Exchange's Member Services Group and the billing function is administered by the Exchange's Trading Operations Group. Each group is charged with distinct responsibilities that do not overlap. The proposed billing fee finality provision is not intended to circumvent the audit process in any manner and the adoption of the three month look back period, beyond which billing errors would be considered final, would not affect a Member or non-Member's ability to take a position with respect to billing charges identified through the audit process.

Further, the Exchange notes that the proposed change is similar to a policy currently in place at another exchange.[6]

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) [8] 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) [9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that establishing a policy that all fees and rebates are final after three months (*i.e.,* resolving billing errors only for the three full calendar months preceding the month in which the Exchange became aware of the error), is reasonable as both the Exchange and Members and non-Members have an interest in knowing when its fee assessments are final and when reliance can be placed upon those assessments. Indeed, without some deadline on billing errors, the Exchange and Members and non-Members would never be able to close their books with any confidence. Furthermore, as noted above, another exchange similarly considers its fees final after a similar period of time. The proposed change is also equitable, and not unfairly discriminatory because it will apply equally to all Members (and non-Members that pay Exchange fees) and apply in cases where either the Member (or non-Member) discovers the error or the Exchange discovers the error.

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 proposed rule change would establish a policy that provides clarity regarding billing errors that would apply equally to all Members. Additionally, the proposed rule change is similar to the rules of another exchange.[10] The Exchange does not believe such proposed changes would impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because the proposed changes would apply equally to all Members, the proposal does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] For example, if the Exchange becomes aware of a transaction fee billing error on October 1, 2021, the Exchange will resolve the error by crediting or debiting Members and non-Members based on the fees or rebates that should have been applied to any impacted transactions during July, August and September 2021. The Exchange notes that because it bills in arrears, the Exchange would be able to correct the error in advance of issuing the October 2021 invoice and therefore, transactions impacted through the date of discovery (in this example, October 1, 2021) and thereafter, would be billed correctly.

[5] The Exchange notes that the current policy which states that all fee disputes must be submitted no later than sixty (60) days after receipt of a billing invoice will remain in place.

[6] *See* Securities Exchange Act Release No. 91836 (May 11, 2021), 86 FR 26765 (May 17, 2021) (SR–BOX–2021–08).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] *Supra* note 6.

Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the operative delay is consistent with the protection of investors and the public interest because such a waiver would allow Members and non-Members to immediately benefit from having a clearly stated policy regarding fee finality for billing disputes and provide certainty and finality to current and prospective billing errors. In addition, the Exchange states that the proposed rule change is comparable to other policies and practices that are already established at another exchange.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to modify its Fee Schedule to immediately adopt a policy relating to billing errors that is designed to provide clarity and certainty with respect to when Exchange fees and rebates may be considered final. Further, the proposed rule change is substantially similar to provisions currently in effect on other national securities exchanges [15] and therefore does not raise any new or novel regulatory issues. Accordingly, the Commission waives the operative delay and designates the proposed rule change operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–MIAX–2021–51 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–MIAX–2021–51. 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–MIAX–2021–51 and should be submitted on or before November 18, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–23437 Filed 10–27–21; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See, e.g., supra* note 6.

[16] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11573]

Notice of Public Meeting of the U.S. President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board; Correction

ACTION: Notice; correction.

SUMMARY: The Department of State published a document in the **Federal Register** of October 6, 2021, concerning the notice of a public meeting of the U.S. President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board. The notice was missing the registration hyperlink.

FOR FURTHER INFORMATION CONTACT: Dr. Sara Klucking, Designated Federal Officer for the SAB, Office of the U.S. Global AIDS Coordinator and Health Diplomacy at *KluckingSR@state.gov* or (202) 615–4350.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of October 6, 2021, in FR Vol. 86, No. 191, Doc. 2021–21799, on page 55678, in the first column, correct the **ADDRESSES** section to read:

ADDRESSES: The meeting will be held virtually via an online platform. Individuals are asked to pre-register at *https://docs.google.com/forms/d/e/1FAIpQLSeRxxRe4wjbSNmlhelXD-RINWASbknPAFWwkjTUJ8zUDbb7FA/viewform.* The agenda will be sent to all registrants and will also be posted on the PEPFAR SAB web page at *www.state.gov/scientific-advisory-board-pepfar* one week in advance of the meeting, along with instructions on how to access the meeting.

Sara Klucking,

Director, Office of Research and Science, Office of the U.S. Global AIDS Coordinator and Health Diplomacy, Office of the Secretary of State.

[FR Doc. 2021–23455 Filed 10–27–21; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land Use Assurance; Astoria Regional Airport, Astoria, Oregon

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice.

SUMMARY: Notice is being given that the FAA is considering a proposal from the Port of Astoria Airport Director to change a certain portion of the airport from aeronautical use to non-aeronautical use at Astoria Regional Airport, Astoria, Oregon. The proposal consists of a portion of a parcel on the south side of the airfield.

DATES: Comments are due within 30 days of the date of the publication of this notice in the **Federal Register**. Emailed comments can be provided to Ms. Mandi M. Lesauis, Program Specialist, Seattle Airports District Office at *mandi.lesauis@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Matt McGrath, Airport Director, Port of Astoria, 10 Pier 1, Ste. 103, Astoria, OR 97103; or Mandi M. Lesauis, Program Specialist, Seattle Airports District Office at (206) 231–4140 or *mandi.lesauis@faa.gov.*

SUPPLEMENTARY INFORMATION: Under the provisions of Title 49, U.S.C. 47153(c), and 47107(h)(2), the FAA is considering a proposal from the Airport Director, Port of Astoria, to change a portion of the Astoria Regional Airport from aeronautical use to non-aeronautical use. The proposal consists of a 24.5-acre portion of a parcel on the south side of the airport.

The parcel is vacant, landlocked and does not have airfield access. The proposed property will be developed as an industrial park. The FAA concurs that the parcel is no longer needed for aeronautical purposes. The proposed use of this property is compatible with other airport operations in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in **Federal Register** on February 16, 1999.

Issued in Des Moines, Washington on October 22, 2021.

Warren D. Ferrell,

Acting Manager, Seattle Airports District Office.

[FR Doc. 2021–23433 Filed 10–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3468

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Investment Credit.

DATES: Written comments should be received on or before December 27, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Investment Credit.

OMB Number: 1545–0155.

Form Number: 3468.

Abstract: Form 3468 is used to compute Taxpayers' credit against their income tax for certain expenses incurred for their trades or businesses. The information collected is used by the IRS to verify that the credit has been correctly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 15,345.

Estimated Time per Response: 34 hours, 7 minutes.

Estimated Total Annual Burden Hours: 523,418.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be 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 has 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 or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 25, 2021.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2021–23477 Filed 10–27–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8834

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Qualified Electric Vehicle Credit.

DATES: Written comments should be received on or before December 27, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson,

at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualified Electric Vehicle Credit.

OMB Number: 1545–1374.

Form Number: 8834.

Abstract: Form 8834 is used to claim any qualified electric vehicle passive activity credit allowed for the current tax year. The IRS uses the information on the form to determine that the credit is allowable and has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and businesses or other for-profit organizations.

Estimated Number of Respondents: 3,136.

Estimated Time per Respondent: 4 hours, 47 minutes.

Estimated Total Annual Burden Hours: 15,022.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be 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 has 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 or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 25, 2021.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2021–23474 Filed 10–27–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council; Meeting

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Notice of meeting.

SUMMARY: The Internal Revenue Service Advisory Council will hold a public meeting.

DATES: The meeting will be held Wednesday, November 17, 2021.

ADDRESSES: The meeting will be held virtually.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Brown, Office of National Public Liaison, at 202–317–6564 or send an email to *PublicLiaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the Internal Revenue Service Advisory Council (IRSAC) will be held on Wednesday, November 17, 2021, from 11:00 a.m. to 4:00 p.m. ET.

The meeting will be held via Zoom. To register and for meeting link instructions, members of the public may contact Ms. Anna Brown at 202–317–6564 or send an email to *PublicLiaison@irs.gov.* Attendees are encouraged to join at least 5–10 minutes before the meeting begins.

Issues to be discussed may include, but are not limited to: *Adequate Funding for the IRS; Implementation of the Taxpayer First Act Section 1302, Modernization of IRS Organizational Structure; Independent Office of Appeals; Reduction in Electronic Filing Threshold for Information Reporting Filers; Circular 230 Revision; Postponing Deadlines Under Revenue Procedure 2018–58; Payors of Income Related to Digital Assets Need Information Reporting & Withholding Guidance; Foreign Student Social Security and Medicare Exemptions; Section 1446(f): Withholding on Transfers of Interests in Publicly Traded Partnerships; Negative Rates; Consider Reasonable Cause Prior to Assessing Penalties on International Information Reporting Forms; Continuation of Revenue Procedure 94–69; Protecting the Personal Identifiable Information of Responsible Parties; Ensuring the Timely Issuance of Certificate of Residence Forms; The IRS COVID–19 Response; The Compliance Effort Around Abusive Promoters and Preparers; Form 990–N and 990–EZ Thresholds; Reducing the User Fee for Private Letter Rulings for Local, State and Indian Tribal Governments Related to Tax-Advantage Bonds; Update, Expand, and Promote Online IRS Guidance for Federal, State, and Local Governments; Review of Paid Preparer Due Diligence Training Module; Determining the Usefulness of Publication 535; Determining the Usefulness of Publication 938; Encouraging Taxpayers to Maximize the Use of Electronic Filing of all Tax Returns, Forms, and Payments;* and *Improving the Taxpayer Experience with the Taxpayer Digital Communication—Outbound Notification (TDC–ON) Application (Recently Renamed as Digital Notices and Letters (DN&L)).* Last-minute agenda changes may preclude advance notice.

Time permitting, at the end of the meeting, interested persons may make oral statements germane to the Council's work. Persons wishing to make oral statements should contact Ms. Anna Brown at *PublicLiaison@irs.gov* and include the written text or outline of comments they propose to make orally. Such comments will be limited to five minutes in length. In addition, any interested person may file a written statement for consideration by the IRSAC by sending it to *PublicLiaison@irs.gov.*

Dated: October 25, 2021.

John A. Lipold,

Designated Federal Officer, Internal Revenue Service Advisory Council.

[FR Doc. 2021–23494 Filed 10–27–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0017]

Agency Information Collection Activity Under OMB Review: VA Fiduciary's Account, Court Appointed Fiduciary's Account, Cert. of Bal. on Deposit and Auth. to Dis. Financial Record

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of

1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice 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. 2900–0017.''

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. 2900–0017'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 108–454, 502–504; 38 U.S.C. 5502.

Title: VA Fiduciary's Account (VA Form 21P–4706b), Court Appointed Fiduciary's Account (VA Form 21P–4706c), Cert. of Bal. on Deposit and Auth. to Dis. Financial Record(21P–4718a).

OMB Control Number: 2900–0017.

Type of Review: Extension Without Change of a Previously Approved Collection.

Abstract: VA Forms 21P–4706b, 21P–4706c, and 21P–4718a will be completed by VA-appointed fiduciaries of VA beneficiaries. The information will be used by VA fiduciary hub staff to determine whether an individual is an appropriate fiduciary and properly using and maintaining an accounting of the VA beneficiary's compensation or pension payments. VA continues to use the information provided on these forms in the oversight of VA-appointed fiduciaries.

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 161 on Tuesday, August 24, 2021, pages 47373 and 47374.

Affected Public: Individuals or Households.

Estimated Annual Burden: 17,720 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 53,159.

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. 2021–23492 Filed 10–27–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0635]

Agency Information Collection Activity Under OMB Review: Suspension of Monthly Check

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. 2900–0635''.

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. 2900–0635'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Suspension of Monthly Check (VA Form 29–0759).

OMB Control Number: 2900–0635.

Type of Review: Revision of a currently approved collection.

Abstract: The form is used by the Department of Veterans Affairs to advise the beneficiary that his/her monthly check has been suspended. The information requested is authorized by law, 38 U.S.C. 1917.

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 161 on August 24, 2021, pages 47372 and 47373.

Affected Public: Individuals and Households.

Estimated Annual Burden: 83 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 500.

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. 2021–23493 Filed 10–27–21; 8:45 am]

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Federal Register

Vol. 86, No. 206

Thursday, October 28, 2021

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General Information, indexes and other finding aids **202–741–6000**
Laws **741–6000**

Presidential Documents
Executive orders and proclamations **741–6000**
The United States Government Manual **741–6000**

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Electronic and on-line services (voice) **741–6020**
Privacy Act Compilation **741–6050**

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

54339–54586 1
54587–54800 4
54801–55468 5
55469–55684 6
55685–56180 7
56181–56644 8
56645–56830 12
56831–57002 13
57003–57320 14
57321–57524 15
57525–57748 18
57749–57984 19
57985–58202 20
58203–58550 21
58551–58762 22
58763–59008 25
59009–59278 26
59279–59602 27
59603–59838 28

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR
1402 57529

3 CFR
Proclamations
9984 (revoked by 10294) 59603
9992 (revoked by 10294) 59603
10143 (revoked by 10294) 59603
10199 (revoked by 10294) 59603
10294 59603
10266 55443
10267 55445
10268 55447
10269 55449
10270 55451
10271 55455
10272 55459
10273 55461
10274 55463
10275 55469
10276 55471
10277 55473
10278 56181
10279 57003
10280 57005
10281 57007
10282 57009
10283 57307
10284 57309
10285 57321
10286 57335
10287 57349
10288 57749
10289 58197
10290 58199
10291 58201
10292 58203
10293 59597
10294 59603
Executive Orders
11287 (amended by 14048) 55465
12382 (amended by 14048) 55465
13231 (amended by 14048) 55465
13265 (amended by 14048) 55465
13621 (superseded by 14050) 58551
13889 (superseded in part by 14048) 55465
14048 55465
14049 57313
14050 58551
Administrative Orders
Presidential Determinations:
No. 2022–1 of Oct. 8, 2021 57525
No. 2022–2 of Oct. 8, 2021 57527
Memorandums:
Memorandum of October 22, 2021 59599
Notices:
Notice of October 6, 2021 56829
Notice of October 12, 2021 57319
Notice of October 25, 2021 59277

5 CFR
532 57355
849 57011
890 55980
1630 58205
Proposed Rules:
894 57764

6 CFR
5 55475
27 57532
Proposed Rules:
5 ..... 55528, 58226

7 CFR
210 57544
220 57544
226 57544
870 54339
966 57356
1427 54339
1728 57015
1755 57015
4280 54587
Proposed Rules:
984 56840

8 CFR
270 57532
274a 57532
280 57532
Proposed Rules:
208 57611
235 57611
1003 57611
1208 57611
1235 57611

10 CFR
52 56645
72 ..... 54341, 54801, 55685
110 55476
429 ..... 56608, 56790
430 ..... 56608, 56790
431 58763
1704 57549
Proposed Rules:
72 54410

429 .....54412, 59308, 59652
430.....57378, 59652
431 .....54412, 59308, 59652
460.....59042

12 CFR

365.....59279
611.....58559
612.....58559
614.....54347
615.....54347
620.....54347
621.....58559
628.....54347
700.....59282
701.....59282
703.....59282
704.....59282
712.....59289
713.....59282

Proposed Rules:

628.....58042
1002.....56356

14 CFR

13.....54514
25.....54588
39 .....54801, 54803, 55479, 55685, 56831, 56833, 57022, 57025, 57027, 57030, 57033, 57550, 57552, 57555, 57558, 57560, 57564, 57567, 57569, 57571, 57574, 57577, 57579, 57751, 59009
71 .....54361, 54362, 54590, 54600, 54602, 55483, 55688, 58794, 58795, 59014, 59015, 59016, 59018
91.....55485
97 .....54604, 54606, 56835, 56837

Proposed Rules:

39 .....54663, 55538, 55542, 55545, 55747, 55749, 56217, 56220, 56225, 56227, 56229, 56232, 56658, 56660, 56840, 57078, 57081, 58228, 58597, 58600, 59062, 59653, 59655, 59658, 59662, 59665, 59667
71 .....55752, 55754, 56234, 56662, 56843, 56845, 57083, 58230, 58604, 58606, 58607, 58608, 58609, 58611, 58613, 58814, 58816, 58817, 58819, 58822, 58823, 58825, 59065, 59067, 59068, 59670, 59672
73.....57611

15 CFR

290.....56183
732.....54807
734.....54807
736.....54807
738.....54807
740.....54807, 58205
742.....54814
744.....54807
748.....54807
750.....54807
770.....54807
772.....54807, 58205
774 .....54807, 55492, 58205
1500.....55494

Proposed Rules:

740.....58615
774.....58615, 59070

16 CFR

1.....54819
305.....57985
1223.....59609

17 CFR

232.....55689
239.....55689

Proposed Rules:

229.....58232
232.....57478
240.....57478, 58232
249.....57478, 58232
270.....57478
274.....57478, 58232

18 CFR

389.....54610

19 CFR

4.....57532
Ch. I.....58216, 58218
122.....57991

21 CFR

16.....55224
73.....55494, 56183
510.....57992
516.....57992
520.....57992
522.....57992
526.....57992
556.....57992
558.....57992
860.....54826
878.....56195
1100.....54300
1107.....55224, 55300
1114.....55300

Proposed Rules:

800.....58150
801.....58150
808.....58150
874.....58150

22

22.....59613
41.....55692

24 CFR

247.....55693
570.....59302
880.....55693
882.....55693
884.....55693
966.....55693

Proposed Rules:

203.....54876
206.....54876

25 CFR

90.....54364
150.....58796

26 CFR

1.....54367
54.....55756
300.....57753

Proposed Rules:

54.....55980

28 CFR

2.....56645
16.....54368

Proposed Rules:

523.....57612
541.....57612

29 CFR

1400.....54851
1915.....54611
2510.....55980
2590.....55980

Proposed Rules:

1910.....59309
1915.....59309
1917.....59309
1918.....59309
1926.....59309
1928.....59309
2550.....57272

30 CFR

950.....59019

Proposed Rules:

950.....59674

31 CFR

589.....59615
591.....58016, 59024

32 CFR

323.....54371
507.....54615

33 CFR

1.....58560, 59303
27.....57532
100 .....54620, 55702, 56205, 58220, 58573, 58575, 58797, 59029
117.....54851, 58799
165 .....54371, 54622, 56205, 56206, 57358, 57581, 58801, 58803, 58805, 59031, 59033
175.....58560, 59303
334.....56208

Proposed Rules:

100.....54879, 59675
117.....58827
167.....59326
328.....58829
334.....56236

34 CFR

604.....59619
690.....59619
691.....59619

Proposed Rules:

Ch. II.....54881, 54883
Ch. VI.....54666

37 CFR

1.....57035
6.....55498
201.....59627
380.....59362

Proposed Rules:

201.....59327
220.....59327
222.....59327
223.....59327
224.....59327
385.....58626

38 CFR

3.....56213, 57583
17.....56646
36.....56213
38.....59035

Proposed Rules:

1.....55547
3.....57084
8.....56846
17.....58237
21.....57084, 57094

39 CFR

111.....58398
211.....58398

Proposed Rules:

3050.....55548
3055.....57385

40 CFR

9.....55116, 55704
51.....57585
52 .....54373, 54375, 54377, 54379, 54624, 54626, 54628, 55501, 56838, 57058, 57585, 57586, 58220, 58577, 58579, 58581, 58592, 58593, 58807, 59641, 59643, 59646
70.....54379
81.....59648
84.....55116
180 .....56652, 56653, 57753
262.....54381
264.....54381
265.....54381
282.....57757
716.....54386
721.....55704

Proposed Rules:

52 .....54887, 56848, 57388, 57769, 58627, 58630, 59073, 59075, 59327, 59333, 59678, 59682
62.....59336
81.....59075
82.....55549
120.....58829
174.....58239
180.....58239
271.....54894
372.....57614
721.....56664
751.....59684
761.....58730
1502.....55757
1507.....55757
1508.....55757

41 CFR

300–90.....54630
300–74.....54630
Appendix E to Ch. 301 54630

Proposed Rules:

51.....56679
52.....56679
53.....56679
54.....56679

42 CFR

51c.....54390
59.....56146
412.....54631, 58019
413.....58019
425.....58019
455.....58019
495.....58019

Proposed Rules:

422.....58245
423.....58245
438.....58245
498.....58245

43 CFR

420.....59039
3000.....54636

45 CFR

147.....55980
149.....55980
670.....54396
1157.....58809
1304.....55509

Proposed Rules:

1.....58042
305.....57770

46 CFR

25.....58560, 59303

Proposed Rules:

50.....57896
52.....57896
53.....57896
54.....57896
56.....57896
57.....57896
58.....57896
59.....57896
61.....57896
62.....57896
63.....57896
64.....57896

47 CFR

1.....54852
25.....54396
27.....57369
54.....55515, 59304
63.....54396
64.....54871, 58039
73.....54396, 54852
74.....54852
90.....58809

Proposed Rules:

52.....57390
54.....57097
64 .....54897, 57390, 59084
73.....54416, 54417

48 CFR

503.....55516
511.....55516
512.....55516
513.....55516
514.....55516
515.....55516
517.....55516
519.....55516
522.....55516
523.....55516
527.....55516
528.....55516
529.....55516
532.....55516
536.....55516
537.....55516
538.....55516
539.....55516
541.....55516
542.....55516
543.....55516
546.....55516
549.....55516
552.....55516, 57372
570.....55516
802.....54402
852.....54402, 54405
853.....54402
871.....54405
1502.....55708
1512.....55708
1513.....55708
1516.....55708
1532.....55708
1539.....55708
1552.....55708

Proposed Rules:

Ch. 1.....57404
2.....55769
19.....55769
52.....55769
332.....57102
352.....57102
Ch. 28.....58526
1426.....59338
1452.....59338
1480.....59338

49 CFR

Ch. III.....57060
382.....55718
383.....55718
384.....55718
390.....55718
392.....55718
801.....54641
1503.....57532

Proposed Rules:

23.....58053

50 CFR

10.....54642
17.....57373, 57588
219.....58474
622 .....54657, 54871, 54872, 58434
635.....54659, 54873
648 .....54875, 56657, 57376, 58595
660 .....54407, 55525, 58810
665.....55743
679.....58040, 58596

Proposed Rules:

17 .....55775, 57104, 57773, 58831, 59346
21.....54667
217.....56857
300.....55560, 55790
424.....59353
622.....57629
648.....54903
660.....59109
665.....59357
679.....55560
680.....55560

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List October 20, 2021

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